

HOUSE FINANCE COMMITTEE
FIRST SPECIAL SESSION
May 20, 2019
1:30 p.m.

[1:30:04 PM](#)

CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 1:30 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Tammie Wilson, Co-Chair
Representative Jennifer Johnston, Vice-Chair
Representative Dan Ortiz, Vice-Chair
Representative Andy Josephson
Representative Gary Knopp
Representative Bart LeBon
Representative Kelly Merrick
Representative Colleen Sullivan-Leonard
Representative Cathy Tilton

MEMBERS ABSENT

Representative Ben Carpenter

ALSO PRESENT

Meghan Wallace, Director, Legislative Legal Services, Alaska State Legislature; Heidi Teshner, Administrative Services Director, Department of Education and Early Development, Office of Management and Budget; Lacey Sanders, Budget Director, Office of Management and Budget; Cori Mills, Special Assistant, Office of the Attorney General, Department of Law.

SUMMARY

HB 1001 APPROP: 2020 EDUCATION FUNDING/REPEAL

HB 1001 was HEARD and HELD in committee for further consideration.

#hb1001

HOUSE BILL NO. 1001

"An Act making appropriations for public education and transportation of students; repealing appropriations; and providing for an effective date."

1:30:36 PM

MEGHAN WALLACE, DIRECTOR, LEGISLATIVE LEGAL SERVICES, ALASKA STATE LEGISLATURE, discussed the question of the legality of forward funding education in 2018 for FY 20. She communicated that the opinion of Legislative Legal Services was that the bill was unnecessary. She indicated that in 2018 the legislature passed HB 287-Approp: Pupil Transportation; Education, which fully funded kindergarten through grade 12 (K-12) education as well a one-time appropriation of \$30 million for FY 2020. She spoke to the governor's proposal to repeal the forward funding and appropriate new FY 20 funding in HB 1001. Legal Services opinion was that the HB 287 appropriations were binding by law and the governor would be constitutionally required to execute the appropriations. She had reviewed the attorney general's (AG) opinion regarding the forward funding and reiterated that the appropriations in HB 287 were valid and would withstand a constitutional challenge. She remarked that the legislature had a "long" history of forward funding education through a variety of mechanisms and had a "strong legislative history" for the reasoning behind using forward funding especially for education. She emphasized that funding education was constitutionally mandated.

Co-Chair Wilson informed the committee that certain topics could not be discussed in case the issue ended up in court. Ms. Wallace would determine whether it was appropriate to answer a question.

Representative Knopp asked about the attorney general's opinion related to the constitutionality of the appropriation. Ms. Wallace answered that the AG highlighted several reasons why he challenged the validity of the 2018 appropriation. She ascertained that the main issue was whether the forward funding violated the prohibition against dedicating revenues. In addition, the AG advanced other arguments with respect to the impacts on the governor's annual budgeting requirements, veto power, and whether it was consistent with the Executive Budget Act.

Co-Chair Wilson interjected that representatives from the Attorney General Clarkson's office would testify next.

Representative Knopp referenced the prohibition against dedicating revenues. He wondered whether the yearly budgeting process that appropriated money for the following year was dedicating funds.

[1:35:15 PM](#)

Ms. Wallace answered that in various cases, the Alaska Supreme Court had recognized the conflict between the dedicated fund prohibition and the legislator's power to appropriate that were distinct provisions within the constitution. She offered that the court would need to decide on the conflict in the current case. She maintained that all budgeting was prospective and if the AG's opinion was strictly applied the legislature would be unable to prospectively budget even one fiscal year ahead if the state had to wait to receive the funding the budget was based on. Currently, the legislature was appropriating the FY 20 budget with revenue not yet received.

Vice-Chair Johnston stated that the legislature had forward funded numerous things over the years. She asked whether there had been a history of forward funding spanning administrations. Ms. Wallace responded in the affirmative. She provided an example of 2005 and 2006 when the legislature forward funded capital education projects one year in advance that had crossed administrations. Vice-Chair Johnston stated that the supplemental budget contained \$20 million in funding that could be construed as forward funding. She asked if the supplemental was a way an administration could gain flexibility to deal with funding from a prior year. Ms. Wallace answered that any forward funded appropriation made by the legislature was subject to amendment or repeal by the governor or the legislature the following session.

[1:38:20 PM](#)

Representative Josephson discussed that Representative Carpenter had offered an operating budget amendment related to the issue earlier in session to remove the forward funding language. The amendment was rejected in committee and on the House floor. He asked if the rejection by the 31st legislature that had expressly looked at the issue and

endorsed the prior legislature's action was potentially relevant. He wondered whether it reflected the "imprimature" of the thirty-first legislature and acted as a stamp of approval for the prior action of the thirtieth legislature. Ms. Wallace responded that if the court was deciding the issue it would consider the legislative history of the current legislature's action regarding the appropriation made in 2018. She deemed that it was reasonable to think that the court might view the action as a ratification by the legislature in its refusal to amend or reappropriate the funds. Representative Josephson discerned that every day that passed since the amendments by Representative Carpenter had been rejected and the issue was prevalent in the media was reflective of the current legislature's desire to fund education pursuant to the action taken in HB 287.

[1:40:40 PM](#)

Ms. Wallace answered that it may be relevant if the matter was litigated.

Vice-Chair Johnston discussed that the bill repealed the legislature's action. She asked whether the repeal was necessary if the action was not considered valid. Ms. Wallace responded that until the appropriation made in 2018 was rendered invalid by a court it would need to be repealed.

Representative Josephson referenced testimony by David Teal, Director, Legislative Finance Division (LFD) in response to a series of inquiries on the matter. He indicated that Mr. Teal reminded members that the constitution prohibited binding future legislatures, but it did not forbid "frustrating the governor." He asked what Legislative Legal thought of of the state's strong governor model. He offered a scenario where the legislature appropriated eight years of funding and the governor signed the legislation and an incoming governor was stuck with the funding. He assumed that a governor would try to persuade the incoming legislature to reappropriate the funding. He asked what she thought of the hypothetical scenario.

[1:43:19 PM](#)

Ms. Wallace did not want to speculate how far the legislature could go in the current circumstance. She

articulated that regarding the issue at hand the legislature appropriated one fiscal year out. It may be a question for the future in terms of the length of time a legislature could go with forward funding before the appropriation turned into a continuing appropriation. She pondered whether the appropriation "took the debate off the table" and if it was still considered an appropriation by the legislature as part of the annual budgeting process. She concluded that the legislature had made a conscious decision to maintain the funding it had approved the prior year.

Vice-Chair Ortiz asked if there was anything different with the way the legislature had forward funded education in 2018. He understood that one of the administration's positions was that it was different because a valid funding source had not been identified. Ms. Wallace answered that the appropriation made in 2018 appropriated the FY 20 funding and the one-time \$30 million funding with a delayed effective date of July 1, 2019. She indicated that the delayed effective date was identified as unusual or different from other forward funding. In the past, it had been the legislature's process to overfund the education fund with revenue from the current year for the purpose of forward funding. She reiterated that there were examples from 2005 and 2006 where the legislature forward funded education capital projects using a delayed effective date and was not unprecedented.

[1:46:29 PM](#)

HEIDI TESHNER, ADMINISTRATIVE SERVICES DIRECTOR, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT, OFFICE OF MANAGEMENT AND BUDGET, provided a PowerPoint presentation titled "HB1001 - Approp: FY2020 Education Funding: Presentation to the House Finance Committee," dated May 20, 2019 (copy on file). She began on slide 2 and reviewed the bill sections:

- Section 1 - appropriates \$30,000.0 as one-time funding to be distributed as grants to school districts based on the adjusted average daily membership
- Section 2 -
 - (a) appropriates the amount necessary, estimated to be \$1,172,603.9, for the Foundation Program

- (b) appropriates the amount necessary, estimated to be \$77,214.6, for the Pupil Transportation Program
- Under both subsections, funds are appropriated from the general fund to the public education fund
- Section 3 - repeals the FY2020 appropriations made under HB287 (Ch. 6, SLA 2018)
- Section 4 - appropriations made in Section 2 capitalize the public education fund and do not lapse
- Section 5 - Section 3 is effective June 30, 2019 (FY2019)
- Section 6 - Remaining sections are effective July 1, 2019 (FY2020)

Co-Chair Wilson asked why the governor believed the funding in HB 1001 was the appropriate amount versus the funding level he proposed in his February 2019 budget that eliminated approximately \$320 million.

Ms. Teshner replied that the governor in discussion with the legislature and the commissioner of the Department of Education and Early Development (DEED) determined that it was not the appropriate time to reduce education funding and would undertake education reform during the interim. Co-Chair Wilson asked for confirmation that the governor endorsed the amount appropriated for education in the bill. Ms. Teshner reiterated that the administration would not reduce funding for education at the current time and remained focused on student outcomes. Co-Chair Wilson requested the data justifying the funding level proposed in the governor's amended budget released on February 13, 2019. She asked whether the data existed. Ms. Teshner replied, "not specifically." She commented that there were conversations about why the amount was chosen. However, at the time, discussions about what was needed to improve educational outcomes and the amounts that districts had in reserves was just beginning. Co-Chair Wilson asked how many districts had enough surplus funds to cover the prior proposed cuts and how many did not.

[1:50:42 PM](#)

Ms. Teshner replied that she did not have the specific information, she offered to provide the districts'

unreserved fund balances. She furthered that not every district had an unreserved fund balances and none exceeded the allowable unreserved fund balance. She could provide a breakdown for the committee. Co-Chair Wilson asked if there had been a backup plan for districts that had no reserves and would be forced to make cuts.

LACEY SANDERS, BUDGET DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, reported that she did not have the information at the time.

Co-Chair Wilson requested the information. She voiced that many of the small districts maintained much higher costs than larger school districts. She emphasized that a question that had never been answered was what happened to districts that lacked reserve funds and how deep their cuts would be.

Representative Josephson asked how the administration proposed to fund the education budget in HB 1001 vis a vie the February 13th budget. Ms. Sanders answered that the funding was currently a part of the conversation in front of the legislature.

Co-Chair Wilson asked whether HB 1001 left the decision about how the appropriations would be funded entirely up to the legislature. Ms. Sanders answered it was the legislature's duty to appropriate funding. Co-Chair Wilson noted that normally an appropriation bill identified a funding source.

[1:53:33 PM](#)

Ms. Sanders moved to slide 3

- Education is one of the most important obligations of the State, and it is vital that we have constitutionally valid funding to send out to school districts come July 1. As it stands right now, that does not exist, and we cannot rely on an unconstitutional appropriation. This bill provides the appropriation necessary to ensure the State can legally distribute funds for education.
- Appropriations are law, and like all laws can be repealed at a future date if priorities or circumstances change. The constitution, however, makes

it clear that no law can dedicate a future revenue stream for a specific purpose. The ability to repeal such a law at a future date does not make it any less a violation of the prohibition against the dedication of funds.

Co-Chair Wilson asked if the administration contended that using general fund (GF) money was illegal and the legislature should take the money from the Permanent Fund Earnings Reserve Account (ERA). Ms. Sanders answered that the education funding was part of the operating and capital budgets and needed a valid appropriation backed by valid revenue to be appropriated on July 1, 2019. She furthered that regardless of the source, the education funding was part of a whole budget package. Co-Chair Wilson understood the process. She recalled that Ms. Sanders stated the funding had to be available on July 1, 2019, and therefore, what the legislature proposed was not valid. She was attempting to verify Ms. Sanders statements. Ms. Sanders responded that the administration did not believe there was a valid appropriation to presently distribute funding. Co-Chair Wilson inquired that whether the administration would consider GF as the funding source inappropriate, like the 2018 appropriation.

CORI MILLS, SPECIAL ASSISTANT, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LAW, clarified what the attorney general's opinion was that was counter to Ms. Wallace's interpretation of the AG's opinion. She explained that the AG's opinion focused on the year the appropriations were intended for; in any given year the appropriations were for the following fiscal year excluding supplementals. Therefore, current revenues were revenues that were available for the year the appropriations were budgeted for. She purported that the constitutional convention minutes and dedicated funds clause cases focused on the idea that all the state's programs needed to compete for funding annually.

Co-Chair Wilson expressed confusion and emphasized that HB 1001 was a separate appropriation. She explained her understanding of Ms. Sander's testimony that the use of GF in 2018 was not appropriate; therefore, illegal. She concluded that according to the administration, if the legislature used general funds in the current appropriation bill it would be illegal. Ms. Mills clarified that her interpretation of the administration's point was incorrect.

She reiterated that the legislature could use GF if the appropriation was for the current appropriating year and not two years ahead. She furthered that when HB 287 was passed the future year's revenue was lacking.

1:58:38 PM

Co-Chair Wilson understood that the administration was saying that the HB 287 revenue was not available at the time of appropriation. However, any funding for FY 20 was not available yet either. The appropriations began on July 1, 2019 and the revenue was collected through the following June 30, 2020. She was not understanding how using general funds for the FY 20 budget that were not currently sitting in the fund and were based on projections exactly as it had been in 2018 was not valid or different. She believed that the administration was making the legislature's case.

Vice-Chair Johnston asked if it was the administration's "feeling" that through passage of the bill there would not be a need to address the issue of forward funding.

Co-Chair Wilson interjected that she wanted the data not the governor's feeling.

Ms. Sanders moved to slide 4 titled "HB 1001 - Appropriation: History of "Forward-Funding" Education. She explained that historically, when the legislature had forward funded education it appropriated a current year's revenue for the following year and the practice had begun in Session Law Year (SLA) 2006 when a surplus of revenue had been available. The legislature deposited two years' worth of revenue via a supplemental appropriation into the Public Education Fund (PEF) that left one year of revenue into the PEF after the first year of funding was expended. The process had continued until SLA 2017 when the legislature experienced a steep decline in revenue and had stopped appropriating an extra year of revenue. She expounded that the declines marked the end of forward funding education and brought the fund balance to a single year available for distribution in the appropriating year. She maintained that in SLA 2018, with the passage of HB 287 forward funding changed. The appropriation into the PEF was still for one year but with an effective date "earmarking future revenue" to be deposited into the PED for FY 2020. She emphasized that the transaction did not mimic historical future funding and merely earmarked future

revenue. She believed that the transaction was the "distinguishing factor" from prior forward funding compared to the forward funding in HB 287. She added that if the legislature had deposited two years' worth of revenue into the PEF for HB 287 it would be reflective of the historical formula, but the administration believed that the funding was an earmark and the appropriation was invalid. The administration was asking the legislature to authorize an appropriation and deposit money into the PEF for FY 20.

[2:03:32 PM](#)

Vice-Chair Johnston understood that in 2005 or 2006 the capital appropriation for building was forward funded. Ms. Sanders was unfamiliar with the capital appropriation Co-Chair Johnston mentioned. She relayed that capital appropriations had several types of forward funded appropriations but each one used current year revenue and were not earmarking future revenue. She turned to slide 5 titled "HB 1001-Appropriation: Appendix/Definitions" to illustrate her point:

- Multi-Year Appropriation - operating appropriation of current year revenue with authority to expend over multiple fiscal years.
- Capital Project - capital appropriation of current year revenue with authority to expend over multiple fiscal years.
- Fund Capitalizations - appropriation of current year revenue into fund to be distributed without further appropriation for a purpose stated in statute. Examples include the Community Assistance and Disaster Relief Funds.

Vice-Chair Ortiz looked at slide 3 that stated education was one of the most important obligations of the state. He asked if it was accurate that the administration was not opposed to the concept of forward funding understanding the value to district's funding processes. Ms. Sanders replied in the affirmative. She maintained that the funding needed to have a valid appropriation behind it.

[2:06:18 PM](#)

Representative Josephson noted there was an opinion and belief that when former Governor Bill Walker had not vetoed any part of HB 287 that it was incumbent on the governor to execute the law by appropriating the funds. He deduced that if the legislature did not advance HB 1001, it would be incumbent on the governor to start the litigation. He related an argument that the burden was on the governor to make the case for forward funding. He voiced that the administration was attempting to convince the legislature that it was "wrongheaded" over the issue and he did not believe that the legislature's opinion would shift. He asked for comments.

Ms. Mills answered that the issue had gone through a myriad of attorneys at the Department of Law who had determined the law was invalid. She asserted that there was a duty to uphold the constitution and defend statutes and from Attorney General Clarkson's perspective it was invalid. She added that in order to have valid funding a valid law was necessary. She hoped that litigation could be avoided.

Co-Chair Wilson asked why the AG was not here considering the significance of the issue.

[2:09:33 PM](#)

Ms. Mills replied that Attorney General Clarkson would be happy to discuss the issue with the committee at a future date. She remarked that she had not received a specific notice that the legal issue would be discussed during the meeting.

Co-Chair Wilson clarified that she did not create the PowerPoint presentation and that the legal issue was put forward by the administration. She assumed that the AG would have testified before the committee since the legality was the focus of the presentation.

Representative Josephson determined that HB 287 had referenced GF as a funding source. Each year's budget process was a "best guess" of anticipated funds. He wondered why the language that identified GF as the source was not enough. Ms. Mills replied that the issue was about the dedicated funds clause and not the appropriations clause. She noted that the prohibition in the constitution against earmarking funds was specific. The prohibition required that funding should be determined on an annual

basis. She summarized the question of whether future revenue was taken off the table before the future legislature could determine where and how the money should be spent. She read the following snippets from the cases of "Meyers versus the Alaska Housing Finance Corporation" and from Sonneman relating to the Alaska Marine Highway System Fund:

"The Alaska Constitution prohibited the legislature from dedicating future revenues directly to any special purpose.

The constitutional framers believed that the legislature would be required to decide funding priorities annually on the merits of the various proposals presented."

The constitutional framers knew that dedicating revenues was an attractive idea but decided that the good that might come from the dedication of funds for a particular purpose was outweighed by the long-term harm to state finances that would result from a broad application of the practice.

Ms. Mills believed that the Alaska Supreme Court had focused on the issue to ensure that every legislature for every year had an opportunity to determine the priorities of the budget with the current year's revenue. The balance was between the appropriation clause and the dedicated funds clause.

[2:13:29 PM](#)

Co-Chair Wilson requested the information for members' packets.

Vice-Chair Ortiz stated that Attorney General Clarkson's perspective to focus on the dedicated fund issue and his reliance on his interpretation negated the whole concept of any type of forward funding for education. Ms. Mills replied that the legislature could prioritize budgeting using the current year's revenues to flow out in future years. She stressed that HB 287 was different because it "earmarked future revenues." Vice-Chair Ortiz asked if the constitution mandating the adequate funding of education did not weigh in the consideration at all. Ms. Mills answered that education funding was a competing

constitutional requirement that merely meant the legislature had to fund education through the constitutionally mandated appropriation process within the bounds of the dedicated funds clause. Vice-Chair Ortiz returned to the current year funding cycle. He asked if the \$20 million appropriated in HB 287 was appropriate. Ms. Mills answered that it was appropriate. Vice-Chair Ortiz asked for clarification. Ms. Mills answered that the appropriation was a valid expenditure if there was no change by the end of the fiscal year.

Representative Sullivan-Leonard asked whether the bill solved the issue of the earmarked funds appropriated for FY 20 in HB 287. Ms. Sanders was uncertain about the issue Representative Sullivan-Leonard was referring to. Representative Sullivan-Leonard stated she was referring to the issue of distribution. Ms. Sanders responded that the current version of the operating budget before the legislature did not include an appropriation for education. She maintained that adding an appropriation to a budget bill or passage of HB 1001 would result in a valid appropriation that allowed the distribution of funds.

[2:18:25 PM](#)

Co-Chair Wilson asked Co-Chair Foster if there was forward funding in the current operating budget. Co-Chair Foster answered in the affirmative.

Representative Merrick asked how much it would cost to litigate the matter. Ms. Mills answered that the department received requests often to estimate the cost of lawsuits and was difficult to answer. She guessed that the range was around \$100,000 and she would follow up. Representative Merrick asked who would be responsible for the costs. Ms. Mills replied that it would be owed by the legislature and the Department of Law.

[2:20:14 PM](#)

Vice-Chair Johnston recalled the statute related to the Permanent Fund Dividend (PFD) and surmised that if she applied the administration's logic, the legislature needed to appropriate the dividend but not necessarily by statute. Ms. Mills replied in the affirmative. She noted that the interpretation had been decided in the *Wielechowski vs State* case in 2017 by the Alaska Supreme Court that decided

that money for the dividend had to be appropriated and the appropriation did not rely on a statute.

Co-Chair Wilson asked whether the bill before the legislature that requested four years' worth of PFDs was a violation similar to forward funding education. Ms. Mills replied that the distinguishing feature between the two was that the current situation included earmarking funds and the PFD bill proposed to withdrawal funds from the ERA. Co-Chair Wilson countered that the calculation for the ERA was based on future earnings that was not yet determined. Ms. Mills responded that current revenues were available even if it depended on a calculation in the future.

Co-Chair Wilson asked about Ms. Mills comment that the \$20 million would be paid out unless something changed. She asked for comment about what would change. Ms. Sanders answered that if the legislature took action to repeal the appropriation as proposed by the governor the funding would no longer be distributed. Co-Chair Wilson surmised that a repeal left the legislature open to a lawsuit and the districts may sue the state. She was certain that the Fairbanks North Star Borough investigated the issue. Ms. Sanders answered that she could not speak to unpredictable outcomes. She reiterated that if the legislature chose not to repeal the \$20 million appropriation and it was based on valid funding, the money would be distributed to school districts.

[2:23:24 PM](#)

Representative Josephson noted that the \$20 million was duly authorized and appropriated. He thought that an executive could hold other funds hostage that were duly appropriated in a current fiscal year seeking to repeal them for use by another agency, in effect defying the law that mandated execution of the appropriation that was signed off by a governor. He elaborated that there was significant "unhappiness" about the \$20 million that was due in six weeks without any indication that the legislature desired to repeal it. He asked what would stop an administration from "husbanding any other agency's last series of checks" under the same repeal/reappropriate argument. Ms. Sanders responded that the \$20 million repeal had been proposed by the governor in the February 13th budget. She could not speak to the legality of the issue or whether the governor would withhold any other funding from

distribution. She concluded that because he proposed the action in a bill, the funding was being held until a determination was made.

Co-Chair Wilson thought that the governor was setting a precedence. She asked how districts could plan ahead and depend on funding that an administration felt that they could cut. She wondered whether OMB would act in the same way in the future and withhold appropriations for something else. How could agencies and districts rely on appropriated money that may or may not be distributed.

[2:26:40 PM](#)

Ms. Sanders answered that the administration had no intention of withholding money for any purpose. She reported that education funding would be distributed as usual on the 15th of each month. She believed that there was historical precedence for the situation. She informed the committee that when agencies did not fill positions within the same fiscal year it was considered a negative supplemental. The legislature had historically, revoked some of the funding that was not utilized to fill the position. The current issue was an instance where the funding was not yet distributed, and the governor proposed to repeal the appropriation. She could not speak to setting precedence in the future. She reiterated that there was no intention to withhold money to any agency. Co-Chair Wilson surmised that the school districts should not anticipate the \$30 million because the funding could be vetoed or withheld, which reflected the precedence she spoke of. She wondered why districts would believe the same thing would not happen again. Ms. Sanders clarified she had been speaking to the \$20 million and not the \$30 million appropriation. Co-Chair Wilson reiterated that the districts were counting on the \$30 million but with the governor's recent actions regarding the \$20 million, the districts could not count on the funds being distributed. She asked if districts should see the action as a one-time deal or prepare for non-distribution of the \$30 million as well. Ms. Sanders answered that school district distributions were all subject to appropriation on an annual basis. She reiterated her argument that the appropriation in HB 287 was not valid.

[2:30:10 PM](#)

Co-Chair Wilson asked if Ms. Saunders was stating that both the \$20 million and the \$30 million appropriations were invalid. Ms. Sanders replied in the negative. She clarified that the \$30 million appropriation was invalid. The \$20 million would be distributed when the operating budget was enacted.

Representative Knopp reiterated the administration's argument that the appropriation was invalid. He deduced that the succeeding legislature had the ability to reappropriate the funds in any manner they chose and the same was true for the current year. He believed that even though the fund source was not yet available, the delayed effective date clearly showed the intention that the funding would come from future revenue. He could not distinguish the difference since the budgeting process always relied on future revenues. He did not see the difference and did not think the legislature's hands were tied. He asked how other legislatures with a two year budget cycle handled the issue. Ms. Mills replied that Alaska's dedicated funds clause was unique among the United States. Most states merely had an appropriations clause. Most states were only able to freely appropriate roughly 17 percent of their revenues because the other 80 percent were dedicated, which was why Alaska adopted the dedicated funds clause.

[2:33:30 PM](#)

Representative Knopp indicated that he was struggling with the concept of a dedicated fund clause.

Co-Chair Wilson asked to hear from Ms. Wallace for closing statements.

Ms. Wallace noted that there was nothing in the presentation that would change the opinion of Legislative Legal Services. She was happy to answer questions.

Representative LeBon asked about the difference between forward funding and an earmark. He thought an earmark denoted an intent rather than an appropriation. Ms. Wallace was not certain how a court would categorize the forward funding mechanism the legislature used. She believed that the term earmark was not appropriate in the current scenario. She indicated that typically the term was restricted to the earmarking of taxes for specific

purposes. The legislature had appropriated the education funding. She noted that in her opinion it had been an appropriation. Representative LeBon recounted the argument being made by the administration against the forward funding. He wondered whether the current legislature had the authority to change the amount of the forward funded appropriation. Ms. Wallace answered in the affirmative. The key about whether the legislature had violated the dedicated fund prohibition was if the appropriation eliminated a future legislature's ability to alter the appropriation in their annual budgeting process. She reported that the current legislature considered the \$1.2 billion education funding appropriation and ensured that adequate revenue existed to fund all general fund appropriations, including the education appropriation. The legislature had the power to amend or repeal both appropriations. She specified that the legislature had a long history of forward funding education and repealing funding when revenue was insufficient. She cited examples from 2015 when the legislature revoked \$1 billion from the Public Education Fund and in 2014 the legislature appropriated one-time funding for the subsequent 3 years and had repealed the FY 16 and FY 17 funds. In both cases, the state no longer had adequate resources. She advised that last year's appropriation was not compulsory and like the examples she shared was subject to repeal or amendment.

[2:39:04 PM](#)

Representative LeBon asked what would happen if the legislature ran short on money before the current fiscal year ended. Ms. Wallace answered that if there was no longer money to adequately fund the remaining fiscal year, the legislature could amend the budget or find additional funds from the ERA or Constitutional Budget Reserve to transfer into the general fund. Representative LeBon surmised that the legislature did not have a "crystal ball" and budgeted based on projected revenue as "best it can." He ascertained that if the legislature did not amend the prior year's education appropriation it would stand.

Representative Knopp deemed that the prior action in HB 287 had no more binding effect on the legislature than a resolution had but did bind the governor. He suspected that that the current administration could not change the appropriation without a reappropriation by the legislature.

[2:41:32 PM](#)

Representative Knopp clarified that it did not tie the hands of a future legislature but did tie the hands of the administration. Ms. Wallace answered that the education appropriations did not bind either a future legislature or the governor. The appropriation in HB 287 had been subject to the governor's veto power. She delineated that the veto power was not specific to a particular governor but to the office of the governor. The current governor sought to amend and repeal some of the education appropriations; therefore, was not binding on the governor.

Representative Josephson cited slide 4 of the presentation. He pointed to the reference to the dual funded years of 2006 and 2007 for education funding that crossed an election cycle. He concluded that if the legislature disapproved of the forward funding for education in 2007, they had the power to amend or repeal and chose not to. He felt that his point was the "essence" of Ms. Wallace's testimony.

[2:43:30 PM](#)

Ms. Wallace affirmed his conclusion. She added that the legislature had a prior record of amending or repealing forward funding mechanisms employed the previous year.

Vice-Chair Johnston turned to slide 6 titled "HB 1001 - Appropriation: Appendix/Definitions" of the presentation that had not been previously discussed.

Examples of Forward Funding Appropriations:

- Community Assistance Program - Fund capitalization made each year, from available revenue, to ensure balance of the fund in the subsequent year is sufficient for the desired statutory distribution.
- Temporary Increments (IncT) - Programs with a set duration, requires appropriation in each subsequent year. IncT designation provides clarity of temporary nature of program and anticipated duration.
- Ch. 171, SLA 1984 - Continuing appropriations from the general fund to the Power Cost Equalization fund, Susitna River Hydroelectric project, and Bradley Lake

Hydroelectric project to occur on July 1 each year. Struck down as unconstitutional by the superior court. (Trustees for Alaska v. State, 3AN-84- 12053.)

Vice-Chair Johnston pointed to the Community Assistance Program (CAP) and noted that the funding was based on a formula and recalled that there was a year where the legislature either had to fully fund the program or change the calculation. She asked for confirmation.

Ms. Sanders answered that Vice-Chair Johnston was referencing the Community Assistance Program. She elucidated that the funding formula relied on depositing the current year's appropriation and one-third of the balance flowed out of the fund. The formula remained unchanged. The formula that determined the amount of the deposit was based on historical revenue. The CAP funding mechanism remained the same; each year \$30 million (instead of the prior \$90 million) was deposited into the fund and \$30 million was appropriated based on the balance of the fund. If the balance of the fund declined, one-third would still flow out of the fund in the following fiscal year. She emphasized that the fund was capitalized using the current year's revenue.

Co-Chair Wilson thought that Power Cost Equalization (PCE) was part of the funding as well and the appropriation relied on "a waterfall effect" where some funding was appropriated to PCE and some amounts appropriated to CAP and the Alaska Energy Authority (AEA). She asked whether her statement was correct. Ms. Sanders responded that there was a formula in place under the PCE program where in the event of excess earnings, the money could be made available to appropriate to CAP, AEA, and other rural energy projects under the capital budget. She furthered that if the PCE fund did not earn enough to waterfall, GF could be deposited to cover the shortfall. The funding mechanism was a funding formula to allow excess earnings to be distributed in a particular manner. Co-Chair Wilson stated the legislature was appropriating funds that were not yet earned. She stated that the scenario was similar because the appropriation happened automatically depending on the fund's earnings.

[2:47:54 PM](#)

Ms. Sanders clarified that the appropriation was not automatic. The legislature had to take an active role in the appropriation.

Vice-Chair Johnston stated that the original program's formula was a type of waterfall and based on oil revenue. The funding mechanism assumed the money would be there until it was not. Ms. Sanders answered that the mechanism was the same methodology of distribution; each year based on oil revenue approximately \$90 million was deposited to keep the balance at \$180 million and one-third would flow out of the fund. She stressed that the deposit relied on an annual appropriation by the legislature.

Co-Chair Wilson would reach out to the sponsor of the CAP bill to obtain further information.

Co-Chair Wilson noted public testimony would be heard at 5:00 p.m.

HB 1001 was HEARD and HELD in committee for further consideration.

ADJOURNMENT

[2:49:47 PM](#)

The meeting was adjourned at 2:49 p.m.