

SENATE FINANCE COMMITTEE  
THIRD SPECIAL SESSION  
August 23, 2021  
3:02 p.m.

[3:02:39 PM](#)

CALL TO ORDER

Co-Chair Stedman called the Senate Finance Committee meeting to order at 3:02 p.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair  
Senator Bert Stedman, Co-Chair  
Senator Lyman Hoffman  
Senator Donny Olson (via teleconference)  
Senator Natasha von Imhof (via teleconference)  
Senator Bill Wielechowski (via teleconference)  
Senator David Wilson (via teleconference)

MEMBERS ABSENT

None

ALSO PRESENT

Alexei Painter, Director, Legislative Finance Division;  
Senator Jesse Kiehl.

PRESENT VIA TELECONFERENCE

Megan Wallace, Director, Legislative Legal Services, Alaska State Legislature.

SUMMARY

^CONSTITUTIONAL BUDGET RESERVE SWEEP OVERVIEW

[3:04:58 PM](#)

ALEXEI PAINTER, DIRECTOR, LEGISLATIVE FINANCE DIVISION, discussed, "Constitutional Budget Reserve Sweep Overview" (copy on file). He looked at slide 2, "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."

Mr. Painter relayed that he would touch on the important clauses within the Constitutional Budget Reserve (CBR) sweep provision. He noted that the state had a CBR liability for many years, and then in the mid-2000's the state repaid the liability. Starting in FY 15, the state began drawing from the CBR again, and currently had an approximately \$11 billion to \$12 billion liability (depending upon the interpretation).

Senator Hoffman quoted the last sentence of the CBR sweep provision. He asked what, if anything, the legislature had done to establish what was swept. He noted that the Power Cost Equalization (PCE) Program had never been part of legislation establishing the fund as a "sweepable" item, and the matter had to go to court to be resolved. He thought the broader question pertained to the lists of items that were sweepable. He asked how many of the items had been determined to be sweepable by state law.

Mr. Painter thought that his next slide would address Senator Hoffman's question.

Co-Chair Bishop mentioned the \$10 billion to \$12 billion that was owed to the CBR. He thought the liability to the CBR functioned as a natural spending limit due to the time it would take to repay the funds.

[3:08:23 PM](#)

Co-Chair Stedman asked Mr. Painter to provide a rough idea of the amount owed to the CBR, as well as interest rates and payment terms.

Mr. Painter replied that the amount owed was approximately \$11 billion to \$12 billion, and that there was a dispute between the administration and the Division of Legislative

Audit regarding \$1 billion of the amount. There was no interest on the debt, and the terms considered the amount a debt until it was paid. The section of the constitution set up the mechanism, which dictated that at the end of the year the General Fund (GF) would be deposited into the reserve fund. The exact mechanics of the repayment functioned was somewhat in dispute. In the years of budget surplus, the Senate had directly deposited funds to the CBR, allowed funds to be swept to the CBR, or a combination of both.

Mr. Painter looked at slide 3, "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).

Mr. Painter noted that in appropriation language, often the legislature would reverse the sweep only for the sub-accounts and not for the GF itself because the GF balance was reset by the sweep back to zero at the beginning of the year.

Co-Chair Bishop commented that the three-quarters vote (required to access the CBR) cost the legislature time and money. He believed there should be no monetary policy in the constitution.

Mr. Painter highlighted slide 4, "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.

[3:12:36 PM](#)

Senator von Imhof considered slide 3 and slide 4 and interpreted that the sweep was found unconstitutional and then it had to be implemented "by hand."

Mr. Painter replied that the statute that had implemented the sweep and determined what was sweepable had been found unconstitutional rather than the sweep itself. The interpretation of what was subject to the sweep had been subject to reading the footnotes of the Hickel v. Cowper case in the absent of a statute.

Mr. Painter addressed slide 5, "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.

Co-Chair Stedman recalled that the most recent account balances had not been available till February.

Mr. Painter affirmed that previous two years numbers had been delayed.

[3:15:31 PM](#)

Mr. Painter looked at slide 6, "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.

Senator Hoffman discussed concerns with participants in the PCE Program being responsible for the cost of higher rates due to the lawsuit regarding the sweep. He asked how the individuals would get reimbursed for the months of July and August, since the lawsuit regarding the sweep was proven to be null and void.

Mr. Painter did not know the answer and agreed to check with the Alaska Energy Authority, which administered the program.

Senator Hoffman asked if Mr. Painter thought the individuals should be reimbursed.

Mr. Painter believed that the state had funded for the entire year and that the entire amount should be paid out.

Co-Chair Stedman noted that funds such as the PCE Fund were deemed unswEEPable for years, until there was a change from the current administration with a legal opinion from the Department of Law.

Co-Chair Bishop commented that the legislature should have engaged in a lawsuit at the time.

[3:19:26 PM](#)

Mr. Painter highlighted slide 7, "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.

Senator Hoffman asked about Mr. Painter's opinion on the chances of the Higher Education Fund not being a sweepable item, since it was never included previously in the sweep by the legislature or governors (as was the PCE Fund).

[3:21:53 PM](#)

MEGAN WALLACE, DIRECTOR, LEGISLATIVE LEGAL SERVICES, ALASKA STATE LEGISLATURE (via teleconference), replied that she had not seen a specific legal opinion from the Department of Law regarding classification of the Higher Education Investment Fund. She continued that the difference between the Higher Education Fund and the PCE Fund was that it was specifically created by the legislature in the GF. Even though it was used as an endowment fund, the money rested in the GF by statute. She continued that based on the analysis in *Hickel v. Cowper* as well as the analysis of the court in the recent *Alaska Federation of Natives (AFN)* case, there did not appear to be anything to indicated that the Higher Education Fund was exempt from the sweep because it remained available for appropriation by the legislature.

Ms. Wallace continued to reason that the legislature must appropriate out of the Higher Education Fund, and the fund could not be automatically utilized by the administration absent an appropriation. She furthered that the fund was currently in the GF, and it was the division's opinion that if the matter was litigated the court would likely find that the fund was subject to the sweep, although neither of the cases that addressed the issue had specifically ruled on the fund.

Senator Hoffman referenced slide 4, in which Mr. Painter pointed out that the legislature could pass a new statute that attempted to define what was sweepable. He asked if the Higher Education Fund would be sweepable if the legislature passed legislation indicating it was not.

Ms. Wallace replied that if the legislature were to pass a new statute implementing the sweep and identified the Higher Education Fund as not able to be swept, it could be subject to challenge.. She referenced Hickel v. Cowper, in which the Alaska Supreme Court looked at Article IV, Section 19, and specifically noted that while the legislature was required to implement the section by law, it must do so within the terms of Section 17 and the legislature would still follow the court's guidance on what it meant to be "available for appropriation." She thought the legislature had other methods of looking at what was established or how the fund was to be managed if it wanted to reconsider whether the fund should be subject to the sweep.

[3:26:09 PM](#)

Senator Hoffman thought it was meaningful that the legislature and prior governors had never deemed the Higher Education Fund as sweepable. He opined that it was only because the current administration had deemed the fund to be sweepable that it had come into play. He assumed that if all prior governors and legislatures had felt the item was not sweepable, that the fund should be looked at in the course of a statute change to comply with the interpretation of all previous governors and legislatures.

Senator Wilson asked about a list of funds that might be swept.

Mr. Painter thought the Legislative Finance Division (LFD) could produce an analysis fairly quickly. He presumed that the administration was conducting an analysis of whether there should be changes to the sweepable fund list. He was not sure of the timeline.

Co-Chair Stedman asked Mr. Painter to procure the list as soon as was convenient.

Senator Wielechowski asked if the legislature could have the other sweepable funds put into the Statutory Budget Reserve (SBR) or PCE Fund, and then sweep the funds back into their respective accounts at 12:01 a.m. of the new fiscal year.

Ms. Wallace thought the legislature likely had the power of appropriation to make whatever appropriation decisions it wanted and could move funds around in the upcoming budget. She thought there would be risk to go back in time since the sweep was a constitutional mechanism that happened at the end of the fiscal year. She thought the legislature could make a policy choice for future fiscal years.

[3:30:02 PM](#)

Senator Wielechowski thought it was an open question as to what was swept and what was not with regard to the funds being discussed. He asked, if under the court decision, the legislature could pass legislation to have the funds swept back, which would force the governor to file a lawsuit if he did not want to enact the movement of the funds.

Ms. Wallace reminded that as Mr. Painter mentioned, it was not certain which funds would or would not be swept. She did not have the answer to Senator Wielechowski's question, and reminded that if money was swept into the CBR, it required a three-quarters vote to appropriate the money out of the CBR to anywhere else. If the money was not swept, it would remain in the accounts that it was in at the end of the fiscal year, as appropriated by the legislature. She reiterated that there would be risk if the legislature went back in time and did any kind of appropriating mechanism that arguably subverted the constitutional sweep.

Mr. Painter looked at slide 8, "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.

Mr. Painter used the example of Designated General Fund (DGF) taxes as an example of the second type of fund category listed on the slide.

[3:33:58 PM](#)

Senator von Imhof asked about programs covered by sweepable funds versus the total of the funds themselves.

Mr. Painter thought an upcoming slide would make things clearer. He commented on the use of the SBR in the FY 22 budget, which was not the same in previous years and increased the amount of appropriations from sweepable funds versus other years.

Senator Hoffman asked how much financial impact was incurred in the accounting program to accomplish the sweep. He recalled an expense in the millions to reverse the sweep.

Mr. Painter asked if Senator Hoffman was referencing lost investment earnings or actual expense.

Senator Hoffman stated "both."

Mr. Painter replied that the Division of Finance would find the numbers for the sweep as part of the financial report, so there was no financial impact. He continued that there was a potential impact to investment earnings if the sweep reversal did not occur right away. He added that because the CBR was invested conservatively, and other funds were invested more aggressively (such as the Higher Education

Fund), there would be a cost. He cited that moving the Higher Education Fund to the CBR alone would cost \$20 million to \$25 million in investment earnings in one year. He summarized that there was a significant cost in investment earnings by moving the funds to a more conservatively invested account.

Senator Hoffman emphasized the significance of the numbers quoted by Mr. Painter and the impact to the Higher Education Fund. He thought the loss of the \$25 million in investment earnings resulted in denying higher education to people in Alaska.

[3:38:15 PM](#)

Co-Chair Stedman thought that the issue was with politics rather than finances. He recounted that the committee had never recommended not reversing the sweep because it was a costly financial mistake. He reminded that the legislature reviewed all the accounts at the beginning of the budget cycle, after the administration had reviewed the accounts and presented a budget. He emphasized that the accounts were reviewed by the administration and legislature each year to ensure there was a prudent minimum balance. He thought the lost earnings resulted in increasing the state's deficit. He thought some people thought there were large account balances with extra funds, which was not at all the case.

Senator Hoffman emphasized that the money lost to the students of Alaska through the loss to the Higher Education Fund was another strong reason for the legislature to introduce legislation proposing that the fund was not a sweepable item. He stressed that the education of students would be in jeopardy every year when the funds were swept, and millions were lost because of the way the funds were invested.

Senator Wilson thought Mr. Painter had mentioned that the administration might not start the sweep right away. He asked if the administration had started the liquidation process since it had been over a month since the sweep had happened.

Mr. Painter relayed that he had only had informal conversations with the administration on the topic, and the committee might need to ask the administration directly a

about its plans. He thought given the timing, since the audit was not complete, the administration did not know how much money to move.

[3:41:53 PM](#)

Co-Chair Stedman stated that the legislature had asked the question before, and had noted that although the technical sweep was in the beginning of the fiscal year, the mechanical sweep could happen as late as November and December when account balances were known. He reminded that there was a time when the reverse sweep did not take place during the regular legislative session, and the legislature had stepped in the following January because there had been an "accounting quagmire." He commented on the large amount of lost revenue that supporters of blocking the reverse sweep were costing the state.

Mr. Painter highlighted slide 9, "Summary of Impacts by Category." He thought there was a fourth category of funding type which was the "immediate impact pending interpretation," which was the SBR and was either an immediate impact or did not belong on the list depending upon how the administration decided to handle it. He pointed out the first column that showed LFD's projected sweep balance in FY 21. The next column was the amount used in the FY 22 budget. The next column was the amount available after the CBR sweep, which signified the ongoing revenue for the funds. He pointed out that there was no revenue for the funds that showed immediate impact. The final column showed the shortfall due to the CBR sweep. Collectively there was a shortfall of about \$142 million due to the reverse sweep. The appropriations were currently in the enacted budget but were unfunded because of the lack of revenue. The next few slides would address the details behind each category and the funds that were within.

Co-Chair Stedman asked about the \$142 million in shortfall and asked if the amount factored in that the PCE Fund was not sweepable.

Mr. Painter affirmed that the PCE Fund was not listed.

Co-Chair Stedman asked how the SBR was accounted for on the slide.

Mr. Painter relayed that the SBR was shown as the purple item on the slide and was the "immediate impact pending interpretation." The SBR was either in the list or if the administration chose to reclassify the fund it was out of the list. The \$80.7 million from the SBR was counted within the \$142 million.

Co-Chair Stedman thought if the SBR was not sweepable, one could subtract the \$81 million from the \$142 million.

Mr. Painter answered affirmatively.

Co-Chair Stedman commented on the significant budget impact.

Senator Hoffman asked if Mr. Painter could explain why the \$80 million shortfall was taking place, and whether it was due to different investment philosophies.

Mr. Painter stated that he did not want to comment on politics but the shortfall, as far as he could tell, seemed to be a political matter rather than a financial matter.

Co-Chair Stedman thought the shortfall was a political mess that was derived from a matter of political leverage that had gone awry.

[3:46:38 PM](#)

Mr. Painter pointed to slide 10, "Immediate Impact," which showed two tables. He highlighted that the Higher Education Fund was shown by itself at the top, with the projected sweep balance at \$416 million, and with \$21.8 million used in the current budget. There was no revenue available after the sweep because the source of revenue for the fund was investment earnings, which were not available without a fund balance. The lower table showed the SBR (Pending Interpretation of the AFN v. State Decision), which had a projected balance of \$410.7 million if subject to the sweep. The governor had vetoed \$330 million of appropriations from the source, so only \$80.7 million was used in the budget after the vetoes. There was nothing available after the sweep, so the \$80.7 million was a shortfall assuming the sweep was not reversed, or the fund was not deemed sweepable.

Co-Chair Stedman shared a concern about the Higher Education Fund, which would be available for spending with a three-quarters vote if it was put into the CBR. He discussed the revenue that would be generated to provide education assistance in perpetuity if the fund was left protected rather than being used to meet a one-to-two-year budget obligation. He was worried about the funds being liquidated.

Mr. Painter addressed slide 11, "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

[3:50:26 PM](#)

Co-Chair Stedman asked if the governor had not vetoed the \$525 PFD and the SBR was not swept (which he thought highly likely), if the dividend in the fall would be \$1025.

Mr. Painter agreed.

Co-Chair Stedman thought the shortfall from the dividend passed by the legislature would only have been \$75 per person.

Mr. Painter agreed.

Co-Chair Stedman thought the PFD had gone from \$1,025 to zero.

Mr. Painter mentioned that when the governor had done his vetoes there had been no way to know that the SBR status might change.

Senator Hoffman asked for Mr. Painter to provide a list of schools that were affected by the \$4.1 million in school debt reimbursement. He thought it would be interesting to see how the funds were disbursed if the sweep was not reversed. He wondered if the cost would be passed on to local governments.

Co-Chair Stedman asked Mr. Painter to include the financial impacts of budget vetoes in Regional Educational Attendance Area (REAA) schools. He thought there was a discrepancy in how schools were treated inside and outside of organized boroughs. He thought the following winter the committee would be looking at a questionable allocation of dollars between rural and urban schools, with less going to rural schools.

[3:54:31 PM](#)

Mr. Painter looked at slide 12, "Partial Impact," which showed a table with a list of funds for which there was a partial impact that had some ongoing revenue but that was insufficient to meet all the FY 22 amounts. The first column showed the projected sweep balance in FY 21, which collectively \$104.6 million. In FY 22, there was a collective \$168.6 million spent out of the funds. The ongoing revenue to the funds was \$129 million, which was short by \$39.5 million versus the appropriations. The funds listed would have some impact without a reverse sweep to utilize the fund balance.

Mr. Painter highlighted some of the funds listed, including the Oil and Hazardous Substance Release Prevention Mitigation Account (also known as the SPAR Fund), which had a projected \$1.5 million shortfall. He noted that OMB's numbers projected closer to a \$3 million shortfall for the SPAR Fund, and the two offices were working to reconcile the differences. He listed several funds within the Department of Labor and Workforce Development that were accounted for on the slide. There were a few funds listed from the Department of Environmental Conservation. He noted

that the deficit to the Commercial Passenger Vessel Environmental Compliance Fund might be smaller than what was shown on the slide due to an increase in cruise ships. He highlighted several funds that impacted Department of Health and Social Services programs. Without access to the fund balance, there was a substantial shortfall in both the Recidivism Reduction Fund and the Marijuana Education and Treatment Fund.

Co-Chair Stedman asked about the Capital Income Fund, which was a "parking garage" for capital projects.

Mr. Painter replied that the fund was currently designated for deferred maintenance projects throughout the state. He noted that there was a significant unspent balance in the fund after the FY 21 budget due to high investment returns in FY 21. A portion of the balance was to be spent in the FY 22 budget for deferred maintenance, and there was an \$18.5 million hole between the appropriations and the expected revenue in FY 22.

[3:58:25 PM](#)

Co-Chair Stedman asked what kind of protection the state had within its financial system to prevent overdrawing the funds. He considered the hypothetical scenario that the administration returned with a supplemental budget after there was a shortfall in the budget after the funds were spent.

Mr. Painter thought the administration was restricting the funds to prevent overspending. He thought the scenario might warrant sending letters to grantees to say grants would be prorated, or curtailing activities. He thought the administration did not generally budget assuming it would get supplementals, so it might restrict activities in the meantime to ensure there was adequate funds.

Co-Chair Stedman thought the administration had done some vetoes expecting a supplemental budget. He thought the slide showed a \$31 million negative budgetary impact.

Mr. Painter noted that the hole for deferred maintenance in the Capital Income Fund was \$18.5 million, and \$31 million was the projected revenue in FY 22.

Co-Chair Bishop thought that some of the projects had been vetoed. He shared concern about the SPAR fund, which was the state's first responder for uninsured hazardous spills and cleanups on land and water. He thought the matter needed to be addressed. He had concerns about the impact to many of the funds listed on the slide.

Co-Chair Stedman commented that the impacts were considerable.

[4:01:35 PM](#)

Mr. Painter pointed to slide 13, "Minimal/No Impact," which showed a table listing funds with minimal or no impact. He noted that many of the funds had an amount listed \$0.0 in funds used in FY 22. He noted that the funds listed may have a balance but were not being currently utilized. He used the example of the Vessel Replacement Fund, which had been used in previous years but was not being used in the FY 22 budget so there was no immediate impact. He mentioned the Railbelt Energy Fund, which had not been used in a number of years. He noted that some funds had sufficient ongoing revenue to meet the projected expenditures in FY 22, such as the Technical Vocational Education Program Account. He noted that there were not many swept funds on the list.

Co-Chair Stedman thought that one positive from the exercise was a deeper knowledge of the sweepable list of accounts. He discussed cleanup and closing of accounts.

[4:03:26 PM](#)

Co-Chair Stedman commented that some political officials were costing the state millions of dollars. He thought it was unfortunate the state needed to go through the costly exercise to educate state officials. He thought the current situation accomplished very little and hindered the ability to fix the state's financial position. He anticipated working with OMB and the state's auditor to review the accounts. He commented on the additional work created for the administration and the auditors for no real benefit. He mentioned discrepancies in the state's audited statements, and the Legislative Budget and Audit Committee's work on the issue. He emphasized the cost of the change in practice regarding the constitutional budget sweep.

#  
ADJOURNMENT  
4:08:03 PM

The meeting was adjourned at 4:08 p.m.