

**SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) am S**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Amended: 4/13/94**

**Offered: 4/13/94**

**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; making  
3 an appropriation to the Department of Education for support of kindergarten,  
4 primary, and secondary education and community schools programs and for school  
5 construction debt retirement; and making appropriations from the constitutional  
6 budget reserve fund under art. IX, sec. 17(c), Constitution of the State of Alaska;  
7 and providing for an effective date."

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

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

12 (1) created a constitutional budget reserve fund;

13 (2) required that the proceeds of certain tax and mineral revenue disputes be

1 deposited into that fund; and

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

4 (b) That amendment dedicates to the constitutional budget reserve fund money from  
5 mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing  
6 payments or bonuses, and taxes imposed on mineral income, production, or property received  
7 by the state after July 1, 1990, "as a result of the termination, through settlement or otherwise,  
8 of an administrative proceeding or of litigation in a State or federal court."

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

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

26 (e) During the 1993 legislative session, the legislature passed several appropriation  
27 bills. For example, HB 45, the education budget, was passed by the House February 22, 1993,  
28 by a vote of 36-0, and was passed by the Senate March 15, 1993, by a vote of 15-4. Senate  
29 Bill 60, regarding school construction grants, was passed by the Senate April 24, 1993, by a  
30 vote of 12-8, and by the House May 11, 1993, by a vote of 39-1, and the Senate concurred  
31 in the final version by a vote of 17-3 on May 11, 1993. Other appropriations passed by the

1 legislature in 1993 include HB 55, the operating budget; SB 183, the capital budget; and  
2 SB 126, intertie loans and grants and power cost equalization fund. For fiscal year 1994, the  
3 legislature approved appropriations from the general fund in excess of \$3,163,100,000.

4 (f) In passing the appropriation bills in 1993, the legislature authorized the expenditure  
5 of anticipated revenue in the general fund, including amounts deposited in that fund as a result  
6 of settlement of informal tax conferences. At the time the legislature passed those  
7 appropriations for fiscal year 1994, revenue forecasts showed a surplus in the general fund.  
8 Thus, the legislature did not anticipate that all money derived from the settlement of informal  
9 tax conferences would be spent. Due to the unanticipated decrease in state revenue, the state  
10 treasury has less money than was anticipated at the time that the legislature made its  
11 appropriations in 1993. Because of this shortfall, any anticipated surplus representing  
12 settlements of informal tax conferences, and amounts received to date from informal tax  
13 conference settlements must be expended to fully fund the capital and operation appropriations  
14 enacted in 1993.

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

20 (h) On November 19, 1993, the court issued its decision which concluded that art. IX,  
21 sec. 17, of the Constitution of the State of Alaska, applied to informal tax conferences. On  
22 November 29, 1993, the state presented evidence that retroactive application of the court's  
23 ruling, requiring transfer of over \$940,000,000 from the general fund, would disrupt state  
24 finances and put at risk the justifiable reliance interests of Alaskans and municipalities  
25 throughout the state.

26 (i) The superior court dismissed the state's request that the ruling be applied  
27 prospectively only. The court found the evidence of hardship "very compelling," but noted  
28 that the hardship could be relieved if the legislature reappropriated the money for fiscal year  
29 1994. The court ordered the governor to fully restore the constitutional budget reserve fund  
30 with interest and to comply with its decision by the end of the 1994 legislative session. The  
31 superior court noted "it is not clear that the Governor could legally remove the improperly

1 placed funds from the general fund [to the Budget Reserve Fund] without an appropriation  
2 authorizing it."

3 (j) Following appeal to the Alaska Supreme Court, the court in *Hickel v. Halford*  
4 (Supreme Court No. S-6124/6134) (Alaska Jan. 27, 1994) determined that all income that  
5 resulted from the settlement or other termination of informal administrative proceedings  
6 involving certain taxes since July 1, 1990, should have been deposited into the budget reserve  
7 fund created by art. IX, sec. 17, of the Constitution of the State of Alaska.

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

11 (l) The amount required to restore the constitutional budget reserve fund consistent  
12 with the initial judicial interpretation is \$932,762,996, plus interest that would have been  
13 earned upon investment of this money, calculated from the date of receipt by the state.

14 (m) The amount required to restore the constitutional budget reserve fund consistent  
15 with the subsequent judicial interpretation (*Hickel v. Halford* (Supreme Court No. 4069)  
16 (Alaska April 4, 1994)) is \$73,275,478, plus interest that would have been earned upon  
17 investment of this money, calculated from the date of receipt by the state.

18 (n) As of April 1994, there is not sufficient unappropriated money in the general fund  
19 to allow the governor to unilaterally transfer the money needed to fully restore the  
20 constitutional budget reserve fund.

21 (o) It is the intent of the legislature that the orders of the Alaska Supreme Court and  
22 the Alaska Superior Court be complied with by appropriations from the general fund to the  
23 constitutional budget reserve fund, retroactive to July 1, 1993, of the principal and interest that  
24 should have been deposited into that budget reserve fund. This appropriation will restore all  
25 money to the constitutional budget reserve fund that should have been deposited there since  
26 July 1, 1990, under the provisions of art. IX, sec. 17, of the Constitution of the State of  
27 Alaska.

28 \* Sec. 2. The sum of \$932,762,996 is appropriated from the general fund to the budget  
29 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply  
30 with the order in *Hickel v. Halford* (Supreme Court No. S-6124/6134) (Alaska Jan. 27, 1994).

31 \* Sec. 3. The sum of \$73,275,478 is appropriated from the general fund to the budget

1 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply  
2 with the decision in *Hickel v. Halford* (Supreme Court No. 4069) (Alaska April 4, 1994).

3 \* Sec. 4. An amount equal to the interest that would have been earned on money received  
4 by the state after June 1, 1990, as a result of tax assessments or termination through settlement  
5 or otherwise of administrative proceedings involving taxes imposed on mineral income,  
6 production, or property, and subsequently deposited in the general fund, is appropriated from  
7 the general fund to the budget reserve fund established by art. IX, sec. 17, Constitution of the  
8 State of Alaska, to comply with the order in *Hickel v. Halford* (Supreme Court No. S-  
9 6124/6134)(Alaska Jan. 27, 1994) and the decision in *Hickel v. Halford* (Supreme Court No.  
10 4069) (Alaska April 4, 1994).

11 \* Sec. 5. (a) The sum of \$696,527,188 is appropriated from the general fund and from  
12 other funds in the amounts listed to the Department of Education for the purposes expressed  
13 and allocated in the amounts listed for operating expenditures for the fiscal year ending  
14 June 30, 1995:

15	FUND SOURCE	AMOUNT
16	General fund	\$635,181,888
17	General fund/mental health trust income account	
18	(AS 37.14.011)	8,054,500
19	Public school trust fund (AS 37.14.110)	6,816,600
20	School fund (AS 43.50.140)	2,668,100
21	P.L. 81-874	21,806,100
22	Federal receipts other than	
23	P.L. 81-874	22,000,000
24	PURPOSE	ALLOCATION AMOUNT
25	Foundation program	\$629,938,000
26	Child nutrition/student lunch program	22,000,000
27	Cigarette tax distribution	2,668,100
28	Tuition students	1,887,600
29	Boarding home grants	355,000
30	Youth in detention	800,000
31	Pupil transportation	31,638,148

1	Schools for the handicapped	3,447,600
2	Community schools	600,000
3	Additional district support	3,192,740.

4 (b) The amount allocated under (a) of this section for additional district support is  
5 further allocated to the following school districts in the amounts listed:

6	SCHOOL DISTRICT	ALLOCATION AMOUNT
7	Annette Island School District	\$166,530
8	Cordova School District	217,160
9	Craig City School District	151,890
10	Dillingham City School District	250,100
11	Galena City School District	156,160
12	Hoonah City School District	126,270
13	Hydaburg City School District	102,480
14	Kake City School District	136,640
15	Kashunamiut School District	206,180
16	Klawock City School District	158,600
17	Nenana City School District	164,090
18	Nome City School District	264,740
19	Pelican City School District	56,730
20	Petersburg City School District	199,470
21	St. Mary's School District	119,560
22	Skagway City School District	115,290
23	Tanana City School District	122,000
24	Unalaska City School District	200,690
25	Wrangell City School District	151,890
26	Yakutat City School District	126,270.

27 \* Sec. 6. (a) The sum of \$103,345,264 is appropriated from the general fund to the Alaska  
28 debt retirement fund (AS 37.15.011).

29 (b) The sum of \$103,345,264 is appropriated from the Alaska debt retirement fund  
30 (AS 37.15.011) to the Department of Education for state aid for costs of school construction  
31 under AS 14.11.100.

1     \* **Sec. 7. (a)** The sum of \$416,600,000 is appropriated under art. IX, sec. 17(c), of the  
2 Constitution of the State of Alaska, from the budget reserve fund established by art. IX,  
3 sec. 17, of the Constitution of the State of Alaska, to the general fund.

4           (b) The appropriation made by (a) of this section is to fund the portion of the fiscal  
5 year 1994 appropriations enacted in 1993 that was intended to be funded from amounts  
6 deposited in the general fund representing a portion of the revenue received from informal tax  
7 conference settlements and tax assessments.

8           (c) The sum of \$516,162,996 is appropriated under art. IX, sec. 17(c), of the  
9 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.  
10 17, of the Constitution of the State of Alaska, to the general fund.

11          (d) The sum of \$73,275,478 is appropriated under art. IX, sec. 17(c), of the  
12 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.  
13 17, of the Constitution of the State of Alaska, to the general fund.

14          (e) The appropriations made by (c) and (d) of this section are to fund the portion of  
15 the fiscal year 1994 appropriations enacted in 1993 that was anticipated as being funded from  
16 the general fund but, due to shortfalls created by declining state oil revenue, requires  
17 expenditure of revenue received from informal tax conference settlements and tax assessments.

18     \* **Sec. 8.** An amount equal to the amount appropriated by sec. 4 of this Act is appropriated  
19 under art. IX, sec. 17(c), Constitution of the State of Alaska, from the budget reserve fund  
20 established by art. IX, sec. 17, Constitution of the State of Alaska to the general fund.

21     \* **Sec. 9.** In addition to the amounts appropriated by secs. 7 and 8 of this Act, if the  
22 unrestricted state revenue available for appropriation in fiscal year 1994 is insufficient to cover  
23 the fiscal year 1994 general fund appropriations, the amount necessary to balance revenue and  
24 general fund appropriations is appropriated under art. IX, sec. 17(c), Constitution of the State  
25 of Alaska from the budget reserve fund established under art. IX, sec. 17, Constitution of the  
26 State of Alaska, to the general fund.

27     \* **Sec. 10.** The appropriations from the budget reserve fund (art. IX, sec. 17, Constitution  
28 of the State of Alaska) contained in secs. 7 - 9 of this Act are made under art. IX, sec. 17(c),  
29 Constitution of the State of Alaska.

30     \* **Sec. 11.** Sections 2 - 4 of this Act are retroactive to July 1, 1993.

31     \* **Sec. 12.** The appropriations contained in secs. 2 - 6 of this Act take effect only if the

- 1 appropriations from the budget reserve fund contained in secs. 7 - 9 of this Act take effect.
- 2 \* Sec. 13. This Act takes effect immediately under AS 01.10.070(c).