

**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)	Case No. 3AN-21-06737 CI
official capacity, The State of Alaska,)	
Office of Management and Budget, and)	
The State of Alaska, Department of)	
Administration,)	
)	
Defendants.)	

AFFIDAVIT OF NEIL STEININGER

STATE OF ALASKA)	
)	ss.
THIRD JUDICIAL DISTRICT)	

I, Neil Steininger, being duly sworn, state as follows:

1. I am the Director of the State of Alaska, Office of Management and Budget ("OMB"). I have held this position since January 2020. Previously, I served as the Department of Education and Early Development Administrative Services Director from June 2019 through January 2020 and before that, I was the OMB Chief Budget Analyst from October 2017 through June 2019.
2. I am familiar with the Constitutional Budget Reserve ("CBR") fund and its repayment obligation under article IX, section 17(d) of the Alaska Constitution.

3. I am also familiar with the Power Cost Equalization (PCE) Endowment fund. The PCE Endowment fund was established in 2000. The legislature has appropriated money from the CBR fund and the general fund to the PCE Endowment fund, beginning in 2000 with an appropriation of \$100 million dollars.
4. The statute creating the PCE Endowment Fund provides that it is not a dedicated fund and that it is placed in the Alaska Energy Authority (“AEA”). But the AEA has no independent authority to expend money in the PCE Endowment Fund. Instead, an appropriation from the legislature is required to expend money in the PCE Endowment Fund.
5. The legislature historically appropriated money from the PCE Endowment Fund to the Power Cost Equalization and Rural Capitalization Fund (PCE-CAP) to help offset rural power costs. However, appropriations to the PCE-CAP ended in FY 2009, and the PCE Endowment funds have since been appropriated directly to the Department of Commerce, Community, and Economic Development for the program. Since fiscal year 2017, the legislature has made appropriations from PCE to provide general financial support to communities through the community assistance program.
6. In fiscal year 2020, the Legislature also appropriated money from the PCE fund for other purposes not listed in AS 42.45.085 – appropriations to the departments of corrections, administration, health and social services, law and the court

system. The bill passed by the legislature that included those appropriations was SB 19 (Ch 3 FSSLA 2019), sections 7 and 14.

7. Over the past several years, the legislature has appropriated money from the CBR fund to the general fund in order to cover fiscal year budget deficits that have existed since fiscal year 2016, when the state's oil and gas revenues experienced a dramatic decline. Effectively, the CBR fund has served as an emergency savings account that has been tapped to cover annual deficits between state revenues and state expenditures.
8. Article IX, section 17(d) provides that once money is withdrawn from the CBR fund it must be 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." This is commonly referred to as "the sweep." But this has not taken place. Instead, the legislature each year—until 2019—passed a provision in the annual operating budget bill providing that the amounts withdrawn from general fund subaccounts and deposited in the CBR fund at the end of the fiscal year pursuant to section 17(d) are immediately appropriated out of the CBR fund and back into the general fund subaccounts. This process is commonly called the "reverse sweep." Under Article IX, section 17(c), it requires a three-quarters supermajority vote of the legislature.
9. In the first half of 2019, I was serving as the OMB Chief Budget Analyst. The initial fiscal year 2020 annual operating budget (HB 39) did not include the reverse sweep. Therefore, OMB was required to conduct a careful review of all

of the many state funds and accounts to determine what ones would be transferred—"swept"—into the CBR fund.

10. I worked on that project with my colleagues and also testified on the subject of the CBR fund reverse sweep at a legislative hearing in July 2019. OMB worked closely with the Department of Law and the Division of Finance to assess the nature of each fund to determine whether the money in each fund should be swept into the CBR fund as required by article IX, section 17(d). There is one Alaska Supreme Court case, *Hickel v. Cowper*, that interpreted the CBR amendment and the meaning of "available for appropriation" that we had available to guide our decision making.
11. I am aware that the Plaintiffs contend that there have been CBR fund sweeps in prior years, such as 2018, and that the guidelines for what funds are subject to the sweep changed in 2019. This is misleading. It is important to note that the legislature had not in 2018, or ever before since the CBR fund was created, failed to pass the reverse sweep in a budget bill for the next fiscal year. Thus, no prior year presented any threat to the continued funding of state programs because of the emptying of general fund subaccounts into the CBR fund. The 2018 and prior sweepability determinations were done primarily by Division of Finance accountants.
12. When the reverse sweep passes, the only "sweep" that occurs is an accounting event involving a reconciliation of accounts for the end of a fiscal year. This accounting exercise essentially recreates on paper an event between June 30 at

11:59pm (end of one fiscal year) and July 1 at 12:00am (beginning of next fiscal year) – with the event being the deposit of general fund account monies into the CBR fund and the immediate return of that money to the accounts they were withdrawn from.

13. Although the sweep theoretically happens at midnight on June 30, the actual accounting for the sweep must happen later in the calendar year, because it isn't possible to know what funds are available for appropriation at the end of the fiscal year until accounts have been reconciled and that takes time. The statute about effectuating the sweep (AS 37.10.420, declared unconstitutional by the Alaska Supreme Court) required the accounting to be completed and the sweep effectuated by December 16 each year. In practice, the amounts are not known until the audit of the state's annual comprehensive financial reports is completed.
14. When counteracted by the reverse sweep, the "sweep" has no real-world effect on any of the accounts and thorough review of the interpretation of applicability of the sweep serves no practical purpose. For that reason, OMB did not regularly review reporting of swept accounts in annual financial reports produced by DOF.
15. It was not until 2019 when the "reverse sweep" actually failed in the legislature that real tangible results in the form of major state programs being unfunded could have resulted from the CBR fund sweep. Because of that major event, OMB undertook a thorough review of all funds and accounts to determine which ones were subject to the CBR fund sweep under section 17(d) and the guidance provided by the *Hickel v. Cowper* case.


16. Given this unprecedented event, the legislature held hearings in July 2019 on the ramifications of the failure to pass the CBR fund “reverse sweep.” On July 12, 2019, OMB submitted to the co-chairs of the House and Senate Finance Committees a letter outlining the framework and guidelines that OMB had developed and that had been applied to each fund to determine whether it was subject to the CBR fund sweep or repayment provision, with an attached list of the funds subject to the sweep. A true and correct copy of that letter and its attached list of funds is attached hereto as **Exhibit A**.
17. Around the same time on July 10, 2019, then-Attorney General Clarkson submitted a letter to the Finance Committee co-chairs regarding the specific question of whether the Power Cost Equalization Endowment Fund was subject to the CBR fund sweep. A true and correct copy of that letter is attached hereto as **Exhibit B**.
18. I participated in a Senate Finance hearing on July 18, 2019 and testified regarding the CBR fund sweep and the process and guidelines OMB used in determining what funds were subject to the sweep or repayment provision.
19. **Exhibit C** contains a complete list of the 54 general fund subfunds that we at OMB, in consultation with the Department of Law and the Division of Finance, determined to be sweepable in 2019. The total number of funds we analyzed was 159. Attached hereto as Exhibit C is a list showing in more detail the analysis regarding the 54 funds we deemed to be sweepable, and the 105 funds we determined were not sweepable, and reasons for each of our decisions.

20. As shown on Exhibit C, we determined that the PCE Endowment fund is sweepable under section 17(d) and *Hickel v. Cowper* by applying the following series of tests:
- a. Is the fund part of the general fund? (Answer: Yes. The PCE Endowment fund is DGF (designated general fund) money. It is not part of either of the two constitutional funds—the permanent fund or the CBR.
 - b. Can the money in the PCE Endowment fund be expended without further legislative appropriation? (Answer: No. Further appropriation is necessary.)
 - c. Is the use of the fund restricted by law to some particular purpose? For example, is the fund a constitutionally permissible dedicated fund? (Answer: No.) Is the fund legally restricted by trust, bond, third parties via gift, contract, grant, federal restrictions, or otherwise? (Answer: No.)
21. In 2019, the consequences of the failure to pass the reverse sweep were ultimately avoided because the legislature passed another appropriations bill for the fiscal year that included a CBR fund reverse sweep provision (CSSB 2002, sec. 17(a)).
22. I am now the OMB director, and I testify at budget related legislative hearings including in response to questions about the CBR fund sweep. This year, the legislature again failed to pass the CBR fund reverse sweep when it enacted the fiscal year 2022 operating budget bill (HB 69). OMB is applying the same

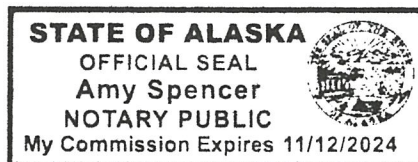
framework and guidelines that it applied in 2019 to determine which funds fall within the sweep.

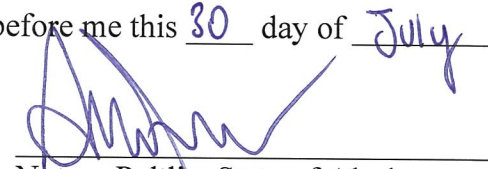
23. On March 18, 2021 I gave a presentation about the CBR Sweep and Reverse Sweep. A true and correct copy of that presentation is attached hereto as **Exhibit D.**

DATED: July 30, 2021


Neil Steininger

SUBSCRIBED and SWORN to before me this 30 day of July, 2021.




Notary Public, State of Alaska
My commission expires: 11/12/2024