

DEPARTMENT OF REVENUE (DOR)
FY 25 Single Audit

Finding No. 2025-021

Type: Other State Issues
Impact: Noncompliance

Condition:

DOR's commissioner entered into an agreement to invest Constitutional Budget Reserve Fund (CBRF) monies without sufficient evidence that his fiduciary responsibilities had been met.

Context:

Alaska Statute 44.25.020 gives DOR's commissioner the authority to invest and manage all state funds. Pursuant to this authority, DOR's commissioner sought CBRF investment opportunities that would yield a higher return and longer investment period than typical CBRF investments. Alaska statute provides that funds can be transferred from the CBRF's main investment account, into a subaccount that may yield higher returns. However, to be eligible for transfer to the CBRF subaccount, the monies must not be needed for at least five years.

In a May 2025 memo, the Senate Finance Committee notified DOR's commissioner that it was highly likely that the legislature would need to draw from the CBRF to balance the FY 27 budget and possibly the FY 26 supplemental budget. In the memo, the Committee requested DOR's projected CBRF investment allocations. The commissioner provided the projected allocations in June of 2025 but failed to notify the Senate Finance Committee of his intention to move up to \$225 million from the CBRF's main account to the subaccount and invest accordingly.

In July 2025, the commissioner entered into a limited partnership agreement, committing \$75 million in CBRF funds that required an investment period of no less than five years; despite the Senate Finance Committee's warning that CBRF monies would need to be accessed within the next one to two fiscal years. According to DOR's chief investment officer (CIO), the investment contract was signed despite the CIO's recommendation that all CBRF monies remain in more liquid investments given the State's need to access the funds within the next five years.

DOR had established investment policies and procedures for both routine and non-routine investments to help ensure fiduciary responsibilities were met. When making the non-routine CBRF investment, the commissioner did not adhere to several of DOR's investment procedures; including:

- Seeking guidance from the appropriate investment officer/subject matter experts to select and evaluate potential investments and possible alternative investments.
- Documenting the determination that the investment opportunity was not better suited for other funding sources
- Documenting why seeking guidance from external auditors on potential concerns/disclosures was not necessary
- Disclosing the specific non-routine investments being considered to the investment advisory committee during its May quarterly State investment review meeting
- Notifying the Office of Management and Budget and the Division of Legislative Audit prior to the investment
- Informing the Senate and House Finance Committee chairs of the decision to move forward with the investment
- Updating the subaccount investment allocation in the Investment Policies and Procedures manual.

The Commissioner's failure to follow DOR's established investment procedures calls into question compliance with CBRF fiduciary responsibilities.

Cause:

DOR's commissioner stated that the non-routine long-term CBRF investment was in the best interest of the State. It is unclear why the commissioner did not follow DOR non-routine investment procedures. A lack of formal oversight of the DOR commissioner's investment functions contributed to the noted deficiencies.

Criteria:

Per AS 37.10.430(c), money in the (CBRF) subaccount shall be invested to yield higher returns than might be feasible to obtain with other money in the budget reserve fund. In establishing or modifying the investment policy for the subaccount in the budget reserve fund, the commissioner of revenue shall assume that those funds will not be needed for at least five years.

Per AS 37.10.071(c), in exercising investment, custodial, or depository powers or duties under this section, the fiduciary of a state fund shall apply the prudent investor rule and exercise the fiduciary duty in the sole financial best interest of the fund entrusted to the fiduciary. Among beneficiaries of a fund, the fiduciaries shall treat beneficiaries with impartiality.

DOR investment policy and procedures manual appendix G *Duties of Care and Loyalty and Treasury's Five-Step Process*, section on non-routine investments states that from time to time, DOR is presented with investment opportunities that fall outside the scope of its existing opportunity set. In those instances, DOR will employ the following process at the Treasury Division:

- Document the investment opportunity to include: date, person presenting opportunity, nature and detail of the investment, funds that will be invested.

- Determine if the investment opportunity is similar to existing investments and seek guidance from appropriate investment officer and/or others with knowledge of offered investment opportunity or similar existing investments.
- Determine whether the opportunity merits further scrutiny based on information presented, or on hand.
- Determine whether the opportunity is better suited for other funding sources.
- Seek a legal opinion to verify the opportunity is eligible for consideration by the Department of Revenue.
- Seek guidance from external auditors regarding potential concerns and disclosures.
- Identify and engage an impartial external expert to evaluate the opportunity.
- Seek guidance from the Investment Advisory Council.
- If the investment opportunity is judged by DOR to have merit for State of Alaska investments, DOR will notify Office of Management and Budget and Division of Legislative Audit of its intent to invest prior to making an investment.
- For investment opportunities that will be made, determine size of investment, date of funding, requirements at custodial bank, basis for valuation, notify compliance, update investment guidelines, determine investment pool and asset class, if applicable, and ensure accounting in the state accounting system is accurate, if required.
- Inform the Chairs of the Senate and House Finance Committees of any decision to move forward with an investment.
- Document process steps above. For investments made, update Blue Book or other documentation, such as financial statement disclosures.

Effect:

Lack of evidence that the commissioner met CBRF fiduciary responsibilities brings into question compliance with the commissioner’s statutory obligations and the prudent investor rule. Further, long-term investments restrict the availability of CBRF monies needed within the next few years to balance the State’s budget.

Recommendation:

DOR’s commissioner should fully comply with investment statutes and DOR procedures specifically designed to meet fiscal responsibilities under the prudent investor rule.

Views of Responsible Officials:

The Department does not dispute the findings outlined in the WilmerHale independent review report, including that the former Commissioner’s “deviations from the non-routine investment protocol, overall lack of diligence during the investment process, and other issues raise significant concerns about whether he met his statutory fiduciary duties.” However, DOR has also found that the policies and procedures are not as clear and precise as your letter seems to indicate. For example, the non-routine investment protocol is silent regarding the timing for notifying the Senate and House Finance Committees of an investment decision (in contrast to the timing requirement for notification of the Office of Management and Budget and the Division of Legislative Audit), and does not specify in detail how the commissioner should seek guidance from internal and external experts and document that advice. We only

acknowledge these ambiguities with the goal of clarifying and addressing them as part of the corrective actions.