

CS FOR HOUSE BILL NO. 505(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/24/94
Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act making appropriations to the constitutional budget reserve fund
2 established under art. IX, sec. 17, Constitution of the State of Alaska; and
3 providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. FINDINGS AND INTENT. (a) Following ratification by the voters, art. IX,
6 sec. 17, of the Constitution of the State of Alaska, took effect on January 2, 1991. This
7 amendment

8 (1) created a constitutional budget reserve fund;

9 (2) required that the proceeds of certain tax and mineral revenue disputes be
10 deposited into that fund; and

11 (3) established limitations on the legislature's ability to appropriate money
12 from that fund.

13 (b) That amendment dedicates to the constitutional budget reserve fund money from
14 mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing

1 payments or bonuses, and taxes imposed on mineral income, production, or property received
2 by the state after July 1, 1990," as a result of the termination, through settlement or otherwise,
3 of an administrative proceeding or of litigation in a State or federal court."

4 (c) Following the ratification of the budget reserve amendment, the Department of
5 Revenue requested that the attorney general determine whether the term "administrative
6 proceeding" in art. IX, sec. 17, of the Constitution of the State of Alaska, applied to informal
7 conferences and audits or only to formal hearings. On April 24, 1992, the attorney general
8 issued a formal opinion concluding that informal conferences do not constitute "administrative
9 proceedings" for the purposes of art. IX, sec. 17, of the Constitution of the State of Alaska.
10 The attorney general reasoned that sec. 17 applied to administrative actions that were similar
11 to litigation, such as the formal hearings held by the Department of Revenue. The opinion
12 concluded that informal conferences held for purposes of discussion and negotiation "fall
13 outside the ambit of the common understanding of litigation or legal contests."

14 (d) Since July 1, 1990, the state has engaged in several formal administrative hearings
15 and judicial proceedings to resolve oil and gas tax and mineral royalty disputes. Revenue
16 from the termination of these disputes has been deposited into the constitutional budget reserve
17 fund. During this period, the state also received oil and gas or mineral tax revenue from audit
18 assessments in the informal conference phase. In conformance with the April 24, 1992
19 opinion of the attorney general, the Department of Revenue deposited in the general fund all
20 revenue resulting from settlement of informal tax conferences.

21 (e) During the 1993 legislative session, the legislature passed several appropriation
22 bills. For example, HB 45, the education budget, was passed by the House February 22, 1993,
23 by a vote of 36-0, and was passed by the Senate March 15, 1993, by a vote of 15-4. Senate
24 Bill 60, regarding school construction grants, was passed by the Senate April 24, 1993, by a
25 vote of 12-8, and by the House May 11, 1993, by a vote of 39-1, and the Senate concurred
26 in the final version by a vote of 17-3 on May 11, 1993. Other appropriations passed by the
27 legislature in 1993 include HB 55, the operating budget; SB 183, the capital budget; and
28 SB 126, intertie loans and grants and power cost equalization fund. For fiscal year 1994, the
29 legislature approved appropriations from the general fund in excess of \$3,163,100,000.

30 (f) In passing the appropriation bills in 1993, the legislature authorized the expenditure
31 of anticipated revenue in the general fund, including amounts deposited in that fund as a result

1 of settlement of informal tax conferences. At the time the legislature passed those
2 appropriations for fiscal year 1994, revenue forecasts showed a surplus in the general fund.
3 Thus, the legislature did not anticipate that all money derived from the settlement of informal
4 tax conferences would be spent. Due to the unanticipated decrease in state revenue, the state
5 treasury has less money than was anticipated at the time that the legislature made its
6 appropriations in 1993. Because of this shortfall, any anticipated surplus representing
7 settlements of informal tax conferences, and amounts received from informal tax conference
8 settlements occurring after July 1, 1994, must be expended to fully fund the capital and
9 operation appropriations enacted in 1993.

10 (g) On July 12, 1993, the senate majority filed suit challenging the Department of
11 Revenue action of depositing into the general fund revenue resulting from informal tax
12 conferences. Halford v. Hickel, (3AN-93-6297 CI). On July 27, 1993, former Governor Steve
13 Cowper filed a similar complaint captioned Cowper v. Hickel (3AN-93-6848 CI). The cases
14 were consolidated.

15 (h) On November 19, 1993, the court issued its decision which concluded that art. IX,
16 sec. 17, of the state constitution applied to informal tax conferences. On November 29, 1993,
17 the state presented evidence that retroactive application of the court's ruling, requiring transfer
18 of over \$940,000,000 from the general fund, would disrupt state finances and put at risk the
19 justifiable reliance interest of Alaskans and municipalities throughout the state.

20 (i) The superior court dismissed the state's request that the ruling be applied
21 prospectively only. The court found the evidence of hardship "very compelling," but noted
22 that the hardship could be relieved if the legislature reappropriated the money for fiscal year
23 1994. The court ordered the governor to fully restore the constitutional budget reserve fund
24 with interest and to comply with its decision by the end of the 1994 legislative session. The
25 superior court noted "it is not clear that the Governor could legally remove the improperly
26 placed funds from the general fund [to the Budget Reserve Fund] without an appropriation
27 authorizing it."

28 (j) Following appeal to the Alaska Supreme Court, which determined that all income
29 that resulted from the settlement or other termination of informal administrative proceedings
30 involving certain taxes since July 1, 1990, should have been deposited into the budget reserve
31 fund created by art. IX, sec. 17, of the Constitution of the State of Alaska.

1 **(k)** The Alaska Supreme Court ordered the governor to restore the constitutional
2 budget reserve fund, with interest from the date of receipt by the state of money described in
3 **(j)** of this section.

4 **(l)** The amount required to restore the constitutional budget reserve fund consistent
5 with judicial interpretation is \$945,636,778.27, plus interest that would have been earned upon
6 investment of this money, calculated from the date of receipt by the state.

7 **(m)** As of February 1994, there is not sufficient unappropriated money in the general
8 fund to allow the governor to unilaterally transfer the money needed to fully restore the
9 constitutional budget reserve fund.

10 **(n)** It is the intent of the legislature to provide a funding source for restoration of the
11 constitutional budget reserve fund in order for the governor to satisfy the order of the Alaska
12 Supreme Court. The legislature finds that this court order can be complied with by an
13 appropriation from the general fund to the constitutional budget reserve fund, retroactive to
14 July 1, 1993, of the principal and interest that should have been deposited into that budget
15 reserve fund. It is the intent of the legislature that this appropriation will restore all money
16 to the constitutional budget reserve fund that should have been deposited there since July 1,
17 1990, under the provisions of art. IX, sec. 17, of the Constitution of the State of Alaska.

18 * **Sec. 2.** The sum of \$945,636,778.27 is appropriated from the general fund to the budget
19 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply
20 with the judgment in *Hickel v. Halford* (Supreme Court No. S-6124/6134) (Alaska Jan. 27,
21 1994).

22 * **Sec. 3.** An amount equal to the interest that would have been earned on money received
23 by the state after June 1, 1990, as a result of termination through settlement or otherwise of
24 an informal administrative proceeding involving taxes imposed on mineral income, production,
25 or property, and subsequently deposited in the general fund, is appropriated from the general
26 fund to the budget reserve fund established by art. IX, sec. 17, Constitution of the State of
27 Alaska, to comply with the judgment in *Hickel v. Halford* (Supreme Court No. S-
28 6124/6134)(Alaska Jan. 27, 1994).

29 * **Sec. 4.** This Act is retroactive to July 1, 1993.

30 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).