

**HB**

**505**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/6/94

FURTHER:

DATE TURNED INTO OFFICE: 4-13-94

Finance Committee considered CSHB 505 (FIN)(brf fld)(efd fld)

"An Act making appropriations to the constitutional budget reserve fund established under art. IX, sec. 17, Constitution of the State of Alaska; and making an appropriation to the Department of Education for school construction debt retirement."

and recommends:

replace with 3 CS CSHB 505 (FINANCE)

or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_

attaches amendment(s)

same title  
 new title  
 technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

### NEW FISCAL NOTES

Department	Date	Zero	Fiscal

### PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

[Signature]  
[Signature]  
[Signature]  
Tim Kelly

OTHER RECOMMENDATIONS:

Steve Thayer Do not pass except  
 as part of a more  
 comprehensive package

1. [Signature] Do pass  
 Co-Chair: Signature/Recommendation

2. [Signature]  
 Co-Chair: Signature/Recommendation

4-13-94  
SF-3  
Adopted

8-GH2045M ✓  
Cook/Utermohle  
4/13/94

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

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act making appropriations to the constitutional budget reserve fund  
2 established under art. IX, sec. 17, Constitution of the State of Alaska; making  
3 an appropriation to the Department of Education for support of kindergarten,  
4 primary, and secondary education and community schools programs and for school  
5 construction debt retirement; and making appropriations from the constitutional  
6 budget reserve fund under art. IX, sec. 17(c), Constitution of the State of Alaska;  
7 and providing for an effective date."

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

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

- 12 (1) created a constitutional budget reserve fund;
- 13 (2) required that the proceeds of certain tax and mineral revenue disputes be

1 deposited into that fund; and

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

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

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

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

26 (e) During the 1993 legislative session, the legislature passed several appropriation  
27 bills. For example, HB 45, the education budget, was passed by the House February 22, 1993,  
28 by a vote of 36-0, and was passed by the Senate March 15, 1993, by a vote of 15-4. Senate  
29 Bill 60, regarding school construction grants, was passed by the Senate April 24, 1993, by a  
30 vote of 12-8, and by the House May 11, 1993, by a vote of 39-1, and the Senate concurred  
31 in the final version by a vote of 17-3 on May 11, 1993. Other appropriations passed by the

1 legislature in 1993 include HB 55, the operating budget; SB 183, the capital budget; and  
2 SB 126, intertie loans and grants and power cost equalization fund. For fiscal year 1994, the  
3 legislature approved appropriations from the general fund in excess of \$3,163,100,000.

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

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

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

26 (i) The superior court dismissed the state's request that the ruling be applied  
27 prospectively only. The court found the evidence of hardship "very compelling," but noted  
28 that the hardship could be relieved if the legislature reappropriated the money for fiscal year  
29 1994. The court ordered the governor to fully restore the constitutional budget reserve fund  
30 with interest and to comply with its decision by the end of the 1994 legislative session. The  
31 superior court noted "it is not clear that the Governor could legally remove the improperly

1 placed funds from the general fund [to the Budget Reserve Fund] without an appropriation  
2 authorizing it."

3 (j) Following appeal to the Alaska Supreme Court, the court in *Hickel v. Halford*  
4 (Supreme Court No. S-6124/6134) (Alaska Jan. 27, 1994) determined that all income that  
5 resulted from the settlement or other termination of informal administrative proceedings  
6 involving certain taxes since July 1, 1990, should have been deposited into the budget reserve  
7 fund created by art. IX, sec. 17, of the Constitution of the State of Alaska.

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

11 (l) The amount required to restore the constitutional budget reserve fund consistent  
12 with the initial judicial interpretation is \$932,762,996, plus interest that would have been  
13 earned upon investment of this money, calculated from the date of receipt by the state.

14 (m) The amount required to restore the constitutional budget reserve fund consistent  
15 with the subsequent judicial interpretation (*Hickel v. Halford* (Supreme Court No. 4069)  
16 (Alaska April 4, 1994)) is \$73,245,478, plus interest that would have been earned upon  
17 investment of this money, calculated from the date of receipt by the state.

18 (n) As of April 1994, there is not sufficient unappropriated money in the general fund  
19 to allow the governor to unilaterally transfer the money needed to fully restore the  
20 constitutional budget reserve fund.

21 (o) It is the intent of the legislature that the orders of the Alaska Supreme Court and  
22 the Alaska Superior Court be complied with by appropriations from the general fund to the  
23 constitutional budget reserve fund, retroactive to July 1, 1993, of the principal and interest that  
24 should have been deposited into that budget reserve fund. This appropriation will restore all  
25 money to the constitutional budget reserve fund that should have been deposited there since  
26 July 1, 1990, under the provisions of art. IX, sec. 17, of the Constitution of the State of  
27 Alaska.

28 \* Sec. 2: The sum of \$932,762,996 is appropriated from the general fund to the budget  
29 reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply  
30 with the judgment in *Hickel v. Halford* (Supreme Court No. S-6124/6134) (Alaska Jan. 27,  
31 1994).

\* Sec. 3. The sum of \$73,245,478 is appropriated from the general fund to the budget reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply with the order in *Cowper v. Hickel*, Case No. 3AN-93-6848 Civ., Superior Court, Third Judicial Dist., (April 8, 1994).

\* Sec. 4. An amount equal to the interest that would have been earned on money received by the state after June 1, 1990, as a result of tax assessments or termination through settlement or otherwise of administrative proceedings involving taxes imposed on mineral income, production, or property, and subsequently deposited in the general fund, is appropriated from the general fund to the budget reserve fund established by art. IX, sec. 17, Constitution of the State of Alaska, to comply with the judgment in *Hickel v. Halford* (Supreme Court No. S-6124/6134)(Alaska Jan. 27, 1994) and the order in *Hickel v. Halford* (Supreme Court No. 4069) (Alaska April 4, 1994).

\* Sec. 5. (a) The sum of \$696,527,188 is appropriated from the general fund and from other funds in the amounts listed to the Department of Education for the purposes expressed and allocated in the amounts listed for operating expenditures for the fiscal year ending June 30, 1995:

FUND SOURCE	AMOUNT
General fund	\$635,181,888
General fund/mental health trust income account (AS 37.14.011)	8,054,500
Public school trust fund (AS 37.14.110)	6,816,600
School fund (AS 43.50.140)	2,668,100
P.L. 81-874	21,806,100
Federal receipts other than P.L. 81-874	22,000,000
PURPOSE	ALLOCATION AMOUNT
Foundation program	\$629,938,000
Child nutrition/student lunch program	22,000,000
Cigarette tax distribution	2,668,100
Tuition students	1,887,600
Boarding home grants	355,000

1	Youth in detention	800,000
2	Pupil transportation	31,638,148
3	Schools for the handicapped	3,447,600
4	Community schools	600,000
5	Additional district support	3,192,740.

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

8	SCHOOL DISTRICT	ALLOCATION AMOUNT
9	Annette Island School District	\$166,530
10	Cordova School District	217,160
11	Craig City School District	151,890
12	Dillingham City School District	250,100
13	Galena City School District	156,160
14	Hoonah City School District	126,270
15	Hydaburg City School District	102,480
16	Kake City School District	136,640
17	Kashunamiut School District	206,180
18	Klawock City School District	158,600
19	Nenana City School District	164,090
20	Nome City School District	264,740
21	Pelican City School District	56,730
22	Petersburg City School District	199,470
23	St. Mary's School District	119,560
24	Skagway City School District	115,290
25	Tanana City School District	122,000
26	Unalaska City School District	200,690
27	Wrangell City School District	151,890
28	Yakutat City School District	126,270.

29 \* Sec. 6. (a) The sum of \$103,345,264 is appropriated from the general fund to the Alaska  
30 debt retirement fund (AS 37.15.011).

31 (b) The sum of \$103,345,264 is appropriated from the Alaska debt retirement fund

1 (AS 37.15.011) to the Department of Education for state aid for costs of school construction  
2 under AS 14.11.100.

3 \* Sec. 7. (a) The sum of \$416,600,000 is appropriated under art. IX, sec. 17(c), of the  
4 Constitution of the State of Alaska, from the budget reserve fund established by art. IX,  
5 sec. 17, of the Constitution of the State of Alaska, to the general fund.

6 (b) The appropriation made by (a) of this section is to fund the portion of the fiscal  
7 year 1994 appropriations enacted in 1993 that was intended to be funded from amounts  
8 deposited in the general fund representing a portion of the revenue received from informal tax  
9 conference settlements and tax assessment.

10 (c) The sum of \$516,162,996 is appropriated under art. IX, sec. 17(c), of the  
11 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.  
12 17, of the Constitution of the State of Alaska, to the general fund.

13 (d) The sum of \$73,245,438 is appropriated under art. IX, sec. 17(c), of the  
14 Constitution of the State of Alaska, from the budget reserve fund established by art. IX, sec.  
15 17, of the Constitution of the State of Alaska, to the general fund.

16 (e) The appropriations made by (c) and (d) of this section are to fund the portion of  
17 the fiscal year 1994 appropriations enacted in 1993 that was anticipated as being funded from  
18 the general fund but, due to shortfalls created by declining state oil revenue, requires  
19 expenditure of revenue received from informal tax conference settlements and tax assessments.

20 \* Sec. 8. An amount equal to the amount appropriated by sec. 4 of this Act is appropriated  
21 under art. IX, sec. 17(c), Constitution of the State of Alaska, from the budget reserve fund  
22 established by art. IX, sec. 17, Constitution of the State of Alaska to the general fund.

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

28 \* Sec. 10. The appropriations from the budget reserve fund (art. IX, sec. 17, Constitution  
29 of the State of Alaska) contained in secs. 7 - 9 of this Act are made under art. IX, sec. 17(c),  
30 Constitution of the State of Alaska.

31 \* Sec. 11. Sections 2 - 4 of this Act are retroactive to July 1, 1993.

- 1 \* Sec. 12. The appropriations contained in secs. 2 - 6 of this Act take effect only if the
- 2 appropriations from the budget reserve fund contained in secs. 7 - 9 of this Act take effect.
- 3 \* Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

**SENATE BILL NO. 331**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**Introduced: 2/18/94**  
**Referred: Finance**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

- 9 (1) created a constitutional budget reserve fund;  
10 (2) required that the proceeds of certain tax and mineral revenue disputes be  
11 deposited into that fund; and  
12 (3) established limitations on the legislature's ability to appropriate money  
13 from that fund.

14 (b) That amendment dedicates to the constitutional budget reserve fund money from

1 mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing  
2 payments or bonuses, and taxes imposed on mineral income, production, or property received  
3 by the state after July 1, 1990 "as a result of the termination, through settlement or otherwise,  
4 of an administrative proceeding or of litigation in a State or federal court."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4-11-94  
SFC

## FY 94/95 Spending Plan

	GF	GF/MH	Total
Budget Reserve Fund/MHTIA Balance From FY 93	0.9	118.5	119.4
<b>FY 94 Revenues</b>			
Unrestricted Revenues DOR Spring Mid-case @ \$13.70/bbl	1,537.7	98.2	1,635.9
(1) Revenue Adjustments	68.2	0.0	68.2
From Railbelt Energy Fund and Other Sources/AHFC Dividend	154.1	0.0	154.1
Executive Life	36.7		36.7
<b>Total FY 94 Revenues</b>	<b>1,796.7</b>	<b>98.2</b>	<b>1,894.9</b>
From Statutory Budget Reserve Fund/MHTIA	0.9	46.2	47.1
From Constitutional Budget Reserve - HB505/SB331	978.0		978.0
From Constitutional Budget Reserve - Needed to Balance	286.4		286.4
<b>Total Fund Sources Expended in FY 94</b>	<b>3,062.0</b>	<b>144.4</b>	<b>3,206.4</b>
<b>FY 94 Expenditures</b>			
Operating Appropriations	2,252.3	132.1	2,384.4
Supplementals - HB454/HB455/HB456/HB510	41.0	-5.3	35.7
Capital Appropriations	599.5	18.5	618.0
Loan Programs	60.1	0.0	60.1
Special Appropriations/Fund Transfers	109.1	1.1	110.2
<b>Total FY 94 Expenditures</b>	<b>3,062.0</b>	<b>144.4</b>	<b>3,206.4</b>

Constitutional Budget Reserve Fund	522.9
Mental Health Trust Fund	72.3
PF Earnings FY 94 year end balance (1/94 report)	1,121.0
<b>Total</b>	<b>1,716.2</b>

<b>FY 95 Revenues</b>			
Unrestricted Revenues ADOR Spring Mid-Case @13.97/bbl	1,585.1	101.8	1,686.9
(2) Revenue Adjustments	48.2		48.2
AHFC Dividend (estimate)	19.0		19.0
Fuel/ Alcohol & Cigarette/School Taxes	112.0	7.1	119.1
<b>Total FY 95 Revenues</b>	<b>1,774.2</b>	<b>109.0</b>	<b>1,883.2</b>
From Constitutional Budget Reserve Fund/MHTIA	605.2	26.1	631.3
<b>Total Fund Sources Available to be Expended in FY 95</b>	<b>2,379.4</b>	<b>135.1</b>	<b>2,514.5</b>

<b>FY 95 Expenditures</b>			
(3) Operating Budget	2,233.9	132.5	2,366.4
Capital Budget	109.2	1.5	110.7
Loan Programs	0.0		0.0
(4) Special Appropriations/Fund Transfers	31.3	1.1	32.4
New Legislation (estimate)	5.0		5.0
<b>Total FY 95 Expenditures</b>	<b>2,379.4</b>	<b>135.1</b>	<b>2,514.5</b>

<b>Fund Balances:</b>	
(5) Constitutional Budget Reserve Fund	-82.2
Mental Health Trust Fund	48.1
PF Earnings FY 95 year end balance (1/94 report)	1,238.0
<b>Total</b>	<b>1,201.9</b>

## FY 94/95 Spending Plan - Notes

	Total GF
<b>(1) FY 94 Revenue Adjustments</b>	
GF Program Receipts From Restricted to Unrestricted:	
Operating Budget	85.7
Capital Budget	0.8
From Unrestricted to Restricted:	
Seafood Marketing	-3.0
Salmon Marketing	-4.0
Marine Highway Receipts	-41.0
Deposit to GF from Excess Loan Funds:	
Commercial Fishing Loan Program (sec. 21, HB 55)	1.8
Other loan program repayments (direct deposit to GF)	1.2
Extraordinary Payments to General Fund	2.8
Mental Health Indirect Cost (sec. 31, HB 55)	1.1
Tourism Loan Portfolio Purchase (sec. 82, ch 41 SLA 93)	0.7
Reappropriation fund sources (ch 41 SLA 93)	2.3
Exxon Reimbursement	20.0
<b>Total</b>	<b>88.2</b>
 <b>(2) FY 95 Revenue Adjustments</b>	
GF Program Receipts From Restricted to Unrestricted:	
Operating Budget	85.5
Capital Budget	0.8
From Unrestricted to Restricted:	
Seafood Marketing	-3.0
Salmon Marketing Tax	-4.0
Marine Highway Receipts	-41.0
Deposit to GF from Excess Loan Funds:	
Rural Electrification Loan Program to GF	0.1
Loan program repayments (direct deposit to GF)	1.1
Extraordinary Payments to General Fund	2.8
Mental Health Indirect Cost	1.1
Exxon Reimbursement (estimate)	5.0
<b>Total</b>	<b>48.2</b>
 <b>(3) FY 95 Operating Appropriations</b>	
Debt Service:	
Lease Debt	9.0
General Obligation Debt	18.5
School Debt	104.0

## FY 94/95 Spending Plan - Notes

	Total GF
Debt Sub-Total	131.5
Operating Expenditures:	
Agency Operations	
Sec. 25 Oil and Gas Litigation/Audit Costs	13.7
Sec. 26 Fire Suppression	5.5
Sec. 27 Information Services Fund	2.4
Sec. 29 Alaska Marine Highway System Fund	28.7
Sec. 38 Agency Budgets	1,133.1
Formula Programs	
Sec. 1 Shared Taxes	19.1
Sec. 2 Salmon Enhancement Receipts	4.5
Sec. 3 Formula Programs	1,027.9
Total Operating	2,366.4
[4] Special Appropriations/Fund Transfers	
Sec. 22 Storage Tank Assistance Fund	5.5
Sec. 24 Oil/Hazardous Substance Release Fund	25.8
Sec. 29 Mental Health Indirect Cost	1.1
[5] Constitutional Budget Reserve Fund	
Balance 8/30/93 per the Annual Financial Report	1,534.3
FY94 CBRF activity through 1/31/94	.253.0
FY94 Return to General Fund - HB505/SB332	-978.0
FY94 Needed to Balance with Appropriations	-288.4
Balance 8/30/94	522.9
FY95 Needed to Balance with Appropriations	-605.2
Balance 8/30/95	-82.2

4-13-94

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

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

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

**MEMORANDUM**

April 13, 1994

**SUBJECT:** Sectional Summary of SCS CSHB 505(FIN). "M" version dated 4/13/94. (Making appropriations from the constitutional budget reserve fund under Art, IX, sec. 17 and sec. 17(c); making an appropriation to the Department of Education)

**TO:** Senator Steve Frank

**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** States the legislature's findings and intent with regard to the constitutional budget reserve fund and legislative experience in passing appropriation bills.

**Sec. 2.** Appropriates \$932,762,996 from the general fund to the constitutional budget reserve fund to comply with the judgment in Hickel v. Halford.

**Sec. 3.** Appropriates \$73,245,478 from the general fund to the constitutional budget reserve fund to comply with the order in Cowper v. Hickel.

**Sec. 4.** Appropriates from the general fund to the constitutional budget reserve fund an amount equal to the interest that would have been earned on money received by the state after June 1, 1990, as a result of tax assessments or termination through settlement or otherwise of administrative proceedings involving taxes imposed on mineral income, production, or property, and subsequently deposited in the general fund, to comply with the judgment and order in Hickel v. Halford.

**Retroactivity.** Under sec. 11, sections 2 - 4 are retroactive to July 1, 1993.

**Sec. 5.** Appropriates \$696,527,188 from the general fund (\$635,181,888) and other funds for education expenses as listed in subsection (a). Subsection (b) allocates the appropriation for additional district support made in subsection (a) among 20 school districts.

**Sec. 6.** Appropriates \$103,345,264 from the general fund to the Alaska debt retirement fund. Subsection (b) then appropriates the same amount from the Alaska debt retirement fund to the Department of Education for state aid for costs of school construction.

**Contingency.** Under sec. 12, sections 2 - 6 are contingent on enactment of sections 7 - 9.

**Sec. 7.** Appropriates \$416,600,000 from the constitutional budget reserve fund, art. IX, sec. 17(c), to the general fund. Subsection (b) states that this appropriation is to fund the portion of the fiscal year 1994 appropriations enacted in 1993 that the state intended to fund from revenue received from informal tax conference settlements and tax assessment that had been deposited in the general fund.

Subsection (c) appropriates \$516,162,996 from the constitutional budget reserve fund, art. IX, sec. 17(c), to the general fund. Subsection (d) appropriates \$73,245,438 from the constitutional budget reserve fund, art. IX, sec. 17(c), to the general fund. Subsection (e) states that the appropriations made by (c) and (d) are to fund the portion of the fiscal year 1994 appropriations enacted in 1993 that the state intended to fund from the general fund but, due to shortfalls created by declining state oil revenue, requires expenditure of revenue received from informal tax conference settlements and tax assessments.

**Sec. 8.** Appropriates an amount equal to the amount appropriated into the constitutional budget reserve fund by sec. 4 of this Act to the general fund from the constitutional budget reserve fund, art. IX, sec. 17(c).

**Sec. 9.** Makes a contingent appropriation from the constitutional budget reserve fund, art. IX, sec. 17(c), to the general fund. The appropriation happens only if the unrestricted state revenue available for appropriation in FY 94 is insufficient to cover the FY 94 general fund appropriations. If the condition is met, the amount necessary to balance revenue and general fund appropriations is appropriated under art. IX, sec. 17(c) from the constitutional budget reserve fund.

**Sec. 10.** States that the appropriations from the constitutional budget reserve fund contained in secs. 7 - 9 are made under sec. 17(c).

**Sec. 11.** Makes the appropriations made in secs. 2 - 4 retroactive to July 1, 1993.

Senator Steve Frank

April 13, 1994

Page 3

**Sec. 12.** Makes the appropriations made in secs. 2 - 6 contingent on the enactment of the appropriations from the budget reserve fund contained in secs. 7 - 9.

**Sec. 13.** Contains an immediate effective date.

TC:pl

94-307.plm

## SUPPLEMENTAL CALENDAR

## SECOND READING OF HOUSE BILLS

**HB 505**

CS FOR HOUSE BILL NO. 505(FIN)(brf fld)(efd fld) "An Act making appropriations to the constitutional budget reserve fund established under art. IX, sec. 17, Constitution of the State of Alaska; and making an appropriation to the Department of Education for school construction debt retirement" was read the second time.

Senator Frank moved and asked unanimous consent for the adoption of the Finance Senate Committee Substitute offered on page 3627. Without objection, SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) "An Act making appropriations to the constitutional budget reserve fund established under art. IX, sec. 17, Constitution of the State of Alaska; making an appropriation to the Department of Education for support of kindergarten, primary, and secondary education and community schools programs and for school construction debt retirement; and making appropriations from the constitutional budget reserve fund under art. IX, sec. 17(c), Constitution of the State of Alaska; and providing for an effective date" was adopted. (Title change authorized by SENATE CONCURRENT RESOLUTION NO. 21)

SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) was read the second time.

Senator Frank offered Amendment No. 1:

Page 4, line 16:  
Delete "\$73,245,478"  
Insert "\$73,275,478"

Page 4, line 31:  
Delete "\$73,245,478"  
Insert "\$73,275,478"

Page 7, line 11:  
Delete "\$73,245,438"  
Insert "\$73,275,478"

**HB 505**

Senator Frank moved and asked unanimous consent for the adoption of Amendment No. 1. Without objection, Amendment No. 1 was adopted.

Senator Taylor moved and asked unanimous consent that SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) am S be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) am S was read the third time.

The question being: "Shall SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) am S "An Act making appropriations to the constitutional budget reserve fund established under art. IX, sec. 17, Constitution of the State of Alaska; making an appropriation to the Department of Education for support of kindergarten, primary, and secondary education and community schools programs and for school construction debt retirement; and making appropriations from the constitutional budget reserve fund under art. IX, sec. 17(c), Constitution of the State of Alaska; and providing for an effective date" pass the Senate?" The roll was taken with the following result:

SCS CSHB 505(FIN) am S  
Third Reading - Final Passage  
Effective Date

**YEAS: 20 NAYS: 0 EXCUSED: 0 ABSENT: 0**

Yeas: Adams, Donley, Duncan, Ellis, Frank, Halford, Jacko, Kelly, Kerttula, Leman, Lincoln, Little, Miller, Pearce, Phillips, Rieger, Salo, Sharp, Taylor, Zharoff

and so, SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) am S passed the Senate.

## SUPPLEMENTAL CALENDAR

## SECOND READING OF HOUSE BILLS

**HB 505**

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Insert "\$73,275,478"

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Senator Frank moved and asked unanimous consent for the adoption of Amendment No. 1. Without objection, Amendment No. 1 was adopted.

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SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) am S was read the third time.

The question being: "Shall SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) am S "An Act making appropriations to the constitutional budget reserve fund established under art. IX, sec. 17, Constitution of the State of Alaska; making an appropriation to the Department of Education for support of kindergarten, primary, and secondary education and community schools programs and for school construction debt retirement; and making appropriations from the constitutional budget reserve fund under art. IX, sec. 17(c), Constitution of the State of Alaska; and providing for an effective date" pass the Senate?" The roll was taken with the following result:

SCS CSHB 505(FIN) am S  
Third Reading - Final Passage  
Effective Date

**YEAS: 20 NAYS: 0 EXCUSED: 0 ABSENT: 0**

Yeas: Adams, Donley, Duncan, Ellis, Frank Halford, Jacko, Kelly, Kerttula, Leman, Lincoln, Little, Miller, Pearce, Phillips, Rieger, Salo, Sharp, Taylor, Zharoff

and so, SENATE CS FOR CS FOR HOUSE BILL NO. 505(FIN) am S passed the Senate.

# MEMORANDUM

## State of Alaska Department of Revenue

TO: Shelby Stastny, Director  
Office of Management and Budget

DATE: April 13, 1994

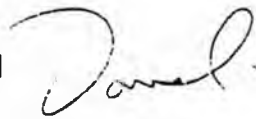
FILE NO:

TELEPHONE NO: 465-2320

THRU:

SUBJECT: Amount Due to CBRF

FROM: Darrel J. Rexwinkel  
Commissioner  
Department of Revenue



Pursuant to your request, we have recalculated the total amount due to the Constitutional Budget Reserve Fund (CBRF) as a result of April 4, 1994 Alaska Supreme Court opinion and previous court decisions in *Rick Halford et al. and Steve Cowper v. Walter J. Hickel*. In accordance with the April 4th opinion, Department of Revenue has adjusted the amount previously identified as due to CBRF by adding payments based on Notices of Assessment and Demand for Payments for which taxpayers did not appeal.

	<b>January 27, 1994 Supreme Court</b>	<b>April 4, 1994 Supreme Court</b>	<b>Total</b>
Principal	\$932,762,996	\$73,275,478	\$1,006,038,474
Interest	41,404,065	7,190,995	48,595,060
<b>Total</b>	<b>\$974,167,061</b>	<b>\$80,466,473</b>	<b>\$1,054,633,534</b>

The final amount due to CBRF has not yet been determined because of pending litigation and results of the CBRF audit currently being performed by Legislative Budget and Audit (LB&A). However, for purposes of projecting impacts on budget matters before the Legislature, Department of Revenue estimates that \$1,054,633,534 will be due to CBRF. This amount includes interest earnings calculated through March 31, 1994.

The amount due to CBRF will change as interest continues to accrue on the principal amount due and may change as a result of the LB&A audit and further litigation.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STEVE COWPER, )

Plaintiff, )

v. )

WALTER J. HICKEL, )

Governor of the )  
State )

of Alaska, et al. )

Defendants. )

---

Case No. 3AN-93-6848 Civil

EXPANDED DECISION FINDING CHAPTER 5,

SLA 1994 TO BE UNCONSTITUTIONAL

Procedural History:

While jurisdiction over this matter was in the Supreme Court, Plaintiff Cowper applied to add to the case claims related to the enactment of Chapter 5, SLA 1994. The Supreme Court remanded the questions raised to the Superior Court for a decision on whether to allow an amended complaint to pursue those issues, and if so, to resolve them. This court allowed the supplemental

1 pleading, arranged with counsel for expedited briefing  
2 and an expedited oral argument which was heard on April  
3 7, 1994. A summary order finding Ch. 5, SLA 1994 to be  
4 unconstitutional was entered on April 8, 1994. This order  
5 will state the reasons for the finding of  
6 unconstitutionality.

7  
8 Factual History:

9 The Constitutional Budget Reserve Fund. Article IX,  
10 Section 17, Constitution of the State of Alaska, was  
11 created to serve two budgetary functions. First, it is  
12 to be a source of funds available to the government for  
13 appropriations if the amount "available for  
14 appropriation" is less than the amount actually  
15 appropriated during the prior legislative session. Sec.  
16 17 (b). A shortfall meeting these requirements can be  
17 withdrawn with a simple majority vote of the legislature  
18 approved by the governor.

19 The second function is to be a source of funds to  
20 the government without regard to what other money is  
21 "available for appropriation", or the prior year's  
22 appropriation level. Withdrawal in this case is much  
23 more restricted, requiring a three-fourths vote of each  
24 house of the legislature, and agreement of the governor.

Sec. 17 (c).

1 In either case, the fund is to be repaid with any  
2 money remaining in the general fund which is available  
3 for appropriation at the end of each succeeding fiscal  
4 year. Sec. 17 (d).

5  
6 Facing serious budgetary problems, on March 16,  
7 1994, the legislature and governor enacted into law  
8 Chapter 5, SLA 1994, which in many ways addresses the use  
9 of the Constitutional Budget Reserve Fund. Whether this  
10 law is constitutional is the question.

11  
12 Chapter 5, SLA 1994, created two new statutes, A.S.  
13 37.10.410 and A.S. 37.10.420. Section 410 deals with  
14 what money goes into the Constitutional Budget Reserve  
15 Fund (CBRF), and section 420 relates to withdrawals from  
16 that fund.

17  
18 Analysis:

19  
20 410 (a).

21 A.S. 37.10.410 (a) purports to place in the CBRF  
22 informal and formal administrative appeal collections  
23 under A.S. 43.05.240. On April 4, 1994, the Supreme  
24 Court ruled that the money to be placed in the fund

25

1 included collections resulting from assessments under  
2 A.S. 43.05.270, a stage prior to the informal and formal  
3 appeal procedures. Walter J. Hickel, et al. v. Rick  
4 Halford, et al. and Steve Cowper, P.2d, (Alaska  
5 1994), Opinion No. 4069, at page 26. In light of this  
6 decision, section 410 (a) is an unconstitutional limit  
7 on the money required to be placed in the CBRF.

8 410 (b)(1).

9 A.S. 37.10.410 (b) purports to designate money not  
10 to be placed in the CBRF. Subsection (b)(1) excludes  
11 money resulting from the termination of informal or  
12 formal administrative proceedings when the money was not  
13 due at the time of initiation of the proceeding. It  
14 would seem that this situation would be rare, but even  
15 so, if the collection resulted from the termination of  
16 an administrative proceeding, it would clearly fall  
17 within the scope of the constitution.

18 410 (b)(2).

19 Subsection (b)(2) would appear to be unrelated to  
20 the issues before the court, covering money paid prior  
21 to an audit. Without an audit there is no assessment,  
22 and therefore no administrative proceeding is involved.  
23 Although no constitutional breach is indicated, this  
24 section is not severable from the remainder of the act,  
25

1 as it would be extremely unlikely the legislature  
2 intended to point out only one of many sources of funds  
3 unrelated to the CBRF.

4 410 (b)(3).

5 Subsection (b)(3) excludes collections received  
6 after assessment but before filing of a notice of appeal  
7 by the taxpayer. Since assessment begins the  
8 administrative sequence according to the April 4, 1994  
9 Supreme Court decision, Id., this section would violate  
10 the meaning of the CBRF.

11 All of A.S. 37.10.410 is therefore unconstitutional.

12  
13 420.

14 The second statute enacted, A.S. 37.10.420, has four  
15 parts which address section 17 (b) of the CBRF, the  
16 process for withdrawing money from the fund.

17  
18 420 (a)(1).

19 Section 420 (a)(1) defines the "the amount available  
20 for appropriation" or "funds available for  
21 appropriation", listing four categories. The focus of  
22 the difficulty with this subsection is another provision  
23 of the constitution, Art. IX, sec. 7, the Dedicated Funds  
24 provision, and the decision in Sonneman v. Hickel, 836  
25

1           Art. IX, sec. 7 states that state taxes are not to  
2 be dedicated to any special purpose, other than the  
3 Permanent Fund, or as required by a federal funding  
4 source. In Sonneman, the Supreme Court ruled on the  
5 constitutionality of a law which limited the power of the  
6 executive to request funds from the Alaska Marine Highway  
7 System Fund. In voiding that provision of the law the  
8 Supreme Court said

9  
10           ...The constitutional clause prohibiting  
11 dedicated funds seeks to preserve an annual  
12 model which assumes that not only will the  
13 legislature remain free to appropriate all  
14 funds for any purpose on an annual basis, but  
15 that governmental departments will not be  
16 restricted in requesting funds from all  
17 sources. 836 P.2d at 940.

18  
19           Of course, there are government funds in addition  
20 to federal matching funds and the Permanent Fund, which  
21 are not legally available to the legislature for  
22 appropriation for any purpose it chooses. Included in  
23 this would be funds owned by third parties, such as the  
24 Public Employees Retirement System funds, or the Mental  
25 Health Trust funds. Even though the legislature  
appropriates these funds, as it does federal funds, the  
appropriation is not controlled by the legislature but  
rather by the third party funding source limitations.

*MHTIA ?*

1 The key is whether the legislature has the power to  
2 choose the purpose for the appropriation. If a simple  
3 majority vote can withdraw the funds, (e.g. The Railbelt  
4 Energy Fund, the Permanent Fund Earnings Reserve  
5 Account), it is available for appropriation. If it  
6 belongs to someone else (trust funds, with vested legal  
7 rights), or would not be there without the purpose and  
8 permission of the source (federal funds of various  
9 sources), then it is not available for the legislature  
10 to exercise its unfettered constitutional discretion.

11 There are other funds which are not available, such  
12 as funds expected to be spent pursuant to the prior  
13 year's appropriations but not yet spent, or revolving  
14 loan funds expected to be loaned during the fiscal year,  
15 and funds necessary to pay contracts signed and  
16 enforceable but not yet payable. Unfettered  
17 appropriation of these funds by the legislature would  
18 violate the vested legal rights of others, or erode the  
19 integrity of the prior legislature's fiscal decisions for  
20 the current fiscal year.

21 It is necessary to use a reasoned view of each fund  
22 of money in the state accounts. No one would interpret  
23 the non-dedication clause of the constitution and the  
24 constitutional budget reserve provision together to  
25

1 require the liquidation of state assets before the  
2 reserve could be used, but it is equally improper to  
3 exclude funds simply because a prior legislature put a  
4 label on the funds, the removal of which carries  
5 political risk but no legal impediment. The legislature  
6 has the power to use many sources of funds in addition  
7 to those enumerated in section 420 (a)(1).

8 420 (a)(2).

9 A.S. 37.10.420 (a)(2), addressing "the amount  
10 appropriated for the prior fiscal year" suffers the same  
11 flaw as (a)(1): the sources are unconstitutionally  
12 limited.

13 420 (a)(3).

14 A.S. 37.10.420 (a)(3), covering the confusing phrase  
15 "the amount of appropriations made in the previous  
16 calendar year for the previous fiscal year" likewise is  
17 tied to the unconstitutionally limited enumeration of  
18 sources.

19  
20 420 (b).

21 A.S. 37.10.420 (b) limits the scope of funds from  
22 which the legislature would be required to repay funds  
23 withdrawn from the CBRF. There is no constitutional  
24 basis for this limitation. The CBRF is not available  
25

1 under Art. IX, Sec. 17(b) unless all of the other money  
2 "available" is inadequate, and must be paid back first  
3 when extra funds are available.

4 420 (c).

5 A.S. 37.10.420 (c) defines terms made irrelevant by  
6 the above discussion of section 420(a).

7 420 (d).

8 A.S. 37.10.420 (d), although accurate, is not  
9 logically coverable from the remainder of the act.

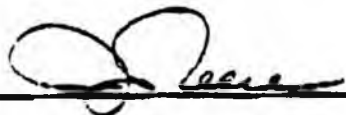
10 Sec. 2, Ch. 5, SLA 1994.

11 Section 2 of the act, for the above reasons, is not  
12 constitutional.

13 Conclusion:

14  
15 Therefore, this court holds that Chapter 5, SLA 1994  
16 is unconstitutional in its entirety.

17 Dated 4/12/94

18  
19  
20  
21 

22 JOHN REESE

23 Judge of the Superior Court

#B505

WALTER J. HICKEL  
GOVERNOR



P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 16, 1994

*The Honorable Ramona L. Barnes  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear Speaker Barnes:*

*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.*

*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.*

The Honorable Ramona L. Barnes  
February 16, 1994  
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*This bill accomplishes these goals in a manner that provides finality. For these reasons, I strongly urge your support for this bill.*

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel". The signature is written in black ink and is centered on the page.

Walter J. Hickel  
Governor