

**CS FOR HOUSE BILL NO. 505(FIN)(brf fld)(efd fld)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Amended: 3/30/94**

**Offered: 3/29/94**

**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 making an appropriation to the Department of Education for school construction  
4 debt retirement."

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

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

9 (1) created a constitutional budget reserve fund;

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

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

14 (b) That amendment dedicates to the constitutional budget reserve fund money from

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

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

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

22 (e) The money in the general fund was available for appropriation by the legislature  
23 and would be applied as necessary to meet any fiscal need.

24 (f) In passing the appropriation bills in 1993, the legislature authorized the expenditure  
25 of anticipated revenue in the general fund, including amounts deposited in that fund as a result  
26 of settlement of informal tax conferences. At the time the legislature passed those  
27 appropriations for fiscal year 1994, revenue forecasts showed a surplus in the general fund.  
28 However, due to the unanticipated decrease in state revenue, the state treasury has less money  
29 than was anticipated at the time that the legislature made its appropriations in 1993. Because  
30 of this shortfall, any anticipated surplus representing settlements of informal tax conferences,  
31 and amounts received from informal tax conference settlements occurring after July 1, 1994,

1 must be expended to fully fund the capital and operation appropriations enacted in 1993.

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

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

12 (i) The superior court dismissed the state's request that the ruling be applied  
13 prospectively only. The court found the evidence of hardship "very compelling," but noted  
14 that the hardship could be relieved if the legislature reappropriated the money for fiscal year  
15 1994. The court ordered the governor to fully restore the constitutional budget reserve fund  
16 with interest and to comply with its decision by the end of the 1994 legislative session. The  
17 superior court noted "it is not clear that the Governor could legally remove the improperly  
18 placed funds from the general fund [to the Budget Reserve Fund] without an appropriation  
19 authorizing it."

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

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

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

30 (m) As of February 1994, there was not sufficient unappropriated or unrestricted  
31 money in the general fund to allow the governor to unilaterally transfer the money needed to

1 fully restore the constitutional budget reserve fund.

2 (n) It is the intent of the legislature that the order of the Alaska Supreme Court be  
3 complied with by an appropriation from the general fund to the constitutional budget reserve  
4 fund, retroactive to July 1, 1993, of the principal and interest that should have been deposited  
5 into that budget reserve fund. This appropriation will restore all money to the constitutional  
6 budget reserve fund that should have been deposited there since July 1, 1990, under the  
7 provisions of art. IX, sec. 17, of the Constitution of the State of Alaska.

8 \* Sec. 2. The sum of \$945,636,778.27 is appropriated from the general fund to the budget  
9 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply  
10 with the judgment in Hickel v. Halford (Supreme Court No. S-6124/6134) (Alaska Jan. 27,  
11 1994).

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

19 \* Sec. 4. The sum of \$103,345,252 is appropriated from the Alaska debt retirement fund  
20 (AS 37.15.011) to the Department of Education for state aid for costs of school construction  
21 under AS 14.11.100.

22 \* Sec. 5. Sections 1 - 3 of this Act are retroactive to July 1, 1993.