

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 4, 2002

1:57 p.m.

**MEMBERS PRESENT**

Representative Norman Rokeberg, Chair  
Representative Scott Ogan, Vice Chair  
Representative Jeannette James  
Representative John Coghill  
Representative Kevin Meyer  
Representative Ethan Berkowitz  
Representative Albert Kookesh

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR SENATE JOINT RESOLUTION NO. 24(RLS)  
Proposing amendments to the Constitution of the State of Alaska  
relating to the budget reserve fund.

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 15  
Proposing amendments to the Constitution of the State of Alaska  
relating to inflation-proofing the permanent fund.

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: SJR 24

SHORT TITLE:AMEND CONSTITUTIONAL BUDGET RESERVE FUND

SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
04/09/01	1013	(S)	READ THE FIRST TIME - REFERRALS
04/09/01	1013	(S)	FIN
04/17/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/17/01		(S)	Heard & Held
04/17/01		(S)	MINUTE(FIN)

04/23/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/23/01		(S)	Moved Out of Committee
04/23/01		(S)	MINUTE(FIN)
04/23/01	1215	(S)	FIN RPT 6DP 3NR
04/23/01	1215	(S)	DP: DONLEY, KELLY, GREEN, WILKEN,
04/23/01	1215	(S)	LEMAN, WARD;
04/23/01	1215	(S)	NR: AUSTERMAN, HOFFMAN, OLSON
04/23/01	1216	(S)	FN1: (GOV)
04/30/01		(S)	RLS AT 11:50 AM FAHRENKAMP 203
04/30/01		(S)	<Bill Postponed to 5/1/01> -- Time Change --
04/30/01		(S)	RLS AT 4:45 PM FAHRENKAMP 203
04/30/01		(S)	-- Meeting Canceled --
05/01/01		(S)	RLS AT 12:15 PM FAHRENKAMP 203
05/01/01		(S)	-- Time Change --
05/01/01		(S)	MINUTE(RLS)
05/01/01	1412	(S)	READ THE SECOND TIME
05/01/01	1412	(S)	RLS CS ADOPTED UNAN CONSENT
05/01/01	1413	(S)	ADVANCED TO 3RD READING FAILED Y14 N6
05/01/01	1413	(S)	ADVANCED TO THIRD READING 5/2 CALENDAR
05/01/01	1401	(S)	RULES TO CAL W/CS 1OR 5/1 SAME TITLE
05/01/01	1401	(S)	FN1: (GOV)
05/02/01	1443	(S)	READ THE THIRD TIME CSSJR 24(RLS)
05/02/01	1444	(S)	HELD IN THIRD READING TO 5/3 CALENDAR
05/03/01	1472	(S)	HELD IN THIRD READING TO 5/4 CALENDAR
05/04/01	1503	(S)	BEFORE THE SENATE IN THIRD READING
05/04/01	1503	(S)	PASSED Y14 N6
05/04/01	1504	(S)	ELLIS NOTICE OF RECONSIDERATION
05/05/01	1571	(H)	READ THE FIRST TIME - REFERRALS
05/05/01	1571	(H)	JUD, FIN
05/05/01	1527	(S)	RECON TAKEN UP - IN THIRD READING
05/05/01	1527	(S)	PASSED ON RECONSIDERATION Y14 N6

05/05/01	1559	(S)	TRANSMITTED TO (H)
05/05/01	1559	(S)	VERSION: CSSJR 24(RLS)
10/19/01		(H)	JUD AT 11:00 AM Anch LIO Conf Rm
10/19/01		(H)	Heard & Held
10/19/01		(H)	MINUTE(JUD)
02/04/02		(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

SENATOR DAVE DONLEY  
 Alaska State Legislature  
 Capitol Building, Room 506  
 Juneau, Alaska 99801  
 POSITION STATEMENT: Presented SJR 24 on behalf of the Senate  
 Finance Committee, sponsor.

JAMES BALDWIN, Assistant Attorney General  
 Governmental Affairs Section  
 Civil Division (Juneau)  
 Department of Law (DOL)  
 PO Box 110300  
 Juneau, Alaska 99811-0300  
 POSITION STATEMENT: Presented the department's position on SJR  
 24 and responded to questions.

BRAD PIERCE, Senior Economist  
 Office of the Director  
 Office of Management & Budget (OMB)  
 Office of the Governor  
 PO Box 110020  
 Juneau, Alaska 99811-0020  
 POSITION STATEMENT: During discussion of SJR 24 responded to  
 questions.

DAVID TEAL, Legislative Fiscal Analyst  
 Legislative Finance Division  
 Alaska State Legislature  
 PO Box 113200  
 Juneau, Alaska 99811-3200  
 POSITION STATEMENT: During discussion of SJR 24 responded to  
 questions.

**ACTION NARRATIVE**

TAPE 02-9, SIDE A  
 Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:57 p.m. Representatives Rokeberg, Ogan, Coghill, and Meyer were present at the call to order. Representatives James, Berkowitz, and Kookesh arrived as the meeting was in progress.

SJR 24 - AMEND CONSTITUTIONAL BUDGET RESERVE FUND

Number 0065

CHAIR ROKEBERG announced that the committee would hear CS FOR SENATE JOINT RESOLUTION NO. 24(RLS), Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund.

Number 0073

SENATOR DAVE DONLEY, Alaska State Legislature, speaking on behalf of the Senate Finance Committee, sponsor, noted that the House Judiciary Standing Committee held a hearing on SJR 24 during the interim. To recap, he explained that SJR 24 would amend the [Alaska State] Constitution [in order] to restore the original intent of the constitutional budget reserve [fund] (CBRF) section, providing that in a year where spending was not more than the previous year, the legislature could access the constitutional budget reserve (CBR) with a simple majority vote. With a simple majority vote, the legislature could access the [CBR] for funds "to make up the difference up to the amount of last year's spending." He offered that this was the original intent, and noted that research has indicated that the voter's guide, the lieutenant governor's statement, the legislative affairs [agency's] legal statement, the proponents' statement, and the opponents' statement all said that in a year where the legislature did not develop a budget that spent more than the previous year, the legislature could access "up to that amount" if there was a revenue shortfall.

SENATOR DONLEY said that subsequent to "that," the legislature attempted to define some of the terms in the [Alaska State] Constitution, specifically "available for appropriation". He explained that a court subsequently said that the legislature's definition was not good enough and that in the court's view, "available for appropriation" meant something different than what either the legislature or the folks who developed the [CBRF] intended, and changed "it" so that now a [three-fourths] vote is needed to access the [CBRF] for virtually "any

function." He said that SJR 24 would restore the original intent as was told to the voters of Alaska in the voter's guide "when they pretty much overwhelmingly approved adding the [CBR] portion to the [Alaska State] Constitution. He noted that SJR 24 also does away with so-called "sweep" provision; "to make it work logically, you pretty much have to do away with that too."

Number 0333

SENATOR DONLEY explained that the sweep provision is a provision in the existing [CBR] section of the [Alaska State] Constitution which says that in any year "where there was not a [three-fourths] vote not to, then all funds that are available for appropriation - subject to appropriation - in any accounts that may be held by state government would be removed and put into the [CBR]." He listed accounts such as the "marine highway fund, science and technology fund, power cost equalization fund"; all those would be subject to the sweep and would be zeroed out to replace the money that was owed to the CBR, as that debt may exist from year to year. So to really make the "simple majority to access for no more than the previous year's spending" work, the sweep provision would have to be eliminated as well, he said, "or you're going to lose all those accounts."

SENATOR DONLEY said, "I think in the court's world of looking at what the words 'available for appropriation' meant, it might have been a reasonable conclusion to reach the conclusion they did." Unfortunately, he added, it wasn't what was intended, it wasn't what the voters were told they were getting when they voted for the CBR. Instead of being a tool to help enforce fiscal discipline, it turned into a tool that did just the opposite, where, unlike any American government that he is aware of, to create a budget now, a [three-fourths] vote is required, he observed. And unless a tremendous amount is going to be cut out of the [spending budget] each year, it is a very difficult situation. Regardless of whether the legal conclusion of the court was correct, it's not what the voters of Alaska were told they were getting when they voted for "this" provision, he said.

REPRESENTATIVE MEYER noted that he found it interesting that the House "passed the budget at a certain amount, and then the Senate passed a budget at a certain amount, and then somehow the number that came back to the body ended up being a much larger number." He said he was mystified how that happened and was told that it was because of the [CBR] and the requirement of getting a [three-fourths] vote. He surmised that [SJR 24]

"would certainly help in that matter." He asked when [the provisions of SJR 24] would go into effect.

Number 0609

SENATOR DONLEY explained that [the provisions of SJR 24] wouldn't go into effect until after "it" was approved by the voters and then it would apply to the subsequent fiscal year. If the legislature placed SJR 24 on the ballot [at the next election] and the voters approved it, it would be in effect for the 2004 fiscal year (FY).

REPRESENTATIVE BERKOWITZ asked: "At current rates, what's the projected amount in the CBR at that time?"

SENATOR DONLEY said it depends on who's making the projections; there's a whole series of assumptions that have to be made before any projection can be made. "First of all, you have to assume revenue - and of course that's more of an art than a science because nobody really knows what's going to happen out there in the geopolitical world." And second, he said, "you have to assume a particular level of expenditure," and while the governor has a proposed level of expenditure, that isn't necessarily the level of expenditure that the legislature may end up finally approving. With all the assumptions the Department of Revenue (DOR) is making - which, he said, he did not necessarily agree with - it is projecting a \$1.2 billion deficit in [FY] '03. He opined that many people would have a different projection of what the fiscal gap may be.

Representative BERKOWITZ said: "Regardless, the CBR will be substantially smaller than it is today, at that point."

SENATOR DONLEY offered that it is undisputed that there will be a draw on the CBR for the next fiscal year. Although the CBR is earning money each year, he added, so that offsets that to some [degree], and there may be some additional settlements come in, [though] the [DOR] has relayed that they won't be anywhere near the magnitude of the past years.

Number 0786

JAMES BALDWIN, Assistant Attorney General, Governmental Affairs Section, Civil Division (Juneau), Department of Law (DOL), said that he'd had the educational experience of representing the state - during the time when "this provision" was adopted by the voters and enacted - in the Hickel et al. v. Cowper [Alaska

Supreme Court] case, which was decided in two parts. "The first part dealt with other provisions of the constitutional budget reserve amendment, [and] the second case dealt with the meaning of the term 'available for appropriation', which I think is the reason that spawns [SJR 24]," he said.

MR. BALDWIN said that in that case, "we" attempted to define the meaning of the amendment via statute, and "we" were attempting to put forward a little bit different meaning from what is being put forward in [SJR 24], though a similar idea. "We" were trying to limit the meaning of "available for appropriation" to meaning the amount of the unrestricted general fund (GF) that was available for appropriation, and that was done in the form of a statute, he said. He said that [the DOL] took that statute to the [Alaska] Supreme Court and argued that it should be given great weight in interpreting the [Alaska State] Constitution. The court did not agree with that interpretation, however; he noted that in putting that interpretation forward at that time, [the DOL] and the legislature were convinced that it was the meaning intended for the [Alaska State] Constitution.

MR. BALDWIN remarked that those statutes are still on the books although they've been stricken, in part, by the court. Those appear at "AS 37.10, approximately 430, I believe, is where they begin in the statutes," he said. "They" are slightly different than what is being proposed via SJR 24, he said, pointing out that one of the aspects in which "they" are different is that what that statute sought to do is to say that the amount available for appropriation means only amounts in the unrestricted (GF), whereas [SJR 24] indicates that when "you take money from the budget reserve fund (BRF), it may only be used to fund appropriations that are funded by the legislature out of the unrestricted [GF]." That's a different twist being put to it than what was originally put forward in 1994 and 1995, when this litigation began, he noted.

MR. BALDWIN said that the effect of this change in approach could have some unintended results; the effect could be that "if you could only expend money on unrestricted general-fund funded appropriations," it may be that the legislature would not be able to apply - using this provision - amounts for what would be something funded by program receipts or some other funding source. "If that's your intent, fine; if it's not your intent, you can understand that this would work in a way that would be contrary to that intent," he added. He remarked that the other thing he worries about with "this" approach is that now "we have general fund appropriations, we have designated program-receipts

appropriations, and we have general fund program-receipts appropriations, and some of us tend to think of them all as being general fund appropriations." With the ability to define "unrestricted general fund" by statute, he added, it might be possible to effectively dedicate "some of these other funding sources," and that may not be something that the legislature wants to do.

Number 1078

MR. BALDWIN said: "If that's something that you want to do, then keep in mind that this opens the door for that; if it's something you don't want to do, then I would say, 'Look very hard at that language and find some way to protect against that.'" He said that the final legal point he wanted to make regarding [SJR 24] is that the so-called sweep provision has been remedied every year by something that is euphemistically referred to as the "roundtrip appropriation" - meaning that the legislature replaces the money that would be swept, in an offsetting appropriation. The problem that's left in "this section," he noted, is that over the years, an on-the-books type of liability has been built up that is a substantial sum of money and is reported in the state financial report, which is considered by "Wall Street and the other financial institutions that we do business with."

MR. BALDWIN opined that what "this provision" does is good: it gets rid of the sweep provision, and Senator Donley is to be commended for his purpose in that regard. He added, however, that the way "this" is worded, because constitutional amendments are considered to be prospective only - they operate from "this day forward" - it doesn't answer what's happens to that liability that has built up. Therefore, he opined, it would be a valuable provision to have, in an "amendment like this," something that says that the past indebtedness is forgiven or dealt with in some way, so that there is no question about it.

REPRESENTATIVE OGAN asked Mr. Baldwin to clarify his concerns regarding the creation of dedicated funds. He asked: "If, in your opinion, it does that, does that not put tension in the [Alaska State] Constitution with respect to the ban on dedicated funds - except for ones that were in place during statehood?"

Number 1187

MR. BALDWIN offered that it is "by implication that causes my worry." He said that the language that he is looking at is on

[page 1] line 16, where it says that the legislature can define the meaning of "unrestricted general fund" by law. He also opined that on [page 1] lines 8 and 9, [SJR 24] says that amounts taken from the [BRF] by a majority vote can be used only to fund unrestricted [GF] appropriations. "Right now, in Title 37, there are things known as designated program receipts, and then there's also a category known as general fund program receipts," he said. As an attorney approaching this problem, he said he looks at that all as general fund dollars, surmising that the legislature, "in its heart of hearts," does too.

MR. BALDWIN noted, however, that over time, fences have been built around some of these funding sources that in people's minds - not in the law - have attained the status of being almost de facto dedications of those revenue sources. He said:

I fear that with the ability - in the [Alaska State] Constitution - to be able to point to a constitutional power to define what is known as unrestricted general fund, that that power could be used to make these barriers around these other funding sources have the strength of constitutional significance.

REPRESENTATIVE OGAN said that in his heart of hearts he has had problems in the past with program receipts and "the various things that we do" because he thinks it is a de facto way of creating a dedicated fund [that bypasses] the intent of the [Alaska State] Constitution. So if [SJR 24] passed and that issue was ever raised in court, "do you think ... that maybe it would cause the legislature to disband that practice and make everything GF, or do you think it might ... [result in] further exacerbating the problem with the ... dedicated fund," he asked.

MR. BALDWIN opined that if [SJR 24] is adopted, it will heighten the distinctions that can be made between GF and program receipts, and that it would further exacerbate the problem; "I think it's a natural consequence of it."

REPRESENTATIVE OGAN restated his question regarding tension in the [Alaska State] Constitution between the "non-dedicated fund section and this section."

Number 1353

MR. BALDWIN opined that it would introduce some uncertainty; "if that's tension, in your mind, then I think its possible."

REPRESENTATIVE OGAN asked: "Does not, when you amend one section of the [Alaska State] Constitution, by implementing that section, it actually [affect] other sections by the simple fact that it's there?" For example, "the limited entry [section] affects [the] no-exclusive-fisheries section, ... because while the constitution says there is no exclusive fishery, in another section of the constitution we said there is." He asked Mr. Baldwin to expand on his assessment of what [SJR 24] might do.

MR. BALDWIN said that in his opinion, the court will try very hard to harmonize the provisions that are in the [Alaska State] Constitution, to the extent that it can.

REPRESENTATIVE BERKOWITZ said that [SJR 24] is touted as being a way of reducing spending, "but it seems to me that it's a way of accelerating spending because it allows access to the CBR with a simple majority [vote] as opposed to a [three-fourths] vote." He noted that in his experience, the [three-fourths-vote requirement] has been "a fairly effective brake on spending." He offered:

Hypothetically, next year, there's a majority in power which is inclined to spend more money than the minority, ... and yet next year it's fairly certain that we're going to need CBR monies. Isn't the failure to require a [three-fourths] vote -- doesn't it accelerate the spending of money?

MR. BALDWIN said he did not think he could answer that.

Number 1465

BRAD PIERCE, Senior Economist, Office of the Director, Office of Management & Budget (OMB), Office of the Governor, said he didn't know.

CHAIR ROKEBERG said that the problem with the [three-fourths] vote is that it "depends on which perspective the power that had the majority was in, in terms of their proclivities for spending or reducing budgetary monies."

REPRESENTATIVE BERKOWITZ remarked:

Senator Donley has widely published what he claims is a \$150 million extra money added to the budget last year because of CBR negotiations; I've never seen any evidence of that. I negotiated on it; that was

clearly not part of our package. I think if we're going to change the [Alaska State] Constitution based on a faulty premise, we ought to tread carefully.

CHAIR ROKEBERG mentioned that he thinks it is very clear that historically, there have been increases in the budget.

REPRESENTATIVE BERKOWITZ stated that Senator Donley claims that last year's legislation regarding "breast cancer coverage" was a CBR item, whereas he, Representative Berkowitz, thought the entire House of Representatives voted for that legislation. He remarked that debate on [Senator Donley's claims] is pertinent because at issue is whether to change the [Alaska State] Constitution.

MR. PIERCE, referring to SJR 24, remarked: "We've seen proposals like this in the past that the administration has not opposed; this one has a few more moving parts to it, though, than those we've seen previously." That's cause for concern regarding potential mischief down the road, he added. Every year when the spring revenue forecast comes out, he said, he is usually asked to make the calculation of whether a [three-fourths] vote will be required to access the CBR. What [the OMB] does is compare the amount appropriated in the previous calendar year so that "supplementals" from the previous year are included, and that would include money appropriated from the earnings reserve account of the permanent fund for inflation-proofing and dividends. Then, in calculating what is available for appropriation in the current year - or the prospective year - the net income from the permanent fund is included in that calculation, [as well as] the balance in the earnings reserve account (ERA).

Number 1624

MR. PIERCE said:

Because of the balance in the earnings reserve account, that's usually why a [three-fourths] vote is required - because you have more money available for appropriation in the current year than you ... appropriated in the previous calendar year.

CHAIR ROKEBERG said: "Because the earnings reserve was available for appropriation."

MR. PIERCE said: "Because the earnings reserve is available for appropriation, and that's exactly what the court did; they put the crosshairs square on the earnings reserve account in their decision."

CHAIR ROKEBERG said: "If only the rest of the public in the state would understand that. That the legislature's had the ability to appropriate from the earnings reserve from the get go but really never has."

MR. PIERCE said:

That's the concern here is that if we're saying with this amendment that that income of the permanent fund is excluded from this calculation - well, what about the balance in the earnings reserve account? The court clearly thought that that should be front and center, and so I'm not quite sure what the intent is here with the earnings - ERA - balance, but it's an issue and it's going to be, probably, the cornerstone of any fiscal plan ... that we come up with in the future, here. So that's just one concern here that I think we should clarify before ... proceeding with something as serious as a constitutional amendment....

The other [concern], ... that [Mr. Baldwin] already talked about somewhat, is the "unrestricted general fund revenue versus other funds" distinction. In budgeting, we move stuff back and forth quite often between general fund and other funds. Sometimes it's ... tobacco settlement revenues become other funds, when they started out as general funds, because we've dedicated - or we've set aside - the money for debt service to build schools and so forth. Sometimes it's one-time monies that are other funds that we replace with general funds.

Number 1760

MR. PIERCE:

And this flexibility that we have to do this - it benefits everybody. It benefits the administration in trying to build a budget, it benefits the legislature in trying to move money around and come out with a budget in the end. And so I think that when you start drawing these lines, like [Mr. Baldwin] referred to,

of unrestricted general fund and [that] the CBR draw can only be applied to that part of the budget - well ... that might make trouble down the road for other legislatures. I'm sure that the law of unintended consequences here will ... drive OMB and [Legislative Finance Division] crazy down the future, and it's very likely that we'll have to go through all kinds of gyrations to spend this money legally. And it's just a complication, I think, that concerns me....

And finally, [there's] the issue that [Mr. Baldwin] referred to about the bookkeeping entry on the books. There's \$3.8 billion that we owe the CBR right now, and every time we go to Wall Street, that shows up and we have to explain why it really isn't a debt; it's only a debt that we owe ourselves and doesn't mean any thing in a fiscal sense. So, if we're going to go to the trouble of amending the constitution here, then maybe we ought to get rid of that entry on our books.

REPRESENTATIVE OGAN remarked: "Assuming we spend all the CBR, which is probably going to happen in the next couple of years, it's kind of a moot point anyway, right?" "We're not going to get anymore settlements that I'm aware of," he added. So wouldn't it be a simpler approach to avoid all these gyrations by repealing "this whole provision" of the Alaska State Constitution, he asked. Other than California, he noted, Alaska is the only state, that he is aware of, that requires more than a simple majority vote; "it seems to me [that] if we just repeal that whole section we'd have a simple majority budget, and that'd be the end of it."

MR. PIERCE said he has never given the concept of repealing the CBR provision] any thought; he has always "just been trying to deal with the complications of the thing."

Number 1886

REPRESENTATIVE JAMES, after noting that she was not a legislator "when this passed," recounted that she voted in favor of a budget reserve account. She said that she was sold on the concept because Alaska had the potential of receiving a lot of windfalls and there was a general attitude that windfalls generally just get spent. And so with the budget reserve account, any windfalls could be set aside "to help us out of the difficult times." She noted that she was a legislator when "we first started to implement this" provision, and there was debate

about "what it really meant." She said that when she voted for this [provision], it was her understanding that it meant that "if we had less money this year than we had the previous year, ... we could spend up to that amount of money with a simple majority vote, and if we wanted to spend more money than we did the year before, we had to have a [three-fourths] vote."

REPRESENTATIVE JAMES said, "That's what I voted for; I thought that's a good idea because that way, if we've got some things we need to spend money for, in order to ... do it, we'd have go to a [three-fourths] vote." The language, however, was not sufficient, and the net result of the court decision was that the permanent fund earnings were considered available for appropriation when "it was whether or not we needed a [three-fourths] vote, but when it came to the sweep of moving everything ... back in to pay it back, it's not." So it really has been kind of a cobbled up mess of things, she opined. She mentioned that [at one point] she had a bill to repeal that constitutional provision, so perhaps it would be better to just repeal it; "we don't really have any of those windfalls coming, so the whole purpose of it [has] gone away." She added, "We wouldn't have this debt hanging over us, because we don't get rid of that debt until we get rid of this [CBR]."

CHAIR ROKEBERG said that's a policy call.

MR. PIERCE noted that he could not speak for the governor on that issue.

CHAIR ROKEBERG asked: "Mr. Baldwin, you brought forward the question of the definition and the problems about using unrestricted general fund as -- is that currently defined in statute?"

MR. BALDWIN indicated uncertainty on that point.

Number 2023

DAVID TEAL, Legislative Fiscal Analyst, Legislative Finance Division, Alaska State Legislature, answered: "Yes, at [AS] 37.05.146."

MR. BALDWIN pointed out that [AS 37.05.146] is the statute that defines the designated program receipts. In [AS] 37.10.430, he added, is where "we" were attempting to define it during the Hickel Administration - define the terms "available for appropriation"; he noted that he'd testified earlier that there

was a slightly different approach taken regarding how the operation of the BRF amendment is defined.

CHAIR ROKEBERG said he appreciates Mr. Baldwin's concern "about the problematic," but added that [SJR 24] allows the legislature to establish the definition via statute if there is confusion regarding implementation.

MR. BALDWIN acknowledged that that does solve the problem "we" ran into the first time around, where the court said that the legislature didn't quite get there in attempting to put forward an interpretation that would carry the day. He said that what he is trying to relay is that the interpretation that was put forward at that time is different in some important respects than the interpretation that is put forward [via SJR 24]. There was nothing in that approach, taken back then, about limiting what could be spent - what kind of appropriations "you could support with the [CBRF] balance ... being freed up by the majority vote"; that's a new concept here, he added.

MR. BALDWIN noted that "the way it was gone at," at that particular time, was to define the term "the amount available for appropriation" to only refer to unrestricted general fund sources as being available for appropriation; "we were trying to narrow it and limit it just to those kinds of sources." He added that that's where "we" got into getting crossed up with the court, where the court said, "No, the language should be interpreted broader to include not only unrestricted general fund sources, but also permanent fund sources and other 'general fund group fund' sources." And so those kinds of things were all added into the mix, and then the equation became hard to meet in order to provide for majority-vote access to the [CBRF].

REPRESENTATIVE BERKOWITZ asked Mr. Baldwin if he had "suggested language for that proposed amendment."

Number 2161

MR. BALDWIN said: "No, I don't, but if it's the desire of the committee, we could help you with that." He added that with regard to [Article IX, Section 17(d)], there are a couple of approaches that could be taken.

SENATOR DONLEY remarked that a question raised by the press is: "If you're trying to create something that helps with fiscal discipline, wouldn't this backfire if ... a fiscally conservative group was in the minority; wouldn't you want to

maintain that authority?" He said that his response to that question is, "No, it doesn't do that, because it only runs one way." The original intent was: "Before you could access with a simple majority, you had to be exercising fiscal discipline and not spend more than the previous year." So by going back to that, he offered, it actually does just the opposite of giving up the authority of a fiscally disciplined minority; it would say that the majority has to impose fiscal discipline before it would be able to use a simple majority [vote] to access this.

SENATOR DONLEY noted that language in Section 1(b) of SJR 24 specifies that the definitions used therein apply to that subsection. He said that the intent of using such language is to ensure that those definitions do not spill over to any other section of the [Alaska State] Constitution; the definitions are intended to only deal with the CBR in that subsection. He opined that such language is "crystal clear" though if the legislature so chooses, a letter of intent could be added. He noted that he would be willing to entertain any suggestions from the DOL, and would check with the drafter to see whether any other clarifying language was needed to prevent any spill over.

Number 2229

SENATOR DONLEY said that another question that has been raised is: "What has been the cost of the CBR vote to the budget process, getting to the [three-fourths] requirement." He said:

This is a very complex issue; this is not a simple issue by any means, and it's become more complex. Obviously, it's been the subject of legislation that was overturned by the [Alaska] Supreme Court. This is not simple business here. So in trying to convey to the public this issue and why it may be important, we've tried to do our best to balance between understandability and complexity - you know, the full details. One of the standards that we tried to find - to try to [quantify], somehow, what kind of an impact this has - was to go back and look at what floor amendments were proposed by the minority in the House and the Senate that did not pass, where subsequently that money was placed within the final operating budget document. And those were the quantities that the Representative referred to.

We've tried to clarify that that was what we did, and ... there's a good argument that maybe those things

would have been done anyway, because you can see a pattern over the four or five years. You go back five or six years, it starts about \$5 million, and then it grows up to about \$150 million last year. Now, would some of that money been included anyway in a final gasp to get some sort of consensus on the budget? Possibly. But even if you were [to] discount it by 50 percent - those numbers - you'd still have a very, very significant number, even if you discount it by 75 percent, you'd have a very, very significant number given the budget situation we're in.

So this was just an attempt to quantify what the impact's been, and to make that attempt you got to put some parameters on it. So, with full acknowledgement that ... those numbers may vary, we did the best we could to try to not overlap and ... say, "Oh, there were two motions here," and try to use apples and apples as much as possible. But I recognize ... it's a speculative number, and by its very nature, it's going to be, because that's the political process. So I recognize that but I would suggest that even if ... you discount it, which ... could be fair, it's still going to be a significant number and in no way would it go the other direction.

SENATOR DONLEY continued:

[Mr. Teal and I] spent quite a bit of time this summer examining this question of the ongoing debt - the liability that was owed to the constitutional budget reserve. ... It was our impression that this was good the way it was because as we vote year to year, we're eliminating that ongoing debt.

Number 2420

MR. TEAL said:

We did discuss that issue with Legal [and Research] Services [Division]; the final answer was that once [subsection] (d) is gone, then all the legislature needs to do is appropriate the \$3.8 billion from the general fund into the constitutional budget reserve, and the debt will be met - the liability will be met - and then the money is simply drawn out again. So it's the same kind of roundtrip issue; we do owe ourselves,

and it's simply removing it from the books. It would require a [three-fourths] vote to do that.

CHAIR ROKEBERG asked: "What if we didn't have the [\$3.8 billion]?"

MR. TEAL said: "We don't."

CHAIR ROKEBERG asked: "Wouldn't that cause a slight accounting problem if we try to sweep and balance?"

MR. TEAL replied: "Well, I suppose it does but no more of an accounting problem than we have now with the CBR vanishing." "All of these definitions are difficult," he added, and if the money is appropriated, then "we don't have it ... - we don't have any cash - but we're simply crossing liability off the books by making that appropriation, because we'd grab it from the place that we just paid it to."

TAPE 02-9, SIDE B  
Number 2478

REPRESENTATIVE BERKOWITZ commented that it sounds to him as though Senator Donley is retreating a little bit from the assertions he made in "this magazine that was passed out, where you explicitly said the cost [of] this [provision to] access the CBR with a [three-fourths] supermajority vote to balance the budget was nearly \$150 million, period." "No caveats, no qualifications, nothing," he added, asking, "Is this statement accurate or inaccurate?"

SENATOR DONLEY replied: "I believe ... it's accurate; I think that's what it actually costs, using that measure that we utilized." "Now, I believe [there's room] for disagreement there - reasonable, honest disagreement - but I do believe - no question - that it cost more this year than it had the year before, and ... that it's gotten more expensive," he added. He opined that some way to quantify it has to be figured out, and that "that's" a reasonable way to quantify it given the parameters being presented.

REPRESENTATIVE BERKOWITZ said to Senator Donley:

It's hard for me to reconcile that statement; ... you're taking credit on the first page for the funding you criticize us for leveraging on the second page, and it's got to be one or the other - it can't be

both. You either take credit for increasing the budget or you opposed us trying to increase the budget. Which one is it?

CHAIR ROKEBERG noted that the document Representative Berkowitz is referring to is not before the committee.

SENATOR DONLEY said that he thinks there is no question that the CBR vote has inflated the budget over the years.

REPRESENTATIVE JAMES asked: "Senator Donley, how many savings accounts do you think we need to have?" She said she thinks there should be a reserve account somewhere, but questions whether more than one is needed.

SENATOR DONLEY said it would depend on how they're structured. He offered:

If you had one big savings account with different criteria for accessing under different circumstances, that might work. If you've got single [criterion] for accessing a particular account, maybe you need more than one account for dealing with different types of situations. Some people would contend that there's funds out there that could be considered savings [accounts] that we normally - ... the majority [of] ... bipartisan legislators - wouldn't necessarily consider to be savings accounts because they kind of feel those are off limits.

Number 2359

REPRESENTATIVE JAMES said that at the time that she voted on this issue, she thought it was a good idea for "these windfalls" to be set aside for some time when there was desperate need to access the money. With regard to the [three-fourths] vote that was mentioned at that time, she indicated she thought that surely if it was a valid reason to use the money, the legislature could get a [three-fourths] vote because it would be for an emergency of some sort. She said she thought, further, that if the money is used, it should be paid back. She said that it bothers her a lot that now "we're talking about not paying it back" but still keeping the account.

REPRESENTATIVE JAMES said that she has generally thought that "we" should just do away with the CBR, period, and put the money somewhere else. She remarked that according to her

understanding of [SJR 24], it seems to her like "your still wanting another tool, here, to not use any money from our savings account without having more than a majority vote," and then only up to the amount that was spent in the prior year. "Is that the purpose of this," she asked Senator Donley, or had he given thought to "any other methodology" without having an account that the legislature is required to pay back.

SENATOR DONLEY opined that Representative James's analysis of what people were told and what they thought they were voting for is "absolutely correct." He continued:

The members that are still here, that were in the House at that time, that were the actual sponsors of that, confirm that; it was intended to be a tool for fiscal discipline and also as a fiscal shock absorber, so to speak, that could be utilized when necessary. And while it's worked very well, I think, as a fiscal shock absorber - a savings account ... to be used when it's needed - it hasn't worked, as it was intended, as a tool for fiscal discipline, because of the court's definition of "available for appropriation."

So that was one reason why I didn't support just doing away with it, because it's worked well ... to balance out the high and the low years. And goodness knows, we have this challenge here, more than any other state in the nation, since we're so dependent on [the] world price of oil for our revenue from year to year. And so I think it was a very wise choice, by the voters, to have this shock absorber in place to deal with those radical sweeps in revenue from year to year, but it came with this unintended consequence of sort of a reversal of how it was originally intended as far as the access provision. So I do think that there's a role for a savings account like that - to balance things out - and I think it's worked well to do that; it just hasn't worked as intended on the other end, as a tool for fiscal discipline.

Number 2231

REPRESENTATIVE JAMES asked: When it is determined that federal funds, income of the permanent fund, or the budget reserve account may not be considered available for appropriation, what would be the net result of that as far as fiscal discipline is concerned?

SENATOR DONLEY said that for determining the amounts that would be available for appropriation, first of all, "we" are trying to exclude funds that didn't logically fit in that category such as federal funds that are coming in for other sources. "We" don't have any control over those and most of the time they are earmarked for specific things so there is not the same sort of flexibility as there is with general funds. With regard to the income of the permanent fund, traditionally it is used for other programs such as inflation-proofing and the dividend program, so "we" felt it was appropriate to remove that income from consideration.

REPRESENTATIVE JAMES said:

If we don't count them, and if we used some of the earnings of the permanent fund in one year and the next year it's not considered again, then that's the problem that I have. In other words, we're going to look at last year's budget and figure out how much we spent without these monies, and if we don't have that much money, we can do it. It seems to me like if we use some earnings of the permanent fund the next year and you reduce that whole amount and we don't have that much money without using earnings of the permanent fund, we can't go in there. Am I misreading something?

SENATOR DONLEY said he would like some time to follow out that line of reasoning.

Number 2128

CHAIR ROKEBERG noted that SJR 24 would be held over because he has some concern about "what did you call it, the 17(d), or the \$3.8 billion clarity; we want to make sure that we have that included."

SENATOR DONLEY said he thinks that is a reasonable suggestion: to make it clear one way or the other whether that debt still exists. It was always just an accounting tool because, in reality, each year "we" had removed the liability for paying that debt. Also, the accounts that are out there that are subject to the sweep "aren't that much money."

CHAIR ROKEBERG said: "It's a fiction and a phantom but if the financial community recognizes it, then we have to deal with it."

REPRESENTATIVE OGAN said:

I'm always concerned when we load up the [Alaska State] Constitution with statutory language that the public can't understand. I mean, I had to read it a couple of times - I think I understand it, ... and I do this for a living ... at least part of the time.... So I'm not sure that the average person is going to be able to read this and really understand what [he/she is] voting on. And if the average person can't read it, that means the lawyers can read what they want into it....

I want to talk a little bit about the CBR process and what the net result to public policy [is].... We go through this whole dog-and-pony show on budget subcommittee hearings and then the subcommittee chairman come forth, and then ... we have the budget process in the finance committees, and then we go out on the floor and there's a million amendments, and at the end of the day - at the end of session - all that just kind of goes out the window. It's really window dressing, ... and what happens is "let's make a deal behind closed doors." And something that the public can't see on Gavel to Gavel ... [is] who's going in and out of what office and figuring out what deals are being made.

And the only reason we're doing that is because of the CBR, and I think just having that leverage by minority - and I've used it too as [part of a] minority caucus ... for different gain ... - I don't think is good public policy. That's why I appreciate what you're trying to do here. But I just think it would be better if we just got rid of the whole doggone thing, ... I really do, just because we're not getting good government when some super minority can leverage somebody else to get their way for schools or for whatever they've got to have to buy the vote.

Number 1942

REPRESENTATIVE KOOKESH [brought up] a point of order: "I don't see what the rhetoric here is going to get us."

CHAIR ROKEBERG acknowledged that Representative Ogan was speaking a little bit off the subject with his debate. He mentioned that if the legislature were to adopt an endowment type of [account], it wouldn't be readily accessible as a "shock absorber cushion" if there were an enormous swing in [Alaska's] "cash flow position." He also mentioned that the "so-called rainy day content" of the CBR does allow for a budgetary shock absorber if there is a significant swing in revenues and expenditures. He said, "What we have now is two [accounts]: we have the CBR and we have the earnings reserve. So if we ever were to change any of that, you could make the argument that something has to be there." He reminded members that the legislature has a constitutional mandate to balance the budget every year.

SENATOR DONLEY said that with such a high threshold of [three-fourths], "I think you do bear a real risk that small interest groups can form within the legislature to prevent ever getting to that level." Now, as time's gone by, he added, groups have become more and more sophisticated [in] working around the [three-fourths] vote; [in the] last several years "we've" seen other groups, not just the majority and the minority, develop on this issue. As that gets more and more complex and more and more of those groups form, he opined, it's going to become virtually impossible for enough agreement to form to get a [three-fourths] vote, and there are some serious downsides to not being able to achieve that.

SENATOR DONLEY said number one, the state would have a cash flow problem; "you" certainly wouldn't have enough to go through the next fiscal year without access to the CBR. Number two, the sweep would occur. So in the interest of the citizens of the state, setting this [three-fourths] threshold is just not good public policy, he opined.

Number 1819

REPRESENTATIVE JAMES pointed out:

The governor can veto the budget and we have to have [three-fourths] to override the [veto]; so there is that there. And historically, when you [raise the] requirement - even from two-thirds to [three-fourths] on any issue - what you do is you empower the

minority, and whether that's a good idea or not is a separate issue.... So I agree with your statement that it can be very cumbersome and [may] not necessarily get the best interest of the majority of the folks met.

REPRESENTATIVE OGAN said: "I've overheard members of the fiscal planning caucus saying that they're going to withhold their CBR vote if they don't get taxes, so ... these are the kind of things that get in the mix with this well-intended but troublesome provision."

CHAIR ROKEBERG announced that SJR 24 would be held over.

**ADJOURNMENT**

Number 1741

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.