

SENATE FINANCE COMMITTEE
March 1, 2022
9:03 a.m.

[9:03:43 AM](#)

CALL TO ORDER

Co-Chair Bishop called the Senate Finance Committee meeting to order at 9:03 a.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Lyman Hoffman
Senator Donny Olson
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

Senator Natasha von Imhof

ALSO PRESENT

Konrad Jackson, Staff, Senator Peter Micciche; Madison Govin, Staff, Senator Peter Micciche; Erin Shine, Staff, Senator Click Bishop; Alexei Painter, Director, Legislative Finance Division.

PRESENT VIA TELECONFERENCE

Megan Wallace, Director, Legislative Legal Services; James Squyres, Self, Rural Deltana; Cyrus Cooper, Self, Healy.

SUMMARY

SB 151 EXTEND ALCOHOLIC BEVERAGE CONTROL BOARD

SB 151 was REPORTED out of committee with three "do pass" recommendations and with three "no recommendation" recommendations, and one previously published fiscal impact note: FN 1 (CED).

SB 224 FUNDS SUBJECT TO CBR SWEEP PROVISION

SB 224 was HEARD and HELD in committee for further consideration.

SJR 12 SOCIAL SECURITY BENEFIT REDUCTION REPEAL

SJR 12 was REPORTED out of committee with six "do pass" recommendations and with and one previously published zero fiscal note: FIN 1 (S.STA).

#sb151

SENATE BILL NO.151

"An Act extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

[9:05:13 AM](#)

KONRAD JACKSON, STAFF, SENATOR PETER MICCICHE, introduced himself.

[9:05:29 AM](#)

MADISON GOVIN, STAFF, SENATOR PETER MICCICHE, introduced herself.

Mr. Jackson relayed that the bill would give the legislature the opportunity to review the board every 4 years as recommended by the legislative audit.

[9:05:57 AM](#)

Co-Chair Bishop addressed the fiscal note from the Department of Commerce, Community and Economic Development (DCCED).

[9:06:53 AM](#)

Co-Chair Stedman MOVED to REPORT SB 151 from committee with individual recommendations and attached fiscal note. There being NO OBJECTION, it was so ordered.

[9:07:14 AM](#)

AT EASE

[9:09:02 AM](#)

RECONVENED

SB 151 was REPORTED out of committee with three "do pass" recommendations and with three "no recommendation" recommendations, and one previously published fiscal impact note: FN 1 (CED).

#sjr12

SENATE JOINT RESOLUTION NO. 12

Urging the United States Congress to repeal the Windfall Elimination Provision and Government Pension Offset of the Social Security Act.

[9:09:17 AM](#)

SENATOR BILL WIELECHOWSKI, SPONSOR, reintroduced the bill. He offered a truncated sponsor statement:

SJR 12 urges Congress to repeal the Windfall Elimination Provision (WEP) and Government Pension Offset (GPO) of the Social Security Act. The provisions reduce Social Security benefits for individuals or the dependents of individuals whose work histories include jobs for which they were entitled to a pension and were not subject to Social Security payroll taxes. In 2022, the WEP reduction could be as much as \$498 a month. The WEP and the GPO affect nearly 16,000 Alaskans, and these provisions can have a substantial effect on benefits in those households.

Senator Wielechowski relayed that there was no known opposition to the legislation.

[9:09:52 AM](#)

Co-Chair Bishop expressed appreciation for the legislation.

[9:10:15 AM](#)

Senator Wielechowski addressed the zero fiscal note.

[9:10:35 AM](#)

Senator Wilson thanked the sponsor for addressing the issue.

Senator Hoffman asked whether the bill sponsor planned to travel to Washington DC to present the resolution.

Senator Wielechowski said as soon as the bill passed.

[9:11:08 AM](#)

Senator Wielechowski MOVED to REPORT SJR 12 from committee with individual recommendations and attached fiscal note. There being NO OBJECTION, it was so ordered.

SJR 12 was REPORTED out of committee with six "do pass" recommendations and with and one previously published zero fiscal note: FIN 1 (S.STA).

[9:11:38 AM](#)

AT EASE

[9:13:13 AM](#)

RECONVENED

#sb224

SENATE BILL NO. 224

"An Act relating to the Alaska marine highway system fund; relating to the budget reserve fund established under art. IX, sec. 17(d), Constitution of the State of Alaska; relating to the Alaska higher education investment fund; and providing for an effective date."

[9:13:21 AM](#)

ERIN SHINE, STAFF, SENATOR CLICK BISHOP, read from a prepared statement:

- moves the Alaska Marine Highway Fund and the Alaska Higher Education Investment Fund from the general fund to the treasury;
- creates a definition for repayment of the Constitutional Budget Reserve under Alaska Constitution Article 9, section 17(d); and

- repeals statutes defining which funds are available for appropriation that was ruled broadly unconstitutional by the Hickel v Cowper decision in 1994.

In addition, the application of the language in SB 224 makes the Statutory Budget Reserve not sweepable. This was determined last year with practice, but this bill codifies it.

We now have two superior court decisions that helped draft this bill proposal for your consideration:

Power Cost Equalization Endowment Fund (AFN v. Dunleavy):

Ruled that PCE was not subject to the sweep because it failed the two-part test set out in Hickel v Cowper - PCE is in a separate fund and not the general fund.

Further footnote 77 gave us guidance as it outlined that the legislature has expressly created many funds and accounts in the general fund for various purposes but has also created separate funds outside the general fund, such as the SBR, which is included in the state treasury.

Alaska Higher Education Investment Fund (Short v. Dunleavy):

While HEIF has been ruled to be sweepable the Superior court also expressly states that the legislature possesses the power to establish funds as separate funds outside the general fund.

That is exactly what SB 224 attempts to accomplish.

Why these two accounts?

AMHF: helps give the system stability over fiscal years. The fare box is deposited each year for future fiscal years.

HEIF: Also gives stability for Alaska's Performance Scholarship program recipients and WWAMI students.

This bill does not create dedicated funds - the legislature still maintains its power to appropriate funds from these accounts for any purpose.

[9:15:48 AM](#)

Co-Chair Bishop shared that there were individuals available for questions.

[9:16:02 AM](#)

Co-Chair Stedman requested a sectional analysis.

[9:16:16 AM](#)

Ms. Shine discussed the Sectional Analysis (copy on file):

Section 1 AS 19.65.060(a)
Amends to move the Alaska marine highway fund from the general fund to the state treasury.

Section 2 AS 37.10.440
Adds a new section to 37.10:

- designating the means by which appropriations from the Constitutional Budget Reserve fund are paid back to the fund under Article IX, section 17(d), Constitution of the State of Alaska.
- defines the following terms for purposes of applying Article IX, section 17(d), Constitution of the State of Alaska:
 - (1) general fund; and
 - (2) unreserved, undesignated general fund balance to be carried forward.

Section 3 AS 37.14.750(a)
Amends to move the Alaska higher education investment fund from the general fund to the state treasury.

Section 4 Repealed Section
Repeals AS 37.10.420, a section of law invalidated in *Hickel v. Cowper*

Section 5 Effective Date
Provides an effective date of June 30, 2022.

[9:17:46 AM](#)

Senator Wilson wondered why all funds subject to the sweep were not being addressed. He asked for a conclusive list of all sweepable funds.

[9:18:39 AM](#)

ALEXEI PAINTER, DIRECTOR, LEGISLATIVE FINANCE DIVISION, replied that the list provided by the Legislative Finance Division (LFD) included accounts that had balances and the Office of Management and Budget's (OMB) list was more expansive. He relayed that the only list of real importance was the Division of Finance's list because they were the ones that executed the sweep. He said that LFD would receive a comprehensive financial report, which would include the list of funds that were swept on June 30, 2021.

[9:19:25 AM](#)

Senator Wilson wondered why other funds that could spur litigation had not been included in the legislation.

[9:19:32 AM](#)

Ms. Shine replied that the only the two accounts had been considered in the process of crafting the bill but that any legislator could put forth an amendment that considered any of the other accounts associated with the sweep.

[9:19:50 AM](#)

Senator Wilson commented that he preferred not to "cherry pick" funds, that all the funds should be considered or none of the funds should be considered.

[9:20:25 AM](#)

Senator Hoffman disagreed. He believed that the funds should be a priority because of their size and because of the number of Alaskans effected by the programs they funded. He contended that focusing on the two programs set the stage for other funds to follow.

[9:21:51 AM](#)

Co-Chair Stedman agreed that the two funds were of utmost importance and should be protected.

[9:23:00 AM](#)

Senator Olson wondered whether any alternative approaches to protect the funds had been considered.

[9:23:19 AM](#)

Ms. Shine clarified that all the funds would be available for appropriation because they were not dedicated funds. She said that there were two pieces of legislation working through the other body that offered alternative approaches. She said that "general fund" had never been defined in statute or in the constitution and the bill attempted to do so for clarification.

[9:24:03 AM](#)

Senator Olson stressed that the PCE ruling came from the Superior Court and wondered what would happen if the ruling was overturned.

[9:24:19 AM](#)

Ms. Shine deferred to Legislative Legal Services.

[9:24:39 AM](#)

MEGAN WALLACE, DIRECTOR, LEGISLATIVE LEGAL SERVICES (via teleconference), replied that the case found that the PCE fund was not sweepable could be challenged in the future, but it was the opinion of the division that most lower courts would uphold prior Superior Court opinions. She said that there was always a risk of litigation.

[9:27:01 AM](#)

Senator Olson asked whether Ms. Wallace agreed with the Superior Court decision that the AMHS Vessel (Hickel v. Cowper) fund should require future appropriations.

[9:27:23 AM](#)

Ms. Wallace replied that the approach used in the bill was to remove funds from the general fund and put them in separate accounts created by the legislature. She said another alternative for avoiding the sweep, addressed in Hickel v. Cowper, was that funds that do not require

further appropriating from the legislature would not be subject to the sweep. She stated that some statutes could be reconfigured to set up a formula to allow payment to be made without appropriation. She added that choosing an approach would be a policy decision by the legislature.

[9:28:50 AM](#)

Senator Olson surmised that Ms. Wallace agreed with the process the committee was currently undergoing concerning the legislation.

[9:28:59 AM](#)

Ms. Wallace replied that her office would never comment on policy and added that she believed that the bill could withstand legal scrutiny.

[9:29:38 AM](#)

Senator Wielechowski wondered whether there was a risk to defining funds that might be outside the general fund. That the court could assume funds that were not addressed could be considered within the general fund.

[9:30:12 AM](#)

Ms. Wallace replied that it was difficult to answer the question generally and that each fund would need to be scrutinized. She said that any specific challenge or debate would be specific to each fund's creation and the power of the legislature to create funds separate from the general fund. She relayed that the more specific the legislature could be on the matter, the better.

[9:32:08 AM](#)

Co-Chair Bishop OPENED public testimony.

[9:32:26 AM](#)

JAMES SQUYRES, SELF, RURAL DELTANA (via teleconference), testified against the bill.

[9:34:32 AM](#)

CYRUS COOPER, SELF, HEALY (via teleconference), spoke against the legislature.

[9:36:57 AM](#)

Co-Chair Bishop CLOSED public testimony.

[9:37:29 AM](#)

Senator Olson wondered whether there was a consideration of putting the Higher Education Investment Fund (HEIF) in statute to protect funding for medical students.

[9:37:55 AM](#)

Ms. Shine replied that the bill ultimately protected the HEIF from the sweep and would protect Washington, Wyoming, Alaska, Montana, and Idaho (WWAMI) funds for Alaskan medical students.

Senator Olson wondered whether the bill would provide adequate protection of the funds.

Ms. Shine read from Page 15 of the Short v. Dunleavy case brief:

"If the legislature believes these programs should be funded, it possesses the power to establish the HEIF as a separate fund outside the general fund of to appropriate money from other sources -"

[9:39:05 AM](#)

Co-Chair Stedman clarified that the funds were still subject to appropriation. The legislature could appropriate all of the money from each fund, every year, if it chose to do so.

[9:39:57 AM](#)

Co-Chair Bishop discussed housekeeping.

SB 224 was HEARD and HELD in committee for further consideration.

ADJOURNMENT

9:40:17 AM

The meeting was adjourned at 9:40 a.m.