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- 1 11-19-93 Decision on Cross 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
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~~11-19-93~~

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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 7671 # of pages

To: Bartels

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Case No. 3AN-93-62 /CIV
(Consolidated)
Case No. 3AN-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 apparently
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
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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....)

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Sec. 43.05.240. **Taxpayer remedies.** (a) A person aggrieved by the action of the department in fixing the amount of a tax or in imposing a penalty may apply to the department within 50 days from the date of mailing the notice required to be given to the person by the department, giving notice of the grievance, and requesting an informal conference. At the conference the person aggrieved may present arguments and evidence relevant to the amount of tax or penalty due the state. If the department determines that a correction is warranted, the department shall make the correction.

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

15 AAC 05.020. **INFORMAL CONFERENCES.** (a) Upon receipt of a written request for appeal under 15 AAC 05.010 requesting an informal conference, an appeals officer will promptly schedule the informal conference. The informal conference will be conducted in person, through correspondence, or by telephone, audio, or video teleconference, or other electronic means. The appeals officer shall make available to the person who filed the request for appeal the relevant portion of that person's file, 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 the
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
14 **ADVERSARY JUSTICE MODEL**

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

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

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: Ad Botelho / Pope / K. Edwards
[Signature]
Secretary / Deputy Clerk

**SUPPLEMENTAL FINDINGS ON
INJUNCTION ISSUE**

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5 Plaintiff Cowper has requested an injunction
6 prohibiting the State from encumbering the estimated
7 \$124,000,000 of informal conference receipts received
8 since the filing of this litigation.

9
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11 1. The legislature was aware of the source of the
12 funds involved during its deliberations in the last
13 legislative session, and chose to appropriate those
14 funds. It therefore shares responsibility for replacing
15 the funds. Furthermore, considering the legislative
16 involvement, it is not clear that the Governor could
17 legally remove the improperly placed funds from the
18 general fund without an appropriation authorizing it.

19
20 2. The purpose of the constitutional Budget Reserve
21 Fund is to cushion the impact of reduced oil revenue as
22 oil production declines and State revenues are depleted.
23 Currently, State revenue is not depleted. For example,
24 there is presently some \$950,000,000 in the Permanent
25 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 tands 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
25

placed in the Constitutional Budget Reserve Fund.¹

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

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

21 5. The defendants shall produce to plaintiffs (a)

22 ¹The evidence presented by the parties up to the date of
23 this final order suggests that the relevant monies
24 received by the State after July 1, 1990, totals an
25 amount of not less than \$951,518,827.86, 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.

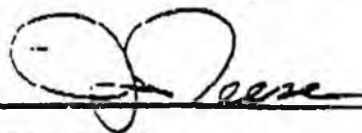
18 8. Plaintiff Steve Cowper may apply for attorneys
19 fees pursuant to Alaska Civil Rule 82. Any award of fees
20 does not preclude a subsequent application for fees for
21 enforcement and verification work done after entry of
22 this final order.

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	63,598,000.00 ²	32,475,910.95	96,073,910.95
<i>Total Principal and Interest</i>	\$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

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

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: *for* *Robert E. Behr*
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:c1

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
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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, require 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. Halford, 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