

НВ

505

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 24, 1994

FURTHER REFERRALS:

Date of Committee Action: 3/29/94

The FINANCE Committee considered:

HB 505

HOUSE BILL NO. 505

APPROP: BUDGET RESERVE FUND TO GEN.FUND

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

RECOMMENDATIONS:

be replaced with CS HB 505 (Fin) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>maclenn</i> Eileen P. MacLenn		<i>parnell</i> Sean Parnell			
Ronald J. Hanson	x	James G. Grussendorf		x	
<i>MARTIN</i> Peter Martin	x	<i>Hoffman</i> Lynn Hoffman			
<i>Richard J. Foster</i> Richard J. Foster	x	<i>Mike Navarre</i> Mike Navarre			
		<i>Tom Brown</i> Tom Brown			
		<i>Gene Thorsrud</i> Gene Thorsrud		x	

Ronald J. Hanson *EP MacLenn*
CHAIRMAN'S SIGNATURE

Adopted

8-GH20450 ✓
Cook
3/28/94

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

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

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; amending certain appropriations for education
6 programs and school construction debt retirement for fiscal year 1994 and for
7 educational facilities maintenance and construction; making appropriations from the
8 constitutional budget reserve fund under art. IX, sec. 17(c), Constitution of the
9 State of Alaska; and providing for an effective date."

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

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

1 amendment

2 (1) created a constitutional budget reserve fund:

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

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

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

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

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

29 (e) The money in the general fund was available for appropriation by the legislature
30 and would be applied as necessary to meet any fiscal need. [Thus, in fiscal year 1992,
31 accounting conventions show that the amounts collected from informal conferences in fiscal

1 years 1991 and 1992 were used to cover the fiscal year 1992 general fund deficit. Had that
2 money not been available, the amount transferred into the general fund from the statutory
3 budget reserve fund (AS 37.05.540) would have been significantly increased.]

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 However, due to the unanticipated decrease in state revenue, the state treasury has less money
9 than was anticipated at the time that the legislature made its appropriations in 1993. Because
10 of this shortfall, any anticipated surplus representing settlements of informal tax conferences,
11 and amounts received from informal tax conference settlements occurring after July 1, 1994,
12 must be expended to fully fund the capital and operation appropriations enacted in 1993.

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

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

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

31 (j) Following appeal to the Alaska Supreme Court, the court determined that all

1 income that resulted from the settlement or other termination of informal administrative
2 proceedings involving certain taxes since July 1, 1990, should have been deposited into the
3 budget reserve fund created by art. IX, sec. 17, of the Constitution of the State of Alaska.

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

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

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

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

19 * Sec. 2. The sum of \$945,636,778.27 is appropriated from the general fund to the budget
20 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply
21 with the judgment in *Hickel v. Halford* (Supreme Court No. S-6124/6134) (Alaska Jan. 27,
22 1994).

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

30 * Sec. 4. (a) The sum of \$696,357,088 is appropriated from the constitutional budget
31 reserve fund and from other funds in the amounts listed to the Department of Education for

1 the purposes expressed and allocated in the amounts listed for operating expenditures for the
2 fiscal year ending June 30, 1995:

3	FUND SOURCE	AMOUNT
4	Budget reserve fund (art. IX, sec. 17,	
5	Constitution of the State of Alaska)	\$635,149,688
6	General fund/mental health trust income account	
7	(AS 37.14.011)	7,916,600
8	Public school trust fund (AS 37.14.110)	6,816,600
9	School fund (AS 43.50.140)	2,668,100
10	P.L. 81-874	21,806,100
11	Federal receipts other than	
12	P.L. 81-874	22,000,000
13	PURPOSE	ALLOCATION AMOUNT
14	Foundation program	\$629,938,000
15	Child nutrition/student lunch program	22,000,000
16	Cigarette tax distribution	2,668,100
17	Tuition students	1,887,600
18	Boarding home grants	355,000
19	Youth in detention	800,000
20	Pupil transportation	31,638,148
21	Schools for the handicapped	3,277,500
22	Community schools	600,000
23	Additional district support	3,192,740.

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

26	SCHOOL DISTRICT	ALLOCATION AMOUNT
27	Annette Island School District	\$166,530
28	Cordova School District	217,160
29	Craig City School District	151,890
30	Dillingham City School District	250,100
31	Galena City School District	156,160

1	Hoonah City School District	126,270
2	Hydaburg City School District	102,480
3	Kake City School District	136,640
4	Kashunamiut School District	206,180
5	Klawock City School District	158,600
6	Nenana City School District	164,090
7	Nome City School District	264,740
8	Pelican City School District	56,730
9	Petersburg City School District	199,470
10	St. Mary's School District	119,560
11	Skagway City School District	115,290
12	Tanana City School District	122,000
13	Unalaska City School District	200,690
14	Wrangell City School District	151,890
15	Yakutat City School District	126,270.

16 * Sec. 5. (a) The sum of \$103,345,252 is appropriated from the budget reserve fund (art.
 17 IX, sec. 17, Constitution of the State of Alaska) to the Alaska debt retirement fund
 18 (AS 37.15.011)

19 (b) 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. 6. (a) Section 1(a), ch. 5, SLA 1993, is amended to read:

23 Section 1. (a) The sum of \$674,531,870 is appropriated from the
 24 constitutional budget reserve [GENERAL] fund and from other funds in the amounts
 25 listed to the Department of Education for the purposes expressed and allocated in the
 26 amounts listed for operating expenditures for the fiscal year ending June 30, 1994:

27	FUND SOURCE	AMOUNT
28	<u>Budget reserve fund (art. IX, sec. 17,</u>	
29	<u>Constitution of the State of Alaska)</u>	
30	[GENERAL FUND]	\$615,783,070
31	General fund/mental health trust income account	

1	(AS 37.14.011)	7,489,700
2	Public school trust fund (AS 37.14.110)	8,452,700
3	School fund (AS 43.50.140)	2,721,000
4	Interagency receipts	100,000
5	P.L. 81-874	21,885,400
6	Federal receipts other than	
7	P.L. 81-874	18,100,000.

8	PURPOSE	ALLOCATION AMOUNT
9	Foundation program	\$615,723,100
10	Child nutrition/student lunch program	18,100,000
11	Cigarette tax distribution	2,721,000
12	Tuition students	2,012,600
13	Boarding home grants	230,000
14	Youth in detention	800,000
15	Schools for the handicapped	3,077,500
16	Pupil transportation	28,975,900
17	Community schools	600,000
18	Additional district support	2,291,770.

19 (b) Section 2(a), ch. 5, SLA 1993, is amended to read:

20 Sec. 2. (a) The sum of \$99,795,200 is appropriated from the budget reserve
 21 [GENERAL] fund (art. IX, sec. 17, Constitution of the State of Alaska) to the
 22 Alaska debt retirement fund (AS 37.15.011).

23 * Sec. 7. (a) Section 38, ch. 65, SLA 1993, page 14, line 27, is amended to read:

24		APPROPRIATION	GENERAL	OTHER
25		ITEMS	FUND	FUNDS
26	Additional district support	1,066,300	[1,066,300]	<u>1,066,300</u>

27 (b) The appropriation made by sec. 38, ch. 65, SLA 1993, page 14, line 27,
 28 as amended by (a) of this section, is funded from the budget reserve fund (art. LX,
 29 sec. 17, Constitution of the State of Alaska).

30 * Sec. 8. Section 1, ch. 83, SLA 1993, is amended to read:

31 Section 1. Contingent upon the establishment of an educational facilities

1 maintenance and construction fund by the Eighteenth Alaska State Legislature, the sum
2 of \$192,408.894 is appropriated from the budget reserve [GENERAL] fund (art. IX,
3 sec. 17, Constitution of the State of Alaska) to the educational facilities maintenance
4 and construction fund (AS 37.16.010).

5 * Sec. 9. The appropriations from the constitutional budget reserve fund (art. IX, sec. 17,
6 Constitution of the State of Alaska) contained in this Act are made under art. IX, sec. 17(c),
7 Constitution of the State of Alaska.

8 * Sec. 10. Sections 1 - 3, 6, 7, and 9 of this Act are retroactive to July 1, 1993.

9 * Sec. 11. Section 8 of this Act is retroactive to July 17, 1993.

10 * Sec. 12. Sections 1 - 3 and 6 - 11 of this Act take effect immediately under
11 AS 01.10.070(c).

12 * Sec. 13. Sections 4 and 5 of this Act take effect July 1, 1994.

8-GH2045J ✓
Cook
3/5/94

~~Adopted~~
Rescinded
5129

CS FOR HOUSE BILL NO. 505(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

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) The money in the general fund was available for appropriation by the legislature
22 and would be applied as necessary to meet any fiscal need. Thus, in fiscal year 1992,
23 accounting conventions show that the amounts collected from informal conferences in fiscal
24 years 1991 and 1992 were used to cover the fiscal year 1992 general fund deficit. Had that
25 money not been available, the amount transferred into the general fund from the statutory
26 budget reserve fund (AS 37.05.540) would have been significantly increased.

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

1 in the final version by a vote of 17-3 on May 11, 1993. Other appropriations passed by the
2 legislature in 1993 include HB 55, the operating budget; SB 183, the capital budget; and
3 SB 126, intertie loans and grants and power cost equalization fund. For fiscal year 1994, the
4 legislature approved appropriations from the general fund in excess of \$3,163,100,000.

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

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

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

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

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

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

13 (n) As of February 1994, there was not sufficient unappropriated or unrestricted
14 money in the general fund to allow the governor to unilaterally transfer the money needed to
15 fully restore the constitutional budget reserve fund.

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

22 * Sec. 2. The sum of \$945,636,778.27 is appropriated from the general fund to the budget
23 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply
24 with the judgment in *Hickel v. Halford* (Supreme Court No. S-6124/6134) (Alaska Jan. 27,
25 1994).

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

- 1 6124/6134)(Alaska Jan. 27, 1994).
- 2 * Sec. 4. This Act is retroactive to July 1, 1993.
- 3 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

SCHOOL CONSTRUCTION DEBT RETIREMENT - FY95 ESTIMATED STATE AID

Updated 1/31/94

SCHOOL DIST.	100%	90%	80%	90%	80%	Estimated new debt	LESS CIG. TAX PAID IN FY93	SCHOOL DIST.	ESTIMATED TOTAL DEBT RETIREMENT BY DISTRICT FOR FY95
	BOND SALES PRE 7/1/77 2YR LAG	BOND SALES 7/1/77 TO 1/1/82 2YR LAG	ESTIMATED CASH PAYMENTS 2YR LAG	BOND SALES 1/1/82 TO 7/1/83 CURRENT PAY	BOND SALES 7/1/83 TO 3/31/90 CURRENT PAY	BOND SALES 4/1/90 TO PRESENT CURRENT PAY			
ALEUTIANS EAST					\$54,193		(\$15,213)	ALEUTIANS EAST	\$38,980
ANCHORAGE	\$4,177,050		\$266,111	\$16,765,131	\$10,872,292	\$8,472,100	(\$1,078,167)	ANCHORAGE	\$29,474,517
BRISTOL BAY		\$371,214	\$137,542				(\$12,789)	BRISTOL BAY	\$495,967
FAIRBANKS	\$984,146		\$2,892,369	\$5,768,188	\$3,546,862		(\$376,592)	FAIRBANKS	\$12,814,973
GALENA			\$37,691				(\$9,543)	GALENA	\$28,148
HAINES			\$520			\$252,000	(\$17,153)	HAINES	\$235,367
JUNEAU	\$58,732		\$73,480	\$623,977	\$2,512,333		(\$136,658)	JUNEAU	\$3,131,864
KENAI			\$197,058	\$1,080,343	\$8,746,619		(\$241,288)	KENAI	\$9,782,732
KETCHIKAN	\$431,115				\$1,335,840		(\$72,321)	KETCHIKAN	\$1,694,634
KODIAK			\$16,667	\$1,091,770	\$887,336	\$880,579	(\$69,114)	KODIAK	\$2,807,238
LAKE & PEN			\$281,240			\$775,127	(\$17,123)	LAKE & PEN	\$1,039,244
MAT-SU	\$1,378,725		\$669,358	\$4,227,480	\$11,352,767	\$914,900	(\$258,519)	MAT-SU	\$18,284,711
NOME				\$102,752	\$517,562		(\$25,322)	NOME	\$594,992
NORTH SLOPE					\$5,155,261	\$273,781	(\$42,415)	NORTH SLOPE	\$5,386,627
PETERSBURG	\$284,000		\$15,470	\$232,767	\$213,572		(\$23,489)	PETERSBURG	\$722,320
SITKA	\$132,823				\$1,937,362		(\$50,491)	SITKA	\$2,019,694
UNALASKA		\$235,546			\$928,722		(\$13,581)	UNALASKA	\$1,150,687
VALDEZ	\$903,750			\$1,831,964	\$824,726		(\$27,258)	VALDEZ	\$2,708,456
WRANGELL		\$128,684					(\$19,297)	WRANGELL	\$934,113
TOTALS	\$8,350,341	\$735,444	\$4,587,506	\$32,549,098	\$48,060,721	\$11,568,487	(\$2,506,333)		\$103,345,264

THESE ENTITLEMENTS ARE SUBJECT TO ADJUSTMENTS BASED ON ACTUAL BOND PAYMENTS.

BOND ENTITLEMENT	\$101,264,091
CASH ENTITLEMENT	<u>\$4,587,506</u>
SUB TOTAL	\$105,851,597
LESS: CIG. TAX	<u>(\$2,506,333)</u>
EST. STATE AID-FY95	<u>\$103,345,264</u>

ALASKA DEPARTMENT OF EDUCATION
PROJECTED FY95 STATE PROGRAM ALLOCATIONS

3/16/94 FILE: FY95PR#2.XLS

	Total Foundation	Cigarette Tax Distribution	Tuition	Boarding Home	Youth in Detention	Handicap. Schools	Pupil Trans.	Community Schools	Debt Retirement	PROJECTED FY95 TOTALS
LOWER YUKON	12,790,651	0	0	0	0	0	13,771	12,156	0	12,816,578
MAT-SU	55,418,385	268,228	36,913	0	0	0	5,062,155	53,011	18,284,711	79,123,403
NENANA	1,616,090	10,278	0	0	0	0	101,053	2,010	0	1,729,431
NOME	4,943,691	22,463	7,544	0	0	0	198,702	4,829	594,992	5,772,221
NORTH SLOPE	9,699,634	43,543	0	0	0	0	284,695	9,473	5,471,457	15,508,802
NORTHWEST ARCTIC	15,815,997	47,734	0	9,418	0	0	0	15,320	0	15,888,469
PELICAN	545,281	7,041	0	0	0	0	1,093	2,010	0	555,425
PETERSBURG	3,089,379	22,448	1,818	0	0	0	114,787	3,048	722,320	3,953,800
PRIBILOF	1,612,258	0	0	76,141	0	0	0	2,010	0	1,690,409
SITKA	6,448,219	49,333	30,179	0	0	0	370,971	7,247	2,019,694	8,925,643
SKAGWAY	818,116	9,308	0	0	0	0	3,594	2,010	0	833,028
SOUTHEAST	4,329,979	0	0	0	0	0	127,435	4,590	0	4,462,004
SOUTHWEST	5,900,340	0	0	69,037	0	0	94,057	5,646	0	6,069,080
ST. MARY'S	1,232,068	8,084	0	0	0	0	0	2,010	0	1,242,162
TANANA	1,117,992	8,336	9,368	0	0	0	20,667	2,010	0	1,158,283
UNALASKA	1,955,651	14,295	0	0	0	0	122,909	2,010	1,150,687	3,245,552
VALDEZ	3,307,447	26,746	0	0	0	0	308,140	3,312	2,708,456	6,354,101
WRANGELL	2,533,824	18,518	14,961	0	0	0	115,694	2,569	934,113	3,619,679
YAKUTAT	1,220,516	9,470	0	0	0	0	57,050	2,010	0	1,289,046
YUKON FLATS	5,091,554	0	0	62,818	0	0	33,794	5,236	0	5,193,402
YUKON/KOYUKUK	6,799,989	0	0	76,704	0	0	59,373	6,762	0	6,942,828
YUPIIT	3,890,568	0	0	0	0	0	0	3,911	0	3,894,479
STATE CCS	3,599,824	0	0	0	0	0	0	0	0	3,599,824
MI. EDGE CUMBE	1,693,054	0	0	0	0	0	0	0	0	1,693,054
OTHER	5,386,260	0	152,536	0	0	2,411,100	500,000	0	0	8,449,896
	∑1		∑2			∑3	∑4			
TOTALS	\$629,938,009	\$2,668,100	\$1,887,600	\$355,000	\$800,000	\$3,277,500	\$31,638,148	\$600,000	\$104,060,094	\$775,224,451

∑1 OTHER INCLUDES CONTRACTUAL OBLIGATIONS AND OTHER ADJUSTMENTS.

∑2 OTHER INCLUDES CONTRACTS FOR HYDER STUDENT'S ATTENDING SCHOOL IN CANADA.

∑3 OTHER INCLUDES ALLOCATIONS TO (SESA) AND (AYD).

∑4 OTHER INCLUDES GROWTH FACTOR FOR ADDITIONAL BUSES DUE TO ENROLLMENT INCREASES AND POPULATION SHIFTS.

ALASKA DEPARTMENT OF EDUCATION
PROJECTED FY95 STATE PROGRAM ALLOCATIONS

3/16/94 FILE: FY95PR#2.XLS

	Total Foundation	Cigarette Tax Distribution	Tuition	Boarding Home	Youth in Detention	Handicap. Schools	Pupil Trans.	Community Schools	Debt Retirement	PROJECTED FY95 TOTALS
ADAK	\$510,626	\$0	\$0	\$0	\$0	\$0	\$102,959	\$2,010	\$0	\$615,595
ALASKA GATEWAY	4,863,553	0	0	0	0	0	428,871	4,994	0	5,297,418
ALEUTIAN REGION	545,640	0	0	0	0	0	0	2,010	0	547,650
ALEUTIANS EAST	3,574,051	14,535	0	0	0	0	53,804	3,481	38,980	3,684,851
ANCHORAGE	195,435,608	1,061,819	850,251	0	404,677	866,400	9,256,641	178,521	39,474,517	247,528,434
ANNETTE ISLANDS	1,300,700	0	0	0	0	0	9,962	2,010	0	1,312,672
BERING STRAIT	14,668,921	0	0	0	0	0	35,822	14,508	0	14,719,251
BRISTOL BAY	1,553,959	12,282	0	0	0	0	189,215	2,010	495,967	2,253,433
CHIATHAM	2,249,763	0	0	0	0	0	12,078	2,398	0	2,264,239
CHUGACH	1,688,419	0	0	0	0	0	0	2,010	0	1,690,429
COPPER RIVER	5,028,217	0	0	0	0	0	564,640	5,105	0	5,597,962
CORDOVA	2,534,093	17,823	11,903	0	0	0	45,463	2,606	0	2,611,888
CRAIG	2,147,846	14,489	5,703	0	0	0	11,085	2,142	0	2,181,265
DELTA/GREELY	5,189,529	0	0	0	0	0	832,306	5,459	0	6,027,294
DENALI	2,966,808	14,678	0	0	0	0	268,171	3,029	0	3,252,686
DILLINGHAM	3,220,397	17,230	0	0	0	0	237,136	3,115	0	3,477,878
FAIRBANKS	72,204,778	362,401	254,673	0	174,447	0	5,121,228	63,170	13,444,973	91,625,670
GALENA	1,411,033	9,079	1,391	0	0	0	40,017	2,010	28,148	1,491,678
HALES	2,142,574	15,462	0	0	0	0	151,282	2,092	235,367	2,546,777
HOONAH	1,982,886	12,176	0	0	0	0	36,547	2,010	0	2,033,619
HYDABURG	1,013,495	8,526	0	0	0	0	5,863	2,010	0	1,029,894
IDITAROD	4,850,105	0	0	31,179	0	0	48,717	4,740	0	4,934,741
JUNEAU	22,544,357	130,779	151,065	4,997	83,363	0	1,316,550	22,836	3,131,864	27,385,811
KAKE	1,236,214	10,054	0	0	0	0	26,851	2,010	0	1,275,129
KASHUNAMIUT	1,907,507	0	0	0	0	0	2,870	2,010	0	1,912,387
KENAI	44,983,040	233,748	266,669	10,795	0	0	3,346,545	43,096	9,782,732	58,666,625
KETCHIKAN	9,719,005	69,272	49,719	3,714	0	0	756,562	9,688	1,694,634	12,302,594
KLAWOCK	1,460,291	10,857	0	0	0	0	8,203	2,010	0	1,481,361
KODIAK	14,263,810	69,560	42,907	10,197	0	0	610,639	12,726	2,807,238	17,817,077
KUSPUK	5,046,138	0	0	0	0	0	184,406	4,958	0	5,235,502
LAKE AND PENINSULA	6,710,311	17,505	0	0	0	0	70,075	6,713	1,039,244	7,843,848
LOWER KUSKOKWIM	30,127,658	0	0	0	137,513	0	273,700	29,323	0	30,568,194

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

COPY

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 25, 1994

SUBJECT: Appropriations to the constitutional budget reserve fund
(CSHB 505(JUD))

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Tamara Brandt Cook
Director

Ms. Anne Williams of your office asked me to explain drafting changes to this bill that differ from language passed by the House Judiciary Committee. Most of the changes made were editorial in nature because this was originally a governor's bill and had not been reviewed for form by this division. I made significant changes only after consulting with Ms. Daniella Loper.

The bill title as passed from the committee referred to "appropriations to the constitutional budget reserve fund under Art. IX, sec. 17(c). . ." I changed the title slightly to remove the reference to subsection (c) because that deals with appropriations from the fund not appropriations to the fund and it became obsolete when appropriations from the fund were deleted by committee action.

On page 2 the following changes were made:

- (1) a comma was added after the date on line 3;
- (2) on lines 23-26 the word "on" was removed from in front of each date for ease of reading.

On page 3 the following changes were made:

- (1) in subsection (g) capital letters were eliminated in "Senate Majority" to conform to usual drafting style;
- (2) in subsection (h) a full reference was added to "sec. 17" to read "art. IX, sec. 17, of the state constitution";
- (3) in subsection (j) "that determined that" was changed to "which determined that" for ease of reading.

On page 4 the following changes were made:

Representative Brian Porter, Chair

February 25, 1994

Page 2

(1) at line 19 a comma was added before the date;

(2) all of subsection (o) was deleted rather than just the portion removed by amendment in the House Judiciary Committee because the entire subsection consisted of a justification for making appropriations from the constitutional budget reserve fund, and this seemed inconsistent with amendments deleting those appropriations;

(3) because of possible inconsistency, I discussed removing subsection (m) as well, but Ms. Loper concluded that was not necessary.

On page 5 former paragraphs (o) and (q) were deleted in their entirety because both were inconsistent with amendments deleting appropriations from the fund.

On page 6, although the amendment adopted called for deletion of the effective date, the retroactive provision was retained. Because an immediate effective date is usually desirable in cases involving retroactive bills, I added the immediate effective date. This also conformed to the amended title, which retained reference to a special effective date.

Let me know if you have any other questions.

TBC:gc
94-156.glc

- 1 11-19-93 Decision on C's Motions for Summary Judgment signed by Judge Reese
- 2 12-14-93 Supplemental Findings on Injunction Issue signed by Judge Reese
- 3 12-14-93 Final Order and Judgment signed by Judge Reese
- 4 02-10-94 Memo to Stastny from Kreinheder re: Projected Constitutional Budget Reserve Fund Allowable Majority Vote Appropriations
- 5 02-11-94 Final version of bill making appropriations to and from the constitutional budget reserve fund and transmittal letter

~~11-19-93~~

Index

452-7868

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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RICK HALFORD, President of
the Alaska State Senate,
DRUE PEARCE, STEVE FRANK,
BERT SHARP, MIKE MILLER,
RANDY PHILLIPS, TIM KELLY,
LOREN LEMAN, GEORGE JACKO,
STEVE RIEGER, and ROBIN
TAYLOR, comprising the
Senate Majority of the
Eighteenth Alaska Legislative
Session,

Plaintiffs,

v.

WALTER J. HICKEL, GOVERNOR OF
THE STATE OF ALASKA, and
DARREL J. REXWINKEL,
COMMISSIONER OF THE ALASKA
DEPARTMENT OF REVENUE,

Defendants.

STEVE COWPER,

Plaintiff,

v.

WALTER J. HICKEL, Governor
of the State of ALASKA,
DARREL J. REXWINKEL,
Commissioner of the
Department of Revenue for
the State of Alaska,
and the STATE OF ALASKA,

Defendants.

Post-It brand fax transmittal memo 7571 1 of pages
To: *Hickel*
From: *A.D. Mickel*
Phone: *Anchorage*
Fax: *Hickel*

Case No. JAN-93-62 /CIV
(Consolidated)
Case No. JAN-93-6848CIV

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**DECISION ON CROSS MOTIONS FOR
SUMMARY JUDGMENT**

This court has been called upon to decide if the informal conference appeal procedure set out in A.S. 43.05.240 (a) is an "administrative proceeding" as used in Article IX, Section 17 of the Alaska Constitution, the Constitutional Budget Reserve Fund.

These informal appeals are administrative proceedings, and therefore money received from settlements, final decisions or otherwise at this appellate level are subject to segregation into the Constitutional Budget Reserve Fund.

BACKGROUND

On January 2, 1991, Article IX, Section 17 of the Alaska State Constitution took effect. This constitutional amendment was approved by the voters after being presented to them by the legislature in a ballot proposition during the prior fall election.

1 This new constitutional language requires that
2 money received by the state after July 1, 1990, from the
3 resolution of mineral tax disputes, is to be placed in
4 a Budget Reserve Fund, separate from the general fund of
5 the state, and quite limited in its availability for
6 appropriation by the legislature.

7 The state had been receiving and continues to
8 unpredictably receive large sums of money, amounting to
9 hundreds of millions of dollars, from oil and gas tax
10 appeals. The legislature intended to restrict the
11 spending of these "windfalls" of what were essentially
12 back taxes by placing these funds in the constitutionally
13 mandated Budget Reserve Fund. (The language adopted by
14 the voters does not mention windfalls, although the voter
15 pamphlet pro and con statements both mention the word).

16 One of the sources of mineral tax appeal income is
17 the informal conference procedure established by
18 A.S.43.05.240 (a) and 15 AAC 05.010 and .020. This is the
19 optional first stage of the taxpayer remedies which
20 become available when the Department of Revenue serves
21 a notice of tax deficiency following an audit of a tax
22 return. Money received from settlements of or following
23 final decision in these informal appeals was apparen'ly
24 placed in the Budget Reserve Fund in early 1991,
25

1 (although present and former revenue officials give
2 differing answers about the issue. See affidavits of
3 Floerchinger, Fischer and Dick, as well as deposition
4 excerpt of defendant Rexwinkel, page 74). At that time
5 the Department of Revenue removed the informal conference
6 money from the Budget Reserve Fund account and placed it
7 in the general fund, making it available for the
8 legislature to appropriate in the same manner as
9 unrestricted state revenues. Subsequently received
10 informal conference money has also been placed in the
11 general fund.

12 By the summer of 1993 nearly \$800,000,000.00 of this
13 money had been placed in the general fund. During the
14 1993 legislative session appropriations from the general
15 fund spent essentially all of this informal appeal money.

16 These consolidated lawsuits were subsequently filed
17 challenging the legality of the state placing this money
18 in the general fund rather than the Constitutional Budget
19 Reserve Fund. Plaintiffs are the "Senate Majority" a
20 group of state senators, as well as former Governor Steve
21 Cowper, who was governor at the time of creation of the
22 Budget Reserve Fund amendment. Defendants are the present
23 Governor, Walter J. Hickel, his Commissioner of Revenue,
24 Darrel J. Rexwinkel, and the State of Alaska. Governor
25

Hickel, through the Commissioner, is responsible for placing state money in the proper accounts.

All parties have moved for summary judgment on the question of whether the "informal conference" appeal process is an "administrative proceeding" as contemplated by the Constitutional Budget Reserve Fund amendment.

ANALYSIS

The Budget Reserve Fund was established by Article IX, Section 17(a) of the Alaska Constitution, which states:

(a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund ..., all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving... taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund....

The meaning of the "administrative proceeding" language in the above provision is the focus of this case.

ADMINISTRATIVE PROCEEDINGS

The meaning of this term can be a technical legal

1 meaning developed over time by the courts, the
2 legislature or otherwise, or it could be the common,
3 everyday meaning likely to be placed on the term by the
4 voters ratifying the constitutional amendment.

5 Technical meanings: There are three general types
6 of administrative proceeding: administrative rulemaking,
7 administrative investigation, and administrative
8 adjudication.

9 Here the administrative proceeding is one in which
10 a final decision is possible, ("...termination, through
11 settlement or otherwise...") and one in which a dispute
12 is present, (disputes are "settled," and the reference
13 to litigation also implies dispute resolution).
14 Therefore rulemaking administrative proceedings are
15 excluded simply by the context.

16
17 Investigative administrative proceedings are
18 probably also excluded, see Mallas v. United States, 993
19 F.2d 1111, 1112 (4th Cir. 1993), although the line is not
20 as clear, since an investigation of an issue eventually
21 terminates in a result which could have mandatory
22 consequences, and "settlement" of the issue under
23 investigation is a conceivable interim resolution,
24 although this is a bit of a stretch.

1 The audit performed by the Department of Revenue of
2 a taxpayer's return is an investigatory administrative
3 proceeding. None of the parties to this case have
4 suggested that these audits and the resulting deficiency
5 assessments are covered by the Budget Reserve Fund
6 requirements, and the legislative history does not
7 suggest it.¹

8 The most clear administrative proceeding covered by
9 the context of the Budget Reserve Fund language is an
10 adjudicatory administrative proceeding: a proceeding in
11 which a dispute between a taxpayer and the department is
12 resolved, resulting in a final, collectable tax
13 obligation.

14
15 The central question then is whether the informal
16 conference remedy provided by A.S.43.05.240 (a), and
17 expanded upon in 15 AAC 05.010 and .020 is an
18 adjudicatory administrative procedure. The statute says:
19
20

21 ¹ (This is not to say someone might not try to
22 impose this extension someday. Alaskans are contentious
23 and tend not to trust authorities to spend their money.
24 That's why we have the Permanent Fund, the Budget Reserve
25 Fund, various tax "caps", etc. The senate majority didn't
even trust itself with the \$800 million. That's why they
protested its placement in the general fund: for fear
they might spend it....)

1 **Sec. 43.05.240. Taxpayer remedies.** (a) A person
2 aggrieved by the action of the department in fixing
3 the amount of a tax or in imposing a penalty may
4 apply to the department within 60 days from the
5 date of mailing the notice required to be given to
6 the person by the department, giving notice of the
7 grievance, and requesting an informal conference.
8 At the conference the person aggrieved may present
9 arguments and evidence relevant to the amount of
10 tax or penalty due the state. If the department
11 determines that a correction is warranted, the
12 department shall make the correction.

13 The nature of the informal conference itself is
14 established in the administrative code which states:

15 **15 AAC 05.020. INFORMAL CONFERENCES.** (a) Upon
16 receipt of a written request for appeal under 15
17 AAC 05.010 requesting an informal conference, an
18 appeals officer will promptly schedule the informal
19 conference. The informal conference will be
20 conducted in person, through correspondence, or by
21 telephone, audio, or video teleconference, or other
22 electronic means. The appeals officer shall make
23 available to the person who filed the request for
24 appeal the relevant portion of that person's file,
25 and shall explain at the informal conference the
 action taken by the department. A person who wants
 to present facts and information in support of its
 position must bring all pertinent books, records,
 schedules, and other documents to the conference.
 The appeals officer may copy any of the books,
 records, schedules, and other documents brought to
 the conference or otherwise made available to the
 appeals officer. The person who filed the request
 shall supply additional information that the
 appeals officer considers necessary.

 (b) After considering the facts, information, and
 arguments presented at the informal conference, the
 appeals officer shall promptly render a written
 decision. The decision must identify the issues in
 controversy for purposes of further appeal. If the
 appeals officer believes that modification of the
 department's action is appropriate, modification
 must be made and reflected in the written decision.

1 (c) The decision of the appeals officer is final
2 for purposes of appeal to a formal hearing under 15
3 AAC 05.030 but is not a final administrative
4 determination for purposes of appeal to the
5 superior court.

6 So, the informal conference is a proceeding in which
7 an aggrieved taxpayer appeals a mineral tax or penalty
8 deficiency assessment and presents evidence. The appeals
9 officer who hears the appeal considers all the evidence
10 and the arguments of the taxpayer. If the officer decides
11 it is appropriate to change the assessment in light of
12 the evidence and argument presented, he or she does so,
13 and this new deficiency amount is included in a written
14 decision which is final and subject to collection by
15 state unless a further appeal is instituted. Is this an
16 adjudicative administrative proceeding?

17 The state argues that this process is too lacking
18 in formal adversary procedures to constitute an
19 adjudication, and therefore is nothing more than an
20 extension of the audit process, a reconsideration of the
21 deficiency assessment.

22 The opinion of the Attorney General of April 24,
23 1992, part D., pages 7 through 22, is the initial
24 internal authority for removing the informal conference
25 money from the Constitutional Budget Reserve account and
placing it in the general fund. Several sides of the

1 issue are discussed, but the deciding aspect in the
2 opinion is the attorney general's conclusion that a
3 "conference" is not the same as an adjudicatory hearing.
4 But the characterization of the conference as different
5 from an adjudicatory hearing is not sound. At page 12,
6 the opinion says the informal appeals officer is not a
7 judicial or quasi-judicial officer, yet the appeals
8 officer hears evidence, may ask for further evidence,
9 weighs it and then makes a formal, written decision. It
10 is difficult not to view such an official as having
11 "judicial" or deciding power. Common sense allows no
12 other conclusion.

13 Following this logical lapse, the opinion goes on,
14 still at page 12, to characterize the written decision
15 of the appeals officer as simply setting out the
16 disagreements of the parties. Although he is required to
17 state those disagreements, the appeals officer is writing
18 a decision about the dispute, the dispute raised in the
19 appeal. The officer must take into account the taxpayer's
20 evidence and argument. And the written decision is final.
21 It is as final as an unappealed deficiency assessment or
22 formal hearing decision or a court decision which is not
23 appealed further. Finality occurs when the tax is due and
24 collectable, and should not be confused with the
25 legalistic concept of exhaustion of remedies. Termination

of the proceeding is what the constitution refers to, which precludes the idea of appeal.

1 The opinion goes on to state

2 ...It [the informal conference] is not a process
3 which results in the protection of a legal right,
4 or redresses or prevents a wrong, as does a judgment
5 or other order enforceable by judicial process....

6 This statement is wrong on all points.

7 The informal conference could as easily have been
8 called an informal adjudication. It is informal compared
9 to the formal appeal hearing of A.S. 42.05.240 (b), and
10 is less adversary, but it is obviously an adjudication
11 of a dispute. The informality makes it more convenient,
12 but not less substantive nor final.

13 **ADVERSARY JUSTICE MODEL**

14 The state points out that the informal conference
15 lacks some of the traditional adversary justice hallmarks
16 of common law jurisprudence: cross examination of
17 witnesses, neutral hearing officer, record maintained for
18 appeal.
19

20 The state misses the point. The procedural
21 safeguards do not define the proceeding. Instead, what
22 procedural formalities are necessary depends on the
23 context of the proceeding. An analysis of the types of
24

1 procedural safeguards the state is concerned about
2 illustrates that the context of the proceedings is the
3 relevant inquiry.

4 As to cross examination, a proceeding to adjudicate
5 a question involving credibility or veracity might
6 require oral testimony and cross examination, Goldberg
7 v. Kelly, 397 U.S. 254 (1970), (welfare termination),
8 while a dispute involving objectively obtainable facts
9 may only require a proceeding involving the informal
10 exchange of information, Matthews v. Eldridge 424 U.S.
11 319 (1976), (statistical evidence and medical reports in
12 a disability termination).

13 Cross examination, if necessary, is certainly not
14 precluded by the informal conference process. The
15 taxpayer presents "evidence" to the appeals officer.
16 Evidence includes testimony of witnesses, which certainly
17 includes cross examination. In the context of a tax
18 appeal, it would rarely come up, however, as credibility
19 and veracity are usually not the issues in dispute.

20
21 The appeals officer appointed to hear the informal
22 appeal is as neutral as most agency internal hearing
23 officers. The use of agency employees as hearing officers
24 for administrative adjudicatory hearings is basic to the
25

1 field of administrative law. Although to a judge or
2 attorney only familiar with judicial litigation
3 principles it might seem a violation of due process, it
4 is actually common. The appeals officer is not the
5 auditor who issues the deficiency assessment, and even
6 if he were, the responsibility is to be fair in a
7 decisionmaking model which is much less adversary than
8 that urged by the state. Many administrative procedures
9 used in decisionmaking include elements of the
10 inquisitorial or civil law system of justice, in which
11 the decisionmaker is not passive, but rather active,
12 leading the questioning, directing the gathering of
13 facts, controlling not only the proceeding itself but the
14 formulation of issues as well. Administrative hearing
15 officers have broader duties than judicial officers. The
16 following passage describes this well. It is from
17 Administrative Law in a Nutshell, Gellhern and Levin, 3rd
18 Ed., West Publishing Co., 1990, page 275-6.

19 Most agencies have been given a statutory mission
20 to accomplish, and they have the duty to develop the
21 facts needed to carry out that mandate. Thus, the
22 hearings need not be structured as pure adversary
23 contests in which the presiding officer serves as
24 a passive referee. In some programs, particularly
25 those involving welfare or disability benefit
claims, the hearing may be largely "inquisitorial",
with the Administrative Law Judge taking an active
part in questioning witnesses and eliciting relevant
facts.

Strict separation of prosecutorial and decisionmaker
functions is not always required by due process. Withrow

1 v. Larkin 421 U.S. 35, 32 (1975), (members of a state
2 examining board disciplining physicians who participate
3 in an investigation are not disqualified from
4 adjudicating). In the case before the court, the appeals
5 officer is not involved in the case before it reaches the
6 appeal stage. See also F.T.C. v. Cement Inst., 333 U.S.
7 683 (1948), (agency heads who also make final decision
8 on alleged violations of regulatory statutes and
9 regulations may examine evidence gathered by staff when
10 deciding whether to initiate the proceeding by voting to
11 issue a complaint).

12 An adversary trial is not always necessary, Goss v.
13 Lopez, 419 U.S. 565 (1975), (in which a student was
14 suspended properly when only receiving a statement of the
15 charges and a chance to tell his side of the story),
16 Board of Education v. Loudermill, 470 U.S. 532 (1985),
17 (in which an employee was properly discharged in a
18 proceeding involving only oral or written notice of the
19 charge, an explanation of the evidence, and an
20 opportunity to give his side of the story).

21 Finally, assuming it is necessary for a record to
22 emerge from the informal conference, such a requirement
23 is met by the appeals process set out in A.S. 43.05.240
24 (a). The taxpayer is provided with both a written
25

1 deficiency assessment and also a written explanation of
2 the appeals officer's decision, including the changes,
3 if any, made by the appeals officer following the
4 informal conference.

5 The informal conference appeal procedure is an
6 administrative proceeding under the technical meaning
7 analysis.

8 Non-technical meaning: In Citizens Coalition for
9 Tort Reform v. McAlpine, 810 P.2d 162, (Alaska 1991), the
10 Alaska Supreme Court stated that it is

11 ...reluctant to construe abstrusely any
12 constitutional term that has a plain ordinary
13 meaning. (citations omitted). Rather, absent some
14 signs that the term at issue has acquired a peculiar
15 meaning by statutory definition or judicial
16 construction, we defer to the meaning the people
17 probably placed on the provision. (citations).
18 Normally, such deference to the intent of the people
19 requires "adherence to the common understanding of
20 words." (citation). at 169.

21 As the state points out, there is no definitive
22 judicial or statutory definition of "administrative
23 proceeding." A dictionary definition of "proceeding"
24 which is most enlightening is found in Webster's New
25 World Dictionary, Second College Edition, Pg. 1133
(1976), referred to in Schroeder, Siegfried, Etc. v.
Modern Electronic, 295 N.W. 2d 514, 516 (Minn. 1980):

1 "Proceeding" is a comprehensive term meaning
2 the action of proceeding--a particular step or
3 series of steps, adopted for accomplishing
4 something. This is the dictionary definition as well
5 as the meaning of the term in common parlance.
6 Proceeding before a governmental department or
7 agency simply mean proceeding in the manner and form
8 prescribed for conducting business before the
9 department or agency, including all steps and stages
10 in such action from its inception to its conclusion.

11
12 The steps of going through an informal conference
13 under A.S. 43.05.240 (a) fall squarely within this broad,
14 non-technical definition of the term. An administrative
15 proceeding is a process of going through the prescribed
16 steps to an end. The end is the decision by the appeals
17 officer.

18
19 Much paper has been consumed in the briefing on the
20 issue of intent, legislative or voter, in the enactment
21 of Art. IX, Sec. 17. What the legislators intended is not
22 relevant to what the voters intended unless they were
23 aware of it, and even then, the term must be susceptible
24 to multiple, logical interpretations. Here the term is
25 easily defined as a process, a series of steps, within
an administrative agency, to resolve a dispute, with a
final, enforceable decision made by the appeals officer
after reviewing the evidence and arguments presented by
the appellant/taxpayer. An informal conference is an
administrative proceeding in the common understanding of
language.

CONCLUSION

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The informal conference procedure set out in A.S. 43.05.240 (a) is an administrative proceeding as the term is used in the Budget Reserve Fund established by Article IX, Section 17, of the Alaska Constitution. Money received after July 1, 1990, from the termination of these informal appeal proceedings, whether by settlement or through legal collection processes after decision by the appeals officer, belong in the Constitutional Budget Reserve Fund Account, not in the general fund of the state.

Dated 11/19/93
[Signature]
John Reese
Judge of the Superior Court

I certify that on 11-22-93
a copy of the above was mailed to each
of the following at their addresses of
record: Abel Botelho / Pope / K. Edwards
[Signature]
Secretary / Deputy Clerk

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**SUPPLEMENTAL FINDINGS ON
INJUNCTION ISSUE**

Plaintiff Cowper has requested an injunction prohibiting the State from encumbering the estimated \$124,000,000 of informal conference receipts received since the filing of this litigation.

1. The legislature was aware of the source of the funds involved during its deliberations in the last legislative session, and chose to appropriate those funds. It therefore shares responsibility for replacing the funds. Furthermore, considering the legislative involvement, it is not clear that the Governor could legally remove the improperly placed funds from the general fund without an appropriation authorizing it.

2. The purpose of the constitutional Budget Reserve Fund is to cushion the impact of reduced oil revenue as oil production declines and State revenues are depleted. Currently, State revenue is not depleted. For example, there is presently some \$950,000,000 in the Permanent Fund Earnings Account, available for appropriation by the

legislature.

1 3. This means there is no actual emergency created
2 by replacing the Constitutional Budget Reserve money, in
3 that such replacement is not immediately needed to serve
4 the purpose of the fund, so long as there is assurance
5 the money will be replaced promptly. It may be needed
6 within a few months, and almost certainly within a few
7 years.

8
9 4. The other financial resources of the State and
10 the anticipated good faith of its officials in finding
11 a proper method of replacing the funds within the ordered
12 time limit are sufficient security to assure the ultimate
13 correction of the fund problem.

14
15 5. Ordering the immediate removal of these funds
16 from the cash accounts of the State could jeopardize the
17 orderly payment of ongoing obligations, disrupting the
18 affairs of government. Furthermore, there are several
19 political options available to the legislature and the
20 Governor for dealing with this issue. Immediate transfer
21 of funds from the general fund could burden or even
22 preclude some of these options. Since it is not
23 immediately necessary to have the funds restored, and the
24 funds to ultimately do it are safe, there is no reason
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to burden the legislature and the Governor as they
examine all legitimate solutions to the task.

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THEREFORE, having found the balancing of the
equities tends against entry of an injunction at this
time, the request is denied, without prejudice.

Dated December 14, 1993



John Reese
Superior Court Judge

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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RICK HALFORD, President of
the Alaska State Senate,
DRUE PEARCE, STEVE FRANK,
BERT SHARP, MIKE MILLER,
RANDY PHILLIPS, TIM KELLY,
LOREN LEMAN, GEORGE JACKO,
STEVE RIEGER, and ROBIN
TAYLOR, comprising the
Senate Majority of the
Eighteenth Alaska Legislative
Session,

Plaintiffs,

v.

WALTER J. HICKEL, GOVERNOR OF
THE STATE OF ALASKA, and
DARREL J. REXWINKEL,
COMMISSIONER OF THE ALASKA
DEPARTMENT OF REVENUE,

Defendants.

Case No. JAN-93-6297CIV
(Consolidated)
Case No. JAN-93-6848CIV

STEVE COWPER,

Plaintiff,

v.

WALTER J. HICKEL, Governor
of the State of ALASKA,
DARREL J. REXWINKEL,
Commissioner of the
Department of Revenue for
the State of Alaska,
and the STATE OF ALASKA,

Defendants.

FINAL ORDER AND JUDGMENT

1
2 This cause having come before this court, the
3 Honorable John Reese, Superior Court Judge presiding, on
4 cross motions for summary judgment as well as other
5 motions, the issues having been duly heard, and a
6 decision having been duly rendered,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as
8 follows:

9 1. The term "administrative proceeding", as it is
10 used in Article IX, Section 17 of the Alaska
11 Constitution, includes the informal conference process
12 established pursuant to A.S. 43.05.240 and 15 AAC 05.010
13 and.020

14 2. All monies received by the State after July
15 1, 1990, as a result of the termination, through
16 settlement or otherwise, of all informal conference
17 appeals involving mineral lease bonuses, rentals,
18 royalties, royalty sale proceeds, federal mineral revenue
19 sharing payments or bonuses, or involving taxes imposed
20 on mineral income, production, or property, shall be
21 deposited into the Budget Reserve Fund established by
22 Art. IX, Sec. 17 of the Alaska Constitution, along with
23 an amount of money equal to the income which would have
24 been earned on these funds if the funds had been properly
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placed in the Constitutional Budget Reserve Fund.¹

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3. The defendants are hereby ordered to restore and fully fund the constitutional Budget Reserve Fund, by not later than the end of the regular session of the Eighteenth Alaska Legislature, consistent with the terms of this order and with Article IX, Section 17 of the Alaska Constitution. . Action by the State of Alaska consistent with the constitution and laws of the State which properly obligate these funds is not precluded by this order. (e.g., a 3/4the vote of each house of the legislature to authorize appropriation of part or all of the funds).

4. The defendants shall, within 30 days, provide an accounting to the plaintiffs of the receipt and disposition of all monies subject to paragraph #2 of this final order and judgment. Said accounting shall include the date and amount(s) of money received which resulted from the termination of any informal conference referred to in paragraph #2. Defendants' obligation to provide an accounting is a continuing one until the terms of this order are met.

5. The defendants shall produce to plaintiffs (a)

¹The evidence presented by the parties up to the date of this final order suggests that the relevant monies received by the State after July 1, 1990, totals an amount of not less than \$951,518,827.88, which total represents at least \$924,051,580.19 in principal, plus at least \$27,467,247.67 in income which would have been earned.

1 the defendants' Interest Computations for Settlements
2 Received Through Informal Proceedings, and (b) any
3 documents referring to that part of the 1993 settlement
4 of the oil and gas tax dispute with British Petroleum
5 which was allocated to preinformal conference general
6 fund revenues.

7 6. Pending further order of this court, any
8 documents referred to in paragraphs #4 and #5 of this
9 final order shall be subject to a protective order,
10 prohibiting plaintiffs or plaintiffs' counsel from
11 disclosing the contents of said documents to anyone other
12 than this court under seal or an agent or employee of
13 plaintiffs' counsel who agrees in writing to abide by the
14 terms of the protective order.

15 7. This cause involves important issues affecting
16 the public interest and plaintiffs are the prevailing
17 parties.

18 8. Plaintiff Steve Cowper may apply for attorneys
19 fees pursuant to Alaska Civil Rule 62. Any award of fees
20 does not preclude a subsequent application for fees for
21 enforcement and verification work done after entry of
22 this final order.

23 9. "Senate Majority"-plaintiffs have waived their
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right to costs and attorney fees.

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DATED December 14, 1993



JOHN REESE
SUPERIOR COURT JUDGE

Alaska Department of Revenue
Oil and Gas Assessment Receipts Summary
 Total Principal and Interest
 For the Period July 1, 1990 Through December 31, 1993

	<i>Constitutional Budget Reserve</i>	<i>General Fund Informal</i>	<i>Total All Funds</i>
<i>Principal Payments</i>			
Fiscal Year 1991	\$230,480,513.57	\$ 61,196,813.05	\$ 291,677,326.62
Fiscal Year 1992	307,455,569.32	84,204,052.62	391,659,621.94
Fiscal Year 1993	100,772,483.00	679,711,459.60	780,483,942.60
Fiscal Year 1994	99,475,744.64	120,524,453.00	220,000,197.64
Total Principal Payments	738,184,310.53	945,636,778.27	1,683,821,088.80
<i>Interest Earnings</i>			
Through November 30, 1993	60,719,000.00 ²	29,808,910.95 ³	90,527,910.95
December 1993	2,879,000.00 ²	2,667,000.00 ⁴	5,546,000.00
Total Interest Earnings	63,598,000.00²	32,475,910.95	96,073,910.95
Total Principal and Interest	\$801,782,310.53	\$978,112,689.22	\$1,779,894,999.75

Footnote 1 - Amounts determined to be included in the constitutional budget reserved fund per December 14, 1993 Alaska Superior Court decision.

Footnote 2 - Reported in the State of Alaska accounting system.

Footnote 3 - Based on earnings rates reported in Treasury Division's monthly financial statements.

Footnote 4 - Estimate based on Treasury Division's November 1993 earnings rate.

MEMORANDUM

State of Alaska
Office of the Governor
Office of Management and Budget
Office of the Director

TO: Shelby Stastny
Director

DATE: February 10, 1994

FROM: Jack Kreinheder *JK*
Senior Policy Analyst

PHONE: 465-3568

SUBJECT: Budget Reserve Fund Majority Vote
Appropriation Projections

FAX: 465-3640

As you requested, I have reviewed the projections of the allowable majority vote appropriations from the constitutional budget reserve fund with Jim Baldwin and Neil Slotnick from the Department of Law. They agree that the treatment of the amounts available for appropriation in the attached projection is consistent with CSHB 58(FIN).

I have also updated the projections based on the February petroleum revenue executive update, and have excluded supplemental appropriations to be consistent with HB 58, and have also corrected an earlier error in the consistent exclusion of mental health funds from the projections (mental health funds are now excluded).

The calculation of the allowable majority vote appropriations was done as follows, using FY 94 as an example:

Under the budget reserve amendment, the allowable majority vote appropriation for FY 94 is equal to the amount appropriated for FY 93 less the amount available for appropriation for FY 94, as shown below. Amounts shown are in millions of dollars.

FY 93 appropriations (per OMB spending plan)	\$2,577.4
less FY 94 unrestricted general fund revenues	- <u>\$1,653.9</u>
equals allowable majority vote appropriation of	\$ 923.5

FY 94 revenues were calculated as follows:

FY 94 UGF revenue forecast, less 6% to mental health (from DOR 2/4/94 Executive Update)	\$1,574.5
plus other UGF revenues (includes program receipts and AHFC dividend- from OMB EBB spending plan)	<u>\$79.4</u>

Totals	\$ 1,653.9
--------	------------

In this calculation of FY 94 revenues, \$120.8 million which was appropriated from the railbelt intertie reserve and railbelt energy fund was excluded, in order to be consistent with the definition discussed above that excludes reserve funds and other designated funds or accounts. This amount was also deducted from FY 94 spending in calculating the allowable appropriation for FY 95.

Projected Constitutional Budget Reserve Fund Allowable Majority Vote Appropriations

FY 94—FY 99/Low Case/With Futures Prices for FY 94

Note: Calculation of allowable appropriations is based on the definition of the term "available for appropriation" as stated in CSHB 58(FIN).

Revenue amounts exclude mental health funds.

Appropriation amounts exclude supplementals.

	<u>FY 93</u>	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>
\$/bbl.	17.92	13.52	15.04	15.35	15.91	17.04	17.41
Production MMbl/day	1.732	1.648	1.682	1.612	1.560	1.479	1.380
REVENUES:							
UGF REVENUE FORECAST*	2,211.1	1,574.5	1,710.8	1,707.1	1,741.6	1,761.1	1,658.3
OTHER UGF REVENUES	937.9	79.4	210.2	210.2	210.2	210.2	210.2
TOTAL UGF REVENUES	3,149.0	1,653.9	1,921.0	1,917.3	1,951.8	1,971.3	1,868.5
APPROPRIATIONS							
OPERATING	2,243.8	2,252.3	2,230.8	2,286.6	2,343.7	2,402.3	2,462.4
CAPITAL	294.0	478.7	95.0	300.0	300.0	300.0	300.0
LOANS & TRANSFERS	39.6	169.2	36.3	37.0	37.0	37.0	37.0
TOTAL APPROPRIATIONS	2,577.4	2,900.2	2,362.1	2,623.6	2,680.7	2,739.3	2,799.4
ANNUAL DEFICIT	--	-1,246.3	-441.1	-706.2	-728.9	-768.0	-930.8
ALLOWABLE CBR APPROP.	--	923.5	979.2	444.8	671.7	709.4	870.8
REMAINING CBR BALANCE	--	856.4	415.3	--	--	--	--

Initial FY 94 CBR Balance	1,779.9
(after repayment of \$978 million; also includes FY 94 settlements to date)	

*FY 94 based on revenues collected as of 1/30/94 and futures market projections of lower 48 average prices for ANS crude, per DOR February "Executive Update".

Prepared by OMB/JK.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

February 11, 1994

MEMORANDUM

TO: Honorable Walter J. Hickel
Governor

FROM: *Bruce M. Botelho*
for Bruce M. Botelho
Attorney General

RE: Attached third revised final version of bill making appropriations to and from the constitutional budget reserve fund
Our file: 773-94-0045

Attached is a third revised final version of a bill making appropriations to and from the constitutional budget reserve fund to comply with the court's order in Hickel v. Halford. A slight change was made to the language of subsec. (o) of sec. 1 of the bill.

We have prepared the bill for introduction in the House and Senate.

No changes were made to the transmittal letter sent with the first revised version of the draft bill.

BMB:DEB:cl

cc w/enc.: Cheryl Frasca, Deputy Chief of Staff
Office of the Governor

Hon. Bruce M. Botelho
Attorney General

Hon. Nancy Bear Usera, Commissioner
Dept. of Administration

Hon. Darrel Rexwinkel, Commissioner
Dept. of Revenue

Shelby Stastny, Director, OMB
Office of the Governor

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:

Referred:

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.

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION
BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:
Referred:

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 CD). On July 27, 1993, former Governor Steve
15 Cowper filed a similar complaint captioned *Cowper v. Hickel* (3AN-93-6848 CD). 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, s:c. 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.

DRAFT TRANSMITTAL LETTER

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill necessary for the state to comply with the January 27, 1994, order of the Alaska Supreme Court in Hickel v. Holford, the litigation concerning the constitutional budget reserve fund. This bill appropriates money from the general fund to fully restore the constitutional budget reserve fund as required by the court's order. In addition, it appropriates money from the constitutional budget reserve fund to the general fund to provide valid funding sources for fiscal year 1994 appropriations. The enactment of this bill is essential for two reasons: it ensures that the state is in compliance with the order of the Alaska Supreme Court, and it provides finality with regard to the validity of fiscal year 1994 appropriations.

The bill sets out findings concerning the constitutional budget reserve fund and the litigation on this issue. That litigation resulted in an order of the Alaska Supreme Court that the governor restore the constitutional budget reserve fund, with interest. The amount required to restore that fund consistent with the court's interpretation is \$945,636,778.27, plus income that would have been earned upon investment of this money, calculated from the date of receipt by the state. The bill makes appropriations necessary to accomplish this.

Sections 4, 5, and 6 of the bill appropriate money from the constitutional budget reserve fund to the general fund. The appropriations require a three-fourths majority vote of each house of the legislature under art. IX, sec. 17(c) of the Alaska Constitution. If secs. 4, 5, and 6 receive this required vote, the bill will take effect immediately upon enactment.

The enactment of this bill is essential to the State of Alaska. If enacted into law, the bill will bring the state into compliance with the order of the Alaska Supreme Court. By making appropriations from the constitutional budget reserve fund, the bill provides valid funding sources for fiscal year 1994 appropriations.

This bill accomplishes these goals in a manner that provides finality. For these reasons, I strongly urge your support for this bill.

Sincerely,

Walter J. Hickel
Governor

AMENDMENT

consider for
committee
SUBSTITUTE

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS HB 505(JUD)

Page 1, line 5 after "INTENT" through page 4, line 9:

Delete all material.

Page 4, line 10:

Delete "(n)"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS HB 505(Fin) Work Draft "J"

Page 2, line 10 through line 13:

Delete all material

Page 2, line 21 through page 3, line 4:

Delete subsections (e) and (f)

Reletter following subsections

Page 3, line 12 after "1993." through line 15:

Delete all material

Page 3, line 21 through line 25:

Delete subsection (i)

Reletter following subsections

AMENDMENT

BY

TO: CS HB 505 (FIN)

Page 2, line 27 delete subsection [f]

Page 3, line 5 subsection [g] is amended to read:

(g) In passing the appropriation bills in 1993, the legislature authorized the expenditure of anticipated revenue in the general fund, including amounts deposited in that fund as a result of settlement of informal tax conferences. At the time the legislature passed those appropriations for fiscal year 1994, revenue forecasts showed a surplus in general fund. [THUS, THE LEGISLATURE DID NOT ANTICIPATE THAT ALL MONEY DERIVED FROM THE SETTLEMENT OF INFORMAL TAX CONFERENCES WOULD BE SPENT.] But, due to the unanticipated decrease in state revenue, the state treasury has less money than was anticipated at the time that the legislature made its appropriations in 1993. Because of this shortfall, any anticipated surplus representing settlements of informal tax conferences, and amounts received from informal tax conference settlements occurring after July 1, 1994, must be expended to fully fund the capital and operation appropriations enacted in 1993.