

#### **CBR Sweep Mechanism**

The CBR sweep provision was established in Article IX, Section 17 of the Alaska Constitution:

(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."

#### Reverse Sweep

- The "reverse sweep" is an appropriation from the CBR 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.
- The sweep is effective at the end of a fiscal year (June 30) and the reverse sweep is effective on the first day of the following fiscal year (July 1).

### Statute Implementing Sweep Was Found Unconstitutional

- AS 37.10.420 was intended to implement the sweep.
- The Supreme Court in *Hickel v. Cowper* found this statute unconstitutional in 1994.
- Since then, the executive branch has had to implement the sweep without statutory guidance. The list of sweepable funds has been driven by legal interpretations of *Hickel v. Cowper*.
- The legislature could pass a new statute that attempts to define which funds are sweepable, but absent this or a court case the administration's interpretation is operative.

#### How the Sweep Works

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

## Changes in Interpretation for FY19 Sweep

- Starting with the FY19 sweep, the administration expanded the scope of the sweep to include additional funds.
- Most significantly, the sweep was expanded to include the Power Cost Equalization (PCE) Fund and the Higher Education Investment Fund.
- While this added only a few new funds, it greatly increased the affected balances: in FY20, those two funds accounted for \$1.4 billion out of the \$1.5 billion swept to the CBR.

# Impact of Litigation on Sweep Interpretation

- The Alaska Federation of Natives brought a lawsuit against the administration challenging the sweepability of the PCE Fund.
- On August 11, a Superior Court ruled in favor of the plaintiffs, finding that PCE should not be subject to the sweep because, although it was available for appropriation, it was not part of the general fund.
- The Superior Court decision also indicates that other funds that are statutorily established outside the general fund should not be swept, although this is not directly ordered.
- LFD is reviewing the sweepable funds list to determine whether other funds should be reclassified, although it is up to the administration to reclassify them in the absence of further litigation.
  - Most notably, the Statutory Budget Reserve likely should not be subject to the sweep under this ruling based on statutory language that places the fund as a "separate fund in the state treasury" rather than in the general fund (see footnote 77 of the decision). This fund has long been considered sweepable.
  - The Higher Education Fund was established in the general fund and would not be affected by this ruling.

#### Impact of Sweep on the Budget

- Based on the list of funds swept in FY20 by the Division of Finance, the FY22 budget uses \$367.4 million from sweepable funds. Subtracting the PCE fund would reduce that to \$321.2 million.
- Not all funds are impacted equally, however. LFD breaks them into three categories:
  - 1. Immediate Impact: No ongoing source of revenue to support appropriations.
  - 2. Partial Impact: Ongoing source of revenue that is insufficient to support appropriations.
  - 3. Minimal/No Impact: Ongoing source of revenue fully covers appropriations.

#### Summary of Impacts by Category

| Category                                | FY21 Projected<br>Sweep Balance | Amount Used in FY22 Budget | FY22 Amount<br>Available After<br>CBR Sweep | FY22 Approp<br>Shortfall Due<br>to CBR Sweep |
|---|---------------------------------|----------------------------|---|--|
| Immediate<br>Impact                     | 416,411.4                       | 21,818.7                   | 0.0   | (21,818.7)                                   |
| Immediate Impact Pending Interpretation | 410,666.3                       | 80,659.5                   | 0.0   | (80,659.5)                                   |
| Partial Impact                          | 104,558.4                       | 168,562.8                  | 129,030.9                                   | (39,476.4)                                   |
| Minimal/No<br>Impact                    | 27,093.8                        | 50,203.5                   | 52,809.8                                    | 0.0  |
| Total                                   | 958,729.9                       | 321,244.5                  | 181,840.6                                   | (141,954.6)                                  |

#### Immediate Impact

| Fund<br>Code | Fund Name                                | FY21 Projected<br>Sweep Balance | Amount Used in FY22 Budget | FY22 Amount<br>Available After<br>CBR Sweep | FY22 Approp<br>Shortfall Due<br>to CBR Sweep |
|--------------|--|---------------------------------|----------------------------|---|--|
| 1226         | Alaska Higher<br>Education<br>Investment | 416,411.4                       | 21,818.7                   | 0.0   | (21,818.7)                                   |

#### Pending Interpretation of AFN v. State Decision

| Fund<br>Code | Fund Name                   | •         | in FY22 Budget | FY22 Amount<br>Available After<br>CBR Sweep | FY22 Approp<br>Shortfall Due to<br>CBR Sweep |
|--------------|-----------------------------|-----------|----------------|---|--|
| 1243         | Statutory Budget<br>Reserve | 410,666.3 | 80,659.5       | 0.0   | (80,659.5)                                   |

## Items Funded with Statutory Budget Reserve in FY22 Budget

- Governor vetoed \$320.0 million appropriation for Permanent Fund Dividends from the SBR, along with \$362.5 million from the general fund.
  - If the SBR is swept, this would have resulted in a PFD estimated to be \$525. If the SBR is not swept, the vetoed PFD would have been estimated to be \$1,025.
- SBR also funds \$4.15 million for School Debt Reimbursement in FY22.
- SBR was used to fund \$76.5 million of capital projects, including:
  - \$10 million for Mat-Su Borough Pavement Rehab
  - \$9 million for Houston Middle School
  - \$8.5 million for West Susitna Access
  - \$36.5 million of projects in the Department of Natural Resources, including \$10 million for firebreak construction
  - \$6.3 million of projects in other agencies

### Partial Impact

| Fund<br>Code | Fund Name   | FY21 Projected<br>Sweep Balance | Amount Used in FY22 Budget | FY22 Amount<br>Available After<br>CBR Sweep | FY22 Approp<br>Shortfall Due to<br>CBR Sweep |
|--------------|---|---------------------------------|----------------------------|---|--|
| 1052         | Oil and Hazardous Substance Release Prevention Mitigation Account | 8,981.3                         | 15,339.9                   | 13,820.0                                    | (1,519.9)                                    |
| 1054         | State Employment & Training Program                               | 2,602.5                         | 8,518.2                    |   | (442.4)                                      |
| 1153         | State Land Disposal Income Fund                                   | 4,568.4                         | 6,739.1                    | 5,000.0                                     | (1,739.1)                                    |
| 1157         | Workers Safety and Compensation<br>Administration Account         | 2,005.8                         | 9,697.3                    | 6,700.0                                     | (2,997.3)                                    |
| 1166         | Commercial Passenger Vessel Environmental Compliance Fund         | 2,239.8                         | 1,505.8                    | 100.0                                       | (1,405.8)                                    |
| 1168         | Tobacco Use Education and Cessation Fund                          | 16,580.9                        | 9,244.8                    | 6,631.0                                     | (2,613.8)                                    |
| 1172         | Building Safety Account   | 446.2                           | 2,226.4                    | 1,682.6                                     | (543.8)                                      |
| 1180         | Alcohol & Other Drug Abuse<br>Treatment & Prevention Fund         | 3,502.8                         | 21,142.5                   | 20,300.0                                    | (842.5)                                      |
| 1195         | Snow Machine Registration Receipts                                | 24.5                            | 250.0                      | 170.0                                       | (24.5)                                       |
| 1197         | Alaska Capital Income Fund  | 38,663.4                        | 49,500.0                   | 31,000.0                                    | (18,500.0)                                   |
| 1200         | Vehicle Rental Tax Receipts                                       | 7,528.6                         | 10,601.1                   | 9,700.0                                     | (901.1)                                      |
| 1203         | Workers' Compensation Benefits<br>Guaranty Fund                   | 3,565.7                         | 785.1                      | 732.3                                       | (52.8)                                       |
| 1220         | Crime Vic Comp Fund   | 1,002.7                         | 1,027.2                    | 990.6                                       | (36.6)                                       |
| 1237         | Vocational Rehabilitation Small Bus.<br>Enterprise Revolving Fd   | 322.1                           | 198.2                      | 128.6                                       | (69.6)                                       |
| 1246         | Recidivism Reduction Fund   | 6,644.4                         | 20,971.9                   | 16,000.0                                    | (4,971.9)                                    |
| 1254         | Marijuana Education and Treatment Fund                            | 5,879.4                         | 10,815.3                   | 8,000.0                                     | (2,815.3)                                    |
|              | Total   | 104,558.4                       | 168,562.8                  | 129,030.9                                   | (39,476.4)                                   |

### Minimal/No Impact

| Fund<br>Code | Fund Name  | FY21 Projected<br>Sweep Balance | Amount Used in FY22 Budget | FY22 Amount<br>Available After<br>CBR Sweep | FY22 Approp<br>Shortfall Due to<br>CBR Sweep |
|--------------|--|---------------------------------|----------------------------|---|--|
| 1012         | Railbelt Energy Fund                             | 3,445.7                         | 0.0                        | 0.0   | 0.0  |
| 1019         | State Reforestation                              | 0.2                             | 0.0                        | 0.0   | 0.0  |
| 1044         | AK Debt Retirement Fund                          | 30.5                            | 0.0                        | 0.0   | 0.0  |
| 1076         | Marine Highway System Fund                       | 0.0                             | 0.0                        | 0.0   | 0.0  |
| 1082         | Vessel Replacement Fund                          | 21,684.4                        | 0.0                        | 0.0   | 0.0  |
| 1087         | Muni CIP Match Grant Fund                        | 253.4                           | 0.0                        | 0.0   | 0.0  |
| 1088         | Uninc CIP Match Grant Fund                       | 0.0                             | 0.0                        | 0.0   | 0.0  |
| 1151         | Technical Vocational Education Program Account   | 0.0                             | 12,165.0                   | 12,921.3                                    | 0.0  |
| 1154         | Shore Fisheries Development Lease Program        | 475.9                           | 367.0                      | 367.0                                       | 0.0  |
| 1211         | Cruise Ship Gambling Tax                         | 6.9                             | 0.0                        | 0.0   | 0.0  |
| 1221         | Civil Legal Services Fund                        | 0.0                             | 311.6                      | 311.6                                       | 0.0  |
| 1248         | Alaska Comprehensive Health Insurance Fund       | 0.0                             | 0.0                        | 0.0   | 0.0  |
| 1234         | License Plates                                   | 0.0                             | 9.8                        | 9.8   | 0.0  |
| 1247         | Medicaid Monetary Recoveries                     | 0.0                             | 219.8                      | 0.0   | 0.0  |
| 1249         | Motor Fuel Tax Receipts                          | 0.0                             | 37,130.3                   | 39,200.0                                    | 0.0  |
| 3205         | Alaska Historical Commission<br>Receipts Account | 26.8                            | 0.0                        | 0.0   | 0.0  |
| 3221         | Originator Surety Fund                           | 1,170.1                         | 0.0                        | 0.0   | 0.0  |
| 3222         | Trauma Care Fund                                 | 0.0                             | 0.0                        | 0.0   | 0.0  |
| 3223         | Abandoned Vehicle Fund                           | 0.0                             | 0.0                        | 0.0   | 0.0  |
|              | Total  | 27,093.8                        | 50,203.5                   | 52,809.7                                    | 0.0  |

#### Questions?

#### **Contact Information**

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