

An Act relating to the budget reserve fund established under art. IX, sec 17 (d), Constitution of the State of Alaska; relating to money available for appropriation for purposes of applying art. IX, sec. 17, Constitution of the State of Alaska; and providing an effective date.

HB 57

Sponsor: Representative Josephson
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Sectional Analysis

- Section 1 - Uncodified language- legislative intent and findings
- Section 2 - Defines “available for appropriation.”
- Section 3 - Codifies the principle that funds found within the general fund that do not require further appropriation (or must be held separately by law) are not subject to the sweep. Lists funds that meet these requirements.
- Section 4 - Defines “general fund.”
- Section 5 - Effective Date - June 30th 2021

▼ CBR repayment provision

Article IX, Section 17(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.**”



Legislative Intent #1

“It is the intent of the legislature to create statutory definitions for these terms in alignment with both the current legal understanding of them and the reality of existing state fiscal systems.”

- A lack of clarity in statutes surrounding the mechanics of the sweep provision
- Potential adverse impacts on the availability of important fund sources
- July 2019 events
- Need consistent meaning of terms “general fund” and “available for appropriation”



Legislative Intent #2

- It is the intent of the legislature to update the section of statute defining “available for appropriation” to specifically reflect the findings set forth in *Hickel*.
 - The Alaska Supreme Court’s analysis in the *Hickel v. Cowper* decision provides a framework
 - A legislative obligation exists to implement by law Article 9 Section 17(d) of the constitution
 - 1994 passage of House Bill 58 (AS 37.10.420) aimed to do this but was found to be broadly unconstitutional
 - Supreme Court outlined general standard and invited a reexamination of this statute
 - “We also make no attempt to name and classify as “available” or “unavailable” every fund within the treasury of the State of Alaska. We leave it, in the first instance, to executive and legislative branch officials more familiar with all of the funds involved to apply the general definition we adopt today.” (*Hickel v Cowper*, 874 P. 2d 922, n. 27)
- Legislative Audit Finding No. 2019-089 of the State of Alaska FY 2019 Single Audit



Legislative Intent #3

- “It is the intent of the legislature to protect the financial security of existing programs and maintain the integrity of state financial structures to the greatest extent possible”
 - The *Hickel* ruling voiced clear opposition to disrupting the mechanics of state finance; advocated commonsense approach
 - Legislature’s view too narrow, Cowper’s view too broad
 - Revolving Loan Funds- “...the existing state programs dependent on these funds would have to be curtailed if these funds were expended on another purpose. These funds are maintained, however, because in the judgment of the legislature they serve worthwhile purposes.” (*Hickel*, 874 P. 2d at 929)



Legislative Intent #4

- “The legislature finds that appropriated funds which can be expended with no further legislative action are no longer considered available for appropriation and thus would not be included in the sweep... It is the intent of the legislature to include this principle in the codified definition of ‘available for appropriation.’ ”
 - True regardless of if the funds were given to a state agency to spend or were held in the general fund
 - *Hickel* - Article 17 did not require “counting funds already validly appropriated to a specific purpose as still ‘available’” and that monies already “validly committed by the legislature to some purpose should not be counted as available.” (*Hickel*, 874 P. 2d at 930-931)



Legislative Intent #5

- “The legislature finds that any funds that cannot be immediately expended through appropriation are not considered available for appropriation and thus are not subject to the sweep ... It is the intent of the legislature to include this principle in the codified definition of ‘available for appropriation.’ ”
 - The *Hickel* Court held that the voters, in supporting passage of the CBR resolution in 1990, were not trying to eliminate state services or liquidate state assets before funds in the CBR could be accessed (*Hickel*, 874 P. 2d at 928).
 - Categories of funds that are not immediately spendable include:
 - illiquid assets
 - revolving loan funds
 - grants to the state from private entities



Legislative Intent #6

- “The legislature finds that funds considered to be trust receipts, despite being included in the metric for calculating what is available, are to be excluded from the sweep... It is the intent of the legislature to include this principle in the codified definition of ‘available for appropriation’ and to clarify in statute the principle that trust receipts are not fully subject to the sweep provision.”
 - If actually appropriated must be included in “available for appropriation”
 - Only a portion is available according to *Hickel* - the part that would be expended consistent with application of prudent “trust principles”



Legislative Intent #7

- “The Hickel Court treated money appropriated by state corporations much the same way as trust receipts...”
 - Alaska Energy Authority is a state corporation that holds the Power Cost Equalization (PCE) endowment fund. The PCE is not subject to sweep or part of the general fund for 4 reasons-
 - 1) This fund is housed in a corporation
 - 2) PCE follows an endowment model which requires application of prudent “trust principles”
 - 3) *Hickel* says that only the money appropriated from a corporation must be counted as available for appropriation, even if a corporation had funds in excess of what it required to fulfill its purpose
 - 4) The legislature has never fully appropriated the funds and it is unlikely that it would do so, as that would defy the very purpose of the fund



Legislative Intent #8

- “The legislature finds that the earnings reserve account, as an account in the Alaska permanent fund, is located outside of the general fund and thus is not subject to the sweep provision... It is the intent of the legislature to codify fund types that exist in the state treasury separately from the general fund to eliminate all uncertainty as to what constitutes the general fund.”
 - *Hickel*- “the earnings reserve account, need not be deposited into the budget reserve.” (*Hickel*, 874 P. 2d 922, 23)



Legislative Intent #9

- “It is the intent of the legislature to define ‘general fund’ in a way that is practical, logical, and stabilizing in nature.”
 - No statutory or constitutional definition for the term “general fund” exists
 - Occurs 200+ times throughout statute
 - Lack of consistency between organizations - currently a matter of policy rather than law
 - It is common practice in other states to define ‘general fund’

What is the “General Fund”?

- There isn't consensus between state agencies
- In budgeting terms, we are used to thinking in terms of UGF, DGF, Federal and Other
 - These categories don't align with the accounts in the state treasury
- The CAFR says
 - “All public monies and revenues coming into the state treasury not specifically authorized by statute to be placed in a special fund constitute the General Fund”
 - But also notes - “Not all revenues that flow into the General Fund are available to pay for unrestricted government activities. The most notable are federal revenues, which are provided for specific purposes.”
- It is common practice in public finance to define general fund

Definition of General Fund

The primary operating fund of the state, consisting of all money paid into the state treasury that is not specifically authorized by law to be placed in a separate fund

Excludes

- funds held or managed by legally separate entities that the state is financially accountable for including funds held or managed by public corporations and the University of Alaska
- enterprise funds
- debt service funds
- special revenue funds
- the Alaska permanent fund
- internal service funds
- agency funds

Summary of
principles
from *Hickel v*
Cowper used
in defining
“available for
appropriation”

- Two main parameters:
 - “must include all funds over which the legislature has retained power to appropriate”

and
 - “which are not available to pay expenditures without further legislative appropriation”
- For trust receipts the amount appropriated by the legislature IS the amount available for appropriation
 - This category includes federal funds, funds given to the state for specific purposes by private entities AND appropriations from trust account
 - Notably “amounts appropriated by the legislature out of other funds within executive agencies for the purpose of administering these funds, under explicit statutory authority may also be treated as a type of trust receipt” (revolving loan funds)
- Monies of public corporations are treated similarly to trust receipts
- Excludes illiquid assets, funds expendable without further legislative appropriation, or funds validly appropriated

Goal in summary

HB 57 aims to enact by law section Article IX, Section 17 (d) of the Alaska Constitution thereby providing legal clarity on the sweep provision.

It does this by:

- defining 'available for appropriation' using an understanding of parameters set in *Hickel v Cowper* and thereby correcting the largely unconstitutional AS 37.10.420 (a)(1)
- defining 'general fund' in a way that reflects the actual mechanics of state finance and clarifying what fund types are excluded from the general fund
- formally addressing which funds within the general fund cannot be swept and why



Questions?