

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3 MADILYN SHORT, RILEY VON BORSTEL,
4 KJRSTEN SCHINDLER, and JAY-MARK
PASCUA,

5 Plaintiffs,

6 v.

7 GOVERNOR MICHAEL J. DUNLEAVY in his
8 official capacity, THE STATE OF ALASKA,
9 OFFICE OF MANAGEMENT AND BUDGET,
and THE STATE OF ALASKA, DEPARTMENT
OF ADMINISTRATION,

10 Defendants.

Court No.: 3AN-22-04028CI

11 **MOTION FOR SUMMARY JUDGMENT**

12 Plaintiff-students Madilyn Short, Riley von Borstel, Kjrsten Schindler and Jay-
13 Mark Pascua ("Plaintiffs") move for summary judgment that the Higher Education
14 Investment Fund ("HEIF") is not subject to the sweep into the Constitutional Budget
15 Reserve ("CBR") under article IX, section 17 of the Alaska Constitution. Defendants
16 Governor Michael J. Dunleavy (the "Governor"), the Office of Management and Budget
17 within the Office of the Governor ("OMB"), and the Department of Administration
18 ("DOA") that effectuates the transfers of state monies (collectively, the "Executive
19 Branch"), violated both sections 17 and 13 of article IX of the Alaska Constitution by
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transferring funds from the HEIF into the CBR without a valid appropriation by the legislature. This motion is supported by the affidavit of counsel and attached exhibits.¹

I. INTRODUCTION

At the request of then-Governor Sean Parnell, the legislature appropriated \$400 million to the newly-created HEIF — established in 2012 — to provide a long-term funding source for scholarships and grants to Alaskans pursuing postsecondary education in Alaska. Today, the HEIF (now valued at over \$410 million) is primarily used to fund the: (1) Alaska Performance Scholarship (“APS”); (2) Alaska Education Grant (“AEG”); and (3) Washington-Wyoming-Alaska-Montana-Idaho medical school (“WWAMI”) programs.

In 2019, for the first time in the HEIF’s history, OMB claimed that the entirety of the HEIF was subject to the annual “sweep” of funds back into the CBR pursuant to article IX, section 17(d) of the Alaska Constitution. Although the legislature obtained enough votes in July 2019 to effectuate a “reverse sweep” to counter OMB’s novel interpretation that year, the Executive Branch still considers the HEIF subject to the CBR sweep.

In 2021, the legislature failed to obtain the necessary three-quarters vote for a reverse sweep. OMB indicated in June 2021 that the Executive Branch — through the DOA — intended to sweep the entirety of the HEIF into the CBR, essentially eliminating

¹ See Affidavit of Jahna M. Lindemuth (Jan. 4, 2021) [hereinafter Lindemuth Aff.].

1 the fund, despite the existence of lawful FY2022 appropriations from it. After twenty
2 plaintiffs won a lawsuit invalidating the Executive Branch's decision to sweep the
3 similarly-situated Power Cost Equalization ("PCE") Endowment Fund, the Governor
4 directed OMB to honor FY2022's appropriations from the HEIF. Nevertheless, the
5 Executive Branch continues to assert that the remainder of the HEIF is still subject to the
6 sweep.
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8 The Executive Branch's designation of the HEIF as being subject to the annual
9 CBR sweep violates the Alaska Constitution in several ways. First, the HEIF is not
10 subject to the CBR sweep under the express language and intended purpose of article IX,
11 section 17(d) of the Alaska Constitution, recently confirmed by a new legal analysis by
12 Attorney General Treg Taylor. Second, by transferring monies from the HEIF to the
13 CBR without a valid appropriation from the legislature, the Executive Branch violated
14 article IX, section 13 of the Alaska Constitution. Indeed, the Executive Branch's
15 interpretation violates separation of powers by interfering with the legislature's,
16 appropriation powers and effectively undoing prior valid appropriations to the HEIF.
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18 Plaintiffs respectfully request that this court GRANT Plaintiffs' motion for
19 summary judgment, declare that the HEIF is not subject to the sweep, and order the
20 HEIF's swept funds be returned to the HEIF immediately. Plaintiffs also ask that this
21 court permanently enjoin the Executive Branch from sweeping monies appropriated to
22 the HEIF to the CBR absent a valid appropriation.
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II. FACTUAL BACKGROUND

A. Voters Established The CBR In 1990.

The CBR was established after over 66% of voters approved the amendment of the Alaska Constitution in 1990.² The primary reason behind the creation of the CBR was to encourage the legislature to set aside “windfall” profits from settlements related to resource extraction in a reserve.³

The CBR has four general characteristics outlined in the four subsections of article IX, section 17 of the Alaska Constitution. In sum, the CBR: (1) is capitalized through certain settlement proceeds and earnings;⁴ (2) may be accessed by a simple majority of the legislature “[i]f the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year”;⁵ (3) may otherwise be accessed with a three-quarters vote from both houses of the legislature;⁶ and (4) must be “repaid” annually

² See State of Alaska, Official Returns, November 6, 1990 General Election, at 4 <https://www.elections.alaska.gov/Core/Archive/90GENR/90genr.pdf> (printed Nov. 29, 1990) (showing 66.2% of voters approving the creation of the CBR).

³ See State of Alaska, Official Election Pamphlet, Ballot Measure No. 1, at 2 (1990) [hereinafter 1990 Election Pamphlet] (“If approved, the [CBR] will help hold down spending by removing from the table the oil and gas revenue ‘windfalls’ that result from pending litigation and tax disputes.”) (Exhibit 1 to Lindemuth Aff.); see also *Hickel v. Halford*, 872 P.2d 171, 177 n.8 (Alaska 1994) (“The record is replete with references . . . to the need to remove ‘windfalls’ from the normal appropriations power of the legislature.” (citations omitted)).

⁴ Alaska Const. art. IX, § 17(a).

⁵ Alaska Const. art. IX, § 17(b).

⁶ Alaska Const. art. IX, § 17(c).

1 if there is “money in the general fund available for appropriation at the end of each
2 succeeding fiscal year.”⁷

3 This case concerns the final subsection relating to the annual replenishment of the
4 CBR, accomplished by “sweeping” available money from the general fund at the end of
5 each fiscal year.⁸ Article IX, section 17(d) of the Alaska Constitution provides, in full:

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7 If an appropriation is made from the budget reserve fund,
8 until the amount appropriated is repaid, *the amount of money*
9 *in the general fund available for appropriation at the end of*
10 *each succeeding fiscal year* shall be deposited in the budget
11 reserve fund. The legislature shall implement this subsection
12 by law.^[9]

13 This provision creates the budgetary mechanism commonly referred to as the CBR sweep,
14 where any excess funds are “swept” back into the CBR at the end of each fiscal year with
15 available monies.¹⁰ Annual sweeps have previously been counteracted through a “reverse
16 sweep” vote on appropriation bills to effectively re-appropriate funds from the CBR. The
17 reverse sweep requires a three-quarters vote in both houses of the legislature.¹¹

18 In recent years, the legislature has relied on funds from the CBR to balance the state’s
19 budget. And until very recently, the legislature has counteracted the CBR sweep through a

20 ⁷ Alaska Const. art. IX, § 17(d).

21 ⁸ *Id.*

22 ⁹ *Id.* (emphasis added).

23 ¹⁰ *Id.*

24 ¹¹ See Alaska Const. art. IX, § 17(c) (“An appropriation from the budget reserve fund
25 may be made for any public purpose upon affirmative vote of three-fourths of the
26 members of each house of the legislature.”).

reverse sweep vote. Additionally, prior administrations only designated 32 out of 71 “subfunds” as being subject to the annual CBR sweep.¹²

B. The Legislature Established The HEIF In 2012.

1. Creation

The HEIF was established by the twenty-seventh legislature in 2012,¹³ funded by \$400 million the legislature had appropriated the year before.¹⁴ By statute — and consistent with Governor Parnell’s intent as the sponsor of the legislation — the HEIF serves as a stable, long-term funding source for scholarships and grants for the APS and AEG programs.¹⁵ To further this goal, the legislature also provided that contributions to

¹² See Presentation on Sweep and Reverse Sweep before the Senate Finance Committee by Kris Curtis, Legislative Auditor and Megan A. Wallace, Legal Services Dir., at 16 (July 9, 2019) [hereinafter FYE2018 Sweep List] (Exhibit 2 at 1 to Lindemuth Aff.).

¹³ AS 37.14.750; *see also* ch. 74, SLA 2012.

¹⁴ See ch. 5, § 20(f), FSSLA 2011 (“The sum of \$400,000,000 is appropriated from receipts of the Alaska Housing Capital Corporation . . . to a fund created for the purpose of providing education grants or performance scholarships, or both, by the Twenty-Seventh Alaska State Legislature.”); *see also* ch. 74, § 27, FSSLA 2012 (“The [HEIF] established in AS 37.14.750 . . . is the fund identified in sec. 20(f), ch. 5, FSSLA 2011.”).

¹⁵ See AS 37.14.7509(a) (“The [HEIF] is established . . . for the purpose of making grants awarded under [the AEG program] by appropriation to the account established under AS 14.43.915(a) and of making scholarship payments to qualified postsecondary institutions for students under [the APS program] by appropriation to the account established under AS 14.43.915(b).”).

1 the HEIF can qualify for a variety of tax credits.¹⁶ The legislature intended the fund to
2 exist into perpetuity, and provided by statute that “[m]oney in the fund *does not lapse*.”¹⁷

3 The legislature also indicated its intent to preserve the corpus of the fund by
4 providing in statute that the commissioner of revenue annually identify 7% of the HEIF’s
5 value as being available annually for further appropriation to the APS and AEG
6 programs, expressly confirming that the HEIF is to act as an endowment for those
7 programs.¹⁸ Of those identified funds, two thirds are earmarked for the APS program,¹⁹
8 and one third for the AEG program.²⁰ The legislature then makes annual appropriations
9 from the HEIF (and of course, can always appropriate more or less than 7% if the current
10 legislature so desires).²¹

16 ¹⁶ See AS 43.20.014(a)(7); AS 43.55.019(a)(7); AS 43.56.018(a)(7);
17 AS 43.65.018(a)(7); AS 43.75.018(a)(7); AS 43.77.045(a)(7); *see also* ch. 74, §§ 14-25,
18 SLA 2012. Millions of dollars in education tax credits are provided to Alaskan
19 corporations annually. See Indirect Expenditure Report, Legislative Finance Division
20 (Jan. 2021), <https://www.legfin.akleg.gov/IEBooks/2021IndirectExpenditureReport.pdf>
(Exhibit 3 to Lindemuth Aff.) (showing millions of dollars in annual education tax credits,
21 which leads to an estimated annual benefit of over \$166,000 for “[b]etween 30 and 40
22 companies”).

23 ¹⁷ AS 37.14.750(a) (emphasis added).

24 ¹⁸ AS 37.14.750(c).

25 ¹⁹ AS 14.13.915(b); *see also* AS 37.14.750(c)(2).

26 ²⁰ AS 14.13.915(a); *see also* AS 37.14.750(c)(1).

²¹ See *Wielechowski v. State*, 403 P.3d 1141, 1147 (Alaska 2017).

2. Supported programs

The APS program provides annual merit scholarships to Alaskans who attend qualified postsecondary educational institutions.²² Students qualify for the APS program through required high school courses, college entrance exam test scores, and their GPA.²³ Each APS recipient receives either \$4,755, \$3,566, or \$2,378 annually based on that student's GPA and college entrance exam scores.²⁴ Nearly 3,000 students receive scholarships from the APS program each year.²⁵ Plaintiffs von Borstel, Schindler, and Pascua are three students who have received scholarships from the APS program in the past and would qualify for future scholarships as they continue their postsecondary education in Alaska.²⁶

The AEG program provides annual needs-based grants to Alaskans who attend qualified postsecondary educational institutions.²⁷ Students qualify for the AEG program

²² See AS 14.43.810-.849; *see also* State of Alaska, FY2023 Governor's Operating Budget, Department of Education and Early Development, Alaska Performance Scholarship Awards Component Budget Summary, at 2 (Dec. 15, 2021) [hereinafter FY2023 APS Request] (Exhibit 4 to Lindemuth Aff.).

²³ See AS 14.43.820(a). Because college entrance exams were optional last year due to the COVID-19 pandemic, that requirement was waived. *See* FY2023 APS Request at 2 (Exhibit 4 to Lindemuth Aff.).

²⁴ See AS 14.43.825(a).

²⁵ See FY2023 APS Request at 2 (Exhibit 4 to Lindemuth Aff.).

²⁶ See Complaint at ¶¶ 4-6 (Jan. 4, 2022).

²⁷ See AS 14.43.400-.420; *see also* State of Alaska, FY2023 Governor's Operating Budget, Department of Education and Early Development, Alaska Education Grants Component Budget Summary, at 2 (Dec. 15, 2021) [hereinafter FY2023 AEG Request] (Exhibit 5 to Lindemuth Aff.).

1 primarily based on financial need.²⁸ Each AEG recipient receives up to \$4,000 annually
2 from the program.²⁹ Nearly 3,000 students receive grants from the AEG program each
3 year.³⁰ Plaintiff Pascua has received grants from the AEG program, and would qualify
4 for future grants as he continues his postsecondary education in Alaska.³¹

5 Although the HEIF was originally established to provide funding to only the APS
6 and AEG programs,³² the legislature has more recently appropriated money from the
7 HEIF to also support the WWAMI program, including in FY2022.³³ The WWAMI
8 program provides loans to Alaskans going to the four-year medical school at the
9 University of Washington, through the Alaska Commission on Postsecondary Education
10 (“ACPE”), to help cover the difference between in-state and out-of-state tuition. Twenty
11 (20) Alaskans are admitted to the WWAMI program each year,³⁴ and the 60 students in
12 their second, third, and fourth years of medical school receive these loans. These
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15 ²⁸ See AS 14.43.415(a)(3); *see also* 20 AAC 16.015(a); 20 AAC 16.037.

16 ²⁹ See AS 14.43.420(a).

17 ³⁰ FY2023 AEG Request at 2 (Exhibit 5 to Lindemuth Aff.).

18 ³¹ See Complaint at ¶ 6.

19 ³² See AS 37.14.750(a).

20 ³³ See ch. 1, SSLA 2021, at 2 (Enrolled HB 69) (signed June 30, 2021) [hereinafter
21 FY2022 Operating Budget] (appropriating over \$3.2 million from the HEIF for the
22 WWAMI program) (Exhibit 6 to Lindemuth Aff.). In FY2022, the legislature also
23 appropriated funding (\$138,200) from the HEIF to the Live Homework Help program —
24 which provides free live online tutoring to thousands of students throughout Alaska, and is
utilized by K-12 and introductory-level college students each year. *See id.* (Exhibit 6 to
Lindemuth Aff.).

25 ³⁴ See AS 14.42.033.

WWAMI program loans are forgiven for those who return to Alaska for work as doctors and residents after completing their medical training;³⁵ those who do not return to Alaska must repay half of their loans to the ACPE, which are appropriated back to the HEIF.³⁶ Students who receive WWAMI program loans receive approximately \$30,000 in loans annually, and the program has resulted in hundreds of doctors returning to Alaska.³⁷ Plaintiff Short is a first-year medical student in the WWAMI program, and will be eligible to receive WWAMI program loans starting next fall.³⁸

C. The Executive Branch Identified The HEIF As Being Subject To The CBR Sweep In 2019.

In July 2019, after the legislature failed to vote for the reverse sweep by the required three-fourths majority in both houses for the FY2020 operating budget, then-OMB Director Donna Arduin sent a letter outlining which funds would be subject to the CBR sweep pursuant to article IX, section 17(d) of the Alaska Constitution.³⁹ The letter

³⁵ See AS 14.43.510. One third of the loan is forgiven for each year a doctor works in rural Alaska, and one fifth of the loan is forgiven for each year a doctor works elsewhere in Alaska. AS 14.43.510(b).

³⁶ See AS 14.43.510(a); see also FY2022 Operating Budget at 4 (“The amount received by the [ACPE] as repayment of WWAMI medical education program loans, estimated to be \$504,044, is appropriated to the [HEIF] (AS 37.14.750).”) (Exhibit 6 to Lindemuth Aff.).

³⁷ See OMB, Performance Details, Department of Education and Early Development, Washington, Wyoming, Alaska, Montana, Idaho (WWAMI) Medical Education, <https://omb.alaska.gov/html/performance/details.html?p=185> (last accessed Jan. 3, 2022) (current as of Nov. 9, 2021).

³⁸ Complaint at ¶ 3.

³⁹ Letter from Donna Arduin, OMB Director, to Senators Natasha von Imhof and Bert Stedman, Co-Chairs of Senate Finance, Representative Neal Foster, Co-Chair of

1 was also accompanied by a specific list of funds and accounts OMB asserted were subject
2 to the CBR sweep.⁴⁰ The list included the HEIF in its entirety,⁴¹ despite acknowledging
3 that any “portion of a fund that comprises money donated to a fund for a particular
4 purpose should not be included in the sweep.”⁴² Director Arduin’s letter also did not
5 account for WWAMI loan repayments which have typically been repaid into the HEIF.⁴³
6 At the time, the HEIF was valued at approximately \$347 million,⁴⁴ and was the second-
7 largest fund deemed subject to the CBR sweep by OMB.⁴⁵
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9 This novel (and incorrect) legal opinion was contrary to the position of multiple
10 prior administrations, and meant that 54 funds or “subfunds” were now subject to the
11 sweep, in comparison to 32 “subfunds” which were previously so designated.⁴⁶ This
12 broad determination of what funds or “subfunds” were subject to the sweep was also
13 arbitrary, as 9 of the “subfunds” previously identified were no longer designated as
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16 House Finance, and Representative Jennifer Johnston, Vice Chair of House Finance
(July 12, 2019) [hereinafter Arduin Letter] (Exhibit 7 to Lindemuth Aff.).

17 ⁴⁰ Funds Subject to Sweep, OMB (July 12, 2019) [hereinafter FY2020 Sweep List]
18 (Exhibit 8 to Lindemuth Aff.).

19 ⁴¹ *Id.* at 2 (Exhibit 8 to Lindemuth Aff.).

20 ⁴² Arduin Letter at 2 (Exhibit 7 to Lindemuth Aff.).

21 ⁴³ *See generally id.* (Exhibit 7 to Lindemuth Aff.).

22 ⁴⁴ *See* HEIF, Net Asset Value, As of the Month Ending June 28, 2019 (Exhibit 9 to
Lindemuth Aff.).

23 ⁴⁵ *See* FYE2018 Sweep List (Exhibit 2 to Lindemuth Aff.); *see also* FY2020 Sweep
List (Exhibit 8 to Lindemuth Aff.).

24 ⁴⁶ *Compare* FY2020 Sweep List (Exhibit 8 to Lindemuth Aff.), *with* FYE2018
25 Sweep List (Exhibit 2 to Lindemuth Aff.).

1 subject to the sweep.⁴⁷ The HEIF's designation was also consistent with the Governor's
2 expressed desire to eliminate the HEIF; he introduced legislation earlier in 2019 that
3 would have repealed the HEIF statutes.⁴⁸ The legislature did not advance or pass that
4 legislation.

5 After the Executive Branch made the determination that some funds — including
6 the HEIF and the PCE Endowment Fund, both for the first time — were subject to the
7 sweep, the legislature came up with enough votes to effectuate the reverse sweep at the
8 end of July 2019.⁴⁹

10 **D. The Executive Branch Maintains Its Position That The HEIF Is Subject**
11 **To The CBR Sweep For FY2022.**

12 The legislature passed an operating budget for FY2022 in June 2021, and the
13 Governor exercised his vetoes over the FY2022 budget on June 30, 2021.⁵⁰ The FY2022
14 operating budget included over \$21 million from the HEIF to provide: (1) \$11.75 million
15 to the APS program; (2) over \$6.356 million to the AEG program; and (3) \$3.258 million
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18 ⁴⁷ See, e.g., FY2020 Sweep List (omitting, among other subfunds, the Railbelt
19 Energy subfund, the Crime Victims Compensation Fund, and the Municipal Capital
Project Matching Grant subfund) (Exhibit 8 to Lindemuth Aff.).

20 ⁴⁸ 2019 House Bill No. 130, §§ 14, 15(b) (Exhibit 10 to Lindemuth Aff.); 2019
21 Senate Bill No. 110, §§ 14, 15(b) (Exhibit 11 to Lindemuth Aff.). The Governor also
22 initially vetoed \$130 million from the UA's budget. See State of Alaska, Governor
Michael J. Dunleavy, FY2020 Budget Vetoes, Press Briefing – Items of Interest (June 28,
2019),
23 https://omb.alaska.gov/ombfiles/20_budget/PDFs/Press_Items_of_Interest_High_Level_6-28-19.pdf (touting over \$130 million in vetoes for UA).

24 ⁴⁹ See 2019 Senate Journal 1422; 2019 House Journal 1340.

25 ⁵⁰ See generally ch. 1, SSLA 2021.

1 to the WWAMI program.⁵¹ The Governor did not exercise his line-item veto authority
2 over any of these appropriations.

3 However, the legislature failed to achieve the three-quarters vote necessary in both
4 houses to effectuate the reverse sweep.⁵² And immediately after the budget was passed,
5 the Executive Branch confirmed that it intended to sweep into the CBR the funds
6 identified by OMB in 2019, and that such monies would therefore not be available for
7 the FY2022 appropriations.⁵³ Relevant here, the Executive Branch indicated that all
8 monies existing in the HEIF as of June 30, 2021 would be swept, and the FY2022
9 appropriations from the HEIF to support the APS, AEG, and WWAMI programs would
10 not be honored.⁵⁴

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12 **E. The Governor Later Directs OMB To Honor FY2022 Appropriations**
13 **From The HEIF.**

14 In July 2021, the Alaska Federation of Natives (“AFN”) and nineteen other
15 plaintiffs sued the Executive Branch over its decision to designate the PCE Endowment
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17 ⁵¹ See FY2022 Operating Budget at 2-3 (Exhibit 6 to Lindemuth Aff.). The FY2022
18 budget also appropriated over half a million dollars of WWAMI loan repayments to the
19 HEIF. See *id.* at 4 (Exhibit 6 to Lindemuth Aff.).

20 ⁵² See 2021 Senate Journal 1291; 2021 House Journal 1319.

21 ⁵³ See Budgetary Issues Due to the CBR Vote Failure, OMB (June 17, 2021)
22 [hereinafter FY2022 Impacted Appropriations] (identifying the HEIF as a fund where
23 “[n]o activity can begin on these programs and projects until the sweep is resolved or an
24 alternate fund is appropriated”) (Exhibit 12 to Lindemuth Aff.); see also Press Release,
25 Governor Mike Dunleavy, Governor Urges Legislature to Complete Budget (June 17,
26 2021) (providing a link to “[a] fact sheet of [CBR] budgetary issues,” i.e., FY2022
Impacted Appropriations) (Exhibit 13 to Lindemuth Aff.).

⁵⁴ See FY2022 Impacted Appropriations at 1 (Exhibit 12 to Lindemuth Aff.).

1 Fund as being subject to the sweep.⁵⁵ In August, the superior court in *AFN v. Dunleavy*
2 agreed with those plaintiffs, concluding that the Executive Branch's interpretation of
3 article IX, section 17(d) of the Alaska Constitution as including the PCE Endowment
4 Fund was unconstitutional.⁵⁶ The Executive Branch did not appeal that decision.

5 Later that month, Attorney General Taylor authored a memorandum concerning
6 all of the FY2022 appropriations that OMB had previously determined could not be
7 honored because of the lack of votes for a reverse sweep.⁵⁷ And because Attorney
8 General Taylor recognized that "monies which already have been validly committed by
9 the legislature to some purpose should not be counted as available,"⁵⁸ he concluded that
10 "it is legally defensible to release the funds to pay out the validly enacted appropriations
11 for" FY2022.⁵⁹ Stated differently, Attorney General Taylor's memorandum specifically
12 recognized that funds that the legislature had already appropriated for a specific purpose
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16 ⁵⁵ See generally First Amended Complaint, *AFN v. Dunleavy*, 3AN-21-06737CI
17 (July 26, 2021).

18 ⁵⁶ See Order on Motion for Summary Judgment and Cross-Motion for Summary
19 Judgment, *AFN v. Dunleavy*, 3AN-21-06737CI, at 22 (Aug. 11, 2021) [hereinafter *AFN*
20 *Order*] (Exhibit 14 to Lindemuth Aff.).

21 ⁵⁷ Memorandum from Treg Taylor, Attorney General, to Mike Dunleavy, Governor
22 (Aug. 25, 2021) [hereinafter *Taylor Memo*] (Exhibit 15 to Lindemuth Aff.) ("You
23 requested a memorandum . . . addressing the following question: 'Whether appropriations
24 validly enacted prior to July 1, 2021, but with a July 1 effective date that have a funding
25 source that was otherwise swept into the [CBR] as of June 30, 2021, can be expended
26 without a reverse sweep?' ").

⁵⁸ *Id.* at 2 (emphasis omitted) (quoting *Hickel v. Cowper*, 874 P.2d 922, 930-31
(Alaska 1994)) (Exhibit 15 to Lindemuth Aff.).

⁵⁹ *Id.* at 3 (Exhibit 15 to Lindemuth Aff.).

1 are not subject to the annual CBR sweep. Based on this new analysis, the Governor
2 directed OMB to “immediately” honor the FY2022 appropriations from the HEIF and
3 other funds and subfunds designated to be swept.⁶⁰

4 Unfortunately, since Attorney General Taylor’s August memorandum, the
5 Executive Branch appears to have regressed back to its prior improper determination that
6 the HEIF is nevertheless subject to the annual CBR sweep.⁶¹ Rather than take Attorney
7 General Taylor’s August memorandum to its logical conclusion — that *all* existing
8 appropriations “validly committed by the legislature to some purpose” are not
9 sweepable⁶² — the Executive Branch continues to ignore the plain language in article IX,
10 section 17(d) of the Alaska Constitution stating that funds are only subject to the sweep
11 if they are “available for appropriation at the end of each succeeding fiscal year.”⁶³
12 Alaska Statute 37.10.420(b) requires that the Department of Administration effectuate
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19 ⁶⁰ Memorandum from Mike Dunleavy, Governor, to Neil Steininger, Director of
20 OMB (Aug. 25, 2021) (Exhibit 16 *to* Lindemuth Aff.). The Governor also directed OMB
21 “to provide a status update to the Legislature’s Finance Division on these appropriations.”
Id. (Exhibit 16 *to* Lindemuth Aff.). No status update appears to have been provided as of
22 this filing.

23 ⁶¹ *See generally* Letter from Treg R. Taylor, Attorney General, to Pat Pitney, Interim
24 President, University of Alaska (Dec. 15, 2021) (Exhibit 17 *to* Lindemuth Aff.).

25 ⁶² *See* Taylor Memo at 2 (quoting *Hickel*, 874 P.2d at 930-31) (Exhibit 15 *to*
26 Lindemuth Aff.).

⁶³ Alaska Cont. art. IX, § 17(d).

the sweep by December 16 each year,⁶⁴ and the HEIF was valued at over \$410 million at the end of November 2021.⁶⁵

III. STANDARD OF REVIEW

Summary judgment is appropriate “where ‘there is no genuine issue as to any material fact’ and ‘the moving party is entitled to judgment as a matter of law.’”⁶⁶ The interpretation of the Alaska Constitution is a legal matter for this court to decide in its “independent judgment.”⁶⁷ A court’s “analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself. [Courts] are not vested with the authority to add missing terms or hypothesize differently worded provisions . . . to reach a particular result.”⁶⁸ “Constitutional provisions should be given a reasonable and practical interpretation in accordance with common sense.”⁶⁹

⁶⁴ AS 37.10.420(b) (“The transfer[/sweep] shall be made on or before December 16 of the following fiscal year.”).

⁶⁵ See HEIF, Net Asset Value, As of the Month Ending November 30, 2021 [hereinafter HEIF Nov. 2021 Value] (Exhibit 18 to Lindemuth Aff.).

⁶⁶ *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 517 (Alaska 2014) (quoting Alaska Civ. R. 56(c)).

⁶⁷ *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017) (“Questions of constitutional . . . interpretation . . . are questions of law to which we apply our independent judgment. We adopt the ‘rule of law that is most persuasive in light of precedent, reason, and policy.’” (quoting *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016))).

⁶⁸ *Id.* (second alteration in original) (quoting *Hickel*, 874 P.2d at 927-28).

⁶⁹ *Id.* (quoting *Hickel*, 874 P.2d at 926).

IV. ARGUMENT

The Executive Branch's claim that the HEIF is subject to the CBR sweep is based on an improper reading of article IX, section 17(d) of the Alaska Constitution. The legislature has made valid appropriations to the HEIF that do not lapse, and its monies — comprised of an initial \$400 million appropriation, additional private contributions to the fund, proceeds of investments, and repaid loans from the WWAMI program — are therefore not "available for appropriation at the end of [a] . . . fiscal year," and are not subject to the CBR sweep. The Executive Branch's interpretation of section 17(d) impermissibly gives the Executive Branch the ability to constructively veto valid legislative appropriations years later, creating a separation of powers violation.

The Executive Branch recently acknowledged, as it must, that valid appropriations are not subject to the sweep.⁷⁰ The fact that the legislature can re-appropriate monies from the HEIF does not somehow negate all prior appropriations to the HEIF and subject those invested monies to the sweep. Because the Alaska Constitution does not prohibit the legislature from making appropriations to create special funds as endowments for

⁷⁰ Taylor Memo at 2 ("[M]onies which already have been validly committed by the legislature to some purpose should not be counted as available." (emphasis omitted) (quoting *Hickel*, 874 P.2d at 930-31)) (Exhibit 15 to Lindemuth Aff.).

specific public purposes,⁷¹ and the appropriations to the HEIF by statute do not lapse,⁷² this court should conclude that the HEIF is not subject to the annual CBR sweep.

A. The Plain Language Of Section 17(d) Excludes Appropriated Monies From The Annual CBR Sweep.

Article IX, section 17(d) of the Alaska Constitution provides that “the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund” to repay prior appropriations from the CBR.⁷³ As the superior court in *AFN v. Dunleavy* recently recognized, this language only requires money to be swept into the CBR if it is “available for appropriation *at the end of each succeeding fiscal year*.”⁷⁴

⁷¹ The legislature is free to create a special fund and place monies into them; it is only prohibited from permanently dedicating “the proceeds of any state tax or license” to fund it without further appropriation by the legislature. *See State v. Alex*, 646 P.2d 203, 210 (Alaska 1982) (noting that “the purpose of the proposed amendment [by the delegates to the Constitution] was to allow for the setting up of certain special funds, such as sinking funds for the repayment of bonds, but to prohibit the earmarking of any special tax to that sinking fund”); *see also* AS 37.14.750(a) (“The [HEIF] is established . . . for the purpose of making grants awarded under [the AEG program] by appropriation to the account established under AS 14.43.915(a) and of making scholarship payments to qualified postsecondary institutions for students under [the APS program] by appropriation to the account established under AS 14.43.915(b).”). The legislature still retains the statutory ability to appropriate monies from the HEIF to any other public purpose, which the legislature most recently exercised in FY2022, which means the HEIF is not a constitutionally-prohibited dedicated fund. *See* AS 37.14.750(b) (“Nothing in this section creates a dedicated fund.”).

⁷² *See* AS 37.14.750(a) (“Money in the fund does not lapse.”).

⁷³ Alaska Const. art. IX, § 17(d).

⁷⁴ *Id.* (emphasis added); *see also* AFN Order at 8 (citing Alaska Const. art. IX, § 17(d)) (Exhibit 14 to Lindemuth Aff.).

1 This temporal recognition of “the end of each succeeding fiscal year” is critical to
2 understanding which specific monies must be swept back into the CBR. This language
3 necessarily exempts valid appropriations for a fiscal year from the sweep, and subjects
4 only leftover or additional monies not subject to an existing appropriation as being
5 subject to the sweep. Stated differently, only excess monies in the general fund that have
6 not been appropriated for some purpose, are vetoed appropriations, or have since lapsed,
7 are “available for appropriation at the end of each succeeding fiscal year” and are
8 therefore subject to the CBR sweep.
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10 The commonsense interpretation of this requirement is that monies which have
11 already been appropriated — like the previously-appropriated monies to the HEIF — are
12 not “available for appropriation at the end of [a] . . . fiscal year” *unless* the appropriation
13 has lapsed *and* the funds are no longer obligated. Section 17(d) must be read consistently
14 with article IX, section 13 of the Alaska Constitution: “No money shall be withdrawn
15 from the treasury except in accordance with appropriations made by law. . . .
16 Unobligated appropriations outstanding at the end of the period of time specified by law
17 shall be void.”⁷⁵ In other words, only surplus funds — i.e., *unobligated* monies that are
18 not subject to a legislative appropriation — are subject to the annual CBR sweep. The
19 plain language of section 17(d) simply does not subject previously-appropriated monies,
20 like the HEIF, to the sweep.
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25 ⁷⁵ Alaska Const. art. IX, § 13.

1 **B. The Framers’ Intent And Voters’ Understanding Of Section 17(d)**
2 **Confirm That Only Unappropriated Monies Are To Be Swept Into The**
3 **CBR.**

4 In addition to the Alaska Constitution’s plain language, this court is also directed
5 to consider the “purpose of the provision and the intent of the framers” when interpreting
6 the meaning of subsection 17(d).⁷⁶ And because section 17(d) was adopted by a majority
7 vote of the people after a resolution of the legislature passed by a two-thirds vote of each
8 house,⁷⁷ interpretation of section 17(d) may include an examination of the intent of the
9 legislature that drafted the amendment, as well as consideration of what the voters may
10 have understood the language to mean when they adopted it.⁷⁸

11 There is little legislative history about article IX, section 17(d) of the Alaska
12 Constitution, but the history that exists confirms that monies to be swept are only those
13 that had not already been appropriated. Senate Joint Resolution 5 (“SJR 5”), the vehicle
14 which allowed for the creation of the CBR, was completely rewritten through an
15 amendment on the floor of the house on May 8, 1990.⁷⁹ Although only one short statement
16 explained what would later become subsection 17(d), that statement was made by
17 Representative Kay Brown, who would later author the sponsor statement in favor of
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21 ⁷⁶ *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017) (quoting *Hickel*, 874 P.2d
22 at 926); see Alaska Const. art. IX, § 17(d).

23 ⁷⁷ See Alaska Const. art. XIII, § 1.

24 ⁷⁸ *Wielechowski*, 403 P.3d at 1146-51.

25 ⁷⁹ 1990 House Journal 4241 (adopting the current version of article IX, section 17 of
26 the Alaska Constitution by adopting Amendment No. 10 to SJR 5).

1 creating the CBR.⁸⁰ Representative Brown explained on the floor of the house that any
2 money appropriated from the CBR “would be repaid . . . out of any general fund *surpluses*
3 that *remain* at the end of the fiscal year.”⁸¹

4 This statement shows that the framers to the amendment believed that only
5 *surpluses* in the general fund would be subject to the CBR sweep. Such “remain[ing]”
6 “surpluses” would *not* include appropriations for the upcoming fiscal year; nor would it
7 include monies that had previously been appropriated and obligated for a specific public
8 purpose, like those monies contained in the HEIF.

9 This understanding is also consistent with the legislature’s understanding after
10 passage of the amendment, when it enacted the enabling statute in 1994: “If the amount
11 appropriated from the [CBR] has not been repaid . . . , [DOA] shall transfer to the [CBR]
12 the amount of money comprising the *unreserved, undesignated* general fund balance to
13 be carried forward as of June 30 of the fiscal year, or as much of it as is necessary to
14 complete the repayment.”⁸² Had the legislature intended for section 17(d) to sweep
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19 ⁸⁰ See 1990 Election Pamphlet at 1-2 (Exhibit 1 to Lindemuth Aff.).

20 ⁸¹ See House Floor Session on SJR 5, 16th Leg., 2d Sess., Audio 2, 1:02:50-1:03:08,
21 <http://www.akleg.gov/ftp/archives/1990/HFLR/121-HFLR-900508-2.mp3> (May 8, 1990)
22 (emphasis added) (Statement of Representative Kay Brown) [hereinafter Statement of
23 Representative Kay Brown] (“If money is borrowed, or appropriated from the budget
24 reserve fund in that manner, or any money taken out of it, [it] would be repaid to the budget
25 reserve fund out of any general fund *surpluses* that remain at the end of a fiscal year.”).

26 ⁸² AS 37.10.420(b) (emphasis added); see Alaska Const. art. IX, § 17(d) (“The
legislature shall implement this subsection by law.”). *But see Hickel*, 874 P.2d at 936
(affirming the superior court’s determination that AS 37.10.420 is unconstitutional with
respect to defining amounts “available for appropriation”). The enabling statute is cited

1 reserved or designated funds in the general fund — many of which existed at the time⁸³
2 — that “sweeping change to the state’s budgetary framework” would have been discussed
3 and debated by the legislature.⁸⁴

4 Relatedly, there is also no indication whatsoever that the legislature somehow
5 intended to restrict its own appropriation power through section 17(d) by limiting its
6 ability to appropriate money to invest and save in such special funds or subfunds that
7 happen to be technically in the general fund, but still allow the legislature to create special
8 funds that are not subject to the CBR sweep outside the general fund, like the PCE
9 Endowment Fund or the Earnings Reserve Account.⁸⁵ Nor was there any other indication
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13 here for purposes of the legislature’s understanding at the time. *Hickel* is distinguishable,
and likely incorrect as to section 17(d), as discussed *infra* Section IV.D.

14 ⁸³ See e.g., AS 08.88.450 (establishing the now-real estate recovery fund in 1974,
15 previously named the real estate surety fund, as a fund containing money that “does not
lapse”); AS 14.03.125 (establishing a fund for school performance in 1990);
16 AS 14.11.005 (establishing a school construction grant fund in 1990); AS 37.05.570
(establishing the Alaska public building fund in 2000 with monies that “do not lapse”);
17 AS 37.14.700 (establishing the Alaska veterans’ memorial endowment fund in 2002);
18 AS 43.52.080(b) (establishing a vehicle rental tax account in 2003). In fact, when a sweep
did occur for FY2004, these subfunds noted above were not identified as having
19 “unexpended unobligated” balances subject to the sweep. See CBR Sweep Summary –
DRAFT & General Fund Sweepable Subfund Available Balances Swept Into The CBR,
20 OMB (Jan. 30, 2004), in S.B. 283 S. Fin. File (Exhibit 19 to Lindemuth Aff.); see also
Hearing on S.B. 283 Before the S. Fin. Comm., 23rd Leg., 2d Sess., Minutes (Feb. 2,
21 2004) (Exhibit 20 to Lindemuth Aff.).

22 ⁸⁴ *Wielechowski*, 403 P.3d at 1149-50 (“There was little evident recognition, let alone
23 the robust discussion that would be expected, for . . . a sweeping constitutional change
and a consequent sweeping change to the state’s budgetary framework.”).

24 ⁸⁵ See *id.* at 1146-52; see also AFN Order at 17-20 (Exhibit 14 to Lindemuth Aff.).
25 The Executive Branch did not appeal the superior court’s decision in *AFN v. Dunleavy*.

1 that the legislature somehow intended to limit its appropriation power. Without a “robust
2 discussion” about such a “sweeping change to the state’s budgetary framework,”⁸⁶ it
3 should not be presumed that the legislature intended to limit its own appropriation powers
4 in any way, and the Alaska Constitution’s existing framework — which permits
5 appropriations to separate funds whether in the general fund or not⁸⁷ — must remain
6 unchanged.

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8 Moreover, what the voters reasonably understood Ballot Measure 1 to mean (the
9 ballot initiative that created the CBR) comports with the framers’ view. The actual
10 language on the ballot explained that the annual CBR sweep would occur with any
11 “money *left* in the treasury’s general fund.”⁸⁸ And the 1990 general election voter
12 pamphlet included a summary from the legislative affairs agency which emphasized that
13 only “[s]urplus general fund money . . . [would] be deposited in the [CBR] at the end of
14 each year until the [CBR] is repaid.”⁸⁹

15
16 Combined, the framers’ intent and voters’ understanding of what monies are subject
17 to the CBR sweep comports with section 17(d)’s plain meaning. Only unobligated, surplus,
18 leftover monies in the general fund were understood to be subject to the annual CBR sweep.
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21 ⁸⁶ *Wielechowski*, 403 P.3d at 1149-50.

22 ⁸⁷ *See* AFN Order at 17-20 (Exhibit 14 *to* Lindemuth Aff.); *State v. Alex*, 646 P.2d
23 203, 208-10 (Alaska 1982).

24 ⁸⁸ 1990 Election Pamphlet at 1 (emphasis added) (Exhibit 1 *to* Lindemuth Aff.).

25 ⁸⁹ *See id.* (emphasis added) (Exhibit 1 *to* Lindemuth Aff.) (“Money that is
appropriated from the [CBR] must be repaid.”).

1 And there was no desire or understanding by either the framers or voters for this sweep
2 provision to somehow negate or undermine prior valid appropriations.⁹⁰ The framers' intent
3 and voters' understanding aligns perfectly with the view that validly appropriated monies
4 are not subject to the sweep.

5 **C. The HEIF Is Not Subject To The Annual CBR Sweep Because To Conclude**
6 **Otherwise Would Run Contrary To Section 17(d)'s Plain Language And**
7 **Intent.**

8 The legislature's decision to establish the HEIF⁹¹ — an endowment-style fund
9 whose appropriated investments “do[] not lapse”⁹² — is entirely consistent with the plain
10 language and intended purpose behind article IX, section 17(d) of the Alaska Constitution.
11 The Alaska Supreme Court has repeatedly defined an “appropriation” in article II as “the
12 setting aside from the public revenue of a certain sum of money for a specified object, in
13 such manner that the executive officers of the government are authorized to use that
14 money, and no more, for that object, and no other.”⁹³ The legislature has done precisely
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17 ⁹⁰ *Wielechowski*, 403 P.3d at 1151 (“It is a far leap to conclude voters understood and
18 intended . . . to [change] the legislature[’s] broad power[s] Surely there would have
19 been some public discourse about a . . . sweeping [change in] legislative authority; its
absence, like the absence of discussion in the . . . legislature, is telling.”).

20 ⁹¹ AS 37.14.750.

21 ⁹² AS 37.14.750(a).

22 ⁹³ *Alaska Legislative Council ex rel. Alaska State Legislature v. Knowles*, 86 P.3d
23 891, 898 (Alaska 2004) [hereinafter *Knowles II*] (quoting *Thomas v. Rosen*, 569 P.2d 793,
24 796 (Alaska 1977)). This Court has also defined it as “a sum of money dedicated to a
25 particular purpose.” *Id.* (quoting *Alaska Legislative Council v. Knowles*, 21 P.3d 367,
373 (Alaska 2001) [hereinafter *Knowles I*]). “Appropriation” is more broadly defined in
article XI of the Constitution, which limits the people’s power to enact legislation through
the initiative process. *Id.* at 893-94. The key reason for this difference in the meaning of

1 that by appropriating money to the HEIF to permit investments to allow the continued
2 support of Alaskans pursuing postsecondary educational opportunities in Alaska. Those
3 appropriations were passed by the majority of the legislature and survived a governor's
4 veto pen. They are final, valid, ongoing appropriations.

5 The fact that the legislature's appropriations to the HEIF are "final," "terminal,"
6 or "expended" is critical; the legislature has established a state asset for a public purpose,
7 which is no different from the legislature investing in a new building on campus. HEIF
8 monies have been "expended" — i.e., invested — to fulfill the intended purpose of those
9 appropriations: To generate additional income and be otherwise available to provide
10 funding for qualifying postsecondary educational programs for Alaskans. The HEIF is
11 not comprised of "surplus" monies; it exists because of valid appropriations. Just like
12 the state's physical long-term investments to construct new buildings, the commissioner
13 of revenue has invested the HEIF in a number of securities and other financial
14 instruments,⁹⁴ and the Executive Branch does not otherwise have the authority to use or
15 direct money within the HEIF for whatever purpose it may please without another
16 appropriation.
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21 appropriation is to ensure that only the legislature retains control over the allocation of
22 state assets. *Id.* at 895.

22 ⁹⁴ See HEIF Nov. 2021 Value at 1 (showing that over \$400 million of the HEIF was
23 invested as of November 30, 2021) (Exhibit 18 to Lindemuth Aff.). In fact, the HEIF
24 accrued nearly \$75 million with over a 27% rate of return in FY2021 alone. See State of
25 Alaska, Department of Revenue, Treasury Division, Alaska Higher Education Fund (last
accessed Jan. 30, 2022), <https://treasury.dor.alaska.gov/home/investments/alaska-higher-education-fund> (showing a 27.21% return in FY2021 for the HEIF).

Furthermore, there is no practical or logical difference between FY2022 appropriations — which include appropriations *into* the HEIF,⁹⁵ along with appropriations *out* of the HEIF — and appropriations made by the legislature a decade earlier to establish the HEIF.⁹⁶ If OMB believes that the entire HEIF was swept into the CBR on June 30 at 11:59pm, then how could money still be available from the HEIF to fund the FY2022 appropriations on July 1?⁹⁷ The answer is simple; money has been appropriated to the HEIF, and so it cannot be considered “available” for purposes of the sweep.⁹⁸ Indeed, as Attorney General Taylor emphasized, “monies which already have been validly committed by the legislature to some purpose should not be counted as available,”⁹⁹ because “[t]o do otherwise would be to continue to count sums of money as ‘available for appropriation’ after they have been appropriated[.]”¹⁰⁰

The Executive Branch’s interpretation would effectively relegate the HEIF to a non-existent and annually-disappearing fund; if the legislature in the future again appropriated monies to the HEIF, those monies would only stay in the fund if the legislature had the votes to do an annual three-quarters vote for the “reverse sweep.” If

⁹⁵ FY2022 Operating Budget at 4 (Exhibit 6 to Lindemuth Aff.).

⁹⁶ See ch. 5, § 20(f), FSSLA 2011.

⁹⁷ See Taylor Memo at 3 (Exhibit 15 to Lindemuth Aff.).

⁹⁸ If anything, the existence of tax credits for cash contributions *and* additional appropriations *into* the HEIF *this year* should confirm the legislature’s (and the Governor’s) continued desire to maintain the HEIF far into the future.

⁹⁹ *Hickel v. Cowper*, 874 P.2d 922, 930-31 (Alaska 1994).

¹⁰⁰ *Id.* at 931 n.20.

1 the legislature had provided funding to construct a new laboratory at UAA, renovate an
2 engineering building at UAF, or purchase a new research vessel for UAS, we would not
3 require the tearing down or selling of those assets every year if the legislature was unable
4 to garner a three-quarter vote.

5 Adopting the Executive Branch's legal theory would (nonsensically) void an
6 entire statutory framework set up to provide a long-term funding source for student
7 educational programs. Even this administration is not proposing to sweep several other
8 savings or investment accounts.¹⁰¹ This court must "recognize that *any given sum of*
9 *money can only be appropriated once during a given time period,*"¹⁰² which necessarily
10 and simply excludes monies that have already been appropriated. After all, there is no
11 temporal limitation on the legislature's appropriation power, and the legislature has the
12 ability to enact multi-year appropriations or appropriations that do not lapse, as was done
13 here.¹⁰³ In essence, the Executive Branch's theory would effectively repeal the HEIF,
14 even though the Governor's legislation aimed at doing so actually failed.
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21 ¹⁰¹ Such existing accounts for entities include the Alaska Railroad, the Alaska Gasline
22 Development Corporation, the Alaska Aerospace Corporation, and, critically, the Earnings
23 Reserve Account. The superior court in *AFN v. Dunleavy* concluded that a similar savings
or investment account, the PCE Endowment Fund, is also not subject to the annual CBR
sweep. See AFN Order at 22 (Exhibit 14 to Lindemuth Aff.).

24 ¹⁰² *Hickel*, 874 P.2d at 931 n.20 (emphasis added).

25 ¹⁰³ See AS 37.14.750(a).

1 **D. The Alaska Supreme Court’s Decision In *Hickel v. Cowper* Does Not**
2 **Require Appropriated Monies To Be Swept.**

3 The Executive Branch will argue that *Hickel v. Cowper* is controlling and requires
4 that the HEIF be swept. But *Hickel* is distinguishable, and to the extent it can be read to
5 require the sweep of the HEIF, is wrongly decided. It did not consider the differences
6 between sections 17(b) and 17(d), including the temporal differences or purposes of each
7 section. It also failed to consider the framers’ intent and voters’ understanding in adopting
8 the constitutional amendment creating the CBR.

9 In *Hickel*, the Alaska Supreme Court considered which funds must be counted for
10 purposes of calculating when the legislature could make appropriations from the CBR
11 with a simple majority under article IX, section 17(b) of the Alaska Constitution.¹⁰⁴ In
12 that context, the *Hickel* Court defined what “available for appropriation” means.¹⁰⁵ And
13 under those circumstances, it makes sense for the Court to require an apples-to-apples
14 comparison; that comparison includes subfunds and savings accounts the legislature
15 created for specific purposes to determine what is in the general fund each year to
16 determine when a super-majority vote is needed to access the CBR under section 17(b).¹⁰⁶
17 But because a CBR sweep was not at issue, the *Hickel* Court did *not* consider what monies
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22 ¹⁰⁴ See 874 P.2d at 926-935.

23 ¹⁰⁵ See *id.*

24 ¹⁰⁶ *Id.* at 935 (“The State correctly argues that this symmetry is necessary in order to
25 insure that the comparison required by section 17(b) fairly measures the need for access
26 to the [CBR].”).

1 are “available for appropriation *at the end of each succeeding fiscal year*”¹⁰⁷ — which is
2 the relevant and unique language within section 17(d) — performed at a different time
3 for a different reason that does not require *Hickel*’s expansive definition of “available for
4 appropriation” for section 17(b). Stated differently, the Court’s consideration of
5 section 17(b)’s language concerning when a simple majority vote could *access* the CBR
6 is necessarily distinguished from section 17(d)’s language on when “surplus” money is
7 available to *repay* the CBR.
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9 Because the Supreme Court was called upon to consider the application of
10 section 17(b) in *Hickel*, the Court’s assumption in dicta that the analysis of “available for
11 appropriation” should be the same for section 17(d) is not well considered, and does not
12 account for the temporal differences on when the analysis is performed, let alone the
13 purposes for which it is done.¹⁰⁸ Indeed, the Court failed to identify the temporal
14 limitation — “at the end of each succeeding fiscal year” — in noting in a footnote the two
15 factors relevant under section 17(d).¹⁰⁹ Just as a court may not add terms to a
16 constitutional provision, a court cannot delete terms in interpreting the plain language in
17 section 17(d).¹¹⁰ This court is not bound by the dicta in *Hickel*, as *Hickel* held only that
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21 ¹⁰⁷ Alaska Const. art. IX, § 17(d) (emphasis added).

22 ¹⁰⁸ *Hickel*, 874 P.2d at 936.

23 ¹⁰⁹ *Id.* at 936 n.32 (“We recognize, however, that the payback provision in section
24 17(d) is limited only to those funds which are ‘available for appropriation’ and ‘in the
general fund.’ ” (emphasis in original))

25 ¹¹⁰ *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017) (“[Courts] are not
vested with the authority to add missing terms or hypothesize differently worded

AS 37.10.420 was unconstitutional; there was no sweep at issue in that case and *Hickel* did not decide or consider which funds would be subject to the sweep.

Additionally, the *Hickel* Court itself recognized that any analysis determining which funds are sweepable must necessarily exempt “monies which already have been validly committed by the legislature to some purpose,” which the Court recognized “should not be counted as available.”¹¹¹ In fact, Attorney General Taylor relied on (and emphasized) that exact language when concluding that FY2022 appropriations were not subject to the sweep.¹¹²

There is another reason why this court should not rely on select language from *Hickel* to decide this case; the Alaska Supreme Court itself has called some of *Hickel*’s language into question. Indeed, the Court recently acknowledged that it explained some budgetary mechanisms incorrectly in *Hickel*, in part because its holding on section 17(b) was decided on an expedited basis.¹¹³ In sum, *Hickel*’s identification of funds “available for appropriation” for purposes of section 17(b)’s language on accessing the CBR does not bind this court with respect to section 17(d)’s language identifying surplus monies actually “available” for the sweep at the end of the fiscal year.

provisions . . . to reach a particular result.” (second alteration in original) (quoting *Hickel*, 874 P.2d at 927-28)).

¹¹¹ *Hickel*, 874 P.2d at 930-31.

¹¹² Taylor Memo at 2 (quoting *Hickel*, 874 P.2d at 930-31) (Exhibit 15 to Lindemuth Aff.).

¹¹³ See *Wielechowski*, 403 P.3d at 1151 n.66.

1 **E. Recognizing That Prior Appropriations Are Not Subject To The Annual**
2 **CBR Sweep Acknowledges The Legislature’s Broad Power Over**
3 **Appropriations.**

4 Article IX, section 13 of the Alaska Constitution provides: “No money shall be
5 withdrawn from the treasury except in accordance with appropriations made by law.” In
6 addition to correctly recognizing that appropriated monies (like the HEIF) cannot be
7 subject to the sweep according the plain language, framers’ intent, voters’ understanding,
8 and purpose of article IX, section 17(d), such an interpretation also recognizes the
9 legislature’s appropriation power in article IX, section 13 of the Alaska Constitution, and
10 comports with the separation of powers between the executive and the legislature’s power
11 of appropriation. To conclude otherwise would allow the Executive Branch to transfer
12 monies out of the HEIF without a valid appropriation, and effectively allow the
13 administration to invalidate multi-year appropriations and statutes creating such funds.

14 The Alaska Constitution “gives the legislature the power to legislate and
15 appropriate.”¹¹⁴ “[T]he legislature, and only the legislature, retains control over the
16 allocation of state assets among competing needs.”¹¹⁵ An appropriation bill, like the ones
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19 ¹¹⁴ *Knowles I*, 21 P.3d 367, 371 (Alaska 2001) (footnote omitted) (first citing Alaska
20 Const. art. II, § 1; then citing Alaska Const. art. II, § 13).

21 ¹¹⁵ *Knowles II*, 86 P.3d 891, 895 (Alaska 2004) (quoting *McAlpine v. Univ. of Alaska*,
22 762 P.2d 81, 88 (Alaska 1988)); *see State v. Fairbanks N. Star Borough*, 736 P.2d 1140,
23 1142-43 (Alaska 1987) (recognizing that the appropriation power resides in the legislature
24 and cannot be delegated to the executive); *see also Mallott v. Stand for Salmon*, 431 P.3d
25 159, 165 (Alaska 2018) (noting that the restriction on the people’s power to appropriate
26 “was designed to preserve to the legislature the power to make decisions concerning the
 allocation of state assets” (emphasis omitted) (quoting *Pullen v. Ulmer*, 923 P.2d 54, 63
 (Alaska 1996)).

1 which initially capitalized the HEIF and appropriated more money to the HEIF in
2 FY2022, is a special kind of legislation. An appropriation “set[s] aside from the public
3 revenue . . . a certain sum of money for a specified object, in such manner that the
4 executive officers of the government are authorized to use that money, and no more, for
5 that object, and no other.”¹¹⁶ To make an appropriation the legislature need only
6 sufficiently describe a monetary asset transfer “to allow identification of the monies
7 involved.”¹¹⁷
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9 With the goal of “safeguard[ing] the independence of each branch,” and
10 “protect[ing each] from domination and interference” from the other branches, the Alaska
11 Supreme Court has made clear that separation of powers means that one branch cannot
12 interfere with how another branch exercises its core powers.¹¹⁸ “As Justice Brandeis said,
13 the doctrine was adopted ‘not to promote efficiency but to preclude the exercise of
14 arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable
15 friction incident to the distribution of the government powers among three departments,
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18 ¹¹⁶ *Knowles II*, 86 P.3d at 898 (quoting *Thomas v. Rosen*, 569 P.2d 793, 796 (Alaska
19 1977)). The Alaska Supreme Court has also defined an appropriation as “a sum of money
20 dedicated to a particular purpose.” *Id.* (quoting *Knowles I*, 21 P.3d at 373).

21 ¹¹⁷ *Id.* at 898 n.39.

22 ¹¹⁸ *Bradner v. Hammond*, 553 P.2d 1, 6 n.11 (Alaska 1976) (quotation omitted). As
23 the Washington Supreme Court phrases it, “To determine whether a particular action
24 violates separation of powers, we look ‘not [to] whether two branches of government
25 engage in coinciding activities, but rather whether the activity of one branch threatens the
independence or integrity or invades the prerogatives of another.’ ” *Brown v. Owen*, 206
P.3d 310, 316 (Wash. 2009) (alteration in original) (quoting *Carrick v. Locke*, 882 P.2d
173, 177 (Wash. 1994)).

1 to save the people from autocracy.’ ”¹¹⁹ In fact, the Alaska Supreme Court recently
2 reiterated the separation of powers doctrine in *State v. Recall Dunleavy*:

3 The Alaska Constitution “vest[s] ‘legislative power in the
4 legislature; executive power in the governor; and judicial
5 power’ in the courts.” Derived from this “distribution of
6 power among the three branches of government” is the
7 separation of powers doctrine, which “limits the authority of
8 each branch to interfere in the powers that have been
9 delegated to the other branches.” Although not specifically
10 named in the Constitution, “the separation of powers and its
11 complementary doctrine of checks and balances are part of
12 the constitutional framework of this state.”^[120]

13 The Alaska Supreme Court has broadly construed the legislature’s powers of
14 appropriation because the appropriation power has been expressly delegated to the
15 legislature in the Alaska Constitution.¹²¹ As a check on the legislature’s appropriation
16 power, a governor may exercise line-item vetoes to appropriations made by the legislature
17 during a short time period set out in the Alaska Constitution, subject to the legislature’s
18 ability to override his vetoes.¹²² “But this control gives the governor no appropriation

18 ¹¹⁹ *Fairbanks N. Star Borough*, 736 P.2d at 1142 (quoting *Myers v. United States*, 272
19 U.S. 52, 293 (1926) (Brandeis, J., dissenting)).

20 ¹²⁰ *State v. Recall Dunleavy*, 491 P.3d 343, 367 (Alaska 2021) (alteration in original)
21 (footnotes omitted) (first quoting *Jones v. State, Dep’t of Revenue*, 441 P.3d 966, 981
22 (Alaska 2019); then quoting *Alaska Pub. Int. Rsch. Grp. v. State*, 167 P.3d 27, 35 (Alaska
23 2007); and then quoting *id.* at 34-35).

24 ¹²¹ *See DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717, 724-25 (Alaska 1962)
25 (noting that the Court is “not inclined to pass judgment on the means selected by the
26 legislature to accomplish legitimate purposes unless they are clearly in violation of the
constitution”).

¹²² Alaska Const. art. II, §§ 15-17.

power,”¹²³ and “the [governor’s] veto power, though discretionary, may be exercised only within constitutional limits.”¹²⁴ And to maintain the separation of powers, courts must strictly construe the governor’s check on the legislative power of appropriation.¹²⁵ For example, in *State v. Fairbanks North Star Borough*, the Court held that giving the governor “the exercise of sweeping power over the entire budget with no guidance or limitation” was an unconstitutional delegation of legislative power.¹²⁶

The Executive Branch’s interpretation of section 17(d) allows the executive to move monies out of the HEIF against the will of the legislature, effectively voiding prior appropriations that comprise the HEIF by “sweeping” it into the CBR.¹²⁷ Taken to its logical conclusion, the Executive Branch is effectively arguing that the legislature lacks the power to appropriate monies to a particular separate subfund to invest for a specific public purpose. But this would be a radical (and new) limitation on the legislature’s appropriation power.

¹²³ *Knowles I*, 21 P.3d at 372.

¹²⁴ *Recall Dunleavy*, 491 P.3d at 370; *see also id.* at 366 (“[A]s with all discretionary governmental actions, the exercise of the governor’s veto power must be ‘within constitutional bounds.’ ” (quoting *Pub. Def. Agency v. Superior Ct., Third Jud. Dist.*, 534 P.2d 947, 950 (Alaska 1975))).

¹²⁵ *See Bradner*, 553 P.2d at 7 (“The lack of ambiguity in . . . the Alaska Constitution mandate[s] that this court interpret these express provisions as embodying . . . the maximum parameters of . . . executive . . . authority[.]”).

¹²⁶ *Fairbanks N. Star Borough*, 736 P.2d at 1142-43.

¹²⁷ *See* FY2022 Impacted Appropriations (Exhibit 12 to Lindemuth Aff.); *see also* FY2020 Sweep List (Exhibit 8 to Lindemuth Aff.).

1 The Executive Branch’s position that the governor can sweep validly-appropriated
2 funds back into the CBR has no support in the Alaska Constitution, and should be rejected
3 because it would create a severe and unconstitutional imbalance through the executive’s
4 encroachment on the legislative power to appropriate.¹²⁸ Indeed, under this interpretation,
5 a governor will be able to undo and effectively veto *any* validly-appropriated fund years
6 later, including the HEIF. It would not make sense for this court to interpret section 17(d)
7 as having dramatically changed a fundamental principle of separation of powers in our
8 government without any discussion.¹²⁹ Such an interpretation would give the Executive
9 Branch the unprecedented ability to arbitrarily claw back appropriations from years prior
10 and effectively veto, reduce, or eliminate items and programs long settled, which would
11 be a nonsensical result in the case of multi-year projects, including capital projects. This
12 court should reject the Executive Branch’s interpretation of article IX, section 17(d), if
13 for no other reason than to prevent such an encroachment on the legislature’s
14 appropriation powers as enshrined in the Alaska Constitution.
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20 ¹²⁸ See *Recall Dunleavy*, 491 P.3d at 365-71 (confirming that a governor could violate
separation of powers).

21 ¹²⁹ See *Wielechowski v. State*, 403 P.3d 1141, 1149-50 (Alaska 2017) (“There was
22 little evident recognition, let alone the robust discussion that would be expected, for . . .
23 a sweeping constitutional change and a consequent sweeping change to the state’s
24 budgetary framework.”); *id.* at 1151 (“It is a far leap to conclude voters understood and
25 intended . . . to [change] the legislature[’s] broad power Surely there would have
been some public discourse about . . . such sweeping [changes to] legislative authority;
its absence, like the absence of discussion in the . . . legislature, is telling.”).

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V. CONCLUSION

The State's current interpretation of article IX, section 17(d), which subjects the HEIF to the annual CBR sweep, cannot be correct. Only excess, unappropriated funds left over "at the end of each succeeding fiscal year" are subject to the sweep, which necessarily excludes previously-appropriated monies like those appropriated to the HEIF which have been invested to support Alaskans pursuing postsecondary educational opportunities in Alaska. The \$410+ million HEIF has already been appropriated, appropriations to that fund "do[] not lapse", the plain language, framers' intent, and voters' understanding all comport with the view that the HEIF should not be subject to the sweep, and concluding otherwise would impermissibly encroach on the legislature's appropriation authority. This court should GRANT Plaintiffs' motion for summary judgment and permanently enjoin the Executive Branch from sweeping the HEIF into the CBR without a valid appropriation enacted by the legislature.

CASHION GILMORE & LINDEMUTH
Attorneys for Plaintiffs

DATE: Jan. 4, 2022

By: 

Jahna M. Lindemuth
Alaska Bar No. 9711068
Scott M. Kendall
Alaska Bar No. 0405019
Samuel G. Gottstein
Alaska Bar No. 1511099

CERTIFICATE OF SERVICE

I hereby certify that a copy of the
foregoing was served via email
and US Mail on January 4, 2022
on the following:

Cori Mills
Deputy Attorney General, Civil Division
Alaska Department of Law
PO Box 110300
Juneau, AK 99811
cori.mills@alaska.gov

Stacie Kraly
Civil Division Director
Alaska Department of Law
PO Box 110300
Juneau, AK 99811
stacie.kraly@alaska.gov

Margaret Paton-Walsh
Special Litigation Section Chief
Alaska Department of Law
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
margaret.paton-walsh@alaska.gov

CASHION GILMORE & LINDEMUTH

By: s/Jennifer Witaschek

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3 MADILYN SHORT, RILEY VON BORSTEL,
4 KJRSTEN SCHINDLER, and JAY-MARK
PASCUA,

5 Plaintiff,

6 v.

7 GOVERNOR MICHAEL J. DUNLEAVY in his
8 official capacity, THE STATE OF ALASKA,
9 OFFICE OF MANAGEMENT AND BUDGET,
and THE STATE OF ALASKA, DEPARTMENT
OF ADMINISTRATION,

10 Defendants.

Court No.: 3AN-22-04028CI

11 **AFFIDAVIT OF JAHNA M. LINDEMUTH**

12 STATE OF ALASKA)
13) ss.
14 THIRD JUDICIAL DISTRICT)

15 I, Jahna M. Lindemuth, being first duly sworn and deposed, hereby state as
16 follows:

17 1. I am co-counsel of record for Plaintiff-students Madilyn Short, Riley von
18 Borstel, Kjrsten Schindler, and Jay-Mark Pascua.

19 2. Attached as Exhibit 1 is a true and correct copy of two pages from the State
20 of Alaska's Official Election Pamphlet for the general election held in November 1990.
21 These two pages include information on Ballot Measure No. 1 for that election, which
22 was the proposal to create what would eventually become the Constitutional Budget
23 Reserve ("CBR"), located in article IX, section 17 of the Alaska Constitution.
24
25

3. Attached as Exhibit 2 is a true and correct copy of pages 16 and 17 taken from a PowerPoint Presentation on the Sweep and Reverse Sweep made by Kris Curtis, Legislative Auditor, and Megan A. Wallace, Legal Services Director, before the Senate Finance Committee on July 9, 2019. These pages detail the sweep balance for each subfund of the general fund, along with which funds would not be subject to the sweep, for the fiscal year ending in 2018.

4. Attached as Exhibit 3 is a true and correct copy of the cover page and pages 222 and 223 of the Legislative Finance Division's Indirect Expenditure Report from January 2021. These pages detail the amount of education tax credits, which would include contributions to the HEIF, provided to corporations for FY2015 through FY2018.

5. Attached as Exhibit 4 is a true and correct copy of the Department of Education and Early Development's Alaska Performance Scholarship Awards Component Budget Summary, which was part of the Governor's FY2023 proposed Operating Budget, as released on December 15, 2021.

6. Attached as Exhibit 5 is a true and correct copy of the Department of Education and Early Development's Alaska Education Grants Component Budget Summary, which was part of the Governor's FY2023 proposed Operating Budget, as released on December 15, 2021.

7. Attached as Exhibit 6 is a true and correct copy of select pages from FY2022's operating budget (2021 House Bill 69), which includes over \$21.5 million in appropriations from the HEIF in FY2022.

1 8. Attached as Exhibit 7 is a true and correct copy of the letter dated July 12,
2 2019, from the former Director of OMB, Donna Arduin, to the Co-Chairs and Vice Chair
3 of Finance Committees, regarding which funds OMB believes are subject to the annual
4 CBR sweep.

5 9. Attached as Exhibit 8 is a true and correct copy of the list prepared by OMB,
6 as enclosed with former Director Arduin's July 12, 2019 Letter (Exhibit 7), titled "Funds
7 Subject to Sweep."
8

9 10. Attached as Exhibit 9 is a true and correct copy of the HEIF Net Asset Value
10 as of June 28, 2019, and the HEIF Schedule of Investment Income (Loss) and Changes in
11 Invested Assets as of June 28, 2019, available on the Department of Revenue website at
12 <https://treasury.dor.alaska.gov/home/investments/alaska-higher-education-fund>.
13

14 11. Attached as Exhibit 10 is a true and correct copy of 2019 House Bill
15 No. 130, as introduced by Governor Dunleavy on April 12, 2019, which proposed
16 repealing the statutes which created the HEIF.

17 12. Attached as Exhibit 11 is a true and correct copy of 2019 Senate Bill
18 No. 110, as introduced by Governor Dunleavy on April 12, 2019, which proposed
19 repealing the statutes which created the HEIF.
20

21 13. Attached as Exhibit 12 is a true and correct copy of a list prepared by OMB
22 dated June 17, 2021, and entitled "Budgetary Issues Due to the CBR Vote Failure," which
23 details the appropriations OMB initially identified as being impacted by the FY2022
24 sweep.
25

1 14. Attached as Exhibit 13 is a true and correct copy of the Press Release issued
2 by Governor Dunleavy on June 17, 2021, entitled "Governor Urges Legislature to
3 Complete Budget." This Press Release includes a link to Exhibit 12.

4 15. Attached as Exhibit 14 is a true and correct copy of the superior court's
5 Order on Motion for Summary Judgment and Cross-Motion for Summary Judgment in
6 *AFN v. Dunleavy et al.*, 3AN-21-06737CI, dated August 11, 2021.
7

8 16. Attached as Exhibit 15 is a true and correct copy of a memorandum from
9 Attorney General Treg Taylor to Governor Dunleavy on FY2022 appropriations from
10 swept funds, dated August 25, 2021.

11 17. Attached as Exhibit 16 is a true and correct copy of a memorandum from
12 Governor Dunleavy to OMB Director Neil Steininger on FY2022 appropriations from
13 funds deemed subject to the sweep by OMB, dated August 25, 2021.
14

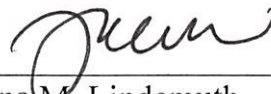
15 18. Attached as Exhibit 17 is a true and correct copy of a letter from Attorney
16 General Taylor to Interim President of the University of Alaska Pat Pitney regarding
17 whether the HEIF should be subject to the annual CBR sweep, dated December 15, 2021.
18

19 19. Attached as Exhibit 18 is a true and correct copy of the HEIF Net Asset
20 Value as of November 30, 2021, and the HEIF Schedule of Investment Income (Loss)
21 and Changes in Invested Assets as of November 30, 2021, available on the Department
22 of Revenue website at [https://treasury.dor.alaska.gov/home/investments/alaska-higher-](https://treasury.dor.alaska.gov/home/investments/alaska-higher-education-fund)
23 [education-fund](https://treasury.dor.alaska.gov/home/investments/alaska-higher-education-fund).
24
25

20. Attached as Exhibit 19 is a true and correct copy of the draft CBR Sweep Summary included in draft Senate Bill No. 283, as prepared by OMB, on January 30, 2004, and presented to the Senate Finance Committee on February 2, 2004.

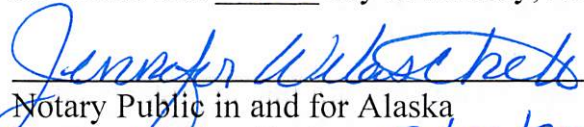
21. Attached as Exhibit 20 is a true and correct copy of the Senate Finance Committee Minutes from February 2, 2004.

FURTHER AFFIANT SAYETH NAUGHT.



Jahna M. Lindemuth
Alaska Bar No. 9711068

SUBSCRIBED AND SWORN to before me this 4th day of January, 2022.



Notary Public in and for Alaska

My Commission Expires: 9/17/25



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of the
3 foregoing was served via email
4 and US Mail on January 4, 2022
5 on the following:

6 Cori Mills
7 Deputy Attorney General, Civil Division
8 Alaska Department of Law
9 PO Box 110300
10 Juneau, AK 99811
11 cori.mills@alaska.gov

12 Stacie Kraly
13 Civil Division Director
14 Alaska Department of Law
15 PO Box 110300
16 Juneau, AK 99811
17 stacie.kraly@alaska.gov

18 Margaret Paton-Walsh
19 Special Litigation Section Chief
20 Alaska Department of Law
21 1031 W. 4th Avenue, Suite 200
22 Anchorage, AK 99501
23 margaret.paton-walsh@alaska.gov

24 CASHION GILMORE & LINDEMUTH

25 By: s/Jennifer Witaschek

BALLOT MEASURE NO. 1

Budget Reserve Constitutional Amendment

[HCS CSSSSJR 5 (Fin) am H]

BALLOT LANGUAGE

This proposal would create the "Budget Reserve Fund" in the state treasury. Money the state receives from mineral revenue lawsuits or administrative actions would be deposited in the Fund, and invested at competitive rates. The Fund could be used when money available for appropriation in the year is less than the year before, but only to make up the shortfall. The legislature could only appropriate from the Fund for other purposes with a 3/4 vote. At the end of each year, the Fund would have to be paid back from money left in the treasury's general fund.

Should this constitutional amendment be adopted?

Yes ☐ No ☐

VOTES CAST BY MEMBERS OF THE 16TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	38	Senate:	Yeas	15
	Nays	2		Nays	5

LEGISLATIVE AFFAIRS AGENCY SUMMARY

This measure will amend the state constitution by creating the budget reserve fund. Money from certain mineral revenue sources received by the state from an administrative proceeding or litigation is placed in the fund. Income of the fund is kept in the fund.

Appropriations may be made from the fund if money available for a fiscal year is less than the amount appropriated for the prior year. When this occurs the amount that may be taken from the fund is limited. Only the money needed to make up the difference may be appropriated.

Money may also be appropriated from the reserve fund by special vote of the legislature. Three-fourths of the members of each house must approve. The amount that may be taken is unlimited when this vote is obtained.

Money that is appropriated from the reserve fund must be repaid. Surplus general fund money must be deposited in the reserve fund at the end of each year until the reserve fund is repaid.

FULL TEXT OF PROPOSED LAW

*Section 1. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17: BUDGET RESERVE FUND. (a) There is

established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature.

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

*Section 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

STATEMENT IN SUPPORT

Cut the budget.

Reduce state spending.

Get state spending under control.

Each year these battle cries are raised by Alaskans. While elected officials say they listen and promise to do all they can, the simple fact is the Legislature's record shows it consistently spends most or all of the money available in the treasury. Alaska is confronted with an impending fiscal crisis of staggering proportions as a result of an inevitable "gap" between general fund revenues and current state spending levels. Present levels

BALLOT MEASURE NO. 1

of state general fund expenditure simply cannot be sustained over the long term.

Ballot Measure Number 1 is the first step Alaskans can take to *effectively* control state spending.

The measure creates the Budget Reserve Fund in the Constitution. Revenues from mineral or oil and gas legal settlements and administrative proceedings will be deposited into the Budget Reserve. The Legislature will be able to spend money from the Budget Reserve only if:

- revenues are less than the amount appropriated the previous year, in which case money could be appropriated from the Budget Reserve in an amount not to exceed the shortfall; or
- three-fourths of the members of both the House and Senate vote to spend money from the Budget Reserve for a public purpose, such as a disaster.

The Legislature will be required to repay any money it appropriates from the Budget Reserve. If the next year revenues are insufficient the Legislature cannot afford to replenish the Budget Reserve, the "debt" will carry forward until it is repaid.

Legal settlements involving mineral or oil and gas revenues received after July 1, 1990, will be deposited into the Budget Reserve. As an example, if voters approve this ballot measure, \$216 million of the amount the state received in September from ARCO's settlement of royalty litigation will be deposited into this Budget Reserve. Should voters not approve this measure, these funds will be available to the legislature to spend next year. Approval of Ballot Measure Number 1 is the first step toward a long-term spending plan. With Alaska's revenues subject to the whims of the world oil market, trying to take steps which will provide some stability in Alaska's spending is especially difficult. If approved, the Budget Reserve Fund will help hold down spending by removing from the table the oil and gas revenue "windfalls" that result from pending litigation and tax disputes. At the very least, this ballot measure will establish a savings account that can help minimize the effects of a "boom" one year, and a "bust" the next.

While other major budget decisions will be necessary to close the future's fiscal gap, this Ballot Measure is a major step toward a long-term spending plan for the state. It is a step we urge Alaskans to support.

If approved by the voters, the Budget Reserve Fund will be a significant help in managing the transition to sustainable spending.

Senator Jan. Faiks
Representative Kay Brown
Representative Randy Phillips

STATEMENT IN OPPOSITION

In sharp contrast to what its proponents have been telling us, the proposed budget reserve fund

- will *not* save any windfalls,
- does *not* require a $\frac{3}{4}$ vote to gain access to it,

- *endorses* the legislature's bloated \$3 billion budget
- will result in *slower growth* of the Permanent Fund, and
- will *reduce the amount* of future PFD checks.

Your vote *against* Ballot Measure #1 will send a signal to the legislature that you do not approve of their excessive spending, and that you want the windfalls deposited into the Permanent Fund.

The most significant danger of this proposal is that it will establish a budget floor at \$3 billion, and allow it to increase every year. Under paragraph (b) of the proposed constitutional change, a simple majority in the legislature could "borrow" funds from the reserve, to make up any shortfall in revenues, *up to the amount appropriated in the previous year*. This year the legislature spent more than \$3 billion. Some of that was vetoed by the governor, but it is expected the legislature will restore the funding and add supplemental appropriations in January. In other words, *the total amount appropriated for FY 91 has not yet been determined. A "yes" vote on this ballot measure amounts to rubber-stamping a blank check of at least \$3 billion!*

How would the budget continue to increase? Legislative leaders can easily get a $\frac{3}{4}$ vote out of their members by dangling capital project plums in front of them.

The appeal of this ballot measure is to save the "windfalls" of oil tax settlements, variously estimated at between \$2 billion and \$5 billion. This can easily be spent in three years.

Constitutionally, 25% of our oil income is dedicated to the Permanent Fund. And under state law, an additional 25% of income from certain leases is put into the Permanent Fund. In other words, as much as 50% of the windfalls should be deposited in the Permanent Fund, by law. The language in this constitutional amendment is unclear regarding the second 25%, and could be interpreted by big-spending legislators to rationalize putting only the constitutionally-dedicated 25% into the Permanent Fund, and leaving 75% for them to spend.

It would be better to save all of these anticipated windfalls, by putting 100% into the Permanent Fund. There, these funds will help the Permanent Fund produce greater annual income, for use as Permanent Fund Dividends to all Alaskans, or to fund necessary functions of state government. In the Permanent Fund, the windfalls would definitely be saved, and would not be accessible by big spenders in the legislature.

If you are one of the 65% of Alaskans who in opinion polls consistently ask the legislature to cut the budget, or if you believe the windfalls should *truly* be saved, you owe it to yourself not to be taken in by the proponents of Ballot Measure #1. Vote NO on the budget reserve amendment.

Representative Terry Martin

<u>FYE 18 Sweep Balance by General Fund Subfund</u>				
<u>Fund Description</u>	<u>Sweep FYE 18</u>	<u>Fund Description</u>	<u>Sweep FYE 18</u>	
Statutory Budget Reserve Fund	184,150,931	Alaska Technical and Vocational Education Program Account	1,038,799	
Alaska Comprehensive Health Insurance Fund	87,044,559	Originator Surety Fund	938,966	
Alaska Capital Income Fund	42,421,966	Municipal Capital Project Matching Grant	653,499	
Alaska Marine Highway System	30,901,112	Unincorporated Community Capital Project Matching Grant	646,158	
Alaska Marine Highway System Vessel Replacement	22,127,890	Building Safety Account	571,355	
Tobacco Use Education and Cessation Account	18,596,705	Oil and Hazardous Substance Release Response Mitigation Account	356,601	
Alcohol and Other Drug Abuse Treatment and Prevention Fund	9,858,600	Crime Victims Compensation Fund	324,777	
Commercial Passenger Vessel Environmental Compliance	8,308,766	Vocational Rehabilitation Small Business Enterprise Revolving	294,960	
Workers' Safety and Compensation Administration Account	4,031,105	Alaska Debt Retirement	29,937	
Employment assistance and Training Program Account	4,014,680	Civil Legal Services Fund	10,357	
Workers' Compensation Benefits Guaranty Fund	2,878,253	1 Cent Per Barrel of Oil Produced Surcharge	455	
Recidivism Reduction Fund	2,867,491	4 Cent Per Barrel of Oil Produced Surcharge	263	
Railbelt Energy	2,796,346	State Land Reforestation	194	
State Land Disposal Income	2,777,158	Educational Facilities Maintenance and Construction	45	
AMHS Capitalization	2,629,444	Trauma Care Fund	26	
Oil and Hazardous Substance Release Prevention Mitigation Account	1,416,373			

FYE 18 General Fund Subfund – Non Sweepable

<u>Fund Description</u>	<u>FYE 18 Fund Balance</u>	<u>Fund Description</u>	<u>FYE 18 Fund Balance</u>
Alaska Higher Education Investment Fund	344,243,758	Alaska Transportation Infrastructure Bank Highway Account	704,365
School Construction Grant	116,611,022	FICA Administration	603,067
Regional Educational Attendance Area School Fund	93,083,571	Assistive Technology Loan Guarantee	446,802
Community Revenue Sharing Fund	91,192,462	Donated Commodity Fee	424,806
Major Maintenance Grant	50,099,582	Real Estate Surety	394,514
Oil and Hazardous Substance Release Response Account	48,053,200	Randolph - Sheppard Small Business	393,830
Disaster Relief	23,909,512	Adak Airport Operations Fund	272,794
Commercial Vessel Passenger Tax Account	20,183,316	Alaska Veterans' Memorial Endowment	208,823
Vaccine Assessment Account	15,356,057	Alaska Surplus Property	141,432
State Insurance Catastrophe Reserve	10,212,495	Art in Public Places	85,885
Oil and Hazardous Substance Release Prevention Account	9,628,132	Training and Building	77,201
Municipal Harbor Facility Grant Fund	8,181,601	Peace Officer and Firefighter Survivors Fund	70,100
Memorial Education Revolving Loan Fund	8,156,111	Alaska Historical commission Receipts Account	35,204
Public Education Fund	7,958,971	Fuel Emergency	22,573
Permanent Fund Dividend	7,815,936	Fund for the Improvement of School Performance	21,749
School Trust Land Sales	7,199,479	FHWA - Airspace Leases	19,049
NTSC Bonds Funding	6,958,826	Alaska Children's Trust Grant Account	17,200
Alaska Transportation Infrastructure Bank Repayment Account	3,802,626	Anatomical Gift Awareness Fund	9,470
Election Fund	2,506,389	Fisheries Disaster Fund	6,842
Oil & Gas Tax Credit Fund	1,204,099		

Indirect Expenditure Report



January 2021

Legislative Finance Division

www.legfin.akleg.gov

Revenue

Applicable Program
Multiple Tax Programs

Indirect Expenditure Name
Education Credit

Department of Revenue Submission per AS 43.05.095

(1) Description of Provision

A non-transferable credit applicable to the Corporate Income Tax, Fisheries Business Tax, Fishery Resource Landing Tax, Insurance Premium Tax, Title Insurance Premium Tax, Mining License Tax, Oil and Gas Production Tax, and the Oil and Gas Property Tax. The credit is available for up to 50% of annual contributions up to \$100,000, 75% of the next \$200,000, and 50% of annual contributions beyond \$300,000. The credit for any one taxpayer cannot exceed \$1,000,000 annually across all eligible tax types. The credit is for contributions to qualified education purposes given in AS 43.20.014(a).

(2) Type

Credit

(3) Authorizing Statute, Regulation or Other Authority

AS 21.96.070, AS 43.20.014, AS 43.55.019, AS 43.56.018, AS 43.65.018, AS 43.75.018, AS 43.77.045

(4) Year Enacted

1987, last amended 2018

(5) Sunset or Repeal Date

01-01-25

(6) Legislative Intent

The Legislature intended to encourage private businesses to make charitable contributions to support Alaskan schools.

(7) Public Purpose

To encourage private businesses that pay tax to contribute to Alaska educational institutions and facilities.

(8) Estimated Revenue Impact

FY 2015 - \$6,746,110

FY 2016 - \$6,299,749

FY 2017 - \$5,448,717

FY 2018 - \$4,784,876

FY 2019 - FY 2019 incomplete.

Note: All returns with tax periods beginning in FY 2019 have not yet been received, so FY 2019 data is incomplete.

(9) Cost to Administer

No additional cost; is administered with current resources.

(10) Number of Beneficiaries / Who Benefits

Between 30 and 40 companies

Legislative Finance Analysis per AS 24.20.235

(1) Estimate of Annual Revenue Foregone by the State

\$5,819,863

Revenue

5.50

Applicable Program
Multiple Tax Programs

Indirect Expenditure Name
Education Credit

Legislative Finance Analysis per AS 24.20.235

(2) Estimate of Annual Benefit to Recipients (cont.)

\$166,282

(3) Legislative Intent Met?

Yes. The credit has resulted in significant donations to educational institutions.

(4) Should it be Continued, Modified or Terminated?

No recommendation based on recent legislative action.

State of Alaska FY2023 Governor's Operating Budget

Department of Education and Early Development Alaska Performance Scholarship Awards Component Budget Summary

Component: Alaska Performance Scholarship Awards

Contribution to Department's Mission

To provide performance-based scholarships to Alaskans.

Core Services

- The Alaska Performance Scholarship (APS) is a performance-based scholarship that is effectively raising the collective academic achievement of Alaska's students. Central to the program are the eligibility requirements that students 1) engage in a rigorous secondary education program of study; and 2) perform well on standards-based, college or career readiness assessments.

Major Component Accomplishments in 2021

- Available funding of \$11,750.0 in Alaska Performance Scholarships (APS) and \$5,841.8 in Alaska Education Grants (AEG);
- Enhanced the Alaska Student Aid Portal (ASAP), a web-based financial aid management system that provides eligible Alaskans with information about their individual APS and/or AEG accounts;
- ASAP, functioning as the financial aid management tool for participating postsecondary institutions for online certification of student enrollment and continuing eligibility, enabled paperless aid disbursement through schools to participating students, and was used to deliver approximately \$9.3 million to nearly 2,800 APS recipients and \$5.8 million to just under 2,700 AEG recipients; and
- Produced the 2020 APS Outcomes Report on the first nine high school graduate cohorts, documenting significant positive program impacts specifically that APS students take more credits and need less remediation, persist in their studies, and stay in Alaska at higher rates, compared to their non-APS peers.

Key Component Challenges

- The COVID-19 health pandemic resulted in the cancelation of ACT, SAT and WorkKeys standardized tests around the state impacting class of 2021 graduates' ability to qualify for the APS. The standardized testing requirement for the class of 2021 was waived to mitigate the impact on students;
- Inability to receive student performance data from high schools prevents early outreach to high school juniors and seniors about potential APS eligibility and importance of staying on track;
- Effecting a statewide culture that values higher education and understands the importance of taking a rigorous high school curriculum;
- A student's lack of awareness regarding timeline and preparation necessary for APS eligibility and recognition of the extent of the award, in terms of its full amount students can be eligible for; and
- Ensuring adequate preparation and course availability at district levels for students to have access to the curriculum requirements for eligibility and necessity of earlier outreach and preparation academically, prior to senior year.
- Uncertainty of funding for APS from the Higher Education Investment Fund (HEIF).

Significant Changes in Results to be Delivered in FY2023

- With information from the review of outcomes for the first decade of the APS program, make improvements to the program to increase eligibility and use of the scholarship;
- Ongoing expended use of email and other electronic communications to reduce costs of communicating with customers;
- Further streamlining of APS outcomes reporting protocols to reduce costs of reporting;
- Further improvements to ASAP to provide streamlined processing and reduce the need for costly manual

- processing; and
- Updated education programs for teachers, counselors, and other mentors assisting students with becoming APS-eligible.

Statutory and Regulatory Authority

AS 14.43.810-849
20 AAC 16.205-16.900

Contact Information
Contact: Sana Efird, Executive Director Phone: (907) 465-6740 E-mail: sana.efird@alaska.gov

Component Detail All Funds
Department of Education and Early Development

Component: Alaska Performance Scholarship Awards (2990)
RDU: Alaska Performance Scholarship Awards (610)

Formula Component

	FY2021 Actuals	FY2022 Conference Committee	FY2022 Authorized	FY2022 Management Plan	FY2023 Governor	FY2022 Management Plan vs FY2023 Governor
71000 Personal Services	0.0	0.0	0.0	0.0	0.0	0.0%
72000 Travel	0.0	0.0	0.0	0.0	0.0	0.0%
73000 Services	0.0	0.0	0.0	0.0	0.0	0.0%
74000 Commodities	0.0	0.0	0.0	0.0	0.0	0.0%
75000 Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0%
77000 Grants, Benefits	9,334.3	11,750.0	11,750.0	11,750.0	-11,750.0	-100.0%
78000 Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0%
Totals	9,334.3	11,750.0	11,750.0	11,750.0	-11,750.0	-100.0%
Fund Sources:						
1004 Gen Fund (UGF)	0.0	0.0	0.0	0.0	0.0	0.0%
1226 High Ed (DGF)	9,334.3	11,750.0	11,750.0	11,750.0	-11,750.0	-100.0%
Unrestricted General (UGF)	0.0	0.0	0.0	0.0	0.0	0.0%
Designated General (DGF)	9,334.3	11,750.0	11,750.0	11,750.0	-11,750.0	-100.0%
Other Funds	0.0	0.0	0.0	0.0	0.0	0.0%
Federal Funds	0.0	0.0	0.0	0.0	0.0	0.0%
Positions:						
Permanent Full Time	0	0	0	0	0	0.0%
Permanent Part Time	0	0	0	0	0	0.0%
Non Permanent	0	0	0	0	0	0.0%

Component Detail All Funds
Department of Education and Early Development

Component: Alaska Performance Scholarship Awards (2990)
RDU: State Financial Aid Programs (720)

Formula Component

	FY2021 Actuals	FY2022 Conference Committee	FY2022 Authorized	FY2022 Management Plan	FY2023 Governor	FY2022 Management Plan vs FY2023 Governor
71000 Personal Services	0.0	0.0	0.0	0.0	0.0	0.0%
72000 Travel	0.0	0.0	0.0	0.0	0.0	0.0%
73000 Services	0.0	0.0	0.0	0.0	0.0	0.0%
74000 Commodities	0.0	0.0	0.0	0.0	0.0	0.0%
75000 Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0%
77000 Grants, Benefits	0.0	0.0	0.0	0.0	0.0	0.0%
78000 Miscellaneous	0.0	0.0	0.0	0.0	11,750.0	100.0%
Totals	0.0	0.0	0.0	0.0	11,750.0	100.0%
Fund Sources:						
1004 Gen Fund (UGF)	0.0	0.0	0.0	0.0	11,750.0	100.0%
1226 High Ed (DGF)	0.0	0.0	0.0	0.0	0.0	0.0%
Unrestricted General (UGF)	0.0	0.0	0.0	0.0	11,750.0	100.0%
Designated General (DGF)	0.0	0.0	0.0	0.0	0.0	0.0%
Other Funds	0.0	0.0	0.0	0.0	0.0	0.0%
Federal Funds	0.0	0.0	0.0	0.0	0.0	0.0%
Positions:						
Permanent Full Time	0	0	0	0	0	0.0%
Permanent Part Time	0	0	0	0	0	0.0%
Non Permanent	0	0	0	0	0	0.0%

Change Record Detail - Multiple Scenarios with Descriptions
Department of Education and Early Development

Component: Alaska Performance Scholarship Awards (2990)
RDU: State Financial Aid Programs (720)

Scenario/Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants, Benefits	Miscellaneous	Positions PFT PPT	NP
***** Changes From FY2022 Conference Committee To FY2022 Authorized *****											
FY2022 Conference Committee											
ConfCom		11,750.0	0.0	0.0	0.0	0.0	0.0	11,750.0	0.0	0	0
1226 High Ed		11,750.0									
Replace Unavailable Higher Education Investment Fund to Support Performance Scholarships											
OTI		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
1004 Gen Fund		11,750.0									
1226 High Ed		-11,750.0									
Fund change to replace unavailable Higher Education Investment Fund appropriation with Unrestricted General Fund appropriation to ensure funding is available in FY2022.											
Higher Education Investment Fund to Support Performance Scholarships											
FndChg		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
1004 Gen Fund		-11,750.0									
1226 High Ed		11,750.0									
Reverse fund change replacing Higher Education Investment Fund appropriation with Unrestricted General Fund appropriation and restore validly committed appropriation from the Higher Education Investment Fund.											
Subtotal		11,750.0	0.0	0.0	0.0	0.0	0.0	11,750.0	0.0	0	0
***** Changes From FY2022 Management Plan To FY2023 Governor *****											
Replace Authority Unavailable due to Alaska Constitution Article IX Section 17(d)											
FndChg		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0
1004 Gen Fund		11,750.0									
1226 High Ed		-11,750.0									
The enactment of Article IX, Section 17(d) of the Alaska Constitution transferred available balances of funds used by this appropriation to the Constitutional Budget Reserve Fund (CBR); a process commonly referred to as the "CBR sweep". Budget authority that cannot be satisfied with projected fiscal year 2023 revenue collections are replaced with unrestricted general funds to ensure continuity of service.											
Totals		11,750.0	0.0	0.0	0.0	0.0	0.0	11,750.0	0.0	0	0

Line Item Detail (1676)
Department of Education and Early Development
Grants, Benefits

Component: Alaska Performance Scholarship Awards (2990)

Line Number	Line Name		FY2021 Actuals	FY2022 Management Plan	FY2023 Governor
7000	Grants, Benefits		9,334.3	11,750.0	11,750.0
Object Class	Servicing Agency	Explanation	FY2021 Actuals	FY2022 Management Plan	FY2023 Governor
		7000 Grants, Benefits Detail Totals	9,334.3	11,750.0	11,750.0
7002	Benefits	Alaska Performance Scholarship awards.	9,334.3	11,750.0	11,750.0

State of Alaska FY2023 Governor's Operating Budget

Department of Education and Early Development Alaska Education Grants Component Budget Summary

Component: Alaska Education Grants

Contribution to Department's Mission

To provide need-based grants to Alaskans to support access and success in postsecondary programs.

Core Services

- The Alaska Education Grant (AEG) program provides higher education grants to Alaska residents who demonstrate financial need and are attending eligible in-state institutions.

Major Component Accomplishments in 2021

- Disbursed \$5,836,192 in grant awards to 2,691 recipients.

Key Component Challenges

- Uncertainty of funding for AEG from the Higher Education Investment Fund (HEIF).

Significant Changes in Results to be Delivered in FY2023

No changes in results delivered.

Statutory and Regulatory Authority

General AS 14.43.400 – AS 14.43.420

Funding AS 14.43.915

20 AAC 16.005 – 20 AAC 16.050

Contact Information
Contact: Sana Efird, Executive Director Phone: (907) 465-6740 E-mail: sana.efird@alaska.gov

Component Detail All Funds
Department of Education and Early Development

Component: Alaska Education Grants (3340) Non-Formula Component
RDU: State Financial Aid Programs (720)

	FY2021 Actuals	FY2022 Conference Committee	FY2022 Authorized	FY2022 Management Plan	FY2023 Governor	FY2022 Management Plan vs FY2023 Governor
71000 Personal Services	0.0	0.0	0.0	0.0	0.0	0.0%
72000 Travel	0.0	0.0	0.0	0.0	0.0	0.0%
73000 Services	0.0	0.0	0.0	0.0	0.0	0.0%
74000 Commodities	0.0	0.0	0.0	0.0	0.0	0.0%
75000 Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0%
77000 Grants, Benefits	0.0	0.0	0.0	0.0	0.0	0.0%
78000 Miscellaneous	0.0	0.0	0.0	0.0	5,841.8	100.0%
Totals	0.0	0.0	0.0	0.0	5,841.8	100.0%
Fund Sources:						
1004 Gen Fund (UGF)	0.0	0.0	0.0	0.0	5,841.8	100.0%
1226 High Ed (DGF)	0.0	0.0	0.0	0.0	0.0	0.0%
Unrestricted General (UGF)	0.0	0.0	0.0	0.0	5,841.8	100.0%
Designated General (DGF)	0.0	0.0	0.0	0.0	0.0	0.0%
Other Funds	0.0	0.0	0.0	0.0	0.0	0.0%
Federal Funds	0.0	0.0	0.0	0.0	0.0	0.0%
Positions:						
Permanent Full Time	0	0	0	0	0	0.0%
Permanent Part Time	0	0	0	0	0	0.0%
Non Permanent	0	0	0	0	0	0.0%

Change Record Detail - Multiple Scenarios with Descriptions
Department of Education and Early Development

Component: Alaska Education Grants (3340)
RDU: State Financial Aid Programs (720)

Scenario/Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants, Benefits	Miscellaneous	Positions PFT	PPT	NP
Subtotal		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
***** Changes From FY2022 Management Plan To FY2023 Governor *****												
Transfer Alaska Education Grants from Program Administration and Operations												
Trin		5,841.8	0.0	0.0	0.0	0.0	0.0	5,841.8	0.0	0	0	0
1226 High Ed		5,841.8										
Transfer the Alaskan Education Grant Program to a new component to improve budget transparency. The Alaska Education Grant program was formerly budgeted within the Program Administration & Operations' component. The former budget structure inflated the Program Administration & Operations' budget and perpetuated the misunderstanding that this authority is part of ACPE operations. This structure change sets these grants in a stand-alone component and Results Delivery Unit (RDU) titled State Financial Aid Programs which clearly identifies them as state educational financial aid to be used for higher education and postsecondary programs in Alaska and provide for more transparency and oversight for these pass-through grants. The Alaska Performance Scholarship component is also located under the State Financial Aid Programs RDU.												
Replace Authority Unavailable due to Alaska Constitution Article IX Section 17(d)												
FndChg		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1004 Gen Fund		5,841.8										
1226 High Ed		-5,841.8										
The enactment of Article IX, Section 17(d) of the Alaska Constitution transferred available balances of funds used by this appropriation to the Constitutional Budget Reserve Fund (CBR); a process commonly referred to as the "CBR sweep". Budget authority that cannot be satisfied with projected fiscal year 2023 revenue collections are replaced with unrestricted general funds to ensure continuity of service.												
Totals		5,841.8	0.0	0.0	0.0	0.0	0.0	5,841.8	0.0	0	0	0

Line Item Detail (1676)
Department of Education and Early Development
Grants, Benefits

Component: Alaska Education Grants (3340)

Line Number	Line Name		FY2021 Actuals	FY2022 Management Plan	FY2023 Governor
7000	Grants, Benefits		0.0	0.0	5,841.8
Object Class	Servicing Agency	Explanation	FY2021 Actuals	FY2022 Management Plan	FY2023 Governor
		7000 Grants, Benefits Detail Totals	0.0	0.0	5,841.8
7002	Benefits	Alaska Education Grant awards.	0.0	0.0	5,841.8



LAWS OF ALASKA

2021

SECOND SPECIAL SESSION

Source

CCS HB 69(brf sup maj fld H/S)

Chapter No.

AN ACT

Making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; amending appropriations; making capital appropriations, supplemental appropriations, and reappropriations; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

		Appropriation	General	Other
	Allocations	Items	Funds	Funds
3	The amount allocated for Museum Operations includes the unexpended and unobligated			
4	balance on June 30, 2021, of program receipts from museum gate receipts.			
5	Online with Libraries (OWL)	477,700		
6	Live Homework Help	138,200		
7	Andrew P. Kashevaroff	1,365,100		
8	Facilities Maintenance			
9	Broadband Assistance Grants	7,797,900		
10	Alaska Commission on Postsecondary	19,752,600	9,666,100	10,086,500
11	Education			
12	Program Administration &	16,494,600		
13	Operations			
14	WWAMI Medical Education	3,258,000		
15	Alaska Performance Scholarship Awards	11,750,000	11,750,000	
16	Alaska Performance	11,750,000		
17	Scholarship Awards			
18	Alaska Student Loan Corporation	9,936,500		9,936,500
19	Loan Servicing	9,936,500		
20	* * * * *	* * * * *		
21	* * * * * Department of Environmental Conservation * * * * *			
22	* * * * *	* * * * *		
23	Administration	9,551,100	4,472,700	5,078,400
24	Office of the Commissioner	1,071,500		
25	Administrative Services	5,648,200		
26	The amount allocated for Administrative Services includes the unexpended and unobligated			
27	balance on June 30, 2021, of receipts from all prior fiscal years collected under the			
28	Department of Environmental Conservation's federal approved indirect cost allocation plan			
29	for expenditures incurred by the Department of Environmental Conservation.			
30	State Support Services	2,831,400		
31	DEC Buildings Maintenance and	657,000	657,000	
32	Operations			
33	DEC Buildings Maintenance	657,000		

1				New	
2			Operating	Legislation	Total
3	1145	Art in Public Places Fund	30,000	0	30,000
4	1151	Technical Vocational Education	490,800	-27,400	463,400
5		Program Receipts			
6	1226	Alaska Higher Education	21,502,300	0	21,502,300
7		Investment Fund			
8	***	Total Agency Funding ***	365,538,400	506,100	366,044,500
9	Department of Environmental Conservation				
10	1002	Federal Receipts	25,450,000	0	25,450,000
11	1003	General Fund Match	4,930,900	0	4,930,900
12	1004	Unrestricted General Fund	12,723,700	0	12,723,700
13		Receipts			
14	1005	General Fund/Program Receipts	9,049,500	0	9,049,500
15	1007	Interagency Receipts	1,605,400	0	1,605,400
16	1018	Exxon Valdez Oil Spill Trust--	6,900	0	6,900
17		Civil			
18	1052	Oil/Hazardous Release Prevention	15,751,200	0	15,751,200
19		& Response Fund			
20	1055	Interagency/Oil & Hazardous	401,300	0	401,300
21		Waste			
22	1061	Capital Improvement Project	3,608,900	0	3,608,900
23		Receipts			
24	1093	Clean Air Protection Fund	4,632,500	0	4,632,500
25	1108	Statutory Designated Program	78,600	0	78,600
26		Receipts			
27	1166	Commercial Passenger Vessel	1,527,400	0	1,527,400
28		Environmental Compliance Fund			
29	1205	Berth Fees for the Ocean Ranger	2,432,900	0	2,432,900
30		Program			
31	1230	Alaska Clean Water	817,600	0	817,600
32		Administrative Fund			
33	1231	Alaska Drinking Water	410,600	0	410,600

CCS HB 69(brf sup maj fld H/S), Sec. 3

1 reclamation trust fund income account (AS 37.14.800(a)) to the mine reclamation trust fund
2 operating account (AS 37.14.800(a)).

3 (k) Twenty-five percent of the donations received under AS 43.23.230(b), estimated
4 to be \$275,000, is appropriated to the education endowment fund (AS 43.23.220).

5 (l) The amount received by the Alaska Commission on Postsecondary Education as
6 repayment of WWAMI medical education program loans, estimated to be \$504,044, is
7 appropriated to the Alaska higher education investment fund (AS 37.14.750).

8 (m) The unexpended and unobligated balance of the large passenger vessel gaming
9 and gambling tax account (AS 43.35.220) on June 30, 2022, estimated to be \$0, is
10 appropriated to the general fund.

11 (n) The sum of \$250,000,000 is appropriated from federal receipts received from sec.
12 9901, P.L. 117-2 (Subtitle M—Coronavirus State and Local Fiscal Recovery Funds,
13 American Rescue Plan Act of 2021) to the general fund for general fund revenue replacement.

14 * **Sec. 72. LEGISLATIVE COUNCIL.** Section 40, ch. 8, SLA 2020, is amended to read:

15 Sec. 40. LEGISLATIVE COUNCIL. The sum of **\$3,500,000** [\$2,500,000] is
16 appropriated from the general fund to the Legislative Council for the Redistricting
17 Board for operations for the fiscal years ending June 30, 2021, [AND] June 30, 2022,
18 **and June 30, 2023.**

19 * **Sec. 73. RETIREMENT SYSTEM FUNDING.** (a) The sum of \$193,494,000 is
20 appropriated from the general fund to the Department of Administration for deposit in the
21 defined benefit plan account in the public employees' retirement system as an additional state
22 contribution under AS 39.35.280 for the fiscal year ending June 30, 2022.

23 (b) The sum of \$97,699,500 is appropriated from the general fund to the Department
24 of Administration for deposit in the defined benefit plan account in the public employees'
25 retirement system as an additional state contribution under AS 39.35.280 for the fiscal year
26 ending June 30, 2022.

27 (c) The sum of \$142,665,000 is appropriated from the general fund to the Department
28 of Administration for deposit in the defined benefit plan account in the teachers' retirement
29 system as an additional state contribution under AS 14.25.085 for the fiscal year ending
30 June 30, 2022.

31 (d) The sum of \$4,185,000 is appropriated from the general fund to the Department of



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Office of the Governor

OFFICE OF MANAGEMENT AND BUDGET
Donna Arduin, Director

Court Plaza Building
240 Main Street, Suite 801
Juneau, Alaska 99811-0020
Main: 907.465.4660
Fax: 907.465.2090

July 12, 2019

The Honorable Natasha von Imhof
Co-Chair, Senate Finance Committee
Alaska State Legislature
State Capitol, Room 516
Juneau, AK 99801-1182

The Honorable Bert Stedman
Co-Chair, Senate Finance Committee
Alaska State Legislature
State Capitol, Room 518
Juneau, AK 99801-1182

The Honorable Neal Foster
Co-Chair, House Finance Committee
Alaska State Legislature
State Capitol, Room 505
Juneau, AK 99801-1182

The Honorable Jennifer Johnston
Vice Chair, House Finance Committee
Alaska State Legislature
State Capitol, Room 501
Juneau, AK 99801-1182

Dear Co-Chairs and Vice Chair of the House and Senate Finance Committees,

As you are aware, the Legislature was unable to achieve a three-fourths vote to reverse the sweep of money in the general fund and sub-funds of the general fund available for appropriation at the end of each fiscal year, into the Constitutional Budget Reserve Fund (CBRF). This requirement is found under Article IX, Section 17(d) of the Alaska Constitution. As a result, the staff of the Office of Management and Budget, the Division of Finance, and the Department of Law went through the arduous process of establishing a framework and guidelines to be applied to every single fund to determine whether the fund is subject to the constitutional sweep. Hundreds of hours of staff time were spent making these determinations. The Governor was not involved in this process; no political influence took place when making these determinations.

The CBRF was established by constitutional amendment in 1990 in Article IX, Section 17 of the Alaska Constitution. There are four subsections to this constitutional amendment:

- (a) Revenue into the CBRF – money received from the termination of administrative and judicial proceedings involving mineral revenues is deposited into the CBRF;
- (b) Expenditures from the CBRF by majority vote – only if “the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year” *and* the appropriation is limited to the amount necessary to make total appropriations equal to the amount appropriated in the previous year;
- (c) Expenditures from the CBRF by a three-fourths vote of the members of each house – the Legislature can appropriate from the fund for any public purpose if such a supermajority vote is obtained;
- (d) **Repayment requirement** – “If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for

appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law."

The language of Article IX, Section 17(d) guided the framework for establishing the criteria used to evaluate each fund. The following guidelines were used to evaluate each fund:

- All financial assets outside of the permanent fund and the constitutional budget reserve are considered to be part of the general fund, not simply the accounts and funds managed directly by the Division of Finance and Treasury.
- Funds for which the legislature has retained the power to appropriate from and that are not available to pay expenditures without further legislative appropriation are subject to the sweep unless a constitutionally dedicated fund or not in the general fund;
- Funds that list purposes for which money in the fund can be used but still require a second appropriation to spend from the fund are subject to the sweep unless a constitutionally dedicated fund or not in the general fund;
- Money in funds that is already validly appropriated to a particular purpose are not subject to the sweep;
- Federal funds are not subject to the sweep;
- Other trust funds such as the Public Employees Retirement Fund that can only be used for a specific stated purpose under law such as constitutionally permissible dedicated funds and pension funds are not subject to the sweep;
- Donations - the portion of a fund that comprises money donated to a fund for a particular purpose should not be included in the sweep;
- Public corporation accounts/funds are not subject to the sweep *unless* the money is in an account or fund that cannot be accessed by the corporation without an additional legislative appropriation (e.g. the Power Cost Equalization Endowment fund);
- Receipts subject to refund (e.g. Alaska Marine Highway, University tuition or student housing) are not subject to the sweep.

Attached, please find the finalized list with the determination on what funds will sweep to the CBRF and what monies will remain in the fund in which they currently reside. The effective date of the sweep is June 30, 2019; however, the deposit of swept funds into the CBRF will not take place until late August-early September timeframe to allow for the close out of FY2019 expenditures.

Please do not hesitate to contact the Office of Management and Budget should you or your staff have any questions.

Sincerely,



Donna Arduin
Director

Co-Chairs and Vice Chair of the House and Senate Finance Committees
July 12, 2019
Page 3

Enclosure

1. Funds Subject to Sweep
-
- cc. Honorable Cathy Giessel, President, Alaska State Senate
Honorable Bryce Edgmon, Speaker, House of Representatives
Honorable Kevin Clarkson, Attorney General, Department of Law
Mr. David Teal, Director, Legislative Finance Division
Ms. Suzanne Cunningham, Director, Governor's Legislative Office
Mr. Hans Zigmund, Director, Division of Finance

Prepared by the Office of Management and Budget

Fund Code	Name	Reference
1005	General Fund/Program Receipts	AS 37.05.142-.146, AS 37.10.050-.060
1044	AK Debt Retirement Fund	AS 37.15.011
1049	Training and Building Fund	AS 23.20.130
1052	Oil and Hazardous Substance Release Prevention Mitigation Account	AS 46.08.010-.040, AS 43.55.201&.300 AS43.40.005-.007
1054	State Employment & Training Program	AS 23.15.625 AS 37.05.146
1076	Marine Highway System Fund	AS 19.65.060, AS 37.05.550
1082	Vessel Replacement Fund	AS 37.05.550
1109	Test Fisheries Receipts	AS 16.05.050(a)(14)
1139	AHFC Dividend	
1140	AIDEA Dividend	
1141	RCA Receipts	AS 37.05.146(c)(22), AS 42.05.254
1150	ASLC Dividend	
1151	Technical Vocational Education Program Account	AS 23.15.830 AS 37.10.200
1153	State Land Disposal Income Fund	AS 38.04.022(a), AS 37.05.146(b)
1154	Shore Fisheries Development Lease Program	AS 38.05.082 AS 37.05.146(b)
1155	Timber Sale Receipts	AS 38.05.110 AS 37.05.146(b)
1156	Receipt Supported Services	AS 37.05. 142 through 146
1157	Workers Safety and Compensation Administration Account	AS 23.05.067(e) AS 18.60, AS 23.30
1162	Alaska Oil & Gas Conservation Commission Rcpts	AS 31.05.093, AS 37.05.146(c)(23)
1166	Commercial Passenger Vessel Environmental Compliance Fund	AS 46.03.460-.490
1168	Tobacco Use Education and Cessation Fund	AS 37.05.580
1169	PCE Endowment Fund	AS 42.45.070-.085
1172	Building Safety Account	AS 44.31.025 AS 37.05.146(c)(53)
1173	Miscellaneous Earnings	-
1180	Alcohol & Other Drug Abuse Treatment & Prevention Fund	AS 43.60.050
1195	Snow Machine Registration Receipts	AS 28.39.010-250
1197	Alaska Capital Income Fund	AS 37.05.565
1200	Vehicle Rental Tax Receipts	AS 43.52.080
1201	Commercial Fisheries Entry Commission Receipts	AS 16.43, AS 16.05.490, AS16.05.530, AS 37.05.146(c)(29)
1203	Workers' Compensation Benefits Guaranty Fund	AS 23.30.082
1211	Cruise Ship Gambling Tax	-
1213	Alaska Housing Capital Corporation Receipts	-
1214	Whittier Tunnel Toll Receipts	23 USC 129(a)(3)
1218	146(c)code	AS 37.05.146(c)
1221	Civil Legal Services Fund	AS 37.05.590

Fund Code	Name	Reference
1226	Alaska Higher Education Investment Fund	AS 37.14.750 (fund) AS 14.43 (program)
1234	License Plates	AS 28.10.421
1237	Vocational Rehabilitation Small Bus. Enterprise Revolving Fd	AS 23.15.130
1243	Statutory Budget Reserve Fund	AS 37.05.540
1246	Recidivism Reduction Fund	AS 43.61.010
1247	Medicaid Monetary Recoveries	37.05.146(c)(59) and AS 09.58 and AS 47.05.210
1248	Alaska Comprehensive Health Insurance Fund	AS 21.55.430(a)
1249	Motor Fuel Tax Receipts	AS 43.40.010(f)(g)(j)
1254	Marijuana Education and Treatment Fund	AS 43.61.010(f)
3200	Statutory Budget Reserve Fund	
3205	Alaska Historical Commission Receipts Account (Partially Sweep)	
3221	Originator Surety Fund	
3222	Trauma Care Fund (Partially Sweep)	
3223	Abandoned Vehicle Fund	
3225	AMHS Capitalization	
3233	Fish and Game Civil Fines & Penalties	
3388	\$.01 Per Barrel of Oil Produced Surcharge	
3389	\$.04 Per Barrel of Oil Produced Surcharge	
N/A	Reappropriations of FY19 Operating Appropriations	

AK Higher Education Investment
Net Asset Value
As of the Month Ending
June 28, 2019

Cash and Cash Equivalents

Short-term Fixed Income Pool (<i>Internally Managed</i>)	\$ 41,044.35
ST Liquidity (<i>Internally Managed</i>)	-
Total Cash and Cash Equivalents	<u>41,044.35</u>

Fixed Income Securities

Interim-term (<i>Internally Managed</i>)	-
Broad-term (<i>Internally Managed</i>)	106,588,313.88
High Yield (<i>Internally Managed</i>)	-
Total fixed Income Securities	<u>106,588,313.88</u>

Broad Domestic Equity

SSgA Russell 3000	<u>139,270,385.56</u>
Total Broad Domestic Equity	<u>139,270,385.56</u>

Global Equity Ex-U.S.

SOA International Equity Pool	<u>84,440,912.70</u>
Total Global Equity Ex-U.S.	<u>84,440,912.70</u>

Real Assets

Real Estate Investment Trust Pool (<i>Internally Managed</i>)	<u>16,751,691.60</u>
Total Real Assets	<u>16,751,691.60</u>

Receivables and Payables

Income Receivable/Payable	12.82
Payable To/From	-
Total Receivables and Payables	<u>12.82</u>

Total Assets

\$ 347,092,360.91

AK Higher Education Investment
Schedule of Investment Income (Loss) and Changes in Invested Assets
As of the Month Ending
June 28, 2019

	<u>1-Month</u>	<u>Fiscal YTD</u>
Cash and Cash Equivalents		
Short-term Fixed Income Pool (<i>Internally Managed</i>)	\$ 12.82	\$ 1,379.05
ST Liquidity (<i>Internally Managed</i>)	-	
	<u>12.82</u>	<u>1,379.05</u>
Fixed Income Securities		
Interim-term (<i>Internally Managed</i>)	-	-
Broad-term (<i>Internally Managed</i>)	1,513,707.88	8,020,278.44
High Yield (<i>Internally Managed</i>)	-	27,792.47
	<u>1,513,707.88</u>	<u>8,048,070.91</u>
Broad Domestic Equity		
SSgA Russell 3000	9,157,838.40	12,211,276.42
	<u>9,157,838.40</u>	<u>12,211,276.42</u>
Global Equity Ex-U.S.		
SOA International Equity Pool	4,723,441.33	1,336,255.46
	<u>4,723,441.33</u>	<u>1,336,255.46</u>
Real Assets		
Real Estate Investment Trust Pool (<i>Internally Managed</i>)	234,114.44	2,081,407.77
	<u>234,114.44</u>	<u>2,081,407.77</u>
Total Investment Income (Loss)	\$ 15,629,114.87	\$ 23,678,389.61
Payable To/From	-	-
Total Invested Assets, Beginning of Period	331,746,228.37	344,265,007.31
Net Contribution (Withdrawal)	(282,982.33)	(20,851,036.01)
Total Assets	<u>\$ 347,092,360.91</u>	<u>\$ 347,092,360.91</u>

HOUSE BILL NO. 130

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/12/19

Referred: House Special Committee on Energy, Education, Community and Regional Affairs, Judiciary,
Finance**A BILL****FOR AN ACT ENTITLED**

1 **"An Act relating to the community assistance fund and to community assistance;**
2 **repealing the civil legal services fund, power cost equalization endowment fund, power**
3 **cost equalization and rural electric capitalization fund, curriculum improvement and**
4 **best practices fund, and Alaska higher education investment fund; disposing of**
5 **proceeds; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 14.43.825(f) is amended to read:

8 (f) Payment of a scholarship is subject to appropriation [AND THE
9 AVAILABILITY OF FUNDS FOR EXPENDITURE UNDER AS 37.14.750]. If
10 insufficient funds are appropriated [OR AVAILABLE] in a fiscal year to pay all
11 eligible scholarships, the commission may not award a scholarship to a new applicant,
12 and the commission shall pay existing awards on a pro rata basis for that fiscal year.

13 * **Sec. 2.** AS 14.43.915(a) is amended to read:

(a) The Alaska education grant account is created as an account in the general fund. **The department may seek appropriations to fund grants and awards from this account** [MONEY MAY BE APPROPRIATED TO THE ACCOUNT FROM THE ALASKA HIGHER EDUCATION INVESTMENT FUND UNDER AS 37.14.750 AND FROM OTHER SOURCES]. The commission may use the money in the account to pay grants awarded under AS 14.43.400 - 14.43.420 and to pay the cost of administration of the Alaska education grant program created under AS 14.43.400.

* **Sec. 3.** AS 14.43.915(b) is amended to read:

(b) The Alaska performance scholarship award account is created as an account in the general fund. **The department may seek appropriations to fund awards from this account** [MONEY MAY BE APPROPRIATED TO THE ACCOUNT FROM THE ALASKA HIGHER EDUCATION INVESTMENT FUND UNDER AS 37.14.750 AND FROM OTHER SOURCES]. The commission may use the money in the account to pay scholarships awarded to students under AS 14.43.810 - 14.43.849.

* **Sec. 4.** AS 14.43.915(c) is amended to read:

(c) Of the total amount available annually to the commission for payment of grants under AS 14.43.400 - 14.43.420 and for payment of scholarships under AS 14.43.810 - 14.43.849, one-third of the combined amount in the accounts established under (a) and (b) of this section shall be available solely for payment of grants awarded under AS 14.43.400 - 14.43.420. The commission shall annually allocate to all qualified applicants for scholarships awarded under AS 14.43.810 - 14.43.849 two-thirds of the combined amount in the accounts. If an insufficient number of qualified applicants are awarded grants under AS 14.43.400 - 14.43.420 or scholarships under AS 14.43.810 - 14.43.849, or both, before the end of that fiscal year, the commissioner shall redeposit the remaining funds **into the relevant account** [INTO THE ALASKA HIGHER EDUCATION INVESTMENT FUND ESTABLISHED UNDER AS 37.14.750].

* **Sec. 5.** AS 29.60.850 is repealed and reenacted to read:

Sec. 29.60.850. Community assistance. The legislature may appropriate funds

1 for the purpose of community assistance.

2 * **Sec. 6.** AS 29.60.855(a) is amended to read:

3 (a) The basic amount used for determining the basic community assistance
4 payment for a fiscal year is \$300,000. However, if the amount appropriated
5 [AVAILABLE] for payments for that fiscal year under AS 29.60.850
6 [AS 29.60.850(c)] is less than the amount necessary to make the payments under (b)
7 of this section, the department shall reduce the basic amount pro rata.

8 * **Sec. 7.** AS 29.60.860(a) is amended to read:

9 (a) Subject to (b) of this section, if the amount appropriated [AVAILABLE]
10 for distribution under AS 29.60.850 [AS 29.60.850(c)] exceeds the amount needed to
11 fully fund all the basic community assistance payments, the excess amount
12 [BALANCE] shall be distributed on a per capita basis to municipalities, to reserves,
13 and to communities in the unorganized borough.

14 * **Sec. 8.** AS 37.05.530(g) is amended to read:

15 (g) The provisions of this subsection apply to amounts received by the state
16 under 42 U.S.C. 6506a(l) or former 42 U.S.C. 6508, as follows:

17 (1) amounts received and not appropriated for grants to municipalities
18 under (d) of this section shall be deposited at the end of each fiscal year as follows:

19 (A) 25 percent of amounts received by the state during that
20 fiscal year under 42 U.S.C. 6506a(l) or former 42 U.S.C. 6508 to the principal
21 of the Alaska permanent fund; and

22 (B) .5 percent of amounts received by the state during that
23 fiscal year under 42 U.S.C. 6506a(l) or former 42 U.S.C. 6508 to the public
24 school trust fund (AS 37.14.110);

25 (2) if, after making the grants under (d) of this section, the amounts
26 remaining are insufficient to make payment in full of the deposits required by (1)(A)
27 and (B) of this subsection, the deposits shall be allocated pro rata between the fund
28 deposits;

29 (3) the amounts remaining after the making of the payment of the
30 deposits in full to the Alaska permanent fund and the public school trust fund under
31 (2) of this subsection may be appropriated

1 [(A) FIRST,] to each of the funds described in (1)(A) and (B)
 2 of this subsection to recover amounts not paid to those funds on or after
 3 September 1, 2006, because of deficiencies in making the payments required
 4 by (2) of this subsection; [AND

5 (B) AFTER APPROPRIATIONS AUTHORIZED BY (A) OF
 6 THIS PARAGRAPH, TO THE POWER COST EQUALIZATION AND
 7 RURAL ELECTRIC CAPITALIZATION FUND (AS 42.45.100);]

8 (4) the amounts remaining [AFTER ANY APPROPRIATION TO
 9 THE POWER COST EQUALIZATION AND RURAL ELECTRIC
 10 CAPITALIZATION FUND] shall lapse into the general fund for use by the state for
 11 the following facilities and services: planning; construction, maintenance, and
 12 operation of essential public facilities; and other necessary public services.

13 * **Sec. 9.** AS 42.05.141(b) is amended to read:

14 (b) The commission shall perform the duties assigned to it under
 15 AS 42.45.100 - 42.45.180 [AS 42.45.100 - 42.45.190].

16 * **Sec. 10.** AS 42.45.100 is repealed and reenacted to read:

17 **Sec. 42.45.100. Power cost equalization and rural electric capitalization**
 18 **program.** The legislature may appropriate funds for the purpose of equalizing power
 19 cost a kilowatt-hour statewide at a cost close to or equal to the mean of the cost a
 20 kilowatt-hour in Anchorage, Fairbanks, and Juneau by paying money to eligible
 21 electric utilities in the state.

22 * **Sec. 11.** AS 42.45.180(a) is amended to read:

23 (a) The authority may make a grant from legislative appropriations [THE
 24 FUND] for an eligible utility for a small power project that will reduce the cost of
 25 generating or transmitting power to the customers of the utility. The amount of the
 26 grant may not exceed 75 percent of the cost of the project. The authority may not
 27 make a grant under this section unless the eligible utility has secured financing for 25
 28 percent of the cost of the project [FROM A SOURCE OTHER THAN THE POWER
 29 COST EQUALIZATION AND RURAL ELECTRIC CAPITALIZATION FUND], as
 30 provided under (c) of this section.

31 * **Sec. 12.** AS 42.45.180(c) is amended to read:

(c) In determining whether an eligible utility has secured financing for 25 percent of the cost of the project [FROM A SOURCE OTHER THAN THE POWER COST EQUALIZATION AND RURAL ELECTRIC CAPITALIZATION FUND], the authority shall accept solicited and unsolicited proposals for third party financing or for a joint venture between the utility and an entity from the private sector provided that the private sector participant has

(1) a valid state business license;

(2) a resolution or letter of agreement executed by the eligible utility agreeing to participation by the private sector participant;

(3) a business plan that illustrates how the proposed project will reduce the cost of generating or transmitting power to the customers of the utility.

* **Sec. 13.** AS 43.77.045(a), as amended by sec. 32, ch. 101, SLA 2018, is amended to read:

(a) A person engaged in a floating fisheries business is allowed a credit against the tax due under this chapter for contributions of cash or equipment accepted for

(1) direct instruction, research, and educational support purposes, including library and museum acquisitions, and contributions to endowment, by an Alaska university foundation, by a nonprofit, public or private, Alaska two-year or four-year college accredited by a national or regional accreditation association, or by a public or private nonprofit elementary or secondary school in the state;

(2) secondary school level vocational education courses, programs, and facilities by a school district in the state;

(3) vocational education courses, programs, and facilities by a state-operated vocational technical education and training school;

(4) a facility by a nonprofit, public or private, Alaska two-year or four-year college accredited by a national or regional accreditation association or by a public or private nonprofit elementary or secondary school in the state;

(5) Alaska Native cultural or heritage programs and educational support, including mentoring and tutoring, provided by a nonprofit agency for public school staff and for students who are in grades kindergarten through 12 in the state;

(6) education, research, rehabilitation, and facilities by an institution

1 that is located in the state and that qualifies as a coastal ecosystem learning center
 2 under the Coastal America Partnership established by the federal government;

3 (7) [THE ALASKA HIGHER EDUCATION INVESTMENT FUND
 4 UNDER AS 37.14.750;

5 (8)] funding a scholarship awarded by a nonprofit organization to a
 6 dual-credit student to defray the cost of a dual-credit course, including the cost of

7 (A) tuition and textbooks;

8 (B) registration, course, and programmatic student fees;

9 (C) on-campus room and board at the postsecondary institution
 10 in the state that provides the dual-credit course;

11 (D) transportation costs to and from a residential school
 12 approved by the Department of Education and Early Development under
 13 AS 14.16.200 or the postsecondary school in the state that provides the dual-
 14 credit course; and

15 (E) other related educational and programmatic costs;

16 (8) [(9)] constructing, operating, or maintaining a residential housing
 17 facility by a residential school approved by the Department of Education and Early
 18 Development under AS 14.16.200;

19 (9) [(10)] childhood early learning and development programs and
 20 educational support to childhood early learning and development programs provided
 21 by a nonprofit corporation organized under AS 10.20, a tribal entity, or a school
 22 district in the state, by the Department of Education and Early Development, or
 23 through a state grant;

24 (10) [(11)] science, technology, engineering, and math programs
 25 provided by a nonprofit agency or a school district for school staff and for students in
 26 grades kindergarten through 12 in the state; and

27 (11) [(12)] the operation of a nonprofit organization dedicated to
 28 providing educational opportunities that promote the legacy of public service
 29 contributions to the state and perpetuate ongoing educational programs that foster
 30 public service leadership for future generations of residents of the state.

31 * **Sec. 14.** AS 14.07.182; AS 37.05.146(c)(70), 37.05.590; AS 37.14.750; AS 42.45.070,

1 42.45.080, 42.45.085, 42.45.099, 42.45.180(b), 42.45.190; AS 43.20.014(a)(7);
2 AS 43.55.019(a)(7); AS 43.56.018(a)(7); AS 43.65.018(a)(7); AS 43.75.018(a)(7); and
3 AS 43.77.045(a)(7) are repealed.

4 * **Sec. 15.** The uncoded law of the State of Alaska is amended by adding a new section to
5 read:

6 (a) The department of revenue shall make a good faith attempt to return unexpended
7 donations to the Alaska higher education investment fund, repealed in sec. 14 of this Act, the
8 power cost equalization fund, repealed in sec. 14 of this Act, and the power cost equalization
9 and rural electric capitalization fund, repealed in sec. 10 of this Act, to the original donors.

10 (b) The department of revenue shall place any unexpended amounts from the
11 remaining funds, repealed by secs. 5 and 14 of this Act, into the general fund.

12 * **Sec. 16.** The uncoded law of the State of Alaska is amended by adding a new section to
13 read:

14 TRANSITION. (a) Litigation, hearings, investigations, and other proceedings related
15 to funds repealed by this Act continue in effect and may be completed notwithstanding the
16 repeal.

17 (b) Regulations adopted to implement a fund repealed by this Act remain in effect as
18 issued, or until revoked, vacated, or otherwise modified under the provisions of this Act.

19 (c) Contracts, rights, liabilities, and obligations created by a fund repealed by this Act,
20 and in effect of the effective date of this Act, remain in effect notwithstanding this Act's
21 taking effect.

22 * **Sec. 17.** This Act takes effect July 1, 2019.

SENATE BILL NO. 110

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/12/19

Referred: Community and Regional Affairs, Finance

A BILL**FOR AN ACT ENTITLED**

1 **"An Act relating to the community assistance fund and to community assistance;**
2 **repealing the civil legal services fund, power cost equalization endowment fund, power**
3 **cost equalization and rural electric capitalization fund, curriculum improvement and**
4 **best practices fund, and Alaska higher education investment fund; disposing of**
5 **proceeds; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 14.43.825(f) is amended to read:

8 (f) Payment of a scholarship is subject to appropriation [AND THE
9 AVAILABILITY OF FUNDS FOR EXPENDITURE UNDER AS 37.14.750]. If
10 insufficient funds are appropriated [OR AVAILABLE] in a fiscal year to pay all
11 eligible scholarships, the commission may not award a scholarship to a new applicant,
12 and the commission shall pay existing awards on a pro rata basis for that fiscal year.

13 * **Sec. 2.** AS 14.43.915(a) is amended to read:

(a) The Alaska education grant account is created as an account in the general fund. **The department may seek appropriations to fund grants and awards from this account** [MONEY MAY BE APPROPRIATED TO THE ACCOUNT FROM THE ALASKA HIGHER EDUCATION INVESTMENT FUND UNDER AS 37.14.750 AND FROM OTHER SOURCES]. The commission may use the money in the account to pay grants awarded under AS 14.43.400 - 14.43.420 and to pay the cost of administration of the Alaska education grant program created under AS 14.43.400.

* **Sec. 3.** AS 14.43.915(b) is amended to read:

(b) The Alaska performance scholarship award account is created as an account in the general fund. **The department may seek appropriations to fund awards from this account** [MONEY MAY BE APPROPRIATED TO THE ACCOUNT FROM THE ALASKA HIGHER EDUCATION INVESTMENT FUND UNDER AS 37.14.750 AND FROM OTHER SOURCES]. The commission may use the money in the account to pay scholarships awarded to students under AS 14.43.810 - 14.43.849.

* **Sec. 4.** AS 14.43.915(c) is amended to read:

(c) Of the total amount available annually to the commission for payment of grants under AS 14.43.400 - 14.43.420 and for payment of scholarships under AS 14.43.810 - 14.43.849, one-third of the combined amount in the accounts established under (a) and (b) of this section shall be available solely for payment of grants awarded under AS 14.43.400 - 14.43.420. The commission shall annually allocate to all qualified applicants for scholarships awarded under AS 14.43.810 - 14.43.849 two-thirds of the combined amount in the accounts. If an insufficient number of qualified applicants are awarded grants under AS 14.43.400 - 14.43.420 or scholarships under AS 14.43.810 - 14.43.849, or both, before the end of that fiscal year, the commissioner shall redeposit the remaining funds **into the relevant account** [INTO THE ALASKA HIGHER EDUCATION INVESTMENT FUND ESTABLISHED UNDER AS 37.14.750].

* **Sec. 5.** AS 29.60.850 is repealed and reenacted to read:

Sec. 29.60.850. Community assistance. The legislature may appropriate funds

1 for the purpose of community assistance.

2 * **Sec. 6.** AS 29.60.855(a) is amended to read:

3 (a) The basic amount used for determining the basic community assistance
4 payment for a fiscal year is \$300,000. However, if the amount appropriated
5 [AVAILABLE] for payments for that fiscal year under AS 29.60.850
6 [AS 29.60.850(c)] is less than the amount necessary to make the payments under (b)
7 of this section, the department shall reduce the basic amount pro rata.

8 * **Sec. 7.** AS 29.60.860(a) is amended to read:

9 (a) Subject to (b) of this section, if the amount appropriated [AVAILABLE]
10 for distribution under AS 29.60.850 [AS 29.60.850(c)] exceeds the amount needed to
11 fully fund all the basic community assistance payments, the excess amount
12 [BALANCE] shall be distributed on a per capita basis to municipalities, to reserves,
13 and to communities in the unorganized borough.

14 * **Sec. 8.** AS 37.05.530(g) is amended to read:

15 (g) The provisions of this subsection apply to amounts received by the state
16 under 42 U.S.C. 6506a(l) or former 42 U.S.C. 6508, as follows:

17 (1) amounts received and not appropriated for grants to municipalities
18 under (d) of this section shall be deposited at the end of each fiscal year as follows:

19 (A) 25 percent of amounts received by the state during that
20 fiscal year under 42 U.S.C. 6506a(l) or former 42 U.S.C. 6508 to the principal
21 of the Alaska permanent fund; and

22 (B) .5 percent of amounts received by the state during that
23 fiscal year under 42 U.S.C. 6506a(l) or former 42 U.S.C. 6508 to the public
24 school trust fund (AS 37.14.110);

25 (2) if, after making the grants under (d) of this section, the amounts
26 remaining are insufficient to make payment in full of the deposits required by (1)(A)
27 and (B) of this subsection, the deposits shall be allocated pro rata between the fund
28 deposits;

29 (3) the amounts remaining after the making of the payment of the
30 deposits in full to the Alaska permanent fund and the public school trust fund under
31 (2) of this subsection may be appropriated

1 [(A) FIRST,] to each of the funds described in (1)(A) and (B)
 2 of this subsection to recover amounts not paid to those funds on or after
 3 September 1, 2006, because of deficiencies in making the payments required
 4 by (2) of this subsection; [AND

5 (B) AFTER APPROPRIATIONS AUTHORIZED BY (A) OF
 6 THIS PARAGRAPH, TO THE POWER COST EQUALIZATION AND
 7 RURAL ELECTRIC CAPITALIZATION FUND (AS 42.45.100);]

8 (4) the amounts remaining [AFTER ANY APPROPRIATION TO
 9 THE POWER COST EQUALIZATION AND RURAL ELECTRIC
 10 CAPITALIZATION FUND] shall lapse into the general fund for use by the state for
 11 the following facilities and services: planning; construction, maintenance, and
 12 operation of essential public facilities; and other necessary public services.

13 * **Sec. 9.** AS 42.05.141(b) is amended to read:

14 (b) The commission shall perform the duties assigned to it under
 15 AS 42.45.100 - 42.45.180 [AS 42.45.100 - 42.45.190].

16 * **Sec. 10.** AS 42.45.100 is repealed and reenacted to read:

17 **Sec. 42.45.100. Power cost equalization and rural electric capitalization**
 18 **program.** The legislature may appropriate funds for the purpose of equalizing power
 19 cost a kilowatt-hour statewide at a cost close to or equal to the mean of the cost a
 20 kilowatt-hour in Anchorage, Fairbanks, and Juneau by paying money to eligible
 21 electric utilities in the state.

22 * **Sec. 11.** AS 42.45.180(a) is amended to read:

23 (a) The authority may make a grant from legislative appropriations [THE
 24 FUND] for an eligible utility for a small power project that will reduce the cost of
 25 generating or transmitting power to the customers of the utility. The amount of the
 26 grant may not exceed 75 percent of the cost of the project. The authority may not
 27 make a grant under this section unless the eligible utility has secured financing for 25
 28 percent of the cost of the project [FROM A SOURCE OTHER THAN THE POWER
 29 COST EQUALIZATION AND RURAL ELECTRIC CAPITALIZATION FUND], as
 30 provided under (c) of this section.

31 * **Sec. 12.** AS 42.45.180(c) is amended to read:

(c) In determining whether an eligible utility has secured financing for 25 percent of the cost of the project [FROM A SOURCE OTHER THAN THE POWER COST EQUALIZATION AND RURAL ELECTRIC CAPITALIZATION FUND], the authority shall accept solicited and unsolicited proposals for third party financing or for a joint venture between the utility and an entity from the private sector provided that the private sector participant has

(1) a valid state business license;

(2) a resolution or letter of agreement executed by the eligible utility agreeing to participation by the private sector participant;

(3) a business plan that illustrates how the proposed project will reduce the cost of generating or transmitting power to the customers of the utility.

* **Sec. 13.** AS 43.77.045(a), as amended by sec. 32, ch. 101, SLA 2018, is amended to read:

(a) A person engaged in a floating fisheries business is allowed a credit against the tax due under this chapter for contributions of cash or equipment accepted for

(1) direct instruction, research, and educational support purposes, including library and museum acquisitions, and contributions to endowment, by an Alaska university foundation, by a nonprofit, public or private, Alaska two-year or four-year college accredited by a national or regional accreditation association, or by a public or private nonprofit elementary or secondary school in the state;

(2) secondary school level vocational education courses, programs, and facilities by a school district in the state;

(3) vocational education courses, programs, and facilities by a state-operated vocational technical education and training school;

(4) a facility by a nonprofit, public or private, Alaska two-year or four-year college accredited by a national or regional accreditation association or by a public or private nonprofit elementary or secondary school in the state;

(5) Alaska Native cultural or heritage programs and educational support, including mentoring and tutoring, provided by a nonprofit agency for public school staff and for students who are in grades kindergarten through 12 in the state;

(6) education, research, rehabilitation, and facilities by an institution

1 that is located in the state and that qualifies as a coastal ecosystem learning center
 2 under the Coastal America Partnership established by the federal government;

3 (7) [THE ALASKA HIGHER EDUCATION INVESTMENT FUND
 4 UNDER AS 37.14.750;

5 (8)] funding a scholarship awarded by a nonprofit organization to a
 6 dual-credit student to defray the cost of a dual-credit course, including the cost of

7 (A) tuition and textbooks;

8 (B) registration, course, and programmatic student fees;

9 (C) on-campus room and board at the postsecondary institution
 10 in the state that provides the dual-credit course;

11 (D) transportation costs to and from a residential school
 12 approved by the Department of Education and Early Development under
 13 AS 14.16.200 or the postsecondary school in the state that provides the dual-
 14 credit course; and

15 (E) other related educational and programmatic costs;

16 (8) [(9)] constructing, operating, or maintaining a residential housing
 17 facility by a residential school approved by the Department of Education and Early
 18 Development under AS 14.16.200;

19 (9) [(10)] childhood early learning and development programs and
 20 educational support to childhood early learning and development programs provided
 21 by a nonprofit corporation organized under AS 10.20, a tribal entity, or a school
 22 district in the state, by the Department of Education and Early Development, or
 23 through a state grant;

24 (10) [(11)] science, technology, engineering, and math programs
 25 provided by a nonprofit agency or a school district for school staff and for students in
 26 grades kindergarten through 12 in the state; and

27 (11) [(12)] the operation of a nonprofit organization dedicated to
 28 providing educational opportunities that promote the legacy of public service
 29 contributions to the state and perpetuate ongoing educational programs that foster
 30 public service leadership for future generations of residents of the state.

31 * **Sec. 14.** AS 14.07.182; AS 37.05.146(c)(70), 37.05.590; AS 37.14.750; AS 42.45.070,

1 42.45.080, 42.45.085, 42.45.099, 42.45.180(b), 42.45.190; AS 43.20.014(a)(7);
2 AS 43.55.019(a)(7); AS 43.56.018(a)(7); AS 43.65.018(a)(7); AS 43.75.018(a)(7); and
3 AS 43.77.045(a)(7) are repealed.

4 * **Sec. 15.** The uncoded law of the State of Alaska is amended by adding a new section to
5 read:

6 (a) The department of revenue shall make a good faith attempt to return unexpended
7 donations to the Alaska higher education investment fund, repealed in sec. 14 of this Act, the
8 power cost equalization fund, repealed in sec. 14 of this Act, and the power cost equalization
9 and rural electric capitalization fund, repealed in sec. 10 of this Act, to the original donors.

10 (b) The department of revenue shall place any unexpended amounts from the
11 remaining funds, repealed by secs. 5 and 14 of this Act, into the general fund.

12 * **Sec. 16.** The uncoded law of the State of Alaska is amended by adding a new section to
13 read:

14 TRANSITION. (a) Litigation, hearings, investigations, and other proceedings related
15 to funds repealed by this Act continue in effect and may be completed notwithstanding the
16 repeal.

17 (b) Regulations adopted to implement a fund repealed by this Act remain in effect as
18 issued, or until revoked, vacated, or otherwise modified under the provisions of this Act.

19 (c) Contracts, rights, liabilities, and obligations created by a fund repealed by this Act,
20 and in effect of the effective date of this Act, remain in effect notwithstanding this Act's
21 taking effect.

22 * **Sec. 17.** This Act takes effect July 1, 2019.

Budgetary Issues Due to the CBR Vote Failure

Appropriations with Immediate Problems -

These are appropriations made from funds that do not have FY2022 revenues anticipated and programs that do not have easy access to alternate sources of funding. No activity can begin on these programs and projects until the sweep is resolved or an alternate fund is appropriated. Includes direct appropriations from the CBR.

Dept	Fund	Description	Amount
DCCED	1169	PCE AEA Power Cost Equalization and Supporting Costs	32,736.8
DCCED	1243	SBR Capital - West-Su Access	8,500.0
DCCED	1243	SBR Capital - Mat-Su Road Repair	10,000.0
DCCED	1243	SBR Capital - ATIA	10,000.0
DCCED	1243	SBR Capital - Voice of the Arctic	1,000.0
DEC	1052	SPAR Spill Prevention and Response account appropriations.	15,751.2
DEED	1226	Higher Ed AK Performance Scholarship Award	11,750.0
DEED	1226	Higher Ed Live Homework Help	138.2
DEED	1226	Higher Ed Alaska Education Grant Program	6,356.1
DEED	1226	Higher Ed WWAMI Medical Education	3,258.0
DEED	1243	SBR Capital - Houston Middle School Replacement	9,000.0
DFG	1243	SBR Capital - Endangered Species Act Statehood Defense	2,000.0
DHSS	1243	SBR Capital - Palmer Veteran's Pioneers Home Roof Replacement	2,268.0
DMVA	1243	SBR Capital - JBER Maintenance (needed to match Fed maintenance funding)	3,812.5
DNR	1243	SBR Capital - RS2477 Statehood Defense	2,500.0
DNR	1243	SBR Capital - Global Navigations Satellite System Network	5,000.0
DNR	1243	SBR Capital - ASTAR	5,000.0
DNR	1243	SBR Capital - Nenana Totchaket Land Development	5,000.0
DNR	1243	SBR Capital - Agriculture and Mariculture Surveys	3,500.0
DNR	1243	SBR Capital - Permit Backlogs	3,500.0
DNR	1243	SBR Capital - Firebreak Construction	10,000.0
DNR	1243	SBR Capital - Park Sanitation	2,029.0
DOC	1243	SBR Capital - Point Mackenzie Farm Produce Processing Plant	1,500.0
DPS	1243	SBR Capital - Wildlife Trooper Repair and Replacement and Vessel Haul Outs	1,900.0
Debt	1001/1243	CBR/SBR School Bond Debt	4,150.0
Fund Cap	1001	CBR/SBR Oil and Gas Tax Credits	114,000.0
PFD	1001/1243	CBR/SBR Dividend Payments	368,000.0
Total of Immediately Problematic Appropriations			642,649.8

Mitigation:

Mitigation for this group of programs will require legislative action. Options include reconsideration of the reverse sweep in a subsequent appropriation vehicle or appropriating an alternate fund source for the impacted appropriations.

Budgetary Issues Due to the CBR Vote Failure

Delayed Complications -

Most of these programs will collect revenue during the fiscal year allowing them to delay funding problems associated with the sweep. Projected revenues are not likely to cover expenses however all listed funds should have sufficient revenue to avoid problems until at least 3rd quarter FY2022. Amounts reflect total appropriations, not total reliance on the swept funds. Actual FY2022 revenue will determine extent of the budget gap generated by the sweep.

Dept	Fund	Description	Amount
Various	1151	TVEP	13,259.1
DNR	1155	Timber Sales	1,039.6
DEC	1166	CPVEC	1,019.3
DHSS	1168	Tobacco	9,102.2
Law	1168	Tobacco	102.8
DOLWD	1172	Building Safety	2,226.4
Debt	1173	Misc. Earnings	568.3
Courts	1180	Alcohol	518.0
DHSS	1180	Alcohol	21,124.5
DNR	1195	Snow Machine	250.0
DNR	1200	VRT	4,265.1
DOT	1200	VRT	6,336.0
DOT	1214	Whittier Tolls	1,974.0
DCCED	1221	Civil Legal Serv	311.6
DOR	1226	Higher Ed	316.4
DCCED	1234	License Plates	17.6
DOLWD	1237	Voc Rehab RLF	198.2
DHSS	1246	Recidivism	7,425.9
DOC	1246	Recidivism	11,546.0
DPS	1246	Recidivism	2,000.0
DHSS	1247	Recoveries	219.8
DHSS	1254	MET	11,805.5
DOLWD	1049/1054	STEP	9,262.3
DNR	1153/1154	Land Disposal	6,845.4
DOLWD	1157/1203	Workers Comp	10,158.6
Total of Delayed Complications			121,892.6

Mitigation:

Mitigation efforts will depend on the level of confidence in achieving a reverse sweep vote at a later date. If we believe the legislature will resolve this issue in a subsequent appropriation bill we can utilize several tools to delay the impacts to this category of programs. The Division of Finance can utilize interfund borrowing and OMB can authorize mid-year budget transactions with the expectation that they be reversed once the reverse sweep is authorized.

Office of Governor
MIKE DUNLEAVY

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Governor Urges Legislature to Complete Budget

June 17, 2021

June 17, 2021 (Juneau, AK) – Alaska Governor Mike Dunleavy and Deputy Attorney General Cori Mills held a [press conference today where he urged the Legislature](#) to complete its constitutionally mandated task of passing a state operating and capital budget. The Legislature has failed to pass a Fiscal Year 2022 budget that meets the minimum requirements under the Alaska Constitution – specifically, an effective date that would allow funds to be spent at the start of the FY 2022 fiscal year on July 1, 2021. Due to legislative inaction, the governor was forced to direct members of his administration to distribute layoff notices at 4:00 p.m. today. The governor has announced that if necessary, he will call the legislature into a special session to begin Wednesday, June 23rd to resolve the constitutional issue.

“The legislative session is now entering its sixth month and the outcome to this point is a budget that is unfinished, unfunded and has an effective date that will put thousands of hard working state employees out of work and shutdown many functions of state government until September,” said **Governor Dunleavy**. “Active discussions are underway with legislative leadership and, my administration is standing by to provide whatever assistance it can. It’s my hope and the hope of Alaskans that some of the maneuvers and brinksmanship that crafted this budget be put aside and the result in a constitutionally sound budget that serves all Alaskans because we are running out of time.”

Contrary to what some are saying, the effective date is contained in bills as required in Section 18 of the Alaska Constitution.

Without legislative action by June 18th at 11:59 p.m. to resolve the FY 22 budget’s effective date of July 1, 2021, the budget does not take effect until 90 days after enactment, and thousands of pink slips will be delivered to state employees. In the event of a partial government shutdown, essential public health and safety workers will continue in their necessary roles.

On May 13th, with the end of the regular legislative session quickly approaching with no completed budget and little progress to protect the Permanent Fund and Alaskans’ Permanent Fund Dividend in sight, [Governor Dunleavy issued proclamations calling the Legislature into two 30-day special sessions](#) beginning May 20th and August 2nd. Now, following nearly 150 days of legislative session, the FY 22 budget remains unfunded.

The State of Alaska potential government shutdown notice [can be found here](#).

The Department of Law memo on the FY 22 effective date clause [can be found here](#).

7/14/2021

Governor Urges Legislature to Complete Budget – Mike Dunleavy

A fact sheet of budgetary issues [can be found here](#).

Watch the governor's [press conference here](#).

###

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA FEDERATION OF
NATIVES, ET AL.,

Plaintiffs,

v.

GOVERNOR MICHAEL J. DUNLEAVY
in his official capacity, THE STATE OF
ALASKA, OFFICE OF MANAGEMENT
AND BUDGET, and THE STATE OF
ALASKA, DEPARTMENT OF
ADMINISTRATION

Defendant.

Case No.: 3AN-21-06737 CI

**ORDER ON MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION
FOR SUMMARY JUDGMENT**

Introduction

Plaintiffs brought this lawsuit challenging the decision by the Office of Management and Budget to include the Power Cost Equalization Endowment Fund on the list of funds subject to sweep under the provisions of article IX, section 17(d) of the Alaska Constitution. Both parties have moved for summary judgment. Because the Power Cost Equalization Endowment Fund is not in the general fund, it is not subject to the sweep provision of article IX, section 17(d). Therefore, the court grants Plaintiffs' motion for summary judgment and denies Defendants' cross-motion for summary judgment.

3AN-21-06737CI
AFN et al. v. Governor Dunleavy et al.
Order re: Motion for Summary Judgment and Cross-Motion for Summary Judgment

Facts and Proceedings

I. The Constitutional Budget Reserve

In 1990, Alaska voters approved the creation of the Budget Reserve Fund, commonly known as the Constitutional Budget Reserve (CBR).¹ The CBR was created through constitutional amendment, resulting in article IX, section 17 of the Alaska Constitution. Section 17 provides in full:

(a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature.

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in

¹ Article IX, § 17 was placed on the ballot after being passed by a legislative resolution approved by a two-thirds vote of each house in the 1990 legislature. See *Hickel v. Halford*, 872 P.2d 171, 172 (Alaska 1994); ALASKA CONST. art. XIII, § 1.

the budget reserve fund. The legislature shall implement this subsection by law.^[2]

Generally, the CBR is a constitutionally-created savings account from which the Legislature may appropriate funds under specified circumstances, but to which those funds must be repaid. Section 17(a) established the CBR, provides that certain money received by the State is deposited in the CBR, and authorizes appropriation of money from the fund pursuant to sections 17(b) and (c).³ Section 17(b) authorizes appropriation from the CBR by simple majority vote “[i]f the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year.”⁴ In other words, the Legislature may use the CBR to make up budget shortfalls by simple majority vote. Section 17(c) authorizes appropriation from the CBR “for any public purpose” by three-quarters vote of the Legislature.⁵ In other words, the Legislature may use the CBR “for any public purpose” by super-majority vote. Section 17(d) requires repayment of an appropriation made from the CBR, and mandates that, until the CBR is repaid, “the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the [CBR].”⁶ This budgetary mechanism is commonly known as the “sweep.”

The Legislature may, and routinely has, offset the effect of Section 17(d) or the sweep by a “reverse sweep” through Section 17(c).⁷ During the early 2000s the Legislature borrowed funds from the CBR to make up for budget shortfalls; that debt was repaid to the CBR in 2010.⁸ Since 2016 the Legislature has appropriated money from the CBR to make up for

² ALASKA CONST. art. IX, §17.

³ ALASKA CONST. art. IX, §17(a).

⁴ ALASKA CONST. art. IX, §17(b).

⁵ ALASKA CONST. art. IX, §17(c).

⁶ ALASKA CONST. art. IX, §17(d).

⁷ *Amended Complaint* ¶ 32 (filed 7/26/2021).

⁸ Ch. 13, § 19(a), SLA 2010.

budget shortfalls and has used article IX, section 17(c) to reverse sweep those amounts, preventing the sweep that would otherwise operate pursuant to article IX, section 17(d).⁹ The current debt to the CBR is approximately \$10 billion.¹⁰ This year, the Legislature did not pass a reverse sweep as part of its FY2022 operating budget.¹¹

II. The Power Cost Equalization Endowment Fund

In 2000, the Legislature established the Power Cost Equalization Endowment Fund (PCE Endowment Fund or “the fund”) to provide a long-term, stable financing source for power cost equalization.¹² The PCE Endowment Fund is an endowment intended to fund the Power Cost Equalization and Rural Electric Capitalization Fund (PCE-CAP).¹³ The PCE-CAP, in turn, is used to:

- (1) equaliz[e] power cost per kilowatt-hour statewide at a cost close to or equal to the mean of the cost per kilowatt-hour in Anchorage, Fairbanks, and Juneau by paying money from the fund to eligible electric utilities in the state; and
- (2) mak[e] grants to eligible utilities under AS 42.45.180 to improve the performance of the utility.¹⁴

The PCE Endowment Fund was established as “a separate fund of the [Alaska Energy A]uthority.”¹⁵ The Alaska Energy Authority is a public corporation of the state. It is part of the Department of Commerce, Community and Economic Development but is a separate legal entity.¹⁶ The PCE Endowment Fund is capitalized through legislative appropriations to the fund not designated for annual power cost equalization expenditure, accumulated earnings,

⁹ *Amended Complaint* ¶ 40.

¹⁰ *Opposition and Cross-Motion for Summary Judgment* at *10 (filed 7/20/2021) (hereinafter “*Opposition*”).

¹¹ *Motion for Summary Judgment* at *11 (filed 7/19/2021) (hereinafter “*Motion*”).

¹² AS 42.45.070; Ch. 60, §1, 6 SLA 2000.

¹³ AS 42.45.100(b)(3).

¹⁴ AS 42.45.100(a).

¹⁵ AS 42.45.070(a).

¹⁶ AS 44.83.020.

and other gifts, bequests, contributions, and federal grants not designated for annual power cost equalization.¹⁷ The year it was established, the Legislature appropriated \$100 million to the PCE Endowment Fund from the CBR using its authority under article IX, section 17(c).¹⁸ The Legislature later appropriated other sums into the PCE Endowment Fund from the general fund.¹⁹ As of June 30, 2021, the PCE Endowment Fund contained approximately \$1.15 billion.²⁰

The Commissioner of Revenue is the fiduciary of the PCE Endowment Fund and is directed by statute to manage the fund and invest it to meet the objectives of the PCE-CAP.²¹ By statute, five percent of the monthly average market value of the three previous closed fiscal years, as determined by the Commissioner on July 1, may be appropriated from the PCE Endowment Fund to fund the PCE-CAP, reimburse the Department of Revenue for the costs of establishing and managing the fund, and reimburse other costs of administering the fund.²² This year, the Legislature appropriated \$32.355 million from the PCE Endowment Fund to the PCE-CAP for the fiscal FY2022.²³ That appropriation was not vetoed by the Governor.²⁴

III. The Office of Management and Budget's Determination that the PCE Endowment Fund is Subject to the CBR Sweep

In 2019 the Legislature did not pass a reverse sweep as part of the FY 2020 operating budget.²⁵ Then-Attorney General Kevin Clarkson issued a letter to co- and vice- chairs of the Senate and House Finance Committees stating that the Department of Law had determined

¹⁷ AS 42.45.070(a).

¹⁸ Ch. 75, § 1(b), SLA 2000.

¹⁹ *E.g.* Ch. 82, § 20(j), SLA 2006; Ch.3, § 26(c), FSSLA 2011.

²⁰ *Affidavit of Jabna Lindemuth* Ex. 4 (filed 7/19/2021).

²¹ AS 42.45.080(a).

²² AS 42.45.080(c)(1); AS 42.45.085(a).

²³ Ch. 1, § 57(d), SSLA 2021.

²⁴ *Amended Complaint* ¶ 39.

²⁵ *Motion* at *7.

that, because the PCE Endowment Fund is available for appropriation and has all the essential attributes of general fund money, it should be swept pursuant to article IX, section 17(d).²⁶ At the same time the Director of Office of Management and Budget (OMB) issued a letter to the co- and vice- chairs of the Senate and House Finance Committees outlining which funds OMB had determined were subject to sweep pursuant to article IX, section 17(d).²⁷ The letter set forth OMB's criteria in determining which funds were subject to sweep and included a list of funds.²⁸ The PCE Endowment Fund was on the list.²⁹ Co-Plaintiff Alaska Federation of Natives sent a letter to Clarkson challenging the Attorney General's opinion.³⁰ The Legislature ultimately passed a reverse sweep in July 2019.³¹

This year, the Legislature again did not pass a reverse sweep as part of its FY2022 budget.³² OMB issued a document entitled "Budgetary Issues Due to the CBR Vote Failure" in mid-June.³³ That document identified FY2022 appropriations affected by the Legislature's failure to enact a reverse sweep, and included the Legislature's \$32.736 million appropriation for power cost equalization.³⁴ The document asserts that the appropriations are from funds that lack 2022 revenues or alternate funding sources and provides that "no activity may begin on these programs and projects until the sweep is resolved or an alternate fund is appropriated."³⁵ The Governor has called the Legislature into special session to consider, among other topics, the CBR.³⁶

²⁶ *Affidavit of Jahna Lindemuth* Ex. 4.

²⁷ *Affidavit of Jahna Lindemuth* Ex. 6.

²⁸ *Affidavit of Jahna Lindemuth* Ex. 7.

²⁹ *Affidavit of Jahna Lindemuth* Ex. 8.

³⁰ *Affidavit of Jahna Lindemuth* Ex. 14.

³¹ See 2019 Senate Journal 1422; 2019 House Journal 1340.

³² Motion at *11.

³³ *Affidavit of Jahna Lindemuth* Ex. 11.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Affidavit of Jahna Lindemuth* Ex. 13. That session has not begun.

Plaintiffs filed this lawsuit on July 19, 2021, asserting in their complaint that by declaring that no funds are available in the PCE Endowment Fund to effect the Legislature's appropriation, the Governor has constructively and unlawfully vetoed the Legislature's valid appropriation for FY2022 rural energy subsidies.³⁷ The complaint alleges that the Governor violated article IX, section 17(d) by designating the PCE Endowment Fund for sweep, and violated the separation of powers doctrine by effectively vetoing decades of appropriations of the Legislature into the PCE Endowment Fund, and by refusing to appropriate (and therefore effectively vetoing the Legislature's transfer of funds from the PCE Endowment Fund to the PCE-CAP for FY 2022).³⁸ Plaintiffs ask the court to declare that the PCE Endowment Fund is not subject to the CBR sweep, and to enter an order prohibiting the Governor from transferring funds out of the PCE Endowment Fund without an appropriation by the Legislature and to return any funds improperly swept.³⁹

At the time the complaint was filed, Plaintiffs filed a motion for summary judgment and a motion for a preliminary injunction.⁴⁰ This court granted Plaintiffs' partially unopposed request to expedite the briefing schedule in this matter, and Defendants filed a cross-motion for summary judgment.⁴¹ The court held oral argument on August 6, 2021 and the parties filed supplemental briefs in response to this court's order on August 9, 2021.

Discussion

The importance of the PCE Endowment Fund and the policy of power cost equalization are not at issue in this lawsuit. Nor is there any dispute whether a sweep of the

³⁷ *Amended Complaint* ¶ 45.

³⁸ *Amended Complaint* ¶ 48-57.

³⁹ *Id.* ¶ 51-52.

⁴⁰ *Motion; Motion for Preliminary Injunction* (filed 7/19/2021).

⁴¹ *Opposition*.

PCE Endowment Fund would cause harm to many rural Alaska communities. Instead, this lawsuit requires the court to interpret article IX, section 17(d) of the Alaska Constitution and determine whether the PCE Endowment Fund is subject to its repayment provision.

I. Legal Standards

Summary judgment must be granted “where ‘there is no genuine issue as to any material fact’ and ‘the moving party is entitled to judgment as a matter of law.’”⁴² “The proper interpretation of a constitutional provision presents a question of law to which the court applies its independent judgment.”⁴³ “Constitutional provisions should be given a reasonable and practical interpretation in accordance with common sense.”⁴⁴ To interpret the provision, the court “should look to the plain meaning and purpose of the provision and the intent of the framers.”⁴⁵

The plain language of article IX, section 17(d) sets forth a two-part test for determining what money must be deposited in the CBR.⁴⁶ The money must be:

- 1) In the general fund; and
- 2) Available for appropriation at the end of each succeeding fiscal year.⁴⁷

Therefore, whether the PCE Endowment Fund is sweepable under article IX, section 17(d) depends on whether it is “in the general fund” and “available for appropriation at the end of [this] fiscal year.”⁴⁸ Plaintiffs argue that the fund does not meet either part of this test.⁴⁹ Defendants argue that the PCE Endowment Fund meets both prongs of the test.⁵⁰

⁴² *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 517 (Alaska 2014) (quoting Alaska R. Civ. P. 56(c).

⁴³ *Hickel v. Cowper*, 874 P.2d 922, 926 (Alaska 1996).

⁴⁴ *Id.* (quoting *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992)).

⁴⁵ *Id.* (quoting *Arvo Alaska, Inc. v. State*, 824 P.2d 708, 710 (Alaska 1992).

⁴⁶ See *Hickel v. Cowper*, 874 P.2d at 935 & n. 32.

⁴⁷ ALASKA CONST. art. IX, §17(d); see also *Hickel*, 874 P.2d at 935 & n. 32.

⁴⁸ *Id.*

⁴⁹ *Motion* at *13-20.

⁵⁰ *Opposition* at *21-34.

II. The PCE Endowment Fund is Available for Appropriation Within the Meaning of Article IX, Section 17(d)

Whether the PCE Endowment Fund is “available for appropriation” within the meaning of article IX, section 17(d) is governed by the Alaska Supreme Court’s decision in *Hickel v. Cowper*.⁵¹ In *Hickel*, former Governor Steve Cowper challenged as facially unconstitutional parts of AS 37.10.420, which defines terms contained in article IX, section 17, including “available for appropriation.”⁵² In that decision, the court primarily considered the meaning within article IX, section 17(b) (the provision of section 17 that authorizes the Legislature to appropriate from the CBR by simple majority to make up for budget shortfalls).⁵³ The court held that “‘amount available for appropriation’ within the meaning of article IX, section 17 of the Alaska Constitution includes all monies over which the legislature has retained the power to appropriate and which require further appropriation before expenditure.”⁵⁴

In arriving at this definition, the court expressly considered whether an “initial appropriation” to a fund established by the Legislature brought the money in the fund outside the definition of “available for appropriation.”⁵⁵ Reasoning that “one of the fundamental characteristics of an appropriation, in the public law context, is that it authorizes governmental expenditure without further legislative action,”⁵⁶ the court concluded that “because the initial ‘appropriations’ to these funds cannot support any expenditure, the money in these funds remains ‘available for appropriation’ until further appropriations are made.”⁵⁷ The court

⁵¹ *Hickel*, 874 P.2d at 922.

⁵² *Id.* at 925.

⁵³ *Id.* at 926.

⁵⁴ *Id.* at 935.

⁵⁵ *Id.* at 933-934.

⁵⁶ *Id.* at 933.

⁵⁷ *Id.* at 934.

concluded that this was true whether the fund is established in the general fund or in a state agency.⁵⁸

The PCE Endowment Fund is “available for appropriation” according to this definition. Even though the money in the PCE Endowment Fund was appropriated to it by the Legislature, those “initial appropriations” do not support any expenditure. Instead, expenditure of money from the fund requires a further appropriation by the Legislature.⁵⁹ By contrast, if the Legislature appropriates money from the fund to the PCE-CAP Fund, the Alaska Energy Authority may expend that money in the fund without a further act by the Legislature.⁶⁰ Even though the PCE Endowment Fund is “a separate fund of the [A]uthority,” and even though the Authority is a public corporation with a legal existence separate from the department in which it is housed, neither the Authority nor any other entity has authority to expend money from the fund absent further appropriation by the Legislature.

Plaintiffs argue in their motion for summary judgment that the PCE Endowment Fund is not “available for appropriation” because the monies in the fund have already been appropriated, the appropriation has not expired, and the funds remain obligated (to the fund).⁶¹ According to Plaintiffs, the PCE Endowment Fund is not available for appropriation under *Hickel* because, under *Hickel*, “monies which have already been validly committed by the legislature to some purpose should not be counted as available.”⁶² The Plaintiffs reason that the Legislature validly appropriated money into the PCE Endowment Fund, it is still being used for the purpose for which it was appropriated, and it is therefore not available.⁶³

⁵⁸ *Id.* at 933.

⁵⁹ AS 42.45.085(a).

⁶⁰ AS 42.45.100-170.

⁶¹ *Motion* at *18.

⁶² *Reply in Support of Motion for Summary Judgment and Opposition to Cross-Motion* at *19 (filed 8/2/2021) (hereinafter “*Reply*”).

⁶³ *Id.* at *19-23.

But this definition is contrary to the supreme court's holding in *Hickel*, which considers not just whether money was validly appropriated, but also distinguishes between initial appropriations and appropriations within the meaning of section 17, particularly with respect to funds established by the Legislature.⁶⁴ However valid an initial appropriation of money may have been, that money remains available for appropriation within the meaning of article IX, section 17 if "the [L]egislature has retained the power to appropriate and which require further appropriation before expenditure."⁶⁵

Plaintiffs have also argued, during oral argument, that the court should not apply *Hickel*'s definition of "available for appropriation" to section 17(d) because *Hickel* was concerned primarily with section 17(b), and because section 17(b) concerns money available for appropriation "for a fiscal year" and section 17(d) concerns money available for appropriation "at the end of each succeeding fiscal year." But there is no basis to ignore the rule of statutory construction that the same words in the same statute (or here, constitutional provision) should be given the same meaning.⁶⁶ And, at the end of each succeeding fiscal year, the funds are available for appropriation because the Legislature retains the power to appropriate those funds at any time and for any purpose.⁶⁷ Moreover, the supreme court did not restrict its definition to section 17(b) and applied it to section 17(d) when it declared AS 37.10.420(b) unconstitutional.⁶⁸

Because the Legislature has retained that authority with respect to the PCE Endowment Fund and because the fund requires further appropriation before expenditure, it

⁶⁴ *Hickel*, 874 P.2d at 930-935.

⁶⁵ *Id.* at 935.

⁶⁶ See *Fancyboy v. Arctic Village Elec. Coop. Inc.*, 984 P.2d 1128, 1133 (Alaska 1999).

⁶⁷ See AS 42.45.070(b); AS 42.45.085(a); see also *Sonneman v. Hickel*, 836 P.2d 936, 939-40 (Alaska 1992).

⁶⁸ *Hickel*, 874 P.2d at 936 & n. 2 ("We see no reason to give 'available for appropriation' a different meaning in subsection (d) than we did in subsection (b).").

is available for appropriation within the meaning of *Hickel* and within the meaning of article IX, section 17.

III. The PCE Endowment Fund is Not in the General Fund

Although the PCE Endowment Fund is available for appropriation, it is not subject to the CBR sweep unless it is also “in the general fund.”⁶⁹ Whether the PCE Endowment Fund is in the general fund presents a more difficult question, because the term “general fund” is not defined in the state constitution, in statute, or by the Alaska Supreme Court.

Plaintiffs argue that the PCE Endowment Fund is not in the general fund because the Legislature established it as a separate fund and because the Legislature validly appropriated the corpus of the fund from the general fund in prior years.⁷⁰ Plaintiffs contend that the CBR repayment provision was never intended or understood to cover separate funds to which the Legislature had already appropriated money for a specific purpose.⁷¹ Defendants argue that the PCE Endowment Fund is in the general fund because it was created by the Legislature, and only money in a fund established by the Constitution is outside the general fund.⁷² According to the Defendants, the Legislature lacks authority to designate funds as outside the general fund for purposes of article IX, section 17(d).⁷³ Defendants argue that adopting the Plaintiffs’ proposed definition of general fund would undermine the repayment policy established by section 17(d) because it would allow the Legislature to evade the repayment obligation by a majority vote by simply declaring a pot of money not part of the general fund.⁷⁴

⁶⁹ ALASKA CONST. art. IX, §17(d); *see also Hickel*, 874 P.2d at 936 & n. 32.

⁷⁰ *Motion* at *13-17.

⁷¹ *Reply* at *11-12.

⁷² *Opposition* at *18-26.

⁷³ *Id.* at *21-22.

⁷⁴ *Opposition* at *28.

a. The Legislature Established the PCE Endowment Fund as a Separate Fund.

By statute, the Legislature created the PCE Endowment “as a separate fund of the [Alaska Energy Authority].”⁷⁵ The Legislature has expressly created many funds and accounts in the general fund for various purposes.⁷⁶ The Legislature has also created separate funds.⁷⁷ In interpreting AS 42.45.070(a), the court must presume “that the legislature intended every word, sentence, or provision...to have some force and effect, and that no words or provision [is] superfluous.”⁷⁸ In addition, “where certain things are designated in a statute, ‘all omissions should be understood as exclusions.’”⁷⁹ Accordingly, the Legislature’s express creation of the fund as “separate” and “of the authority” and its omission of the phrase “in the general fund” must be interpreted to mean that the Legislature intended to create a fund outside the general fund.

⁷⁵ AS 42.45.070(a).

⁷⁶ *E.g.*, AS 06.60.500; AS 06.65.310; AS 08.88.450(a); AS 14.03.125(a); AS 14.11.005; AS 14.11.030(a); AS 14.43.915(a) & (b); AS 18.09.230(a); AS 18.65.225; AS 18.70.360; AS 19.65.060(a); AS 21.55.430(a); AS 23.15.625; AS 23.15.830; AS 23.30.082(a); AS 26.05.665(a); AS 29.60.850(a); AS 30.30.096(a); AS 37.05.289(a); AS 37.05.500-520; AS 37.05.550(a); AS 37.05.555(a); AS 37.05.560(a); AS 37.05.565(a); AS 37.05.570(a); AS 37.05.580(a); AS 37.05.600(a); AS 37.05.565(a); AS 37.05.570(a); AS 37.05.580(a); AS 37.05.590; AS 37.05.600(a); AS 37.05.610(a); AS 37.10.200(a); AS 37.14.205(a); AS 37.14.750(a); AS 37.15.011(a); AS 37.15.230(a); AS 38.05.874(a); AS 39.30.095(a); AS 39.60010(a); AS 41.15.180(b); AS 43.23.220(a); AS 43.23.230(a); AS 43.40.010(f), (g), (h), (j); AS 43.52.080(b); AS 43.52.230(a); AS 43.60.050(a); AS 43.61.010(c), (f); AS 43.77.050(a); AS 43.90.400(a); AS 45.56.640; AS 46.03.317(a); AS 46.03.482(a); AS 46.06.041(a); AS 46.08.020(b); AS 46.08.025(b); AS 46.14.270.

⁷⁷ *E.g.*, AS 26.05.263(a) (“The Servicemembers’ Group Life Insurance premium fund is established as a separate fund in the state treasury. The fund consists of appropriations by the legislature to it. Money appropriated to the fund does not lapse”); AS 37.05.540(a) (“There is established as a separate fund in the state treasury the budget reserve fund.”); AS 37.14.031(a); AS 37.14.300(a); AS 37.15.240(a); AS 42.45.010(a); AS 42.45.040(a); AS 42.45.045(a); AS 42.45.100(a) (“The mental health trust fund is established as a separate fund of the Alaska Mental Health Trust Authority.”); AS 43.23.045(a) (“The mental health trust fund is established as a separate fund of the Alaska Mental Health Trust Authority.”); AS 43.23.048(a); AS 43.55.028(a) (“The Alaska clean water administrative fund is established as a separate fund that is distinct from other money or funds in the treasury.”); AS 46.03/036(a) (“The oil and gas tax credit fund is established as a separate fund of the state.”); AS 46.03.032(a) (“The Alaska drinking water fund is established as a separate fund that is distinct from other money or funds in the treasury.”); AS 46.03.038(A) (“The Alaska drinking water administrative fund is established as a separate fund that is distinct from other money or funds in the state treasury.”); AS 47.25.621(c) (“The Alaska affordable heating fund is established as a separate fund to be managed by the Department of Revenue.”).

⁷⁸ *McDonnell v. State Farm Mut. Auto Ins. Co.*, 299 P.3d 715, 721 (Alaska 2013) (internal citations omitted).

⁷⁹ *Alaska State Comm’n for Human Rights v. Anderson*, 426 P.3d 956 & n. 34 (Alaska 2018) (quoting *Croft v. Pan Alaska Trucking, Inc.*, 820 P.2d 1064, 1066 (Alaska 1991) (quoting *Puller v. Municipality of Anchorage*, 574 P.2d 1285, 1287 (Alaska 1978))) (explaining principle of statutory construction *expressio unius est exclusio alterius*).

However, as Defendants argue,⁸⁰ if the Legislature lacks constitutional authority to take money out of the general fund simply by designating it as so, the Legislature's intent in creating the PCE Endowment Fund as a separate fund outside the general fund does not end the matter. The Alaska Energy Authority's independent, separate legal existence does not change this analysis. Even though the Authority is a public corporation with a separate legal existence, its assets are state assets in the treasury.⁸¹ But the Legislature's establishment of the fund in the authority reflects its intent to place the money not in the general fund.

b. Alaska Statute 37.10.420(b) Does Not Define "General Fund."

In *Hickel v. Cowper*, the court declared unconstitutional AS 37.10.420(b), which provides:

If the amount appropriated from the budget reserve fund has not been repaid under art. IX, sec. 17(d), Constitution of the State of Alaska, the Department of Administration shall transfer to the budget reserve fund the amount of money comprising the unreserved, undesignated general fund balance to be carried forward as of June 30 of the fiscal year, or as much of it as is necessary to complete the repayment. The transfer shall be made on or before December 16 of the following fiscal year.^[82]

The court concluded the definition was unconstitutional because it excluded "restricted funds within the general fund from the calculation of the amount available to pay back appropriations from the budget reserve fund."⁸³ The court recognized that "available amounts outside the general fund, such as the earnings reserve account [ERA], need not be deposited in the budget reserve."⁸⁴ While the court's decision does not answer the question presented by this case—what is the general fund and is the PCE Endowment Fund in it—it

⁸⁰ *Opposition* at *26-30.

⁸¹ *Cf. Lavery v. Alaska R.R. Corp.*, 13 P.3d 725, 732 (Alaska 2000) (assets of Alaska Railroad Corporation are assets of the state for purposes of the public notice clause of Alaska Constitution).

⁸² AS 37.10.420(b).

⁸³ *Hickel*, 874 P.2d at 936.

⁸⁴ *Id.* & n. 32.

does suggest, as argued by Defendants,⁸⁵ that the phrase must be read in light of the purposes of the CBR amendment. But while *Hickel* holds that even restricted funds in the general fund must be included in the definition of sweepable funds (assuming they are also available for appropriation), *Hickel* says nothing about money outside the general fund (except to note that they are not subject to sweep, and to identify the earnings reserve account as such a fund).⁸⁶

c. The Legislative History of the CBR Amendment Does Not Indicate that the Amendment Constrained the Legislature's Authority to Establish a Fund Outside the General Fund, if the Legislature Had Such Authority.

The voter's pamphlet for the CBR amendment described the effect of article IX, section 17(d)'s repayment provision: "At the end of each year, the Fund would have to be paid back from money left in the treasury's general fund."⁸⁷ The Legislative Affairs Agency Summary stated that "Money that is appropriated from the reserve fund must be repaid. Surplus general fund money must be deposited in the reserve fund at the end of each year until the reserve fund is repaid."⁸⁸ The statement in support, signed by Representatives Jan Faiks, Kay Brown and Randy Phillips, assert that Ballot Measure Number 1 is the first step Alaskans can take to *effectively* control state spending.⁸⁹ In describing the repayment provision, the statement asserts that "[t]he Legislature will be required to repay any money it appropriates from the Budget Reserve. If the next year revenues are insufficient the Legislature cannot afford to replenish the Budget Reserve, the "debt" will carry forward until it is repaid."⁹⁰

⁸⁵ *Opposition* at *6-9.

⁸⁶ *Hickel*, 874 P.2d at 936 & n. 32.

⁸⁷ *Affidavit of Jabna Lindemuth* Ex. 1 at *1.

⁸⁸ *Id.*

⁸⁹ *Id.* at *2.

⁹⁰ *Id.*

Representative Terry Martin's statement in opposition did not address the repayment provision.⁹¹

These descriptions to voters of the repayment provision indicate that the repayment will come from "surplus general fund money" and "revenues." The descriptions do not inform the voter that funds designated by statute as separate will be nevertheless be considered part of the general fund and subject to the repayment provision. In describing the repayment provision on the House floor, Representative Brown asserted that the fund would be repaid out of "general fund surpluses that remain at the end of the fiscal year."⁹² In addition, a prior version of SJR 5, which became article IX, section 17, employed the term "from the treasury," a much broader designation.

Nor does the plain meaning of "general fund" support an interpretation of funds established by law as separate from the general fund. The term "general fund" is defined in Black's Law Dictionary (from 1990, when the amendment passed) as:

a collective designation of all the assets of the state which furnish the means for the support for government and for defraying the discretionary appropriations of the legislature. Such are distinguished from assets of a special character, such as the school fund.^[93]

The dictionary definition must be considered in conjunction with any judicial interpretations of "general fund" that would have informed voters and the Legislature at the time the amendment was passed. If the Legislature had authority to establish a fund outside the general fund at the time the CBR amendment was passed, nothing in the legislative history of the amendment indicates that the amendment was intended to curtail that authority. But if

⁹¹ *Id.*

⁹² See House Floor Session on SJR5, 16th Leg., 2d Sess., Audio 2, (1:02:51-1:03:10) (Statement of Representative Kay Brown).

⁹³ *Affidavit of Jabna Lindemuth* Ex. 21 (filed 7/19/2021) (*General fund*, BLACK'S LAW DICTIONARY (6TH Ed. 1990)).

the Legislature never had authority to create a fund outside the general fund, the absence of any such legislative history makes sense.

d. The Legislature Is Not Prohibited from Establishing a Fund Outside the General Fund by the Dedicated Funds Clause.

The original articles of the Alaska Constitution do not mention the term “general fund.” However, the dedicated funds clause⁹⁴ provides (in pertinent part) that “[t]he proceeds of any state tax or license shall not be dedicated to any special purpose except... when required by the federal government for state participation in federal programs.”⁹⁵ In *State v. Alex*,⁹⁶ and *Sonneman v. Hickel*,⁹⁷ the Alaska Supreme Court considered the legislative history, origin and purpose of the clause, concluding that its purpose was to retain control over the budget and spending in the legislature and governor.⁹⁸ However, the court in *Alex* recognized that the dedicated funds clause did not prohibit the establishment of certain special funds⁹⁹ and the minutes of the constitutional convention relied on by the court in *Alex* indicate that, at the time, at least some delegates distinguished between “the general fund” and “the treasury.”¹⁰⁰

In 1968, the Legislature enacted AS 37.05.155, which provided for specified “special funds” to be accounted for separately “as accounts in the general fund.”¹⁰¹ In a 1969 opinion

⁹⁴ ALASKA CONST. art. IX § 7.

⁹⁵ *Id.* This article was amended in 1976 when the Permanent Fund was established to create an exception for the restrictions placed on the use of the principal of that fund. HJR 111 (1975).

⁹⁶ *State v. Alex*, 646 P.2d 203 (Alaska 1982).

⁹⁷ *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992).

⁹⁸ *Alex*, 646 P.2d at 209-211 (holding that, because the constitution prohibits the dedication of any source of revenue, dedication of salmon assessments to qualified regional associations violated dedicated funds clause); *Sonneman*, 836 P.2d at 938-41 (holding that statute establishing Marine Highway System Fund does not violate dedicated funds clause because legislature may appropriate from the fund for any purpose, but that restriction on executive agency’s authority to request appropriation for capital improvements violated dedicated funds clause).

⁹⁹ *Alex*, 646 P.2d at 210.

¹⁰⁰ See Alaska Const. Conv. Proceed. 2363 (“Now in this case the sinking funds for bonds, all this prohibits is the earmarking of any special tax to that sinking fund. You could still set up a sinking fund from the general fund or the treasury.”).

¹⁰¹ Ch. 5, §1, SLA 1968 (renumbered as AS 37.05.500).

asserting that proposed legislation would violate the dedicated funds clause of the constitution,¹⁰² the Alaska Attorney General opined that “[a]ll public moneys and revenue coming into the state treasury constitute the general fund of the state.”¹⁰³ The opinion acknowledges that the general fund is not specifically created by statute, but that its existence is noted in AS 37.05.155.¹⁰⁴

In 1977, in *Thomas v. Rosen*,¹⁰⁵ the Alaska Supreme Court considered whether a bond issue authorization was an appropriation bill within the meaning of article II, section 15 of the Alaska Constitution.¹⁰⁶ In considering whether the Governor had line-item veto authority over a bond issue authorization, the court was guided by the Wisconsin Supreme Court’s definition of “appropriation” as “the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money and no more, for that object, and no other.”¹⁰⁷ In relying on that definition, the Alaska Supreme Court noted that for its purpose, “the operative phrase ‘public revenue’ is critical since it is the basis of the general fund and special funds from which the legislature may allocate.”¹⁰⁸ In a footnote, the court also acknowledged that the general fund was not specifically created by statute but that it existed, and that its existence was noted in AS 37.05.155.¹⁰⁹ *Thomas*’ description of “the public revenue” as the basis of “the general fund” and “special funds” supports the conclusion that the Legislature had some authority to

¹⁰² ALASKA CONST. art. IX § 7. The dedicated funds clause of the constitution preserves state control over state revenue by (in part) prohibiting funds that the Legislature may only use for a specified purpose or by precluding state agencies from seeking appropriation for a given purpose. *Hickel*, 836 P.2d at 937.

¹⁰³ 1969 Op. Alaska Att’y Gen. No. 5 at *3 (April 15, 1969).

¹⁰⁴ *Id.* at n. 10.

¹⁰⁵ *Thomas v. Rosen*, 569 P.2d 793 (Alaska 1977).

¹⁰⁶ *Id.* at 795.

¹⁰⁷ *Id.* at 796 (quoting *Finnegan v. Dammann*, 264 N.W.622, 624 (Wis. 1936).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* & n. 8.

establish funds outside the general fund, so long as it abided by the dedicated funds clause of the constitution.

The term “general fund” appears for the first time in the constitution in 1976, through article IX, section 15, the amendment establishing the Permanent Fund. That amendment established the Permanent Fund, provided for its funding and investment, and provided that “[a]ll income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.”¹¹⁰ Alaska Statute 37.13.145(a) established the Earnings Reserve Account (ERA) “as a separate account in the [Permanent Fund]” and provided that income from the Permanent Fund be deposited into the ERA “as soon as it is received.”¹¹¹ Article IX, section 7 creates an exception for the dedicated funds clause “as provided by article IX, section 15.”¹¹² Recently, in *Wielechowski v. State*,¹¹³ the Alaska Supreme Court held that this provision referred to the dedication of certain specific mineral revenues to the Permanent Fund, and did not permit the Legislature to dedicate the earnings of the Permanent Fund income.¹¹⁴

While the court’s decision in *Wielechowski* does not address the definition of “the general fund,” it adds to the weight of authority that the Legislature’s establishment of a fund outside the general fund does not constitute an unconstitutional dedication of funds. In *Hickel v. Cowper*, the court explained that “the money in the [ERA] never passes through the general fund, and is never appropriated as such by the Legislature.”¹¹⁵ In *Wielechowski* the court described the ERA as unique in that it is “”(1) an account existing outside of the general fund; (2) appropriable by the legislature; (3) managed by [Alaska Permanent Fund Corporation]; (4)

¹¹⁰ ALASKA CONST. art. IX § 15.

¹¹¹ AS 37.13.145(a).

¹¹² ALASKA CONST. art. IX § 7.

¹¹³ *Wielechowski v. State*, 403 P.3d 1141 (Alaska 2017).

¹¹⁴ *Id.* at 1148-52.

¹¹⁵ *Hickel*, 874 P.2d at 934.

invested in income-producing assets; and (5) treated differently than other state revenues because of public expectations.”¹¹⁶

The court’s description of the ERA raises an important question for this case: whether the Legislature’s authority to establish a fund outside the general fund for Permanent Fund earnings is bestowed on the Legislature by article IX, section 15, or whether the amendment merely recognized the Legislature’s authority to establish a separate fund and provided that the income from the fund would be deposited into the general fund absent exercise of the Legislature’s preexisting authority? If it is the former, then the Legislature had no authority to establish separate funds when the CBR amendment was adopted. If is the latter, then the absence of any discussion in the legislative history of the CBR amendment weighs against concluding that the amendment eliminated this power.

Because the term “general fund” was not a term of constitutional significance when the Alaska Constitution was established, the Legislature had authority to establish, by statute, funds outside and separate from the general fund.¹¹⁷ This authority was circumscribed only by the dedicated funds clause. And the Legislature did establish “separate funds.”¹¹⁸ In 1980, the Legislature established the Power Cost Assistance Fund as a “separate fund” of the authority.¹¹⁹ The statute creating that fund was repealed and reenacted the following year, again as a “separate fund” of the authority.¹²⁰ In 1984, the Legislature established the Power Cost

¹¹⁶ *Wielechowski*, 403 P.3d at 1151.

¹¹⁷ The Alaska Constitution vests legislative power in the legislature. ALASKA CONST. art. II § 1.

¹¹⁸ *E.g.* Ch. 68, § 2, SLA 1967; Ch. 130, § 11, SLA 1974; Ch. 218, § 86, SLA 1975; Ch. 277, § 9, SLA 1976; Ch. 124, § 1, SLA 1977; Ch. 181, § 4, SLA 1978; Ch. 83, § 42, SLA 1980; Ch. 118, § 8, SLA 1981; Ch. 133, § 1, SLA 1984.

¹¹⁹ Ch. 83, § 42, SLA 1980.

¹²⁰ Ch. 118, § 8, SLA 1981.

Equalization Fund as a “separate fund” of the authority.¹²¹ These funds existed at the time the CBR amendment was passed in 1990.

Judicial decisions prior to adoption of the CBR amendment acknowledged the existence of the general fund, but also recognized that the Legislature could establish special or separate funds.¹²² Given this authority, and given the absence of any indication in the legislative history that the CBR amendment was intended to circumscribe that authority or to define general fund more broadly than was already defined through statutes, this court concludes that the term “general fund” does not include a separate fund of a public corporation. Accordingly, it does not include the PCE Endowment Fund.

The Defendants argue that adopting Plaintiffs’ proposed interpretation of “general fund” will undermine the repayment provision of article IX, section 17(d), allowing the Legislature to evade the repayment provision by establishing funds outside the general fund by simply majority vote.¹²³ But, absent an express provision in article IX, section 17(d) or other indications that the CBR amendment limited the Legislature’s authority to establish funds separate from the general fund, the court will not lightly infer such a limitation.¹²⁴ The CBR must still be repaid. But because the Legislature established the PCE Endowment Fund as a separate fund, it may not be swept pursuant to article IX, section 17(d). In addition, the funds validly appropriated by the Legislature from the PCE Endowment Fund for FY2022 for the PCE-CAP must be distributed to the PCE-CAP in accordance with the Legislature’s appropriation.

¹²¹ Ch. 133, § 1, SLA 1984.

¹²² See *supra*, nn. 96-100, and accompanying text.


¹²³ *Opposition* at *21-22.

¹²⁴ *Cf. Bradner v. Hammond*, 553 P.2d 1, 7 (Alaska 1976).

Conclusion

Because the Plaintiffs have demonstrated that they are entitled to judgment as a matter of law, and because the Defendants have not shown that they are entitled to judgment as a matter of law, the court GRANTS Plaintiffs' motion for summary judgment and DENIES Defendants' Cross-Motion for Summary Judgment. The Department is PERMANENTLY ENJOINED from sweeping the PCE Endowment Fund into the CBR pursuant to article IX, section 17(d) of the Alaska Constitution. Plaintiffs are ORDERED to file a proposed final judgment within 20 days of service of this decision.¹²⁵

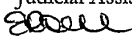
DONE this 11th day of August 2021, at Anchorage, Alaska.



Josie Garton
Superior Court Judge

I certify that on 8/11/2021
a copy of the above was mailed to
each of the following at their
addresses of record:

Erik Groves
Samuel Gottstein
Scott Kendall
John Leman
Jahna Lindemuth
Katherine Demarest
Margaret Paton-Walsh

Elsie Roehl
Judicial Assistant


¹²⁵ Alaska R. Civ. P. 56(c).

MEMORANDUM

State of Alaska
Department of Law

TO: Honorable Mike Dunleavy
Governor

DATE: August 25, 2021

TEL. NO.: 269-5100

FROM: Treg Taylor
Attorney General

SUBJECT: Appropriations from funds
swept June 30, 2021 into the
CBR

You requested a memorandum that could be publicly disseminated addressing the following question: “Whether appropriations validly enacted prior to July 1, 2021, but with a July 1 effective date that have a funding source that was otherwise swept into the constitutional budget reserve as of June 30, 2021, can be expended without a reverse sweep?”

There is a reasonable argument these monies can be expended, but it would be an issue of first impression for the courts. Ultimately, we cannot say with certainty what the courts would decide, especially in light of the recent superior court decision regarding the Power Cost Equalization Fund.

For background, article 9, section 17 of the Alaska Constitution establishes the constitutional budget reserve fund. Subsection (d) of section 17 requires that any money taken from the fund under subsections (b) and (c) must be repaid through what has become known as the “sweep.” Subsection (d) states:

If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

The question presented involves an interpretation of the phrase “available for appropriation at the end of each succeeding fiscal year.” This is not an issue of whether the fund exists in the general fund or not; that was the question addressed by the superior court in the recent Power Cost Equalization Fund decision. Rather, the question is, for those funds in the general fund and otherwise swept as of June 30, should the amount that is needed to pay validly enacted appropriations that have a July 1st effective date be retained in the funds for expenditure in FY’22? In other words, are the amounts needed for the validly enacted appropriations considered “not available for appropriation” under

subsection (d) because they have already been obligated to be expended for a purpose in the next fiscal year?

The Alaska Supreme Court has addressed how to interpret “available for appropriation” in one prior decision: *Hickel v. Cowper*, 847 P.2d 922 (Alaska 1994). Although this decision mainly addressed this phrase as it is used in subsection (b), the court said that its interpretation of “available for appropriation” for purposes of (b) also applies to (d). The court described its ruling as follows:

Instead, we consider it appropriate, as well as consistent with both the language of the amendment and the intent of the framers, to focus on the legal status of the various funds implicated in relationship to the legislative power of appropriation. The “amount available for appropriation” must include all funds over which the legislature has retained the power to appropriate and which are not available to pay expenditures without further legislative appropriation.¹

The court also explained:

It is far more reasonable to interpret “amount available for appropriation” in light of the relative consequences of and circumstances attendant in making appropriations from different sources. In this light, **monies which already have been validly committed by the legislature to some purpose should not be counted as available.**²

In the scenario presented, there is a reasonable argument that appropriations validly enacted prior to July 1, 2021, but with a July effective date, are already “validly committed by the legislature to some purpose.”³ According to *Hickel v. Cowper*, this would remove these amounts from being available for appropriation.

The countervailing argument—and practical concern—is whether an appropriation having an effective date after the sweep has already occurred means the money in the fund has already been swept, and therefore there are no actual funds to

¹ *Id.* at 927.

² *Id.* at 930-931 (emphasis added).

³ *Id.*

support what is otherwise a valid appropriation.⁴ It is unclear where the court would come down on this issue. If the monies cannot be considered validly committed until the appropriation is effective, then there would be no money available in the fund to carry out the appropriation. If, on the other hand, the monies can be considered validly committed before their effective date, then the money needed to pay those appropriations should not be swept and would be available for expenditure in FY'22 to carry out the appropriation. In light of the reasonable arguments on both sides, I believe it is legally defensible to release the funds and pay out the validly enacted appropriations for FY'22.

⁴ By operation of law, the sweep occurs at 11:59 pm on June 30th of any given fiscal year. Consequently, an appropriation that is effective July 1st may be valid, but the underlying account has no funds to support the appropriation.




**STATE OF ALASKA
OFFICE OF THE GOVERNOR**

MEMORANDUM

DATE: August 25, 2021

TO: Neil Steininger, Director
Office of Management and Budget

FROM: Mike Dunleavy 
Governor

SUBJECT: Appropriations Enacted on June 30, 2021

I am directing the Office of Management and Budget, (OMB) and the Division of Finance (DOF), to immediately effectuate appropriations approved by the Legislature and signed into law by me, from fund sources that were eventually swept into the Constitutional Budget Reserve Fund, as of June 30, 2021. This decision is made after a review of all appropriations in light of the Superior Court's recent ruling on Power Cost Equalization. Part of that review included an analysis from the Department of Law. That analysis, a memorandum from Attorney General Taylor, is attached.

Effective immediately, I direct you to take the necessary actions to ensure these expenditures occur for Fiscal Year 2022 according to the enacted appropriations in House Bill 69 (Chapter 1, SSSLA 21). Furthermore, I direct OMB and DOF to provide a status update to the Legislature's Finance Division on these appropriations.

cc: Hans Zigmund, Director of Finance



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

OFFICE OF THE ATTORNEY GENERAL

1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
Main: 907-269-5100
Fax: 907-276-3697

December 15, 2021

Via Email

Pat Pitney
Interim President
University of Alaska
P.O. Box 755000
Fairbanks, Alaska 99775
Email: kppitney@alaska.edu

Re: *Higher Education Investment Fund*

Dear President Pitney:

Thank you for your communications regarding the Higher Education Investment Fund (HEIF) and the automatic "sweep" of certain funds into the Constitutional Budget Reserve Fund (CBRF). I appreciate that you have made your counsel available to discuss the matter with attorneys at the Department of Law. Governor Dunleavy requested that I respond to your letter, since it involves an interpretation of the Alaska Constitution. Specifically, Art. IX, sec. 17(d) of the Alaska Constitution which states in part:

"the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year
shall be deposited into the budget reserve fund."

Emphasis added.

Your previous letter suggested that the HEIF was not subject to the sweep provisions of the CBRF for at least two reasons.

First, the University contends that subjecting the HEIF to the sweep is a matter of executive discretion and that my August 25, 2021 memorandum justifies exempting the HEIF from the sweep.

Second, the University contends that even if the HEIF is subject to the sweep, only a limited portion of the fund is available to be swept through your interpretation of

AS 37.14.750(c), specifically the seven percent of the fund described in statute as available for withdrawal each year.¹

As you know, the CBRF operates as a savings fund with special rules for legislative appropriations from the fund and a requirement that money withdrawn from the fund be repaid. Under the repayment provision, money “in the general fund” and “available for appropriation” at the end of a fiscal year **shall be deposited** in the CBRF until withdrawals from the CBRF have been repaid. This is colloquially known as the sweep.

With a rare exception, prior to the last legislative session, the Alaska State Legislature had been able to work together and historically passed budget language to reverse the sweep and maintain fund balances that would otherwise be deposited into the CBRF. During the 2019 legislative session it appeared that for the first time in recent history the required 3/4 vote of the legislature to reverse the CBRF sweep would not be achievable. In response, the administration performed a comprehensive review of all funds potentially implicated by the sweep. The HEIF was identified as a sweepable fund based on the enabling language in the statute.²

Governor Dunleavy agrees the HEIF provides critical support to a number of Alaskan students. He has provided funding for the annual costs of the HEIF scholarships every year he has been in office (including for this upcoming fiscal year, FY 2023). However, failure of the Legislature to work together and reverse the sweep results in a mandatory duty by the Governor to comply article IX, section 17 of the Alaska Constitution. No governor has the legal authority or discretion to ignore the constitution and its sweep requirements.

As previously stated, under the provisions of the CBRF (and as decided in the recent PCE case) money “in the general fund” and “available for appropriation” at the end of a fiscal year is subject to the sweep.

¹ AS 37.14.750(c) states, in part, “As soon as is practicable after July 1 of each year, the commissioner of revenue shall determine the market value of the fund established in this section on June 30 for the immediately preceding fiscal year. The commissioner shall identify seven percent of that amount as available for appropriation.”

² AS 37.14.750(a) (“The Alaska higher education investment fund is established in the general fund for the purpose of making grants awarded under AS 14.43.400 — 14.43.420 by appropriation to the account established under AS 14.43.915(a) and of making scholarship payments to qualified postsecondary institutions for students under AS 14.43.810 — 14.43.849 by appropriation to the account established under AS 14.43.915(b). Money in the fund does not lapse.”)

Alaska Statute 37.14.750(a) clearly indicates that the HEIF is “established in the general fund for the purpose of making grants . . . by appropriation.”³ Consequently, the HEIF is subject to the sweep provisions in article IX, section 17(d) of the Alaska Constitution as the HEIF is explicitly established in the general fund and the legislature is required to appropriate funds from the HEIF to other accounts in order for funds to be spent.⁴ Recent superior court litigation, clarifying the application of the sweep to the Power Cost Equalization Fund (PCE),⁵ reinforces this principle of law.

Like the HEIF, the PCE was set up as an endowment out of which only a certain portion should be spent each year. Although the superior court determined the PCE was not “in the general fund,” it did agree with us that the fund was fully available for appropriation regardless of any statutory limit on availability of funds for appropriation.

In regard to my analysis that the appropriations from the HEIF made in 2021 could proceed for this fiscal year, I believe that the University may have misconstrued the analysis. My memorandum dealt specifically with funds that had *already* been validly committed in a further appropriation from the fund into the scholarship and other accounts—the only difference was that the appropriation, although enacted, did not go into effect until after the reverse sweep was supposed to occur. I concluded, after reviewing the relevant case law, that there was a reasonable argument that the valid commitment of the funds had already occurred prior to the effective date of the appropriation, thereby making the appropriated funds no longer available for appropriations.⁶ This allowed necessary funding, such as the funding for performance

³ AS 37.14.750(a).

⁴ This letter take no position on whether accounts such as the Alaska education grant account and Alaska performance scholarship award account as subject to the sweep or whether funds previously appropriated from the HEIF are subject to the sweep.

⁵ See *Alaska Federal of Natives v. Dunleavy*, Case No. 3AN-21-06737CI, Order on Mot. for Summ. J. and Cross Mot. for Summ. J. at p. 10-11 (“Plaintiffs argue in their motion for summary judgment that the PCE Endowment Fund is not “available for appropriation” because the monies in the fund have already been appropriated, the appropriation has not expired, and the funds remain obligated (to the fund) . . . [b]ut this definition is contrary to the supreme court’s holding in *Hickel* However valid an initial appropriation of money may have been, that money remains available for appropriation within the meaning of article IX, section 17 if “the [L]egislature has retained the power to appropriate and which require further appropriation before expenditure”).

⁶ *Hickel v. Cowper*, 874 P.2d 922, 931 (Alaska 1994) (“monies which already have been validly committed by the legislature to some purpose should not be counted as available”).

scholarships, to continue in this fiscal year despite the legislature's failure to reverse the sweep.

With respect to the University's argument that only a portion of the HEIF is exposed to the sweep, this argument appears to be contrary to the plain language of the statute itself, and the *Weilechowski* decision by the Alaska Supreme Court.

Initially, AS 37.14.750(b) states "[n]othing in this section creates a dedicated fund." However, under the University's argument at least some percentage of the HEIF would essentially be a dedicated fund. Additionally, the statute is silent on the disposition of the remaining 93% of the fund following the appropriation of the 7% under AS 37.14.750(c).

As the PCE and the *Weilechowski* case made clear, absent a specific statutory directive⁷ or constitutional limit on the availability of funds⁸ the legislature maintains appropriation power over the funds regardless of state statutes. This makes the funds in the HEIF "available for appropriation."⁹

Similarly, the University's analysis seems to depart from the Supreme Court's analysis that trust receipts and restricted accounts in the general fund are available for appropriation under article IX, section 17, despite the intent and express language of those statutes attempting to designate the funds for certain purposes.¹⁰ Consequently, it seems from the plain reading of AS 37.14.750, the HEIF is created within the general fund and there are no restrictions on the legislature's ability to make appropriations from the fund making the entire fund subject to the provisions of article IX, section 17.¹¹

⁷ See, e.g., AS 18.08.085 (authorizing the commissioner to spend funds without further apportion); AS 26.23.300.

⁸ E.g. private donations for a particular purpose, limits on federal funds, etc.

⁹ *Hickel v. Cowper*, 874 P.2d 922, 933 (Alaska 1994).

¹⁰ *Id.* at 935-36.

¹¹ *Curran v. Progressive Northwestern Ins. Co.*, 29 P.3d 829, 832 (2001) ("When a statute's meaning appears clear and unambiguous, the party urging another meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent")(internal citations omitted)

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Governor Dunleavy and I share your concerns regarding the HEIF and are available to discuss options that fall within the boundaries of the law and his authority. The one thing the governor cannot legally do if a Legislature fails to vote to reverse the sweep is ignore the mandate of article IX, section 17(d) of the Alaska Constitution. This duty was clearly described in the PCE case and requires the sweep of all funds “in the general fund” and “available for appropriation” by the Legislature.

Sincerely,



Treg R. Taylor
Attorney General

**AK Higher Education Investment
Net Asset Value
As of the Month Ending
November 30, 2021**

Cash and Cash Equivalents

Short-term Fixed Income Pool (<i>Internally Managed</i>)	\$ 4,223,839.42
Total Cash and Cash Equivalents	<u>4,223,839.42</u>

Fixed Income Securities

Interim-term (<i>Internally Managed</i>)	-
Broad-term (<i>Internally Managed</i>)	120,976,298.13
High Yield (<i>Internally Managed</i>)	-
Total Fixed Income Securities	<u>120,976,298.13</u>

Broad Domestic Equity

SSgA Russell 3000	165,418,302.23
Total Broad Domestic Equity	<u>165,418,302.23</u>

Global Equity Ex-U.S.

SOA International Equity Pool	98,584,115.06
Total Global Equity Ex-U.S.	<u>98,584,115.06</u>

Real Assets

Real Estate Investment Trust Pool (<i>Internally Managed</i>)	21,346,862.46
Total Real Assets	<u>21,346,862.46</u>

Receivables and Payables

Income Receivable/Payable	(44.92)
Payable To/From	-
Total Receivables and Payables	<u>(44.92)</u>

Total Assets

<u><u>\$ 410,549,372.38</u></u>

AK Higher Education Investment
Schedule of Investment Income (Loss) and Changes in Invested Assets
As of the Month Ending
November 30, 2021

	<u>1-Month</u>	<u>Fiscal YTD</u>
Cash and Cash Equivalents		
Short-term Fixed Income Pool (<i>Internally Managed</i>)	\$ (44.92)	\$ 843.13
	<u>(44.92)</u>	<u>843.13</u>
Fixed Income Securities		
Interim-term (<i>Internally Managed</i>)	-	-
Broad-term (<i>Internally Managed</i>)	177,789.49	162,563.42
High Yield (<i>Internally Managed</i>)	-	-
	<u>177,789.49</u>	<u>162,563.42</u>
Broad Domestic Equity		
SSgA Russell 3000	(2,532,347.98)	8,102,633.59
	<u>(2,532,347.98)</u>	<u>8,102,633.59</u>
Global Equity Ex-U.S.		
SOA International Equity Pool	(4,576,600.05)	(5,279,060.58)
	<u>(4,576,600.05)</u>	<u>(5,279,060.58)</u>
Real Assets		
Real Estate Investment Trust Pool (<i>Internally Managed</i>)	(217,715.93)	1,078,462.46
	<u>(217,715.93)</u>	<u>1,078,462.46</u>
Total Investment Income (Loss)	\$ (7,148,919.39)	\$ 4,065,442.02
Payable To/From	-	-
Total Invested Assets, Beginning of Period	417,918,328.79	416,411,393.99
Net Contribution (Withdrawal)	(220,037.02)	(9,927,463.63)
Total Assets	<u>\$ 410,549,372.38</u>	<u>\$ 410,549,372.38</u>

CBR Sweep Summary - DRAFT								
		FY04	FY04	FY04	Minimum Reverse Amount	Fall 2003 Potential Sweep Balance	Notes If Revenue not equal to Appropriation	
		FY04 Appropriation	FY04 Revenue	Revenue Shortfall	Amount Swept			
No Reversal Necessary								
1 FHWA Airspace leases					\$19,049	\$0	\$19,049	
2 State Forestation Fund					\$194		\$194	
3 AMHS Replacement Fund					\$0		\$0	
4 Education Facility Maintenance/Construction Fund					\$0		\$0	
Total		\$0		\$0	\$19,243	\$0	\$19,243	
Reversal Necessary to Support FY 04 Appropriation Level and Future Year Spending								
5 Voc Rehab Small Business Enterprise Revolving Loan Fund		\$365,000	\$230,000	\$135,000	\$121,587	\$121,587	\$0	\$13,413 Shortage does not appear to be a problem; actual expenditures are lower than authorization
6 Alaska Historical Commission		\$0	\$0	\$0	\$85,302	\$0	\$85,302	\$0 Extra sweep supports future appropriations.
7 Oil/Haz Substance Release Accounts		\$20,171,600	\$9,232,900	\$10,938,700	\$18,349,829	\$10,938,700	\$7,411,129	\$0 Extra sweep supports future appropriations.
8 Employment Assistance & Training (STEP)		\$5,639,700	\$4,650,000	\$989,700	\$1,947,655	\$989,700	\$957,955	\$0 See footnote
9 Workers Safety/Comp Account		\$4,139,400	\$4,139,400	\$0	\$4,547,743	\$0	\$4,547,743	\$0 See footnote
10 Commercial Passenger Vessel Env. Compliance Fund		\$706,900	\$706,900	\$0	\$1,099,965	\$706,900	\$393,065	- \$706,900 Revenue received late in year and funds FY05
11 Tobacco Ed/Cessation Fund		\$5,395,600	\$4,295,600	\$1,100,000	\$1,260,524	\$1,100,000	\$160,524	\$0 Extra sweep supports future appropriations.
12 Bldg Safety Account		\$1,603,700	\$1,508,000	\$95,700	\$92,843	\$92,843	\$0	\$2,857 Small shortfall is not a problem
13 Alcohol/Drug Abuse Treatment/Prevention Fund		\$21,400,000	\$15,300,000	\$6,100,000	\$6,191,229	\$6,100,000	\$91,229	\$0 Extra sweep supports future appropriations.

[illegible]

**GENERAL FUND
SWEEPABLE SUBFUND AVAILABLE BALANCES SWEEP INTO THE CBR**

FUND NO.	ACCT NO.	DESCRIPTION	TOTAL Unexpended Unobligated Balance Swept	FY 04 Approp From the Fund
SUBFUNDS				
11126	10705	FHWA-AIRSPACE LEASES	19,049.22	0.00
12130	10741	STATE REFORESTATION	193.67	0.00
11137	10731	AMHS VESSEL REPLACEMENT	0.00	0.00
11142	10843	ED FAC MAINT & CONST	0.00	0.00
11116	10723	VOC REHAB SMALL BUS ENT RLF	121,587.19	365,000.00
11111	10717	AK HISTORICAL COMMISSION	85,301.62	0.00
11122	10708	OHSR PREVENTION ACCT	15,509,734.32	20,171,600.00
11139	10818	PREVENTION MITIGATION ACCT	2,741,388.70	for all 3
11153	10868	RESPONSE MITIGATION ACCT	98,706.41	accounts
11134	10713	EMPLOYMENT ASSIST & TRAINING	1,947,655.00	5,639,700.00
11173	10932	WORKERS SAFETY AND COMP FUND	4,547,743.00	4,139,400.00
11174	10935	COMMERCIAL PASSENGER VESSEL ENVIRON COMP	1,099,965.00	706,900.00
11175	10939	TOBACCO USE EDUCATION	1,260,524.73	5,395,600.00
11177	10955	BUILDING SAFETY ACCOUNT	92,843.00	1,603,700.00
11178	10956	ALCOHOL & OTHER DRUG ABUSE TREAT & PREV	6,191,229.00	21,400,000.00
11164	10911	LAND DISPOSAL INCOME FUND	5,048,554.33	7,818,500.00
12135	10732	AK MARINE HWY FUND	9,277,305.42	86,945,400.00
11138	10964	AK DEBT RETIREMENT FUND	7,926,507.00	53,820,600.00
11166	10913	AK TECH & VOC ED FUND	913,590.00	4,561,500.00
11146	10849	MUNI CIP MATCHING GRANT FUND	1,164,584.31	0.00
11147	10851	UNINCORP CIP MATCH GRANT FUND	1,137,260.00	0.00
11123	10728	RAILBELT ENERGY FUND	29,571,811.00	0.00
TOTAL			88,755,532.92	212,567,900.00

MINUTES
SENATE FINANCE COMMITTEE
February 02, 2004
10:03 AM

TAPES

SFC-04 # 4, Side A

CALL TO ORDER

Co-Chair Lyda Green convened the meeting at approximately 10:03 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Fred Dyson
Senator Lyman Hoffman
Senator Donny Olson
Senator Ben Stevens

Also Attending: CHERYL FRASCA, Director, Office of Management and Budget, Office of the Governor; JOAN BROWN, Chief Budget Analyst, Office of Management and Budget, Office of the Governor.

Attending via Teleconference: There were no teleconference participants.

SUMMARY INFORMATION

SB 283-APPROP: REVERSE 2003 CBR SWEEP

The Committee heard from the Office of Management and Budget. The bill was held in Committee.

#SB283

SENATE BILL NO. 283

"An Act making an appropriation to reverse the deposit of money available for appropriation in the general fund at the end of fiscal year 2003 into the constitutional budget reserve fund; making an appropriation under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date."

SFC-03

(1)

02/02/04

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Green noted the purpose of this meeting is to gather information on the accounts that normally carryover from one fiscal year to the next, but were not allocated from the Constitutional Budget Reserve (CBR) Fund by the legislature during the previous session.

CHERYL FRASCA, Director, Office of Management and Budget overviewed the sub-accounts that were "swept". She reminded that at the end of the previous legislative session, a number of these sub-accounts within the general fund were swept into the CBR fund, and that historically the major appropriation legislation contains a provision to reverse this sweep to restore the funds to their respective sub-accounts. She explained such a provision was not included in the FY 04 appropriation legislation. She noted that the FY 04 budget legislation contained several appropriations that relied on the availability of these revenues for expenditure during the fiscal year.

Ms. Frasca informed that during the previous summer she contacted the co-chairs of the House of Representatives and Senate Finance Committees to garner whether the intent was to implement the affected programs for the period of time before the legislature reconvened in January, as stipulated in the FY 04 budget appropriation, and was verbally instructed to continue the delivery of services.

Ms. Frasca detailed a handout titled "CBR Sweep Summary - DRAFT" [copy on file] listing the aforementioned accounts. She noted the following four items did not require a reversal.

FHWA Airspace leases
Amount Swept: \$19,049
Minimum Reverse Amount: \$0
Fall 2003 Potential Sweep Balance: \$19,049

Ms. Frasca informed that these one-time revenues were initially received several years prior and that the funding source was not recurrent.

State Forestation Fund
Amount Swept: \$194
Fall 2003 Potential Sweep Balance: \$194

Ms. Frasca noted that in addition to the small dollar amount, this fund has not been accessed for several years.

AMHS [Alaska Marine Highway System] Replacement Fund

Amount Swept: \$0

Fall 2003 Potential Sweep Balance: \$0

Education Facility Maintenance/Construction Fund

Amount Swept: \$0

Fall 2003 Potential Sweep Balance: \$0

Ms. Frasca stated that because the balance of the two accounts is zero, there is no need to reverse the funding.

Ms. Frasca continued outlining those items in which a reversal was necessary to support FY 04 appropriation level and future year spending as follows.

Voc Rehab Small Business Enterprise Revolving Loan Fund

FY 04 Appropriation: \$365,000

FY 04 Revenue: \$230,000

FY 04 Revenue Shortfall: \$135,000

Amount Swept: \$121,587

Minimum Reverse Amount: \$121,587

Fall 2003 Potential Sweep Balance: \$0

Reversal of full amount will make the funding available to pay FY 05 costs and ease fund cash flow.

If Revenue not equal to Appropriation: \$13,413 Shortage does not appear to be a problem; actual expenditures are lower than authorization.

Ms. Frasca told of proceeds from vending machine facilities to be utilized to aid blind and severely handicapped licensees who operate the vending machines. She stated the balance of this sub-account is accumulated to allow for larger projects, such as remodeling of facilities. She said the specific funds are intended for construction at the Atwood Building.

Alaska Historical Commission

FY 04 Appropriation: \$0

FY 04 Revenue: \$0

FY 04 Revenue Shortfall: \$0

Amount Swept: 85,302

Minimum Reverse Amount: \$0

Fall 2003 Potential Sweep Balance: \$85,302

Department requests full amount be reversed to support future year spending.

If Revenue not equal to Appropriation:

Ms. Frasca noted this funding is generally utilized for special projects and the funds are accumulated over time.

Senator Dyson asked the proposed projects.

Ms. Frasca exampled a commemoration of the 50 year anniversary of Alaska statehood.

Oil/Haz Substance Release Accounts

FY 04 Appropriation: \$20,171,600

FY 04 Revenue: \$9,232,900

FY 04 Revenue Shortfall: \$10,938,700

Amount Swept: \$18,349,829

Minimum Reverse Amount: \$10,938,700

Fall 2003 Potential Sweep Balance: \$7,411,129

Department requests full amount be reversed to support future year spending; annual revenue not sufficient to maintain current spending level.

If Revenue not equal to Appropriation: Extra sweep supports future appropriations.

Ms. Frasca explained these funds are utilized to support capital projects and cover operating expenses in the Department of Environmental Conservation and the Department of Transportation and Public Facilities.

Ms. Frasca also noted this reversal request includes reversal of prior year balances.

Co-Chair Green clarified this request is not unusual.

Ms. Frasca affirmed a number of these items carry forward from one year to the next.

Employment Assistance & Training (STEP)

FY 04 Appropriation: \$5,639,700

FY 04 Revenue: \$4,650,000

FY 04 Revenue Shortfall: \$989,700

Amount Swept: \$1,947,655

Minimum Reverse Amount: \$0

Fall 2003 Potential Sweep Balance: \$4,547,743

Since fund is a diversion of workers compensation tax monies assessed against insured and self-insured employers, reverse full amount.

Ms. Frasca remarked that funds in this sub-account are used to fund various training programs.

Workers Safety/Comp Account
FY 04 Appropriation: \$4,139,400
FY 04 Revenue: \$4,139,400
FY 04 Revenue Shortfall: \$0
Amount Swept: \$4,547,743
Minimum Reverse Amount: \$0
Fall 2003 Potential Sweep Balance: \$4,547,743
Since fund is a diversion of workers compensation tax monies assessed against insured and self-insured employers, reverse full amount.

Ms. Frasca noted this is a diversion of workers compensation contributions that are used to fund the Division of Workers Compensation, and Occupational Safety and Health programs. She assured that failure to provide reversal of these funds in FY 04 would cause no pending crisis.

Commercial Passenger Vessel Env. Compliance Fund
FY 04 Appropriation: \$706,900
FY 04 Revenue: \$706,900
FY 04 Revenue Shortfall: \$0
Amount Swept: \$1,099,965
Minimum Reverse Amount: \$706,900
Fall 2003 Potential Sweep Balance: \$393,065
Reversal of full amount will make the funding available to pay FY 05 costs and ease fund cash flow.
If Revenue not equal to Appropriation: -\$706,900 Revenue received late in year and funds FY 05

Ms. Frasca explained these funds are collected from cruise ships to address emissions and discharges. She stated that this program does not have a revenue shortfall in the current fiscal year.

JOAN BROWN, Chief Budget Analyst, Office of Management and Budget, Office of the Governor, interjected that a portion of these revenues are received at the end of the fiscal year and therefore the sweep has caused cash flow issues.

Ms. Frasca furthered that funds collected in May and June 2002 were swept into the CBR and thus unavailable for expenditure.

Tobacco Ed/Cessation Fund
FY 04 Appropriation: \$5,395,600
FY 04 Revenue: \$4,295,600
FY 04 Revenue Shortfall: \$1,100,000
Amount Swept: \$1,260,524
Minimum Reverse Amount: \$1,100,000

Fall 2003 Potential Sweep Balance: \$160,524
Reversal of full amount will make the funding available to pay
FY 05 costs and ease fund cash flow.
If Revenue not equal to Appropriation: Extra sweep supports
future appropriations.

Ms. Frasca reminded these funds represent 20 percent of the Tobacco
Settlement funds annually received by the State and utilized to
fund grants for tobacco cessation programs both within the
Department of Health and Social Services and outside organizations.

Bldg Safety Account
FY 04 Appropriation: \$1,603,700
FY 04 Revenue: \$1,508,000
FY 04 Revenue Shortfall: \$95,700
Amount Swept: \$95,700
Minimum Reverse Amount: \$92,843
Fall 2003 Potential Sweep Balance: \$0
If Revenue not equal to Appropriation: \$2,857 Small shortfall
is not a problem.

Ms. Frasca stated this sub-account is utilized to fund the
Department of Labor and Workforce Development mechanical inspection
activities. She remarked that this program has a "shortfall" of
approximately \$96,000 as a result of the sweep.

Alcohol/Drug Abuse Trtmnt/Prevention Fund
FY 04 Appropriation: \$21,400,000
FY 04 Revenue: \$15,300,000
FY 04 Revenue Shortfall: \$6,100,000
Amount Swept: \$6,191,229
Minimum Reverse Amount: \$6,100,000
Fall 2003 Potential Sweep Balance: \$91,229
Reversal of full amount will make the funding available to pay
FY 05 costs and ease fund cash flow.
If Revenue not equal to Appropriation: Extra sweep supports
future appropriations.

Ms. Frasca explained this sub-account represents 50 percent of the
proceeds of the alcoholic beverage tax and is utilized to fund
grants for nonprofit organizations as well as some capital
projects.

Co-Chair Green asked if these grants are awarded to "an agency".

Ms. Frasca replied that the alcohol tax revenues are utilized for
several purposes, including construction of the Nome Youth
Detention Facility, Medicaid expenses, suicide prevention programs,

the Department of Corrections, and the Alaska Council on Domestic Violence and Sexual Assault.

Land Disposal Income Fund

FY 04 Appropriation: \$7,818,500

FY 04 Revenue: \$4,318,500

FY 04 Revenue Shortfall: \$3,500,000

Amount Swept: \$5,048,544

Minimum Reverse Amount: \$3,500,000

Fall 2003 Potential Sweep Balance: \$1,548,554

Department requests full amount be reversed to support FY 04 and FY 05 costs, including FY 05 debt.

If Revenue not equal to Appropriation: Extra sweep supports future appropriations.

Ms. Frasca requested the full amount be reversed to make the balance available in FY 05.

AMHS Fund

FY 04 Appropriation: \$86,945,400

FY 04 Revenue: \$82,945,400

FY 04 Revenue Shortfall: \$4,000,000

Amount Swept: \$9,277,305

Minimum Reverse Amount: \$4,000,000

Fall 2003 Potential Sweep Balance: \$5,277,305

If Revenue not equal to Appropriation: The extra sweep amount is to load the fund for FY 05. FY 05 will be shortfunded without full reversal.

Ms. Frasca stated \$4 million is necessary to fund operations for the remainder of FY 04 with the balance available to support the system in FY 05.

The Office of Management and Budget recommends the following two items be reversed "to Restore Balance - So Available in FY 05".

Debt Retirement Fund

FY 04 Appropriation: \$53,820,600

FY 04 Revenue: \$61,747,107

FY 04 Revenue Shortfall: \$0

Amount Swept: \$7,926,507

Minimum Reverse Amount: \$7,926,507

Fall 2003 Potential Sweep Balance: \$0

Reversal will make the funding available to pay FY 05 debt costs.

If Revenue not equal to Appropriation: -\$7,926,507 the extra sweep amount is to load the fund for FY 05. FY 05 will be shortfunded without full reversal.

Ms. Frasca emphasized the funds are not necessary for FY 04, but rather would be needed for FY 05.

Ak Tech Voc Ed Pgm Fund (TVEP)
FY 04 Appropriation: \$4,561,500
FY 04 Revenue: \$4,561,500
FY 04 Revenue Shortfall: \$0
Amount Swept: \$913,590
Minimum Reverse Amount: \$913,590
Fall 2003 Potential Sweep Balance: \$0
Since fund is a diversion of monies that would otherwise go into the unemployment insurance trust fund, reverse full amount.
If Revenue not equal to Appropriation: -\$913,590

Ms. Frasca explained these funds are utilized for University of Alaska programs, the Kotzebue Technical Center, the Alaska Vocational Technical Center, and the Galena Project Educational Vocational Training Center.

The Office of Management and Budget categorized the following item in the handout as "Reverse to Restore Prior Year Account Balances over \$999 to Communities".

Municipal Capital Matching Grants (sum of 2 grant programs)
Amount Swept: \$2,301,844
Minimum Reverse Amount: \$2,158,525
Fall 2003 Potential Sweep Balance: \$143,319
If Revenue not equal to Appropriation: -\$2,158,525 Expenditure would require a supplemental appropriation. Potential sweep amount affects accounts less than \$1000.

Ms. Frasca noted these funds represent the balance held by a number of smaller communities in their capital matching grants accounts. She stated that reversal of this item would restore the funds to each community.

This Office of Management and Budget noted this final item as a "Policy Call".

Railbelt Energy Fund
Amount Swept: \$29,571,811
Fall 2003 Potential Sweep Balance: \$29,571,811

Ms. Frasca stated the FY 04 budget does not contain an appropriation that is dependant upon these funds; however, the

Office of Management and Budget requests the funds be reversed.

Senator Hoffman asked the purpose of reversing these funds.

Ms. Frasca responded this would restore the account to allow future legislatures to utilize the funds.

Ms. Frasca relayed that departmental managers were "resting easier" with the knowledge that the legislature was considering reversal of these accounts.

Ms. Frasca pointed out that the FY 04 budget did not contain a necessary \$120,000 appropriation to the Department of Revenue to manage the CBR. She requested these funds be appropriated.

Co-Chair Green ordered the bill HELD in Committee.

#

ADJOURNMENT

Co-Chair Lyda Green adjourned the meeting at 10:22 AM

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3 MADILYN SHORT, RILEY VON BORSTEL,
4 KJRSTEN SCHINDLER, and JAY-MARK
PASCUA,

5 Plaintiffs,

6 v.

7 GOVERNOR MICHAEL J. DUNLEAVY in his
8 official capacity, THE STATE OF ALASKA,
9 OFFICE OF MANAGEMENT AND BUDGET,
and THE STATE OF ALASKA, DEPARTMENT
OF ADMINISTRATION,

10 Defendants.

Court No.: 3AN-22-04028CI

11 **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY**
12 **JUDGMENT**

13 Upon consideration of Plaintiffs' Motion for Summary Judgment, and any
14 opposition thereto, the Motion is hereby GRANTED for all the reasons stated in the
15 Motion.

16 The court hereby declares that as a matter of law the Higher Education Investment
17 Fund is not subject to the annual sweep of funds back into the Constitutional Budget
18 Reserve, and therefore the Executive Branch Defendants are prohibited and permanently
19 enjoined from executing such action.
20

21 To the extent the Executive Branch has already transferred funds from the Higher
22 Education Investment Fund to the Constitutional Budget Reserve, they are hereby
23 ORDERED to return the funds.
24

1 This order resolves all claims in this case. Plaintiffs shall submit a proposed form
2 of final judgment.

3 **IT IS SO ORDERED.**

4
5 DATE: _____

6 Hon. Adolf Zeman
Superior Court Judge

7
8 **CERTIFICATE OF SERVICE**

9 I hereby certify that a copy of the
10 foregoing was served via email
and US Mail on January 4, 2022
on the following:

11 Cori Mills
Deputy Attorney General, Civil Division
12 Alaska Department of Law
PO Box 110300
13 Juneau, AK 99811
cori.mills@alaska.gov

14 Stacie Kraly
Civil Division Director
15 Alaska Department of Law
PO Box 110300
16 Juneau, AK 99811
stacie.kraly@alaska.gov

17 Margaret Paton-Walsh
Special Litigation Section Chief
18 Alaska Department of Law
1031 W. 4th Avenue, Suite 200
19 Anchorage, AK 99501
margaret.paton-walsh@alaska.gov

20
21 CASHION GILMORE & LINDEMUTH

22 By: s/Jennifer Witaschek
23
24
25