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Constitutional Budget Reserve Sweep Overview

Senate Finance Committee
August 23, 2021
Legislative Finance Division

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

Pending Interpretation of AFN v. State Decision

Fund Code	Fund Name	FY21 Projected Sweep Balance	Amount Used in FY22 Budget	FY22 Amount Available After CBR Sweep	FY22 Approp Shortfall Due to CBR Sweep
1243	Statutory Budget 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 Code	Fund Name	FY21 Projected Sweep Balance	Amount Used in FY22 Budget	FY22 Amount Available After CBR Sweep	FY22 Approp Shortfall Due to 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	8,075.8	(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 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 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 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. 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 Code	Fund Name	FY21 Projected Sweep Balance	Amount Used in FY22 Budget	FY22 Amount Available After CBR Sweep	FY22 Approp Shortfall Due to 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 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?

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