

SENATE BILL NO. 331

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/18/94
Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act making appropriations to and from the constitutional budget reserve
2 fund under art. IX, sec. 17(c), Constitution of the State of Alaska, for operating
3 and capital expenses of state government for fiscal year 1994; and providing for
4 an effective date."

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

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

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

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

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

30 (j) Following appeal to the Alaska Supreme Court, that determined that all income that
31 resulted from the settlement or other termination of informal administrative proceedings

1 involving certain taxes since July 1, 1990, should have been deposited into the budget reserve
2 fund created by art. IX, sec. 17, of the Constitution of the State of Alaska.

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

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

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

12 (n) It is the intent of the legislature to provide a funding source for restoration of the
13 constitutional budget reserve fund in order for the governor to satisfy the order of the Alaska
14 Supreme Court. The legislature finds that this court order can be complied with by an
15 appropriation from the general fund to the constitutional budget reserve fund, retroactive to
16 July 1, 1993, of the principal and interest that should have been deposited into that budget
17 reserve fund. It is the intent of the legislature that this appropriation will restore all money
18 to the constitutional budget reserve fund that should have been deposited there since July 1,
19 1990 under the provisions of art. IX, sec. 17, of the Constitution of the State of Alaska. This
20 Act also appropriates, under art. IX, sec. 17(c), of the Constitution of the State of Alaska, that
21 same amount of money from the constitutional budget reserve fund to the general fund.

22 (o) Alaskans have relied on appropriations made during the 1993 legislative session.
23 Financial uncertainty is costly for municipalities, state agencies, and the people of the state.
24 Continued uncertainty makes financial planning impossible. Further litigation concerning the
25 capital and operating expenditures authorized by the appropriations made in 1993 for fiscal
26 year 1994 would create greater uncertainty. The importance of finality and stability in
27 government requires that the governor and the legislature take immediate action to restore the
28 constitutional budget reserve fund and appropriate money from that fund under art. IX, sec.
29 17(c), of the Constitution of the State of Alaska. Although it might be possible to make the
30 appropriations by simple majority vote of the legislature under art. IX, sec. 17(b), of the
31 Constitution of the State of Alaska, this Act makes the appropriations under art. IX, sec. 17(c),

1 of the Constitution of the State of Alaska, which requires a three-fourths majority vote of each
2 house of the legislature. This action provides finality and ensures that there will be no
3 successful challenge to the validity of the appropriations made by secs. 4, 5, and 6 of this Act.

4 (p) Making these appropriations retroactive to July 1, 1993 will provide a valid
5 funding source for appropriations made in 1993, in effect ratifying expenditures under those
6 appropriations.

7 (q) The appropriations made by secs. 4, 5, and 6 of this Act are for a public purpose
8 as required by art. IX, sec. 17(c), Constitution of the State of Alaska.

9 * Sec. 2. The sum of \$945,636,778.27 is appropriated from the general fund to the budget
10 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply
11 with the judgment in Hickel v. Halford (Supreme Court No. S-6124/6134) (Alaska Jan. 27,
12 1994).

13 * Sec. 3. An amount equal to the interest that would have been earned on money received
14 by the state after June 1, 1990, as a result of termination through settlement or otherwise of
15 an informal administrative proceeding involving taxes imposed on mineral income, production,
16 or property, and subsequently deposited in the general fund, is appropriated from the general
17 fund to the budget reserve fund established by art. IX, sec. 17, Constitution of the State of
18 Alaska, to comply with the judgment in Hickel v. Halford (Supreme Court No. S-
19 6124/6134)(Alaska Jan. 27, 1994).

20 * Sec. 4. (a) The sum of \$416,600,000 is appropriated under art. IX, sec. 17(c), of the
21 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.
22 17, of the Constitution of the State of Alaska, to the general fund.

23 (b) The appropriation made by (a) of this section is to fund the portion of the fiscal
24 year 1994 appropriations enacted in 1993 that was anticipated as being funded from amounts
25 deposited in the general fund representing a portion of the revenue received from informal tax
26 conference settlements.

27 (c) The sum of \$529,036,778.27 is appropriated under art. IX, sec. 17(c), of the
28 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.
29 17, of the Constitution of the State of Alaska, to the general fund.

30 (d) The appropriation made by (c) of this section is to fund the portion of the fiscal
31 year 1994 appropriations enacted in 1993 that was anticipated as being funded from the

1 general fund but, due to shortfalls created by declining state oil revenue, requires expenditure
2 of revenue received from informal tax conference settlements.

3 * Sec. 5. The amount appropriated by sec. 3 of this Act is appropriated under art. IX, sec.
4 17(c), Constitution of the State of Alaska, from the budget reserve fund established by art. IX,
5 sec. 17, Constitution of the State of Alaska to the general fund.

6 * Sec. 6. In addition to the amounts appropriated by secs. 4 and 5 of this Act, if the
7 unrestricted state revenue available for appropriation in fiscal year 1994 is insufficient to cover
8 the fiscal year 1994 general fund appropriations, the amount necessary to balance revenue and
9 general fund appropriations is appropriated under art. IX, sec. 17(c), Constitution of the State
10 of Alaska to the general fund.

11 * Sec. 7. This Act is retroactive to July 1, 1993.

12 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c), only if secs. 4, 5, and
13 6 of this Act receive the three-fourths majority vote of each house required by art. IX, sec.
14 17(c) of the Constitution of the State of Alaska.