



# ALASKA STATE LEGISLATURE

REP. MATT CLAMAN

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Rep. Harriet Drummond

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Rep. Sarah Vance

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Rep. David Eastman

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## MEMORANDUM

TO: Invited Testimony

FROM: Rep. Matt Claman, Chairman  
House Judiciary Committee

DATE: August 31, 2021

RE: Topics and Questions for House Judiciary Committee Meeting on September 1, 2021

Proposed constitutional amendments addressing financial issues raise questions about funds that are subject to the “sweep” provisions in Article IX, Section 17. The leading case applying those provisions is *Hickel v. Cowper*, 847 P.2d 922 (Alaska 1994). Most recently, the Superior Court in *Alaska Federation of Natives v. Dunleavy* ruled that the Power Cost Equalization Fund (“PCE”) was not “in the general fund” and was not sweepable under Article IX, Section 17. These two cases lead to a number of questions.

1. Are there cases other than *Hickel v. Cowper* and *AFN v. Dunleavy* that address whether particular funds are subject to sweep?
2. Has Judge Garton’s decision in *AFN v. Dunleavy* changed how the Department of Law analyzes whether or not a fund is sweepable? How?
3. The administration did not appeal *AFN v. Dunleavy*. What is the precedent of the superior court decision and how will it affect other Alaska courts considering whether funds are subject to sweep? Is the court’s discussion on page 12, footnotes 76 and 77, binding on future courts?
4. Please explain the difference, if any, between the general fund and the state treasury.
5. Please advise whether the following funds are subject to sweep and why or why not:
  - a. The Permanent Fund Earnings Reserve Account (Art. IX, Sec. 17);
  - b. Funds such as the school construction grant fund (AS 14.11.005) that are expressly created “in the general fund;”

- c. Funds such as the curriculum improvement and best practices fund (AS 14.07.182) that are “established,” but *not* “in the general fund;”
  - d. Funds such as the in-state natural gas pipeline fund (AS 31.25.100) that are established in a state corporation;
  - e. Funds such as the disaster relief fund (AS 26.23.300) that are established “in the Office of the Governor;”
  - f. Funds such as the power cost equalization endowment fund (AS 42.45.070) that are established “as established as a separate fund” of a state entity, such as the Alaska Energy Authority; and
  - g. Funds such as the (statutory) budget reserve fund (AS 37.05.540(a)) or the Servicemembers’ Group Life Insurance premium fund (AS 26.05.263) that are established as a separate fund “in the state treasury.”
6. HB 3003, recently approved by the House, appropriates dividend funds from the (statutory) budget reserve to pay the Permanent Fund dividend. What is the administration’s current position with respect to an appropriation from (statutory) budget reserve (AS 37.05.540(a))?
- a. If the SBR funds are subject to sweep, when does the sweep occur?
  - b. If the governor contends the SBR funds are subject to sweep and the legislature contends that they are not, what options are available to the legislature to resolve any dispute?