

# Sweep and Reverse Sweep

Senate Finance Committee

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Presenters:

Kris Curtis, Legislative Auditor

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# Constitutional Budget Reserve Fund

## Article IX, Section 17 of the Alaska Constitution

Passed by the 16<sup>th</sup> Alaska State Legislature, HCS CSSSSJR 5 (FIN) am H (1990), as an amendment to the state constitution.

Approved by the voters 11/06/90 with 124,280 votes for, and 63,307 against the amendment.

# Article IX, Section 17(a) of the Alaska Constitution

(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.

*This subsection establishes the fund.*

## Article IX, Section 17(b) of the Alaska Constitution

(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.

*This subsection allows for an appropriation from the CBRF by a simple majority vote if the amount available for appropriation is less than the amount appropriated for the previous fiscal year.*

## Article IX, Section 17(c) of the Alaska Constitution

(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.

*This subsection allows for any appropriation from the CBRF with a supermajority vote.*

## Article IX, Section 17(d) of the Alaska Constitution

(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.

*This subsection is known as the “sweep” provision. The sweep automatically occurs; no vote is required.*

# The “Reverse Sweep”

The “reverse sweep” is an appropriation from the CBRF that returns swept funds back to the original subfund or account. The “reverse sweep” is an appropriation under art. IX, sec. 17(c), and requires a 3/4 vote to pass.

Standard “reverse sweep” appropriation language reads:

*Deposits in the budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska) for fiscal year 2019 that are made from subfunds and accounts other than the operating general fund (state accounting system fund number 1004) by operation of art. IX, sec. 17(d), Constitution of the State of Alaska, to repay appropriations from the budget reserve fund are appropriated from the budget reserve fund to the subfunds and accounts from which those funds were transferred.*

## *Hickel v. Cowper*, 874 P.2d 922 (1994) What is “available for appropriation”?

In summary, the “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. In addition, all amounts actually appropriated, whether or not they would have been considered available prior to appropriation, are available within the meaning of section 17. Illiquid assets, such as land and unexploited natural resources, are not available so long as they remain illiquid. For these reasons, trust receipts are available for appropriation, as are funds like the Railbelt energy fund and the educational facilities maintenance and construction fund, which are not available for expenditure without additional appropriations. In contrast, the oil and hazardous substance release response fund is not counted as available because the entire balance of the fund may be expended at any time without further legislative action. The availability of funds not specifically discussed in this opinion must be determined in accordance with this opinion. Finally, the permanent fund earnings reserve account must be counted as available for appropriation, because appropriations may be made from it and it is not subject to expenditure without legislative action.

## *Hickel v. Cowper*, 874 P.2d 922 (1994)

### What is subject to the sweep?

We see no reason to give “available for appropriation” a different meaning in subsection (d) than we did in subsection (b). We recognize, however, that the payback provision in section 17(d) is limited to only those funds which are “available for appropriation” *and* “in the general fund.” Thus, available amounts outside the general fund, such as the earnings reserve account, need not be deposited in the budget reserve. This additional limitation has no effect on funds which exist within the general fund.

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

Our decision today reinforces our holding in [Hickel](#) that the earnings reserve “is available for appropriation.”

## Sec. 37.10.420. Sweep and “available for appropriation” defined

(b) 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.

(c) In this section, “unrestricted revenue accruing to the general fund” or “**unreserved, undesignated general fund balance carried forward**” is money not restricted by law to a specific use that accrues to the general fund according to **accepted principles of governmental or fund accounting** adopted for the state accounting system established under AS 37.05.150 in effect on July 1, 1990.

# What is the General Fund?

- The general fund is the State's primary operating fund.
- It accounts for all public monies and revenues coming into the State treasury not specifically authorized by statute to be placed in another fund.
- There are several accounts and funds created by law that are considered a part of the general fund. These are treated as subfunds of the general fund and are reported as part of the general fund.

# How the Sweep Works

- Department of Administration, Division of Finance accountants calculate the sweep while preparing the Comprehensive Annual Financial Report (CAFR). The sweep represents unreserved, undesignated fund balance of the general fund subfunds.
- Division of Finance accountants calculate the sweep in September as the CAFR is prepared yet the amount of the sweep is posted in the financial records as of the end of the fiscal year (June 30<sup>th</sup>).
- After the CAFR is prepared (historically by the end of October), the CAFR is audited by the legislative auditor. The sweep amount is adjusted as necessary.

# How the FY 18 Sweep Worked

- At Fiscal year end (FYE) 18 there were 71 general fund subfunds (excluding the CBRF) with a fund balance.
- Of the 71 individual subfunds at FYE 18 -
  - 32 were deemed sweepable, meaning the remaining fund balance cannot be spent without further appropriation.
    - All but one of the 32 sweepable funds, Aviation Fuel Tax Account, had a remaining undesignated, unreserved fund balance available for the sweep calculation.
    - A total \$202,684,000 fund balance of the sweepable funds was reported as nonspendable or committed, meaning that, although the funds were sweepable, portions of the funds' balances were not available for sweep.
  - 39 were deemed non-sweepable as the remaining fund balance can be spent without further appropriation.
    - The \$880,313,000 fund balance total of the non-sweepable funds was reported as either nonspendable, restricted or committed.

## How the FY 18 Sweep Worked (Continued)

- FYE 18 sweep balance totaled \$431,688,000 (rounded to thousands) from 31 subfunds.
- FYE 18 sweep posted to the financial records as of June 30, 2018.
- FYE 18 sweep was reversed by Chapter 17, SLA 18, Section 29 (a) and effective as of July 1, 2018. This means that the amounts swept were returned to the funds effective the first day of FY 19.

## FYE 18 Sweep Balance by General Fund Subfund

<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		16

## 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		

# Final Sweep Take-Aways

- The first sweep occurred for FYE 1995.
- All amounts borrowed from the CBRF were repaid by the end of FY 10. The general fund did not borrow from the CBRF from FY 11 through FY 14. Borrowing commenced for FY 15 and the sweep resumed for FYE 16. The sweep was reversed every year until FY 20.
- The reverse sweep was not approved for FY 20. This means that all funds swept as of June 30, 2019 will remain in the CBRF. As of July 1, 2019 those funds will have no balance available for appropriation.
- According to AS 37.05.170, payment may not be made and obligations may not be incurred against a fund unless the Department of Administration certifies that its records disclose that there is a **sufficient unencumbered balance available in the fund**. The sweep, in effect, creates a zero available balance in these funds as of July 1, 2019.