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STATE OF ALASKA

OFFICE OF THE GOVERNOR
OFFICE OF MANAGEMENT AND BUDGET

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110020
JUNEAU, ALASKA 99811-0020
PHONE: (907) 465-3568

June 19, 1992

The Honorable Ron Larson
Chair
Legislative Budget and Audit Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Larson:

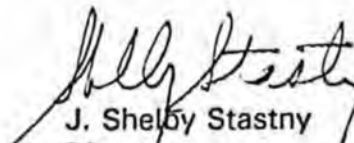
As a follow-up to our meeting this morning, the Administration has agreed that the administrative settlements which the Attorney General previously identified as erroneously deposited in the constitutional budget reserve fund will be placed in a separate account. Future administrative settlements will also be deposited into this account and its interest earnings will be accounted for separately.

This action is taken with the following understanding:

1. The Administration will access these funds should the Commissioner of Revenue determine it is necessary to do so because the cash available in the general fund is insufficient to meet the state's obligations; and
2. The Legislative Budget and Audit Committee and Administration will work on legislation during the interim for introduction next session which will clarify implementation of the constitutional amendment.

On behalf of the Governor, I look forward to working with you and the committee in finding common ground through which we can meet our mutual goals.

Sincerely,


J. Shelby Stastny
Director

cc: Walter J. Hickel, Governor
Legislative Budget and Audit Committee Members
Charles Cole, Attorney General
Commissioner Darrel Rexwinkel

(7)

Date Referred: January 15, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-12-93

The JUDICIARY Committee considered:

HB 58

HOUSE BILL NO. 58

ADMINISTRATION OF BUDGET RESERVE FUND

"An Act relating to the budget reserve fund established under art. IX, sec. 17, Constitution of the State of Alaska."

RECOMMENDATIONS:

be replaced with _____

CS HB 58 (JUD)

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 Administration

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Brian D. Porter</i>	<input checked="" type="checkbox"/>				
<i>Gail Phillips</i>	<input checked="" type="checkbox"/>				
<i>Annette Jones</i>	<input checked="" type="checkbox"/>				
<i>Paula Kott</i>	<input checked="" type="checkbox"/>				
<i>Joseph D. ...</i>	<input checked="" type="checkbox"/>				
<i>John ...</i>	<input checked="" type="checkbox"/>				

Brian D. Porter
CHAIRMAN'S SIGNATURE

Rep. Brian Porter, Chairman

House Judiciary Committee

Date: March 12, 1993
 Place: Capitol Room 120

*HB 86 Sanctions for Property-Related Offenses
 HB 79 Damage of Property by Minors

Subject of Meeting: HB 152 Magistrate Jurisdiction
 HB 58 Admin. of Budget Reserve Fund

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
Maraot Knuth	law-Crim	Box 110300 998			5-4049	(Y) N	HB 86
Jay Frank	State firm Allstate	431 N. Franklin St JUNEAU			586-5777	(Y) N	HR 79
C. S. CHRISTENSEN	CURT SYSTEM	303 K ST ANCH	99501		264-8228	(Y) N	HB 152
Randall Harris	DHSS	Box 110630 JUNEAU	99811		465-3187	Y (N)	HB 86
Jim Baldwin						Y N	HB 58
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 58 (Iud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the Budget Reserve Fund..." BRU: Finance
 Component: Finance
 Sponsor: (H) Finance
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 59

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$ none

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Don Wanie, Director Phone: 465-2240
 Division: Finance Date: _____

Approved by Commissioner: Nancy Bear Usara *NBCU* Date: 3/11/93
 Agency: Department of Administration

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STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

February 23, 1993

WALTER J. HICKEL, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

The Honorable Kay Brown
Alaska State Legislature
State Capitol, Room 517
Juneau, Ak 99801

Dear Representative Brown:

On June 18, 1992 you and Representative Larson had a meeting with Attorney General Cole and Shelby Stastny, Director of OMB. At that meeting an understanding was reached that "administrative settlements which the Attorney General previously identified as erroneously deposited in the Constitutional Budget Reserve" would be placed in a separate account. Furthermore, it was agreed that future administrative settlements would be placed in a separate account.

Since that time you requested information on the balances of the Constitutional Budget Reserve Fund (CBRF) and the Administrative Settlement (AS) accounts. On December 2, 1992, the Department of Revenue provided information to you concerning deposits of revenues into the AS account and accrued interest resulting from these payments.

Subsequent to our response to you, we determined that further review was necessary. This was due to the varying circumstances surrounding payments received after assessments were issued on oil and gas tax and royalty matters. During this additional review we broadened our criteria to accommodate more payment circumstances. We also applied the criteria to all payments received after June 30, 1990. Therefore, the information being provided includes more than just payments received after June 18, 1992.

We have concluded our review of payments received after assessment notices have been issued including those recorded directly into the general fund. Let me offer my apologies for the length of time that you have had to wait for this review process to be concluded. The task of reviewing each tax and royalty payment received by the State as the result of an assessment notice since July 1, 1990 was complex and time consuming. It involved determining the account into which the payment was deposited and then reviewing payment documentation to determine the proper accounting for the deposit. It also involved coordination with the Department of Natural Resources because they receipt and account for royalty payments.

Representative Kay Brown
Page 2

As a result of this review certain adjustments were necessary. The adjustments required moving funds between the unrestricted General Fund (GF), the Administrative Settlement Account in the General Fund (AS) and the Constitutional Budget Reserve Fund (CBRF). Entries have been submitted to the Division of Finance to record the adjustments.

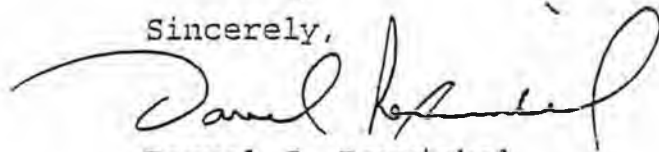
The summary below shows the balance in each of the accounts by fiscal year for amounts collected after an assessment notice was issued. For FY 93 the balance shown is for payments received as of January 31, 1993. The unallocated amount in the general fund represents receipts prior to a request for hearing. The balances for the Permanent Fund and the School Fund did not require adjustment because they were accounted for correctly.

(in thousands)

	<u>CBRF</u>	<u>GENERAL FUND</u> <u>Unallocated</u>	<u>AS Account</u>	<u>Permanent</u> <u>Fund</u>	<u>School</u> <u>Fund</u>
FY 91	230,480.5	30,508.9	61,196.8	75,808.7	1,511.4
FY 92	320,856.5	84,882.9	83,654.9	91,544.9	1,826.8
FY 93	<u>79,541.2</u>	<u>11,915.2</u>	<u>71,059.2</u>	<u>17,417.7</u>	<u>293.5</u>
Total	\$630,878.2	\$127,307.0	\$215,910.9	\$184,771.3	\$3,631.7

Interest earnings associated with the account balances are being calculated and will be appropriately allocated. I will provide you with the updated totals as soon as they are available.

Sincerely,



Darrel J. Rexwinkel
Commissioner

cc: Patrick P Ryan, Chief of Staff, Office of the Governor
Kris Lethin, Legislative Liaison, Office of the Governor
Shelby Stastny, Director, OMB

93-040

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

February 26, 1993

The Honorable Kay Brown
Alaska State Legislature
State Capitol, Room 517
Juneau, AK 99801

Dear Representative Brown:

On February 23 I delivered to you a letter that indicated the principal balance in the Administrative Settlement (AS) Account of the General Fund as of January 31, 1993. On February 22 you received a letter from Mr. Don Wanie, Director of the Division of Finance, Department of Administration indicating the principal and interest balance in that account as of that date.

A reconciliation of the two letters is as follows:

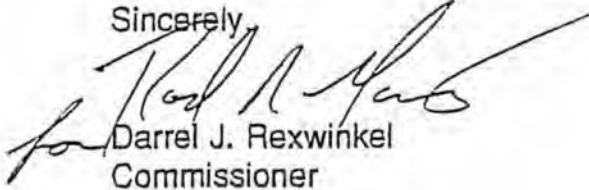
Principal balance only as of January 31	\$215,910,883
February 17 settlement deposited to AS	50,273,236
Interest calculated as of February 22 by Treasury Division	<u>13,560,299</u>
Total in Mr. Wanie's letter	<u>\$279,744,418</u>

As a reminder an amount equal to 6% of unrestricted revenues is required to be transferred to the Mental Health Trust Income Account under AS 37.14.011. All amounts that are deposited into the Constitutional Budget Reserve Fund (CBRF) would be exempt from that provision. Likewise, any amounts that currently reside in the Administrative Settlement Account in the general fund that have had the 6% assessment applied and are subsequently transferred to the CBRF would probably have to be made whole by withdrawing that amount from the Mental Health Trust Income Account and transferring it to the CBRF.

The Honorable Kay Brown
February 26, 1993
Page 2

If you should have any further questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Darrel J. Rexwinkel", is written over the typed name and title.

Darrel J. Rexwinkel
Commissioner

93-051

cc: Representative Ron Larson, Alaska State Legislature
Patrick P. Ryan, Chief of Staff, Office of the Governor
Kris Lethin, Legislative Liaison, Office of the Governor
Shelby Stastny, Director, OMB, Office of the Governor
Don Wanie, Finance Division Director, Department of Administration

MEMORANDUM

TO: Representative Ramona L. Barnes
Speaker of the House

FROM: Douglas A. Wooliver
Staff Attorney

SUBJECT: Article IX, Section 17 of the Alaska Constitution;
the Constitutional Budget Reserve Fund.

DATE: March 9, 1993

You had asked me to write a memo regarding the scope of article IX, section 17 (the Budget Reserve Fund) and whether recent oil tax settlements are required to be deposited into that account. The pertinent part of that section reads as follows:

(a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, 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 mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments of bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund.

The portion of this section that is important for this discussion is the phrase "administrative proceeding". Because this section only speaks to "administrative proceedings" and "litigation", the question arises as to whether the revenues from the recent settlements are the "result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation. . . "

The Department of Law has taken the view that because these tax settlements were arrived at through the informal conference

proceedings under AS 43.05.240(a) rather than the formal hearing proceedings under section (b) of that statute, the settlement was not the result of a settlement of an "administrative proceeding" and thus the revenues need not be deposited into the budget reserve fund.

While the department's position is one possible interpretation, it does not appear to be consistent with the meaning of the phrase "administrative proceeding" or the voters understanding of the amendment when they voted on it. The department's interpretation is also inconsistent with the legislative intent behind the amendment.

Because the phrase "administrative proceeding" is not always self explanatory, the courts will have to decide what that phrase means in the context of this amendment. There are several tools available to the Court when it is interpreting the language in the constitution. These tools include: 1) the plain meaning of the words used, 2) the legal meaning of the words used, 3) the voter's understanding of that they were ratifying, and 4) the legislative intent behind the language (i.e. what problem was the legislature trying to solve).

PLAIN MEANING

When the Court is interpreting a word or phrase that is not clearly defined, it will often look to the meaning of the word as it is commonly used. Citizens Coalition v. McAlpine, 810 P.2d 162, 169 (Alaska 1991). One common source for such an interpretation is the dictionary. Webster's third New International Dictionary at 1807 (Unabridged 1976) defines "proceeding" as:

1: the action of proceeding, 2a: a particular way of doing or accomplishing something. . . b: a particular action or course of action. . . : a particular way of action. . . c: a particular step or series of steps adopted for doing or accomplishing something. .

When this common understanding of the word "proceeding" is applied to proceedings before an administrative agency, it suggests that the "steps adopted" by laws and regulations for appealing agency decisions, and appearing before that agency, would constitute a proceeding.

LEGAL MEANING

In addition to the common usage of the term proceeding above, the Court may also wish to consider the manner in which the term "administrative procedure" is commonly applied in law. Black's Law Dictionary defines an "administrative procedure" as;

Methods and processes before administrative agencies as distinguished from judicial procedure which applies to courts.

Black's Law Dictionary 22-23 (Abridged 5th edition).

The methods and procedures in this case are filled out under Alaska Administrative Code 15.05.010-020 which implements AS 43.05.240(a). Under those regulations, a person coming before the Department of Revenue in an informal conference must first timely file a detailed request for an appeal. Once before the board, they can be represented by an attorney and offer oral and written testimony. The opinion of the board is to be in writing, and under 43.05.240, if there is a compromise in the amount of taxes owed, the Attorney General needs to approve the change. If the taxpayer is not satisfied with the outcome they have the option to proceed to a formal hearing.

Because the informal conference is clearly established as part of an aggrieved taxpayer's appeal process before an administrative agency, it would appear to fall not only within the common legal definition of an "administrative procedure," but also within the common lay understanding of "administrative procedure."

VOTER UNDERSTANDING

Because constitutional amendments are voted on by the citizens of the state, in addition to looking at the plain and/or legal meaning of a word or phrase, the court may also look at the related issue of trying to determine what the voters thought they were ratifying when they voted on this amendment. The Alaska Supreme Court recently stated that;

Additionally, we must never lose sight of another important right of the people implicated in all cases of constitutional construction, namely the right to have the constitution upheld as the people ratified it. . .

Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe abstrusely any constitutional term that has a plain ordinary meaning. . . . Rather, absent some signs that the term at issue has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision.

Citizen's Coalition 810 P.2d 162, 168-169.

In determining what the voters might have thought they were voting on, it can be helpful to look at the voter pamphlet that is published as a means of helping voters understand the issues that they will be deciding. In this case, the pamphlet describes the measure in part by stating:

Legal settlements involving mineral or oil and gas revenues received after July 1, 1990, will be deposited into the Budget Reserve. . . . If approved, the Budget Reserve Fund will help hold down spending by removing from the table the oil and gas revenue "windfalls" that result from pending litigation and tax disputes.

In the present case, the tax money received clearly came from the settlement of a "tax dispute." This is the kind of settlement that appears to fall within the voter pamphlet explanation of the amendment. It does not appear likely that the voters read either this explanation or the amendment itself to mean that money received from the settlement of tax disputes which were settled through the formal hearing procedure, provided under AS 43.05.240, would be deposited in the fund, but money received from the settlement of tax disputes which were settled through the informal conference procedures of that same statute would not go into fund. Such an interpretation would appear to be the kind of "abstruse" definition that the Court tries to avoid.

The most likely voter interpretation of both the amendment and the voter pamphlet was that any money received from the settlements of tax and other included disputes would be deposited into the budget reserve fund.

LEGISLATIVE INTENT

The interpretation most likely understood by the voters is also consistent with the legislative intent behind the amendment. Throughout the history of this amendment the words "windfalls" and "settlements" were used in describing which funds should be placed in the fund. The Department of Law argues that the word "windfall" only refers to unexpected good fortune, and because the amendment does not limit itself to the unexpected, the word is of little help in ascertaining the intent of the legislature.

What this argument fails to consider is that those who spoke of windfalls were not merely referring to the unexpected. Throughout the debate on this amendment references were made to the "windfalls" that the legislature was expecting to be receiving. (e.g. tapes from Senate Finance Committee meeting of 2-2-90, comments of Mary Halloran.) Rather than making the use of the term unhelpful as the Department of Law argues, what this suggests is that the legislature meant by the term "windfall" any large one time payment from one of the listed types of disputes.

The above interpretation is further supported by the impetus behind the establishment of the fund. The problem that the state faced, (then as now) was that sporadic and huge one time payments were coming into the state's general fund and making the budgeting process difficult. The budget reserve fund was established as a means of keeping these large settlements "off the table" so as to keep the budgeting process under control. The money in the fund could then be used to help cushion the expected decline in state revenues. (see for example, comments by Representative Kay Brown, House Judiciary Committee meeting of 2-16-90 and Senate Fiscal Policy Report #3, 1990 , page 15.)

By not depositing the current tax dispute settlements into the budget reserve fund, the state will be contributing to the problem that the fund was designed to prevent, i.e. disrupting the budgeting process by spending a huge one time influx of revenues.

CONCLUSION

The revenues recently obtained through tax dispute settlements should be deposited into the budget reserve fund. This would be consistent with both the plain and legal meanings of the phrase

"administrative proceeding." It would also be consistent with the most likely understanding that the voters had when they ratified this amendment as well as the legislative intent behind it.

The purpose of the amendment will be circumvented if the current tax dispute settlements are allowed to go into the general fund merely because the parties chose to settle the matter through the informal conference procedure rather than the formal hearing procedure. Such a distinction between settlements was not contemplated by either the voters or the legislature.

8-LS0188E
Cook
3/10/93

CS FOR HOUSE BILL NO. 58(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): **HOUSE FINANCE COMMITTEE**

*Note:
most material in CS
is deleted.*

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the budget reserve fund established under art. IX, sec. 17,
2 Constitution of the State of Alaska; and providing for an effective date."

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

4 * Section 1. AS 37.10 is amended by adding new sections to read:

5 **ARTICLE 6. BUDGET RESERVE FUND.**

6 **Sec. 37.10.410. ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES.**

7 (a) The following money received by the state is considered to be received as a result
8 of the termination of an administrative proceeding for purposes of applying art. IX,
9 sec. 17(a), Constitution of the State of Alaska:

10 (1) past due taxes that are received by the state after a request for an
11 informal conference under AS 43.05.240(a) is made to the Department of Revenue,
12 together with penalties and interest on the taxes;

13 (2) past due taxes that are received by the state after a request for a
14 formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue,

1 together with penalties and interest on the taxes.

2 (b) To the extent that an administrative proceeding involves taxes that are not
3 due at the time the request for the proceeding was made under AS 43.05.240(a) or
4 (b)(1), money received by the state as a result of the proceeding is not considered to
5 be received as a result of the termination of an administrative proceeding for purposes
6 of applying art. IX, sec. 17(a), Constitution of the State of Alaska.

7 Sec. 37.10.420. MONEY AVAILABLE FOR APPROPRIATION. (a) For
8 purposes of applying art. IX, sec. 17(b), Constitution of the State of Alaska, in
9 determining the amount of money appropriated for a previous fiscal year, only money
10 appropriated from the sources used to calculate the money available for appropriation
11 for the current fiscal year shall be considered. For purposes of applying art. IX,
12 sec. 17(b) and (d), money available for appropriation for the current fiscal year does
13 not include federal funds, money in the earnings reserve account established under
14 AS 37.13.145, or money held in trust for a particular purpose. Money available for
15 appropriation for the current fiscal year is money in the general fund, including money
16 from lapsed appropriations, that has not been appropriated during a previous fiscal year

17 (1) for expenditure during any fiscal year, or

18 (2) to a special fund or account established by law.

19 (b) If the amount appropriated from the budget reserve fund has not been
20 repaid under art. IX, sec. 17(d), Constitution of the State of Alaska, the Department
21 of Administration shall transfer to the budget reserve fund the amount of money in the
22 general fund available for appropriation on June 30 of the fiscal year, or as much of
23 it as is necessary to complete the repayment. The transfer shall be made on or before
24 December 16 of the following fiscal year.

25 * Sec. 2. APPLICATION. AS 37.10.410, added by sec. 1 of this Act, applies to taxes that
26 are received by the state after June 30, 1993, together with penalties and interest on the taxes.

27 * Sec. 3. This Act takes effect July 1, 1993.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

January 21, 1992

SUBJECT: Budget Reserve Fund (Work Order No. 7-LS1832)

TO: Representative Mike Navarre
Co-chair, House Finance Committee

FROM: Tamara Brandt Cook *TBC*
Director

Under Article IX, Section 17(b) of the state constitution amounts may be appropriated from the budget reserve fund when ". . . the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year. . ." You have asked how the amount available for appropriation is to be determined. I agree with your observation that the language is not clear. Unfortunately, since the matter has not yet been considered by the court, any answer I provide to your question will be speculative at best.

At the very least this language includes the balance in the unrestricted general fund available at the beginning of a fiscal year plus revenue received by the general fund during that year and money lapsed into the general fund during that year.

In addition, there are certain statutory funds within the general fund with restrictions on expenditure. Money in these funds may be appropriated, either for the limited uses set out in the statute or for other uses by amending the restrictions contained in the statute or relying upon the legislature's "power of the purse" and ignoring the restrictions. Since these funds may be appropriated, I believe a court would tend to conclude that amounts in them are "available for appropriation" under Section 17(b). An example of such a fund is the Railbelt Energy Fund (AS 37.05.520).

Likewise, federal funds are made available to the state for restricted uses but can only be expended if appropriated. I would think a court would find these to be "available for appropriation."

However, because subsection (b) is not limited to money that is available for appropriation from the general fund while subsection (d) specifically requires repayment only from general fund money, I would think that a court would find that

Representative Mike Navarre
January 21, 1992
Page 2

money available for appropriation under subsection (b) is not limited to general fund money. If it were, like subsection (d), it could have said so. The earnings reserve account (AS 37.13.145) is, arguably, a fund that is available for appropriation, but it is an account within the permanent fund rather than the general fund. You will recall that under Article IX, Section 16, the earnings of the permanent fund are to be deposited in the general fund unless otherwise provided by law, and the legislature has so provided by denominating the earnings reserve as an account in the permanent fund. Yet the legislature has also regularly made appropriations from the earnings reserve account, so it would seem difficult for a court to find that that money, along with all other permanent fund income, is not "available for appropriation."

On the other hand, the principal of the permanent fund is certainly not "available for appropriation." Article IX, Section 15 states specifically that the principal may only be used for income-producing investments.

There are dozens of other accounts and funds established by statute, ranging from loan funds to trust funds to funds required under federal law. Enclosed is a list of funds and accounts mentioned in statutes, but bear in mind other accounts have been established by administrative agencies. To the extent that those funds contain unencumbered and unobligated balances, they may provide a resource for reappropriation purposes, but because they are typically appropriated to the fund for a specific program and can still be expended under the original appropriation, a fair argument could be made for the proposition that they are not balances "available for appropriation" within the terms of the constitution and do not become available until the original purpose is accomplished and the remaining funds are lapsed or the program is repealed.

TBC:gc
92-040.glc

Enclosure

October 20, 1992

DIRECTORY OF
STATE FUNDS AND ACCOUNTS
ESTABLISHED BY STATUTE

IN ALPHABETICAL ORDER
BY PROPER NAME (including capitalization)

abandoned motor vehicle fund AS 28.11.110(a)
agricultural revolving loan fund AS 03.10.040(a)
Alaska advance college tuition payment fund AS 14.40.803(a)
Alaska Aerospace Development Corporation reserve fund
AS 14.40.951(a)
Alaska Aerospace Development Corporation revolving fund
AS 14.40.841
Alaska amateur sports fund AS 05.35.150
Alaska children's trust fund AS 37.14.200(a)
Alaska clean water fund AS 46.03.032(a)
Alaska debt retirement fund AS 37.15.011(a)
Alaska energy efficient home grant fund AS 18.56.410(a)
Alaska heritage endowment fund AS 37.14.400
Alaska Historical Commission receipts account AS 41.35.380(a)
Alaska housing finance revolving fund AS 18.56.082
Alaska Industrial Development and Export Authority revolving fund
AS 44.88.060
Alaska longevity bonus fund AS 47.45.090(a)
Alaska marine highway system fund AS 19.65.060(a)
Alaska marine highway system vessel replacement fund
AS 37.05.550(a)
Alaska municipal bond bank authority reserve fund AS 44.85.270
Alaska municipal land account AS 29.65.080(a)

Alaska permanent fund AS 37.13.010(a)
Alaska Pioneers' Home Trust Fund AS 47.55.060
Alaska school activities fund AS 14.07.059(a)
Alaska school counseling program grant fund AS 14.30.750(a)
Alaska science and technology endowment AS 37.17.020(a)
Alaska student leadership development fund AS 14.30.510
Alaska Winter Olympics account AS 05.35.100(a)
Alaska World War II veterans' revolving fund AS 26.15.090(a)
alcoholism and drug abuse revolving loan fund AS 44.29.210(a)
alternative energy revolving loan fund AS 45.88.010(a)
art in public places fund AS 44.27.060
aviation fuel tax account AS 43.40.010(e)
benefit account (((in the unemployment compensation fund)))
AS 23.20.135(a)
BIDCO fund AS 37.17.210
bilingual-bicultural education fund AS 14.30.410(a)
budget reserve fund AS 37.05.540(a)
bulk fuel revolving loan fund AS 44.83.600(a)
bulk fuel storage facilities grant fund AS 44.47.145(a)
business assistance fund AS 44.88.500(a)
child care facility revolving loan fund AS 44.33.240(a)
clearing account (((in the unemployment compensation fund)))
AS 23.20.135(a)
commercial fishing revolving loan fund AS 16.10.340(a)
community action against substance abuse grant fund
AS 47.37.045(a)
community college fund of the University of Alaska AS 14.40.610(a)
community health aide grant account AS 18.28.030(a)

community legal assistance grant fund AS 44.47.200
community schools grant fund AS 14.36.020
community solid waste management planning grant account
AS 46.06.041(a)
cooperative arrangement grant fund AS 14.14.115(b)
correctional industries fund AS 33.32.020(a)
crime victim compensation fund AS 18.67.162
disaster relief fund AS 26.23.300(a)
dividend fund AS 43.23.045(a)
earnings reserve account AS 37.13.145
economic development account AS 44.88.172(a)
electrical service extension fund AS 44.83.370(a)
employment security administration fund AS 23.20.155(a)
enterprise development account AS 44.88.155(a)
escheated real property trust account AS 38.95.250(a)
export insurance account AS 44.88.390(a)
family education loan account AS 14.43.720(a)
Federal Transitional Grants Account AS 37.20.020
FICA administration fund AS 39.30.050
fire suppression fund AS 41.15.210
Fish and Game Fund AS 16.05.100
fisheries enhancement revolving loan fund AS 16.10.505(a)
fishermen's fund AS 23.35.060
fishery product revolving loan guarantee fund AS 45.92.010
forest products business loan guarantee fund AS 45.94.010
fuel emergency fund AS 26.23.400
fund for the improvement of school performance AS 14.03.125(a)

furbearer management account AS 16.05.130(c)
group health and life benefits fund AS 39.30.095(a)
handicap and mental illness charitable account (((in the self-
sufficiency trust fund))) AS 47.80.240(a)
hazardous waste reduction grant account AS 46.03.317(a)
highway fuel tax account AS 43.40.010(g)
highways equipment working capital fund AS 44.68.210
historical district revolving loan fund AS 45.98.010(a)
home ownership assistance fund AS 18.56.430(a)
housing assistance loan fund AS 18.56.420(a)
housing development fund AS 18.56.100(a)
housing insurance fund AS 18.56.093(a)
information services fund AS 44.21.045(a)
International Airports Construction Fund AS 37.15.420(a)
International Airports Revenue Bond Redemption Fund AS 37.15.440
International Airports Revenue Fund AS 37.15.430(a)
investment loss trust fund (((SBS bail out))) AS 37.14.300(a)
judicial retirement trust fund AS 22.25.048(a)
library assistance grant fund AS 14.56.300
low cost and low income multiple family housing development fund
AS 18.56.650(a)
medical facilities special bond guarantee account AS 18.26.260(a)
memorial scholarship revolving loan fund AS 14.43.255(a)
mental health trust fund AS 37.14.031
mental health trust income account (((current account)))
AS 37.14.011(a)
mental health trust income account (((new account)))
AS 37.14.036(a)

military retirement trust fund AS 26.05.228(a)
mineral resource revolving fund AS 41.98.015
mining loan fund AS 27.09.010(a)
miscellaneous services account AS 29.60.170
municipal assistance fund AS 29.60.350(a)
National Petroleum Reserve - Alaska special revenue fund
AS 37.05.530(a)
neighborhood revitalization and development fund AS 44.33.436
net income account (((in the Alaska heritage endowment fund)))
AS 37.14.410
nonpublic use highway account AS 43.40.010(j)
nursing facility resident security fund AS 18.20.350(a)
oil and hazardous substance release mitigation account
AS 46.04.010 (see also, AS 46.08.020(b))
oil and hazardous substance release response fund AS 46.08.010(a)
older Alaskans service programs account AS 47.65.010
operating loss reserve account AS 18.56.450(a)
organization grant fund AS 29.05.200(a)
outdoor recreational, open space, and historic properties
development fund AS 41.98.170
power cost equalization fund AS 44.83.162(a)
power development fund AS 44.83.382(a)
power development revolving loan fund AS 44.83.500(a)
power project fund AS 44.83.170(a)
public access fund AS 38.05.874(a)
public school foundation account AS 14.17.010(a)
public school trust fund AS 37.14.110(a)
Railbelt energy fund AS 37.05.520

real estate surety fund AS 08.88.450

regional development fund AS 44.33.026(d) (((repealed July 1,
1997)))

residential energy conservation fund AS 45.89.010(a)

restricted title loss reserve account AS 18.56.490(a)

rural development initiative fund AS 44.47.800(a)

rural electrification revolving loan fund AS 44.83.361(a)

rural housing hazard insurance fund AS 18.56.093(a)

rural housing title insurance fund AS 18.56.093(a)

scholarship revolving loan fund AS 14.43.090(a)

school construction account AS 14.11.100(c)

school construction grant fund AS 14.11.005

School Fund (((cigarette tax))) AS 43.50.140

search and rescue fund AS 18.60.145

second injury fund AS 23.30.040(a)

self-sufficiency trust fund AS 47.80.200(a)

senior citizens housing development fund AS 18.56.810(a)

senior housing bond account AS 18.56.790(d)

senior housing revolving fund AS 18.56.710(a)

small business economic development revolving fund AS 44.88.400

small business revolving loan fund AS 45.95.060(a)

special revolving fund (((surplus property))) AS 44.68.130(c)

special state land disposal income account AS 38.04.022

state insurance catastrophe reserve account AS 37.05.289(a)

state land reforestation fund AS 41.17.300

state mortgage insurance fund (((aka mortgage insurance fund)))
AS 18.56.095(a)

state waterfowl tag fee account AS 16.05.130(b)
storage tank assistance fund AS 46.03.410(a)
student loan fund AS 14.42.210(a)
supplemental housing development grant fund AS 18.55.998(a)
surcharge account (((oil conservation surcharge))) AS 43.55.210
tax equalization account AS 29.60.060
teacher scholarship revolving loan fund AS 14.43.620(a)
toll facilities construction fund AS 37.15.620(a)
toll facilities revenue bond redemption fund AS 37.15.640
toll facilities revenue fund AS 37.15.630(a)
tourism revolving fund AS 45.90.010(a)
training and building fund AS 23.20.130(a)
unemployment compensation fund AS 23.20.130(a)
unemployment trust fund account (((in the unemployment compensation
fund))) AS 23.20.135(a)
universal service fund AS 42.05.840
University of Alaska endowment trust fund AS 14.40.400
University of Alaska risk management fund AS 14.40.455(a)
University of Alaska working capital reserve fund AS 14.40.296(a)
unorganized borough national forest receipts fund AS 41.15.180(b)
veterans service fund AS 26.10.020
vocational rehabilitation small business enterprise revolving fund
AS 23.15.130(a)
water quality enhancement program and water supply, sewage, and
solid waste facilities fund AS 46.03.030(c)
watercraft fuel tax account AS 43.40.010(f)
working reserve account AS 37.05.510(a)

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Alaska State Legislature

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Representative Ronald L. Larson
District 27

MEMORANDUM

TO: Representative Brian Porter, Chairman
House Judiciary Committee

FROM: Representative Ronald Larson, Co-chair
House Finance Committee

DATE: January 22, 1993

SUBJECT: Request to schedule HB 58

I would like to request your consideration of scheduling HB 58, an Act relating to the budget reserve fund, before the House Judiciary Committee at your earliest convenience.

HB 58 is sponsored by the House Finance Committee and is the end product of work done by a subcommittee of the Legislative Budget & Audit Committee. HB 58 is an attempt to establish legislation that will clarify how oil and gas royalty settlements are deposited into the Constitutional Budget Reserve Fund established under Article IX, Section 17 of the State Constitution.

Also included in HB 58 is a section defining "amount available for appropriation" as it is mentioned in (b) of Article IX, Section 17.

I realize my description of this bill and the issue it attempts to resolve requires more enlightenment than I have offered in this memo. As such, I have instructed my staff to provide a briefing to your office in order to outline some of the history leading up to this bill.

Please do not hesitate to get in touch with me if you have any questions or would like any additional backup on this legislation.



Representative Kay Brown

ALASKA STATE LEGISLATURE

Legislative Information Office
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State Capitol
Juneau, Alaska 99801-1182
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November 19, 1992

SECTIONAL ANALYSIS

11/18/92 Work Draft

An Act Relating to the Constitutional Budget Reserve Fund

Section 1, amendments to Sec. 37.10.410

This section clarifies what is meant by the term "administrative proceeding" in article IX, section 17 of the Alaska Constitution, which creates the Constitutional Budget Reserve Fund.

It specifies that revenues gained from tax cases that remain in "informal hearing status" for a period exceeding six months would be deposited in the Constitutional Budget Reserve. Revenues gained from tax disputes settled before the six-month deadline would revert to the general fund. This section also specifies that revenues gained from tax disputes that advance to "formal hearing" status would be deposited into the Constitutional Budget Reserve.

Language in this section also specifies that only tax settlement revenues that relate to past-due taxes and penalties would be deposited into the Constitutional Budget Reserve. In the event that a tax settlement resolves a dispute with a taxpayer that relates to payments in future years, those future payments would go into the general fund.

Section 1, amendments to Sec. 37.10.420

This section defines "amount available for appropriation" for the purposes of determining if an appropriation from the Constitutional Budget Reserve may be made.

The amount available for appropriation is defined as those revenues that are considered general funds, which would include oil revenues, tax revenues and general fund program receipts. The section also specifies that the earnings reserve account of the Permanent Fund and revenues contained in other special funds or accounts, such as AHFC and AIDEA revenues, would not be considered as money available for appropriation.

DISTRICT 12

Downtown • Fairview • City View • Bootleggers Cove • Inlet View • South Addition • Thunderbird Terrace
Eastridge • Penland Park • Airport Heights • Government Hill

This section provides direction to the administrative branch on repayment of funds to the Constitutional Budget Reserve. It specifies that if money is owed to the reserve fund and if a general fund surplus exists at the end of a fiscal year, a repayment to the Constitutional Budget Reserve must be made by November 15 of the following fiscal year.

STATE OF ALASKA

THE LEGISLATURE

1990

Source
HCS C555JR 5(Fin) am H

Legislative
Resolve No.

129



Proposing an amendment to the Constitution of the State of Alaska relating to the budget reserve fund; depositing into 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 state or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property; allowing an appropriation from the fund only if the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year or upon the affirmative vote of three-fourths of the members of each house of the legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. BUDGET RESERVE FUND. (a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, 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 mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature.

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 24, 1992

The Honorable Darrel J. Rexwinkel
Commissioner
Department of Revenue
P. O. Box 110400
Juneau, AK 99811

RE: Interpretation of Budget
Reserve Fund (Alaska Const.
art. IX, § 17)
Our File #'s: 663-91-0298
663-92-0189; -0256; -0107
Opinion No. 1

Dear Commissioner Rexwinkel:

This is in reply to your request for our views on several questions which you raise concerning Article XI, Section 17 of the Alaska Constitution. This constitutional provision, which became effective on January 2, 19 1, following its ratification by the voters as an amendment to the Alaska Constitution, creates a budget reserve fund and requires that the proceeds of certain tax and mineral revenue disputes be deposited into the fund. This amendment also establishes limitations on the legislature's ability to spend money from the budget reserve fund.

The questions which you have presented to us and our views on them are as follows:

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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I. SUMMARY

1. Does the dedication required by the amendment apply to the proceeds received from the termination of administrative proceedings and lawsuits before the effective date of the amendment?

Yes. The amendment applies to all such proceeds received after July 1, 1990.

2. Does the amendment repeal the statutory budget reserve fund established by AS 37.05.540?

No. The preexisting statutory budget reserve fund remains a viable depository of public funds after the adoption of the amendment.

3. Does the amendment supersede other valid dedications of proceeds that are within the scope of the amendment?

No. Under the amendment, other dedications of revenue may apply to settlement proceeds prior to the dedication of revenue to the fund created by the amendment.

4. What is the meaning of the term "administrative proceeding" in the amendment as applied to tax disputes pending before the Department of Revenue?

"Administrative proceeding," in the amendment, means formal adjudicatory proceedings.

II. ANALYSIS

- A. Does the dedication required by the amendment apply to proceeds received by the state before the effective date of the amendment?

The amendment in pertinent part provides:

Except for money deposited into the permanent fund under Section 15 of this article, 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 mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments of bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund.

Alaska Const. art. IX, § 17 (emphasis added). The amendment expressly applies to revenues received before its effective date.

The Alaskan constitution provides that, "unless otherwise provided in the amendment, [the amendment] becomes effective thirty days after the certification of the election returns by the lieutenant governor." Alaska Const. art. XIII, § 1 (emphasis added). The state constitution is construed using the same rules that apply to the construction of statutes. 2 Norman J. Singer, Sutherland Statutory Construction § 41.04 (rev. 4th ed. 1986).

Under most circumstances, a constitutional amendment should be construed to avoid retroactive effects. Cf. AS 01.10.090 ("No statute is retrospective unless expressly declared therein"). However, "the electorate may nonetheless achieve retroactive

effects by clear and unambiguous language." State ex rel. Maloney v. McCartney, 223 S.E.2d 607, 613 (W. Va. 1976) (citing 1 T.M. Cooley, Cooley's Constitutional Limitations (136-37 (8th ed.))); see also Matthews v. Quinton, 362 P.2d 932 (Alaska 1961), cert. denied, 368 U.S. 517 (1962) (constitutional provision may retroactively validate statute previously held unconstitutional, since constitutional provision contained reference to statute intended to be validated). Here, since the amendment clearly and unambiguously states that it applies to revenues received after July 1, 1991, it applies retrospectively to settlement proceeds received after the beginning of fiscal year 1991, even though the amendment did not take effect until January 2, 1991.

B. Does the amendment repeal the statutory budget reserve fund established by AS 37.05.54?

1. Status of the 1991 appropriation to the statutory fund

The same legislative session that adopted the constitutional budget reserve fund also purported to appropriate settlement revenues into a statutory fund established in AS 37.05.540. The statutory fund appropriation provided:

That portion of the money received by the state on or after the effective date of this Act as a result of the termination, through settlement or otherwise, of an administrative proceeding or litigation involving mineral lease rentals, royalties, royalty sale proceeds, or federal mineral revenue sharing payments or bonuses that is not dedicated to the permanent fund under art. IX, sec. 15, Constitution of the State of Alaska, or to

the public school trust fund under AS 37.14.150 is appropriated to the budget reserve fund (AS 37.05.540).

Ch. 194, SLA 1990.

However, this appropriation was not obligated after it took effect. In fact, the appropriation was not encumbered or expended pending voter ratification of the budget reserve fund amendment. Upon ratification, all amounts covered by the appropriation were deposited in the fund created by the amendment.

Thus, the legislature did not intend to have the chapter 194 appropriation processed if the amendment was ratified by the voters. This appropriation was a backup measure designed to ensure that known settlement proceeds were reserved to cover future budgetary shortfalls.

2. Continued viability of the statutory budget reserve fund

The Department of Administration has asked whether the constitutional budget reserve fund operates to impliedly repeal the statutory fund. In deciding what constitutes a repeal in a conflict between a state statute and a state constitutional provision, we apply the same considerations as in conflicts between two state statutes. Fine & Son v. Hall, 21 P.2d 697 (Cal. App. 1933); see also 16 C.J.S. Constitutional Law § 41, at 117-20. In Alaska, a repeal by implication is not a favored construction. Warren v. Thomas, 568 P.2d 400 (Alaska 1977). Where the provisions

are irreconcilable, the later act, to the extent of conflict, constitutes an implied repeal of the earlier one. If the later act covers the entire subject of the earlier one and is intended as a substitute, it will operate to repeal the earlier act. Peter v. State, 531 P.2d 1263 (Alaska 1975).

Here no irreconcilable differences exist between the amendment and the statute. Moreover, no evidence has come to light that the framers of the amendment intended to subsume the statutory fund within the constitutional fund. Therefore, the statutory fund continues in effect until amended or repealed by the legislature.

C. Does the amendment supersede other valid dedications of proceeds that are within the scope of the amendment?

Although the amendment expressly allows dedications to the Alaska Permanent Fund, there are other dedications for which no provision is made by the amendment. Specifically, the amendment does not resolve conflicts with certain dedications of revenue established by statute to satisfy trust obligations imposed by federal law.

Under AS 37.14.150, one-half of one percent of state revenue derived from settlements subject to the amendment must be deposited in the public school trust fund (AS 37.14.110). They may also be subject to a conditional dedication in favor of the Mental Health Trust Income Account (AS 37.14.011), if the settlement

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proceeds constitute "unrestricted general fund revenue." These two trust funds are statutory dedications of state revenue required by federal law. See, e.g., 1985 Inf. Op. Att'y Gen. (Aug. 13; 366-403-85). The state constitution permits dedications that existed before statehood or that are required for participation in a federal program. Alaska Const. art. IX, § 7.

The amendment must be construed to avoid conflict with other provisions of the Alaska Constitution. Abrams v. State, 534 P.2d 91 (Alaska 1975). Whenever reasonably possible, related provisions of an enactment should be harmonized and given their full meaning and effect. Park v. State, 528 P.2d 785 (Alaska 1974). Absent a clear expression of intent that the amendment must take precedence over other valid dedications required by federal law, these pre-existing dedications should be excluded from the reach of the amendment. Research into the history of the amendment reveals no evidence of such an intent.

Therefore, the amendment applies to proceeds net of dedications otherwise permitted under Article IX, Section 7.

D. What is the meaning of the term "administrative proceeding" in the amendment as applied to tax disputes pending before the Department of Revenue?

Dedicated to a budget reserve fund by the amendment are disputed mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal revenue sharing of bonuses, and the proceeds

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taxes imposed on mineral income, production, or property received "as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a state or federal court."

Dedications to the budget reserve fund from the termination of "litigation in a state or federal court" are readily identifiable. Since litigation is initiated with the filing of a complaint, the proceeds from resolution of mineral revenue disputes received following the filing of a complaint involving the disputed liability must be deposited in the budget reserve fund. As a general rule, litigation is the only formal vehicle for resolving disputes involving mineral revenues other than taxes, so normally money received by the state from these revenues will be dedicated to the budget reserve fund.

No ambiguity exists as to whether revenues received as the result of the termination of formal adjudicatory hearings conducted by the Department of Revenue pursuant to statute are dedicated to the budget reserve fund. They fall squarely within the ambit of the amendment. Whether the informal conference process established by AS 43.05.240 for the resolution of tax disputes is an "administrative proceeding" is a question which requires detailed analysis.

1. The conference process for tax disputes

Alaska Statute 43.05.240, enacted in 1976, provides both formal and informal mechanisms for the resolution of state tax disputes. The informal procedure furnishes the taxpayer an opportunity to present objections to a departmental official at an informal conference. AS 43.05.240(a). Corrections to the assessment or penalty are required to be made by the Department if, as a result of the informal conference, the Department determines that a correction is warranted. Taxpayers dissatisfied with the outcome of the informal conference may request a formal conference.¹

Under the formal hearing procedure, an adversarial hearing is held at which the taxpayer may present evidence and argument relevant to the amount of the tax and penalty owing the state. AS 43.05.240(b). The hearing officer is empowered to issue subpoenas, administer oaths, and make inquiries necessary to determine the amount of tax or penalty due, and, following the hearing, is required to issue a written, final decision adjudicating the taxpayer's liability. AS 43.05.240(c). Only after exhausting the formal hearing procedure may the taxpayer appeal to the superior court. AS 43.05.240(d).

¹ An aggrieved taxpayer may bypass the informal conference by immediately requesting a formal hearing. AS 43.20.240(b)(1).

2. Rules of construction to determine meaning of "administrative proceeding"

a. Common meaning of "administrative proceeding"

The Alaska Supreme Court recently noted that an "important right of the people implicated in all cases of constitutional construction" is the "right to have the constitution upheld as the people ratified it." Citizens Coalition for Tort Reform v. McAlpine, 810 P.2d 162, 168 (Alaska 1991). See also Thomas v. Bailey, 595 P.2d 1 (Alaska 1979). At issue in Citizens Coalition was the meaning of "rule" in the context of the constitutional provision defining the rule-making power of the Alaska Supreme Court. The proper approach to the analysis of constitutional provisions, the court explained, is as follows:

Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe abstrusely any constitutional term that has a plain ordinary meaning. Rather, absent some signs that the term at issue has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision. Normally, such deference to the intent of the people requires "adherence to the common understanding of words."

Id. at 169 (citations omitted). Applying this approach, the court looked to a standard dictionary to determine the common understanding of the word at issue.

This approach is appropriate here to ascertain the meaning the people themselves probably placed on the term "administrative proceeding" when they ratified the proposed amendment.² In a legal context, "proceedings" is defined in Webster's Third New International Dictionary at 1807 (Unabridged 1976) as "the course of procedure in a judicial action or in a suit in litigation: legal action . . . (2) a particular action at law or case in litigation"

Since this definition makes reference to "litigation," and "cases or actions at law," the plain, ordinary meaning of these words is important, too. "Litigate" is defined as "to carry on a legal contest by judicial process . . . to contest in law." Webster Ninth New Collegiate Dictionary at 698 (1987). Thus, in the legal context, the common understanding of the term "proceeding" leads to the conclusion that only those administrative actions which can be analogized to legal contests are within the amendment.

Informal conferences fall outside the ambit of the common understanding of litigation or legal contests. A conference, in the common understanding of the word, is inapposite to a legal

² Since the term "administrative proceeding" has not acquired a particular meaning by statutory definition or judicial construction, reference to a standard dictionary should be employed. See State v. Woods, 345 N.W.2d 457, 474 (Wis. 1984) "[t]he common and approved usage of [proceeding] in a statute may be ascertained by reference to a recognized dictionary").

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contest. For example, Tormont Webster's Dictionary defines a conference as "a meeting for consultation or discussion." The Torrant Webster's Illustrated Encyclopedia Dictionary 367 (1990). This common understanding of the word squares with the statutory process for informal resolution of tax disputes. By statute, the informal conference is a meeting between the taxpayer (or the taxpayer's representative) and a department "appeals officer." 15 AAC 05.020. The "appeals officer" at the informal conference is not a judicial or quasi judicial officer. The written decision of the appeals officer following an informal conference simply sets out the points of disagreement between the parties. It is not a process which results in the protection of a legal right, or redresses or prevents a wrong, as does a judgment or other order enforceable by judicial process. Labeling the statutory conference as "informal" supports the conclusion that the "informal conference" is a process inherently different than a legal contest.

Application of well recognized tenets of statutory construction also yields the conclusion that the informal conference procedure is not an "administrative proceeding." Constitutional provisions are interpreted under the same principle as those applied in the interpretation of the statutes. See Citizens Coalition at 169 ("the basic principles of statutory interpretation apply to constitutions"). A "widely applied tenet

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of statutory interpretation [is] that if the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases." State, Real Estate Commission v. Johnston, 682 P.2d 383, 386-87 (Alaska 1984) (quoting 2A C. Dallas Sands, Sutherland Statutory Construction § 47.16 at 101 (4th ed. 1973)). Another rule of statutory construction applicable here is that provisions relating to the same subject matter should be read as a whole so that a total scheme evolves which maintains the integrity of each provision and avoids ignoring one provision over another. Conner v. State, 696 P.2d 680, 682 n.3 (Alaska App. 1985). Since in the amendment the term "administrative proceeding" appears in association with the phrase "litigation in a state or federal court," the electorate must have understood that the term "administrative proceeding" was used to express a process akin to litigation. This conclusion is supported by reference to the words "termination" and "settlement" used earlier in the amendment; these are words commonly used in reference to lawsuits, not conferences or meetings.

b. Harmonizing the amendment with the constitutional preference for unrestricted revenues

A preference for unrestricted revenues is implicit in the general prohibition against dedicated funds contained in the Alaska Constitution. Art. IX, § 7. However, under the amendment money required to be deposited into the budget reserve fund is dedicated, and is not available for the unfettered exercise of the legislative power of appropriation. The divergence between these provisions is minimized by construing "administrative proceeding" to avoid an expansive interpretation of the budget reserve amendment. See Abrams, 534 P.2d at 95 (if possible, conflicting provisions of constitution should be harmonized).

3. Legislative and electoral history

In determining the meaning of a term in the constitution, courts also scrutinize the history of the constitutional provision at issue. Citizens Coalition, 810 P.2d at 170. Unfortunately, here the history of the amendment provides little guidance for interpretation of "administrative proceeding."³

³ All tax disputes arising out of revenues from the development of the North Slope have been resolved through the administrative process. These informal conferences and formal hearings are confidential by law. AS 43.05.230. However, prior to enactment of the amendment, two settlements were publicly announced by the taxpayer and the state jointly because of the magnitude of the dollars involved. Both cases involved tax disputes with Atlantic Richfield Company. Both cases were administrative proceedings in formal hearing before the Department of Revenue. It appears that
(continued...)

- a. The legislative history of the amendment provides no assistance in interpreting "administrative proceeding."

Article IX, section 17, was adopted by the 1990 legislature as Legislative Resolve No. 129. Although the vehicle for the Resolve was a Senate Resolution, SJR 5, that Resolution had earlier been drafted largely by the House Finance Committee as CSHJR 66 (Fin). An amendment adopted on the House floor essentially replaced the original Senate Resolution with CSHJR 66 (Fin), and the Senate later concurred with this amendment.

The original version of SJR 5 that came to the House from the Senate provided:

Except for money deposited into the permanent fund under Section 15 of Article IX, all money received by the State as a result of the termination through settlement or otherwise, of litigation in State or federal court involving mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses shall be deposited in the budget reserve fund.

CSSSSJR 5 (Fin). The House Finance Committee modified this Resolution by, inter alia, including the reference to "an administrative proceeding" and adding "or involving taxes imposed on mineral income, production, or property."

The additional language was proposed to the House Finance Committee by Representative Kay Brown, and was drafted by the House

³(...continued)
these settlements were part of the inspiration for the amendment.

The Honorable Darrel J. Rexwinkel
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Fiscal Policy Subcommittee in conjunction with the Office of Management and Budget. Mary Halloran, former Governor Cooper's budget officer, urged the committee to establish a budget reserve fund that included not only amounts received from the pending litigation--including the Amerada Hess and the Dinkum Sands cases--but also amounts received for "back taxes still under consideration in the Department of Revenue." House Finance Committee, Committee Tape 90-95, side 1 (May 1, 1990).⁴

These few historical items shed no light on interpretation of "administrative proceeding," and nothing else in the legislative process shows that a committee, subcommittee, or legislator directly considered the question of what constitutes an "administrative proceeding."⁵

- b. The ballot summary provided to the electorate before ratification provides no guidance in the interpretation of the term

When a proposed constitutional amendment is to be presented to the electorate for ratification, the official

⁴ Amerada Hess is a longstanding dispute in state court over the value of royalty oil to which the state was entitled; the original amount in dispute approached a billion dollars. Dinkum Sands, litigation in the United States Supreme Court, involves the location of the boundary between state and federal offshore mineral rights in the oil-rich Beaufort Sea; several hundred million dollars are at issue.

⁵ Subsequent pronouncements of legislators regarding the legislative intent in enacting a provision "are irrelevant to a determination of legislative intent." Lynden Transport, Inc. v. State, 532 P.2d 700, 716 (Alaska 1975).

elections pamphlet must include the full text of the proposed amendment, the ballot title and summary of the proposal prepared by the director of the Division of Elections or the lieutenant governor, a neutral summary of the amendment prepared by the Legislative Affairs Agency, and statements in support of and in opposition to the amendment. AS 15.58.020(6).

The ballot summary for the budget reserve fund amendment described the revenue source for the fund as "money the state receives from mineral revenue lawsuits or administrative actions." The neutral summary, prepared by the Legislative Affairs Agency uses the term "administrative proceeding" to explain one of the sources of potential funding. Neither summary described or defined the reach of the amendment with respect to "administrative proceedings." Nor did the statement in support of the amendment, authored by Senator Faiks and Representatives Brown and Phillips, distinguish between the two types of administrative proceedings involved in resolution of tax disputes.⁶ All statements in the

⁶ This statement in the voter pamphlet makes three oblique references to administrative proceedings:

Revenues from mineral or oil and gas legal settlements and administrative proceedings will be deposited into the Budget Reserve.

. . . .

Legal settlements involving mineral or oil and gas revenues received after July 1, 1990, will be
(continued...)

voter pamphlet associate the terms "administrative actions" or "administrative proceedings" with "lawsuits," providing additional support for the view that the "administrative action" referred to was a process in the nature of a legal contest or litigation.

c. The terms "windfalls" and "back taxes" are not helpful in resolving the issue

Although the terms "windfalls" and "back taxes" appear several times in the history of the amendment, they are of no real value to this inquiry. First, these terms do not appear in the text of the amendment, and cannot be grafted into it. See Gray v. State, 463 P.2d 897, 904 (Alaska 1970) (it is not for the court to rewrite statutes). Second, the amendment itself clearly places within the budget reserve fund proceeds of tax disputes that are neither longstanding nor "windfalls." For example, tax revenues arising from the early settlement of litigation initiated by the state to recover taxes cannot properly be called either "windfalls" or "back taxes."⁷ "Windfalls" are commonly understood to be

⁶(...continued)

deposited into the Budget Reserve. . . . If approved, the Budget Reserve Fund will help hold down spending by removing from the table the oil and gas revenue "windfalls" that result from pending litigation and tax disputes.

⁷ It would not be permissible to exclude settlement proceeds clearly within the scope of the amendment merely because those proceeds did not spring from "back taxes" or represent a
(continued...)

sudden and unexpected pieces of good fortune in financial form.⁸ Recoveries of assessed taxes are not unexpected nor, generally, sudden. "Back taxes" would encompass all assessed taxes not paid upon receipt of the tax bill, and surely the amendment was not intended to sweep within its purview all disputed taxes. If such were the case, virtually all major tax assessments would be required to be placed in the budget reserve fund. Further, patently clear is that the amendment snares "future taxes" as well as "back taxes."

In sum, there is no firm evidence that either the legislature or the public directly considered the question of what constitutes an administrative proceeding for the purposes of the amendment. Accordingly, no conclusions on the proper interpretation of the amendment can be drawn from its history.

4. Judicial decisions

While the interpretation of the amendment advanced here is based principally on an analysis of the text of the amendment, judicial decisions construing the phrases "administrative

⁷(...continued)

"windfall." The amendment clearly requires some tax recoveries for other than long-standing back taxes to be placed in the budget reserve fund.

⁸ According to William Safire, "'windfall' is a 400-year-old word that means an unexpected benefit, graphically describing the good fortune that falls to a passer-by when a piece of fruit is blown off a tree." William Safire, On Language 144 (1981).

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proceeding" and "proceeding" provide helpful guidance for its interpretation. Research has revealed cases adopting an expansive definition of these terms as well as cases adopting a narrow definition of them. Generally, the outcomes in these cases turn on the context in which the term "administrative proceedings" is used. No cases were found interpreting "administrative proceeding" in a context similar to that of the amendment.

The more persuasive view expressed in the judicial decisions supports the conclusion that, in this context, "administrative proceeding" means "adjudicatory proceeding." See, e.g., Telco Communications v. Carbaugh, 885 F.2d 1225, 1227-30 (4th Cir. 1989) (an informal administrative fact-finding conference that was not "judicial in nature" was not an administrative proceeding for purposes of the Younger abstention doctrine); Manders v. Oklahoma ex rel. Dep't of Mental Health, 875 F.2d 263 (10th Cir. 1989) (a state agency's internal grievance procedure was not an "action or proceeding" within the meaning of § 706(k) of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(k), governing awards of attorney's fees); American Centennial Ins. Co. v. EEOC, 722 F. Supp. 180 (D.N.J. 1989) ("proceeding" under § 709(e) of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-8(e), which prohibits the disclosure of EEOC-obtained information "prior to the institution of any proceeding" under Title VII, did not include the EEOC's informal conference, conciliation, and persuasion process,

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undertaken after a charge is filed); Roosevelt-Wabash Currency Exchange v. Fornelli, 364 N.E.2d 449, 452-53 (Ill. App. 1977) (judiciary will review only an "administrative decision," defined as a decision "which terminates the proceedings before the administrative agency").

5. Conclusion

The amendment applies only to the proceeds of disputes that have progressed to an adjudicatory stage of the dispute resolution process. The amendment does not apply to the proceeds of disputes settled at the informal conference stage.⁹

Very truly yours,

Charles E. Cole
Attorney General

⁹ Nothing in this memorandum alters the previous advice given to the Department of Revenue concerning the power of the attorney general to approve the compromise of tax claims. In a 1990 formal opinion, we explained the extent of the attorney general's and the department's power to correct or compromise tax claims at various stages of assessment or administrative appeal. 1990 Op. Att'y Gen. No. 1 (Dec. 3, 1990) (the attorney general's approval of a settlement that has the effect of compromising a tax claim is mandatory, even if the settlement of the dispute occurs before the matter is considered an administrative proceeding for purposes of allocating the recovery to the budget reserve fund).

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CEC:JLB:SCS:pml

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110020
JUNEAU, ALASKA 99811-0020
PHONE: (907) 465-3568

June 19, 1992

The Honorable Ron Larson
Chair
Legislative Budget and Audit Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Larson:

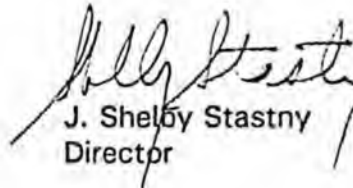
As a follow-up to our meeting this morning, the Administration has agreed that the administrative settlements which the Attorney General previously identified as erroneously deposited in the constitutional budget reserve fund will be placed in a separate account. Future administrative settlements will also be deposited into this account and its interest earnings will be accounted for separately.

This action is taken with the following understanding:

1. The Administration will access these funds should the Commissioner of Revenue determine it is necessary to do so because the cash available in the general fund is insufficient to meet the state's obligations; and
2. The Legislative Budget and Audit Committee and Administration will work on legislation during the interim for introduction next session which will clarify implementation of the constitutional amendment.

On behalf of the Governor, I look forward to working with you and the committee in finding common ground through which we can meet our mutual goals.

Sincerely,


J. Shelby Stastny
Director

cc: Walter J. Hickel, Governor
Legislative Budget and Audit Committee Members
Charles Cole, Attorney General
Commissioner Darrel Rexwinkel

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

December 2, 1992

The Honorable Kay Brown
Legislative Information Office
3111 C Street #435
Anchorage, Alaska 99503

DEC 7 1992

Dear Representative Brown:

We have completed our review of the interest earnings associated with amounts in the Administrative Settlement ("AS") account. As of October 31, 1992, the principal balance in the AS account was \$94,345,593.88. Interest associated with the principal amount is \$8,903,354.59. This interest will be posted to the AS account, bringing the total balance to \$103,248,948.47 as of October 31, 1992.

Thank you for your patience on this matter. If we can be of further service, please let me know.

Sincerely,



Darrel J. Rexwinkel
Commissioner

DJR:BCA:mll
92-154

cc: Shelby Stastny, Director
Office of Management & Budget

FY93/94 GOVERNOR'S SPENDING PLAN
 GENERAL FUND (Includes Mental Health Trust Funds)
 (in millions of dollars)

Fall 1992 - Dept. of Revenue Mid Scenario

Statutory Budget Reserve Balance	340.8	
FY93 Revenues [1]	2,271.5	\$18.23/bbl weighted avg ANS
FY93 Adjustments to Revenue	79.8	
Tax Settlement Received	59.9	
HAD Loan Purchase	180.0	
AHFC Dividend	40.7	
Science & Technology Surplus	17.0	
TAPS Tarrif Rate Change	40.0	
From Budget Reserve Fund	75.3	
FY93 AVAILABLE	2,764.2	

FY93 Expenditures		
Operating	2,173.6	
Debt Service		
-G.O. Debt	59.8	
-School Debt	127.6	
-Other Debt	11.3	
Capital	300.3	
Loans	7.6	
Fund Transfers	34.0	
Supplementals	50.0	
FY93 Expenditures	2,764.2	OMB 12/15/92 Spending Plan

Budget Reserve Balance	265.5	
FY94 Revenues [1]	2,287.9	\$18.42/bbl weighted avg ANS
FY94 Adjustments	78.2	
AHFC Dividend	40.0	OMB 12/15/92 Spending Plan
TAPS Tarrif Rate Change	40.0	
From Budget Reserve Fund	238.0	
FY94 AVAILABLE	2,684.1	

FY94 Expenditures		
Operating	2,208.1	
Debt Service		
-G.O. Debt	34.0	
-School Debt	99.8	
-Other Debt	11.1	
Capital	300.0	OMB 12/15/92 Spending Plan
Loans	2.1	
Fund Transfers	29.0	
FY94 EXPENDITURES	2,684.1	

FY94 Carryforward 0.0

Fund Balances	
Statutory Budget Reserve	27.5
Mental Health Trust Income Balance	109.4
Total	136.9

[1] Revenues are based on Department of Revenue's mid scenario fall 1992 forecast

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY

STATE OF ALASKA

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130 Seward Street, Suite 409

Juneau, Alaska 99801-2105

MEMORANDUM

January 12, 1993

SUBJECT: Budget Reserve Fund (Work Order 8-LS0188\A)

TO: Representative Ron Larson
Co-chair, Finance Committee

FROM: Tamara Brandt Cook
Director *TBC*

Here is a draft bill that was originally prepared for an individual legislator now showing the Finance Committee as sponsor. The bill deals with the constitutionally established budget reserve fund. Be aware that the bill draft does two things that may or may not be accepted and enforced by a court.

AS 37.10.410 added by the bill identifies the point in an administrative proceeding when oil revenue at issue will be deemed to be received by the state as a result of the termination of an administrative proceeding for purposes of placing it in the budget reserve fund. Because the constitution simply requires the money received by the state from certain sources that is the subject of an administrative proceeding go to the fund and because the court has the ultimate authority to interpret constitutional language, it may be that the court will not be persuaded by this statute and elect another point in the administrative process as the event that triggers the flow of the money into the fund.

The same situation exists with AS 37.10.420 which attempts to define money that is available for appropriation for purposes of determining whether the budget reserve fund is accessible to make up a shortfall. The statute, for example, takes the approach that money previously appropriated to a special fund is not available even though it remains unexpended and, as is true of some funds, even though no agency has the power to expend it without an additional appropriation. It is possible that a court will not agree that this money is unavailable for appropriation, despite the statute.

On the other hand, in applying Art. IX, sec. 17, the court may look to the statute for guidance. In addition, the statute, if enacted, would be accorded a presumption of

Representative Ron Larson
January 12, 1993
Page 2

validity. Whether these factors would save the statute if it were subject to a constitutional challenge I cannot guess.

TBC:pl:gc
93-014.plm

Enclosure

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 58

Revision Date: January 28, 1993
Title: "An Act relating to the budget reserve fund established under art. IX, sec. 17..."
Sponsor: House Finance
Requestor: House Finance

Department Affected: Department of Law
BRU: Oil and Gas Special Projects
Component: Operations
COMPONENT SERIAL NO. 0097

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: January 28, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Date: January 28, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 58

ANALYSIS (Continued):

This bill adds a new section to AS 37.10, which provides that past due taxes and penalties that are the subject of a request for an informal conference under AS 43.05.240(a), and that are received by the state at least six months after the request for the informal conference is made to the Department of Revenue, are to be deposited in the budget reserve fund in accordance with art. IX, sec. 17(a) of the Constitution of the State of Alaska.

The bill has the effect of modifying Attorney General Opinion 92-1, dated April 24, 1992, which held that art. IX, sec. 17(a) did not apply to proceeds of disputes settled at the informal conference stage. Under the bill, proceeds received within six months from the date an informal conference was requested would not be subject to the constitutional budget reserve provision, and proceeds received after six months would be subject to the provision.

There will not be a fiscal impact for the Department of Law, because its duty is to collect the overdue proceeds from oil and gas revenue disputes for deposit into whatever fund is appropriate.