

COMMITTEE REPORT
SENATE

FURTHER:

4/30/86

Date 5/6/86

Mr. President

The Committee on FINANCE considered CSHB 513(Fin)
relating to a budget limitation and to reserve funds; efd.

and (a majority of the committee) (the committee) reports it back with
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt SCS for CSHB 513 (Fin)
- new title
- same title and recommends "DO PASS"
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
 SFC
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
Carl Fink
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

No Rec - Rick Helford

Co-Chairman [Signature]
do pass
Chairman recommendation

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SCS CSHB 513 (Fin)
 Title : Act relating to a budget limitation and to reserve funds

Sponsor : Rules/Governor
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : All
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : _____
 Division : Senator Jan Faiks, Co-chairman
Senate Finance Committee

Phone : 465-4523
 Date : May 6, 1986

Approved by Commissioner : _____
 Agency : _____

Date : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

cook
5/5/86

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 513 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a budget limitation and to re-
7 serve funds; and providing for an effective date."

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

9 * Section 1. AS 37.05 is amended by adding a new section to read:

10 Sec. 37.05.156. BUDGET RESERVE FUND; APPROPRIATION LIMIT. (a)

11 There is established as a separate fund in the state treasury the
12 budget reserve fund. The budget reserve fund consists of appropria-
13 tions to the fund. Money received by the state that is subject to the
14 appropriation limit under (b) of this section and that exceeds that
15 limit, may be appropriated to the budget reserve fund.16 (b) Except for appropriations to the permanent fund or for
17 Alaska permanent fund dividends, appropriations to the budget reserve
18 fund, appropriations of revenue bond proceeds, appropriations required
19 to pay the principal and interest on general obligation bonds, and
20 appropriations of money received from a nonstate source in trust for a
21 specific purpose, including revenue of a public enterprise or public
22 corporation of the state that issues revenue bonds, appropriations
23 from the treasury made in a fiscal year may not exceed appropriations
24 made in the preceding fiscal year by more than five percent plus the
25 change in population and inflation since the beginning of the pre-
26 ceding fiscal year. For purposes of applying this limit an approp-
27 riation is considered to be made in the fiscal year in which it is
28 enacted and a reappropriation remains attributed to the fiscal year in
29 which the original appropriation is enacted. The determination of

1 the change in population for purposes of this subsection shall be
2 based on an annual estimate of population by the Department of Labor.
3 The determination of the change in inflation for purposes of this sub-
4 section shall be based on the Consumer Price Index for all urban
5 consumers for Anchorage prepared by the United States Bureau of Labor
6 Statistics. The amount of money received by the state that is subject
7 to the appropriation limit includes the balance in the general fund
8 carried forward from the preceding fiscal year.

9 (c) If the legislature determines that the money subject to the
10 appropriation limit received by the state in a fiscal year is less
11 than the maximum permitted to be appropriated under (b) of this sec-
12 tion, up to 25 percent of the balance of the budget reserve fund may
13 be appropriated to the general fund.

14 (d) The Department of Revenue shall manage and invest assets of
15 the budget reserve fund in the manner set out for the management and
16 investment of the assets of the general fund under AS 37.10.070.
17 Income from investment of the budget reserve fund may be appropriated
18 to the fund each year by law.

19 (e) Notwithstanding other provisions of this section, appropria-
20 tions may be made from the budget reserve fund needed by the governor
21 to meet a disaster. In this subsection, "disaster" has the meaning
22 given in AS 26.23.230.

23 * Sec. 2. AS 37.05.159 is repealed.

24 * Sec. 3. AS 37.05.156 added by sec. 1 of this Act applies to fiscal
25 year 1988 and fiscal years thereafter.

26 * Sec. 4. This Act takes effect July 1, 1986.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : CS HB 513 (FIN)
 Title : Appropriation Limit of
Budget Reserve Fund

 Sponsor : Governor
 Requestor : House Finance Committee
 Date of Request : 4/24/86

FISCAL DETAIL

Agency Affected : ALL
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL		-0-	-0-	-0-	-0-	-0-
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REVENUE		-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER		-0-	-0-	-0-	-0-	-0-
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

APA

Prepared by : Representative Adams - Chairman
 Division : House Finance Committee

465-3706
 Phone : _____
 Date : 4/24/86

Approved by Commissioner : _____
 Agency : _____

Date : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Sectional Analysis for
CSHB 513 (Finance)
5/5/86 version

An Act relating to a budget limitation and to
reserve funds

Section 1.

(a) Establishes the Budget Reserve Fund which consists of money appropriated to it. Any funds received that are subject to the appropriation limit and exceeds the limit may be appropriated to the budget reserve fund.

(b) Provides exceptions to the appropriation limit:
-- to the Permanent Fund;
-- to the budget reserve fund;
-- for revenue bond proceeds;
-- principal and interest on G. O. bonds;
-- money received from nonstate source in trust
for a specific purpose.

Otherwise, all other appropriations can not exceed the amount enacted the preceding fiscal year plus 5% plus adjustments for population plus inflation. Specifies the types of indices to be used for population and inflation.

(c) Provides that no more than 25% of the Budget Reserve Fund can be appropriated in any one fiscal year when determined necessary by the Legislature.

(d) The assets of the Budget Reserve Fund shall be invested as is the general fund and income may be deposited back into the fund by the Legislature.

(e) Monies can be expended by the Governor for a disaster.

Section 2. Repeals the Rainy Day Fund.

Section 3. The provisions of section 1 apply to the FY 88 budget and thereafter.

Section 4. July 1, 1986 effective date.

SB 362
HB 513

Concerns with House version of Budget Reserve Fund

1. Allows a 15% increase in a budget limit over preceeding year compared to the Senate's;
2. Indicates that 25% of the Budget Reserve Fund can be appropriated in any one year (I assume it must be by the Legislature but is not specified). The emphasis here is that at the beginning of the fiscal year, the Governor shall determine if it is necessary to use some of the 25% of the BRF in putting together his budget. Therefore, by knowing you can get 25% because of the 15% increase in your budget, no incentive to keep budget at same level.
3. Says that the Governor is empowered to make appropriations from the Budget Reserve Fund when there is an emergency -- and an emergency includes when revenues from nonstate sources falls below what is necessary for critical services;
4. Includes Undistribution Income Account as a source of funds for the Budget Reserve Fund.

Senate's Version:

1. Tighter appropriation limit;
2. It is clear the Legislature has the power to decide when the Budget Reserve Fund shall be used and it will be done in the third quarter of the fiscal year.
3. Enactment is contingent on voter approval of the appropriation limit.

Fake
5/2/86

STATE OF ALASKA
THE LEGISLATURE


POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

SUBJECT: Constitutional Problems in Section 1,
CSHB 513(Fin)

TO: Senator Jan Faiks
Co-chair, Senate Finance Committee

FROM: David R. Dierdorff 
Revisor of Statutes

You have asked whether sec. 1 of CSHB 513(Fin) presents legal problems. That section uses the repeal and reenactment technique to amend AS 37.05.159 and convert the "reserve for emergency operating expenses account" (rainy day account) to the "budget reserve fund." Subsection (a) of the repealed and reenacted section also purports to transfer the balance of the rainy day account by establishing the new fund as one consisting of money appropriated to it and "of the balance of the reserve for emergency operating expenses account as of July 1, 1986." (July 1 would be the date the rainy day account becomes the reserve fund.)

It is my opinion that sec. 1, CSHB 513(Fin) presents serious constitutional problems. Section 13, Article IX, Constitution of Alaska provides:

SECTION 13. EXPENDITURES. No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

One might argue that since the rainy day fund is in the state treasury, and the budget reserve fund is also in the

state treasury, no money is being withdrawn from the treasury, and, therefor, the transfer of the fund balance does not amount to an appropriation for purposes of sec. 13, Art. IX (or, for that matter, for the purposes of sec. 13, Art. II, which prohibits a mixture of substantive law and appropriations in the same bill).

There are several difficulties with this argument. The most significant, in my opinion, is that the balance of money that is in the rainy day fund was appropriated to that account for the purposes of that account, not for the purposes of some other account with entirely different purposes. As you know, AS 37.05.159 sets out very specific and limited uses of the rainy day fund, including procedures that must be followed in the event of an expenditure or encumbrance. Expenditure of that money for a purpose other than one for which it was appropriated would be a clear violation of sec. 13, Art. IX and of the statutes enacted to implement the constitution. See, for example, AS 37.05.170, which prohibits payments against funds unless an appropriation or expenditure authorization "has been made for the purpose for which it is intended to incur the obligation." I also note that it could be argued that upon the repeal of the rainy day fund and its replacement by a very different type of fund with very different purposes and conditions, the balance of the rainy day fund lapses into the general fund, as to hold otherwise would be to allow its expenditure in an unconstitutional manner.

It might be argued that since the new fund is a reserve for appropriations, not for expenditure, any defect in the transfer would be cured upon subsequent appropriation from the reserve fund. The argument would be that no expenditure could be made from the fund without a new appropriation, so, therefor, any expenditure from the fund would in fact be in accordance with a lawful appropriation for the purpose. Assuming for purposes of argument that the legislature is free to transfer funds by changing the name and character of a fund, and thereby avoid the appropriation process for that transfer, what if the legislature decided to provide that the new fund could be expended by the governor in some manner, in some amounts, and under some procedures, say, for example, to supplement revenue shortfalls, without further appropriation? That would clearly be an expenditure beyond the scope, and without the limitations, of appropriations to the old rainy day fund, and, therefor, illegal. It would not be an expenditure from the reserve fund under an

Senator Faiks
Page 3
May 5, 1986

appropriation, because there was no appropriation to that fund in the first instance.

Thus, one would be limited to saying that transfers without benefit of appropriation are legal only if the new fund does not allow expenditures without appropriation, and I don't think that is what the executive branch is arguing in the instant situation.

Another legal difficulty posed by sec. 1 is that combining the fund transfer with the statutory creation of the fund results in the legislature diminishing the governor's line item veto power under sec. 15, Art. II. It is irrelevant that it is the governor who desires to use the method that diminishes the governor's constitutional authority to veto or reduce an appropriation for it is not who requests an unconstitutional enactment that the court looks to to determine its constitutionality! The constitution gives the governor the power to veto or reduce an appropriation item, including fund transfers, and any attempt to avoid the governor's exercise of that power would be given very short shrift by the court.

Finally, it must be pointed out that sec. 1 of CSHB 513(Fin), in sec. 37.05.159(b), and sec. 1 of SCS CSHB 513(Fin), in sec. 37.05.156(c), purport to limit the legislature's ability to appropriate from the reserve fund. Even the legislature lacks the power to diminish its constitutional powers of appropriation. Thus, absent a constitutional amendment establishing the fund and restricting its availability for appropriation, the referenced statutory provisions would not be binding on a future legislature.

DRD:csh
c7/007

BILL SHEFFIELD
GOVERNOR



AK 532

0-124
cl

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 24, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a joint resolution proposing amendments to the Alaska Constitution relating to a budget reserve fund and an appropriation limit, and a bill to implement the joint resolution.

I am placing the bill implementing the proposed constitutional amendments before the legislature during this session to ensure that legislators and voters facing that proposal in the 1986 general election understand the scope, details, and implications of the amendments.

The bill would take effect following voter approval of the constitutional amendments. At that time, AS 37.05.159, establishing what is commonly known as the "rainy day fund," would be repealed and replaced by a new statute establishing the budget reserve fund. The balance of the money in the rainy day fund would follow the constitutional and statutory change and would be transferred to the budget reserve fund at that time. The budget reserve fund is designed to meet revenue contingencies contemplated by the rainy day fund as well as broader revenue stability needs.

At the outset, it must be emphasized that the budget reserve fund is very different in purpose and function from forward funding and cash-based budgeting proposals. We have carefully evaluated all these options, and we believe that the budget reserve fund is the fiscal management tool that is best suited to the State's situation. This fund seeks to

dampen annual budget swings. Neither forward funding nor cash-based budgeting protect us from annual budget fluctuations caused by volatility in world oil markets.

The budget reserve fund works in the following manner. In years of rising revenues, as specified in the constitutional amendments, appropriations are limited to 115 percent of appropriations made during the preceding calendar year. Any surplus money above the 115 percent limit is used first to replenish the budget reserve fund; any remaining surplus is then divided between deposits to the permanent fund and to the general fund. In years of revenue decline, as specified in the constitutional amendments and proposed statute, money is made available from the budget reserve fund in an amount that brings appropriations up to 95 percent of the appropriations in the preceding calendar year, or an amount that equals no more than 25 percent of the fund's balance, whichever is less.

These two operations of the budget reserve fund will provide a smoother expenditure pattern over the years than would result from the fluctuations of petroleum revenue alone. This is because, in high revenue years, revenue increases will flow into the budget reserve fund for subsequent appropriation during years of revenue decline, buffering fluctuations in the state's revenue stream caused by petroleum price variations. The upper limit to appropriations (the 115 percent level) will provide an effective appropriation limit, in contrast with the ineffective limit now in our constitution. We will therefore have a meaningful constitutional spending limit as desired by the people of Alaska.

Both the joint resolution and the bill specify that the appropriation limit applies only to unrestricted general fund money and to expenditures from the undistributed income account of the permanent fund (except for a deposit of that money to the permanent fund made in 1986). In turn, "money received" by the state includes only money in the undistributed income account and unrestricted general fund money. Excluded from both, for example, are federal receipts. The joint resolution and bill also specify that appropriations for a fiscal year are limited to 115 percent of appropriations made during the preceding calendar year. The calendar-year basis is used to ensure certainty in the determination of allowable appropriation levels for the coming fiscal year. It also avoids problems caused by supplemental appropriations late in a fiscal year.

New AS 37.05.156(c), in sec. 1 of the bill, addresses the question of how reappropriations should be treated for purposes of the appropriation limit. The intent of that provision is to distinguish between "old" and "new" money. This distinction is needed because it is sometimes difficult to determine whether a reappropriation consists entirely of money appropriated in a prior year, or exceeds the amount of money actually available from those prior appropriations, thereby entailing an appropriation of new money. Any reappropriation not clearly identifiable is also considered a new appropriation.

The maximum balance of the budget reserve fund in any fiscal year equals the amount of general fund appropriations enacted during the preceding calendar year. Money in excess of the 115 percent limit is used to bring the fund balance up to the fund's capacity. A portion of the money in excess of the budget reserve fund capacity must then be deposited in the permanent fund as savings. The bill specifies that that portion is 75 percent. The remaining excess (25 percent) must be deposited in the general fund, and is available for appropriation (effectively increasing the 115 percent limit). Any of that excess money subsequently appropriated from the general fund becomes part of the calculation of the base for the next fiscal year.

The bill specifies that if general fund revenue in a fiscal year falls to a level below 95 percent of appropriations made during the preceding calendar year, an amount may be transferred from the budget reserve fund into the general fund. That transferrable amount is limited to the lesser of (1) the amount needed to bring appropriations up to the 95 percent level, or (2) the maximum amount of the fund that may be spent in a fiscal year, which is 25 percent of the budget reserve fund balance.

As specified in the joint resolution, the budget reserve fund retains its income earnings to help ensure an adequate level of capitalization to meet appropriation demand in years of revenue decline.

The constitutional amendments permit expenditures from the fund beyond the 115 percent appropriation limit and the 25 percent fund expenditure limit to meet declared states of emergency. The bill cites existing statutory language to provide further clarification of "emergencies."

The constitutional amendments proposed in the joint resolution and the implementing statutory provisions together can

provide elected officials with the tools of sound fiscal management, and promise to the citizens of the state a means of avoiding the social and economic shocks that may result from extreme volatility in our revenue stream.

Article XV, sec. 27, of the Alaska Constitution now requires the lieutenant governor to place on the ballot in 1986 the proposition for the existing appropriation limitation, which was approved by the voters in 1982. Since that vote will occur at the same election as the vote on the attached proposal, there is the possibility that both constitutional provisions would be approved -- resulting in a direct conflict between them. To avoid confusion and to preclude legal questions arising as to this later amendment, while still having the lieutenant governor comply with art. XV, sec. 27, the attached bill (see sec. 2) requires the lieutenant governor to include an appropriate explanation on the ballot. It is expected that this explanation will be brief, with some amplification in the voter pamphlet.

Sincerely,



Bill Sheffield
Governor

Offered: 4/25/86
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 513 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to a budget limitation and to re-
7 serve funds; and providing for an effective date."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 37.05.159 is repealed and reenacted to read:
10 Sec. 37.05.159. BUDGET RESERVE FUND. (a) There is established
11 as a separate fund in the state treasury the budget reserve fund. The
12 budget reserve fund consists of money appropriated to that fund and of
13 the balance of the reserve for emergency operating expenses account as
14 of July 1, 1986.
15 (b) Not more than 25 percent of the budget reserve fund balance
16 may be appropriated for any fiscal year. However, additional amounts
17 may be appropriated from the fund to meet a state emergency declared
18 by the governor as prescribed by law. For purposes of this subsection
19 "emergency" means the events set out in AS 26.23.230(1) or a reduction
20 of the revenue from nonstate sources that seriously impairs the abili-
21 ty of the state to perform essential functions.
22 * Sec. 2. AS 37.07.02(c) is amended to read:
23 (c) Proposed expenditures other than deposits to the permanent
24 fund may not exceed appropriations made from state sources in the
25 preceding calendar year by more than 15 percent. Estimated revenue
26 that exceeds that budget limit shall be shown as available for
27 appropriation to the budget reserve fund established under
28 AS 37.05.159 [ESTIMATED REVENUES FOR THE SUCCEEDING FISCAL YEAR. THE
29 EXPENDITURES PROPOSED IN THE SIX-YEAR CAPITAL IMPROVEMENTS PROGRAM AND

1 FINANCIAL PLAN SHALL NOT EXCEED THE ESTIMATED REVENUES AND BOND
2 AUTHORIZATIONS PASSED AND PROPOSED].

3 * Sec. 3. AS 37.07.020 is amended by adding new subsections to read:

4 (e) For the purpose of determining the amount of the budget
5 limit under (c) of this section

6 (1) an appropriation is considered to be made in the calen-
7 dar year in which it is enacted; and

8 (2) the amount of revenue received by the state from state
9 sources includes the amount carried forward from the preceding fiscal
10 year.

11 (f) In this section "state source" means

12 (1) the undistributed income account in the permanent fund;

13 and

14 (2) all sources of money in the state general fund except

15 (A) federal sources;

16 (B) bond proceeds;

17 (C) sources from which money is received in trust for
18 a specific purpose; and

19 (D) the dividend fund established under AS 43.23.045.

20 * Sec. 4. This Act takes effect July 1, 1986.