

(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.

**Effect:**

During FY 19, Department of Natural Resources management requested additional expenditure authorization in the form of disaster funding from the Office of Management and Budget (OMB) to suppress wildfires. OMB staff approved the request, resulting in \$34.8 million of fire suppression expenditures without legislative authorization. Given that the general fund borrowed from the CBRF during FY 19, the \$34.8 million was spent from the CBRF, which appears to violate Article IX, Sections 13 and 17 of the Alaska Constitution.

**Recommendation:**

The legislature should seek legal guidance to determine whether the emergency disaster response statute AS 26.23.020 conflicts with the Alaska Constitution and take action accordingly.

**Finding No. 2019-089**

**Type:** Other State Issues  
**Impact:** Noncompliance

**Condition:**

Alaska Statute 37.10.420, which implements the constitutional requirement for the GF to repay the CBRF, was determined unconstitutional by the Alaska Supreme Court in 1994, yet the statutes were never updated.

**Context:**

The constitutional requirement for the general fund to repay the CBRF is commonly referred to as the general fund sweep. The Alaska Constitution requires the sweep be implemented by law. The legislature implemented the constitutional requirement by enacting AS 37.10.420.

In 1994, the Alaska Supreme Court, through its decision on *Hickel, et al. v. Cowper*, determined sections of AS 37.10.420 were not constitutional. Specifically, AS 37.10.420(a)(1) definition of “amount available for appropriation” failed to include several funds. Additionally, AS 37.10.420(a)(2) failed to include all appropriations made for the previous fiscal year, and, therefore, did not accurately reflect the meaning of the constitutional term. Further, because AS 37.10.420(a)(3) relied on unconstitutional sections of AS 37.10.420(a)(2), the statute was also unconstitutional. The Alaska Supreme Court also ruled that AS 37.10.420(b) excluded restricted funds within the general fund from the calculation of the amount available to pay back appropriations from the CBRF and concluded that the statute was unconstitutional.

The sweep is part of the year-end process of preparing the State's financial statements that is reviewed annually by the Division of Legislative Audit. The "sweepability" of general fund subfunds was determined, in consultation with the executive branch attorney general, at the time of the Supreme Court decision. New funds were evaluated annually as part of the annual financial audit.

**Cause:**

It is unclear why the legislature did not take action to amend AS 37.10.420 after the decision was rendered over 25 years ago.

**Criteria:**

Alaska Constitution:

Article IX – Finance and Taxation, Section 17, Budget Reserve Fund.

- (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.

Sec. 37.10.420. "Money available for appropriation" defined.

- (a) For purposes of applying art. IX, sec. 17(b), Constitution of the State of Alaska,
- (1) "the amount available for appropriation" or "funds available for appropriation" means
    - (A) the unrestricted revenue accruing to the general fund during the fiscal year;
    - (B) general fund program receipts as defined in AS 37.05.146;
    - (C) the unreserved, undesignated general fund balance carried forward from the preceding fiscal year that is not subject to the repayment obligation imposed by art. IX, sec. 17(d), Constitution of the State of Alaska; and
    - (D) the balance in the statutory budget reserve fund established in AS 37.05.540;
  - (2) "the amount appropriated for the previous fiscal year" means the amount appropriated from the
    - (A) constitutional budget reserve fund under the authority granted in art. IX, sec. 17, Constitution of the State of Alaska; and
    - (B) same revenue sources used to calculate the money available for appropriation for the current fiscal year; and
  - (3) "the amount of appropriations made in the previous calendar year for the previous fiscal year" means appropriations made from sources identified in (2) of this subsection for a fiscal year that were enacted during the calendar year that ends on December 31 of that same fiscal year.
- (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.

**Effect:**

As determined by the Alaska Supreme Court, current statutes are in conflict with the Alaska Constitution. For FY 19, OMB management and the attorney general changed the historical determination regarding which general fund subfunds were subject to the sweep. The unconstitutional statutes created confusion and uncertainty regarding how the sweep provision should be implemented for FY 19.

**Recommendation:**

The legislature should seek legal guidance regarding the constitutionality of AS 37.10.420 and take action accordingly.