

HB

58

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/18/94

FURTHER:

DATE TURNED INTO OFFICE: 2-22-94

Finance Committee considered CS FOR HOUSE BILL NO. 58(FIN) am(efd fld)

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

and recommends:

- replace with 5 CS CS HB 58 (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
<i>DOA</i>	<i>2-10-94</i>	<i>0</i>	
<i>DOA</i>	<i>2-10-94</i>	<i>0</i>	

Appropriation No Fiscal Note

DO PASS:

Constance

Steve King

Bob King

OTHER RECOMMENDATIONS:

Constitution
of Alaska Do not pass, Unilateral Credit

1. *Do Pass*
 Co-Chair Signature/Recommendation

2. *Do Pass*
 Co-Chair Signature/Recommendation

FISCAL NOTE

No. 2

Bill Version: CSHB 58 (FIN)

(H) Publish Date: 2/11/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO.

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

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

Approved by Commissioner: Nancy Bear Usara Date: 2/10/94
 Agency: Administration

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FISCAL NOTE

No. 3
 Bill Version: CSHB 58 (FIN
 (H) Publiish Date: 2/11/94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: February 10, 1994
 Title: "An Act relating to the budget reserve fund...
 art. IX, sec. 17 Constitution State of Alaska.."
 Sponsor: House Finance Committee
 Requestor: House Finance Committee

Department Affected: Department of Law
 BRU: Legal Services
 Component: Operations
 COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

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

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Richard I. Pegues
 Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: February 10, 1994
Bruce M. Botelho
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law Date: February 10, 1994

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JFC 2-22-94
SR - Adopted
#1

AMENDMENT

TO: CSHB 58 (FIN)

BY Senator Rieger

Page 1, line 13 Delete: "and"

Page 2, line 2: After "Alaska;" insert:

"and (D) the balance in the statutory budget reserve fund established in AS 37.05.540;"

Page 2, Line 4 After "from" insert:

"(A) the constitutional budget reserve fund under the authority granted in art. IX, sec. 17 Constitution of the State of Alaska; and"
(B)"

SENATE FINANCE
COMMITTEE
Amendment Number: (1)
Bill Number: NB 58
Sponsor: Rieger Date: 2/22/94
Logged In By: (Signature)

FISCAL NOTE

No. 3
 Bill Version: CSHB 58 (FIN
 (H) Publish Date: 2/11/94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: February 10, 1994
 Title: "An Act relating to the budget reserve fund...
 art. IX, sec. 17 Constitution State of Alaska..."
 Sponsor: House Finance Committee
 Requestor: House Finance Committee

Department Affected: Department of Law
 BRU: Legal Services
 Component: Operations
 COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

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

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director

Phone: 465-3672

Division: Administrative Services Division

Date: February 10, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General

Agency: Department of Law

Date: February 10, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 58 (FIN)

ANALYSIS CONTINUATION:

This bill amends AS 37.10 to clarify the meaning of the term "amount available for appropriation" as it is used in art. IX, sec. 17 of the Constitution of the State of Alaska. The bill also clarifies the terms "the amount of appropriations for the previous fiscal year" and "the amount of appropriations in the previous calendar year for the previous fiscal year." Last, the bill establishes the repayment schedule to be followed for reimbursements to the budget reserve account from the unreserved, undesignated balance of the general fund to be carried forward as of June 30 of the fiscal year. The changes to the Public Funds Chapter of Title 37 will not have a fiscal impact on the Department of Law. To the extent that disputes arise involving public funds activities the department will use existing resources to handle such disputes, as it has in the past.

JFC 2-22-94
SR - Adopted
#1

AMENDMENT

TO: CSHB 58 (FIN)

BY Senator Rieger

Page 1, line 13 Delete: "and"

Page 2, line 2: After "Alaska;" insert:

"and (D) the balance in the statutory budget reserve fund established in AS 37.05.540;"

Page 2, Line 4 After "from" insert:

"(A) the constitutional budget reserve fund under the authority granted in art. IX, sec. 17 Constitution of the State of Alaska; and"
(B)"

SENATE FINANCE
COMMITTEE
Amendment Number:
Bill Number: NB 58
Sponsor: Rieger Date: 2/22/94
Logged In By: (Signature)

SFC 2-22-94
BS-3
Adopted
5-1
#3

SENATE AMENDMENT
House Bill 58
By Senator Bert Sharp

Amendment #3

AS 37.10 is amended by adding a new section to read:

Article 6. BUDGET RESERVE FUND.

Sec. 37.10.410. ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES.

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

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

(2) past due taxes that are received by the state after a request for a formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue, together with penalties and interest on the taxes.

(B) Money received by the state under the following conditions is not considered to be received as the result of the termination of an administrative proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of Alaska;

(1) taxes that are not due at the time the request for the proceeding was made under AS 43.05.240(a) or (b)(1);

(2) taxes set out in a return not audited by the department at the date of collection; or

(3) taxes collected for a tax year for which the taxpayer did not give notice of appeal of an assessment made by the department.

CS HB 58 (Jud)
conforms to Supreme Court interpretation

New Ground Issues yet to be argued in court.

SENATE FINANCE COMMITTEE
Amendment Number: 3
Bill Number: HB-58
Sponsor: _____ Date: 2/27/94
Logged In By: (Bm)

SFC- 2-22-94
Amendment
4
SR-3
6
Adopted

SENATE AMENDMENT

By Rieger

To: CSHB 58 (FIN) SENATE BILL No. _____ :

To: _____ HOUSE BILL No. _____

PAGE:

LINE:

Page 2 Line 7 after "made" insert:

"from sources identified in (2) of
this subsection."

58(FIN) ~~am(efd fld)~~

JCS for CS FOR HOUSE BILL NO. 58(FIN) ~~am(efd fld)~~

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 2/16/94

Offered: 2/11/94

Sponsor(s): HOUSE FINANCE COMMITTEE

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."

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

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

5 ARTICLE 6. BUDGET RESERVE FUND.

6 Sec. 37.10.420. MONEY AVAILABLE FOR APPROPRIATION. (a) For
7 purposes of applying art. IX, sec. 17(b), Constitution of the State of Alaska,

8 (1) "the amount available for appropriation" or "funds available for
9 appropriation" means

10 (A) the unrestricted revenue accruing to the general fund during
11 the fiscal year;

12 (B) general fund program receipts as defined in AS 37.05.146;

13 and

14 (C) the unreserved, undesignated general fund balance carried

1 forward from the preceding fiscal year that is not subject to the repayment
2 obligation imposed by art. IX, sec. 17(d), Constitution of the State of Alaska;

3 (2) "the amount appropriated for the previous fiscal year" means the
4 amount appropriated from the same revenue sources used to calculate the money
5 available for appropriation for the current fiscal year; and

6 (3) "the amount of appropriations made in the previous calendar year
7 for the previous fiscal year" means appropriations made for a fiscal year that were
8 enacted during the calendar year that ends on December 31 of that same fiscal year.

9 (b) If the amount appropriated from the budget reserve fund has not been
10 repaid under art. IX, sec. 17(d), Constitution of the State of Alaska, the Department
11 of Administration shall transfer to the budget reserve fund the amount of money
12 comprising the unreserved, undesignated general fund balance to be carried forward
13 as of June 30 of the fiscal year, or as much of it as is necessary to complete the
14 repayment. The transfer shall be made on or before December 16 of the following
15 fiscal year.

16 (c) In this section, "unrestricted revenue accruing to the general fund" or
17 "unreserved, undesignated general fund balance carried forward" is money not
18 restricted by law to a specific use that accrues to the general fund according to
19 accepted principles of governmental or fund accounting adopted for the state
20 accounting system established under AS 37.05.150 in effect on July 1, 1990.

21 (d) An appropriation under art. IX, sec. 17(b), Constitution of the State of
22 Alaska, requires an affirmative vote of the majority of the members of each house of
23 the legislature. An appropriation under art. IX, sec. 17(c) requires an affirmative vote
24 of three-fourths of the members of each house of the legislature.

25 * Sec. 2. The provisions of sec. 1 of this Act are declaratory of existing law and represent
26 the intent of the legislature when the Sixteenth Alaska State Legislature passed Senate
27 Joint Resolution No. 5 (HCS CSSSSJR 5(FIN) am H), proposing an amendment to art.
28 IX, Constitution of the State of Alaska, creating the budget reserve fund in 1990.

A M E N D M E N T

TO: CSHB 58 (FIN)

BY:

page 2, line 3: after "from " insert the following new material to read:

"(A) the statutory budget reserve fund established in AS 37.05.540;

(B) the constitutional budget reserve fund under the authority granted in art. IX, sec. 17(b) Constitution of the State of Alaska; and

(C) "

Effect of amendment: This amendment would add appropriations from the statutory budget reserve fund and majority-approved appropriations from the constitutional budget reserve fund to the non restricted fund appropriations that, added together, make up the "amount appropriated for the previous fiscal year." Access to the constitutional budget reserve fund is determined by measuring amount appropriated in the previous fiscal against the amount available in the target fiscal year.

Extra
Copy

AMENDMENT

TO: CSHB 58 (FIN)

BY Senator Rieger

Page 1, line 13 Delete: "and"

Page 2, line 2: After "Alaska;" insert:

"and (D) the balance in the statutory budget reserve fund established in AS 37.05.540;"

Page 2, Line 4 After "from" insert:

"(A) the constitutional budget reserve fund under the authority granted in art. IX, sec. 17 Constitution of the State of Alaska; and"
(B)"

SENATE FINANCE
COMMITTEE
Amendment Number: ①
Bill Number: NB 58
Sponsor: Rieger Date: 2/22/91
Logged In By: Rieger

2-22-94

Rewritten into
Amendment #3
BS — y.) of
Withdrawn

SENATE AMENDMENT
House Bill 58
By Senator Bert Sharp

Amendment #2

AS 37.10 is amended by adding a new section to read:

Article 6. BUDGET RESERVE FUND.

Sec. 37.10.410. ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES.

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

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

(2) past due taxes that are received by the state after a request for a formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue, together with penalties and interest on the taxes.

(b) To the extent that an administrative proceeding involves taxes that are not due at the time the request for the proceeding was made under AS 43.05.240(a) or (b)(1), taxes set out in a return not audited by the department at the date of collection, or taxes collected for a tax year for which the taxpayer did not give notice of appeal of an assessment made by the department, money received ~~as a result of~~ ^{by the state} the termination of an administrative proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of Alaska.
for these reasons (Baldwin proposal) the proceeding is not considered to be received as a result of

SENATE FINANCE
COMMITTEE
Amendment Number: 2
Bill Number: HB 58
Sponsor: Sharp Date: 2/23/94
Logged In By: (Signature)

2-22-94
Rewritten into
Amendment #3

SENATE AMENDMENT
House Bill 58
By Senator Bert Sharp

Amendment #2

AS 37.10 is amended by adding a new section to read:

Article 6. BUDGET RESERVE FUND.

Sec. 37.10.410. ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES.

(A) The following money received by the state is considered to be received as a result of the termination of an administrative proceeding for purposes of applying ~~art.~~ ^{art.} IX, sec. 17(a), Constitution of the State of Alaska;

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

(2) past due taxes that are received by the state after a request for a formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue, together with penalties and interest on the taxes.

(b) To the extent that an administrative proceeding involves taxes that are not due at the time the request for the proceeding was made under AS 43.05.240(a) or (b)(1), taxes set out in a return not audited by the department at the date of collection, or taxes collected for a tax year for which the taxpayer did not give notice of appeal of an assessment made by the department, money received, as a result of the termination of an administrative proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of Alaska.

by the state

the proceeding is not considered to be received as a result of

SENATE FINANCE
COMMITTEE
Amendment Number: 2
Bill Number: HB 58
Sponsor: Sharp Date: 2/5/94
Logged In By: [Signature]

SENATE AMENDMENT
House Bill 58
By Senator Bert Sharp

Amendment #2

AS 37.10 is amended by adding a new section to read:

Article 6. BUDGET RESERVE FUND.

Sec. 37.10.410. ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES.

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

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

(2) past due taxes that are received by the state after a request for a formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue, together with penalties and interest on the taxes.

(b) Money received by the state as a result of the termination of an administrative proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of Alaska does not include:

(1) taxes that are not due at the time the request for the proceeding was made under AS 43.05.240(a) or (b)(1);

(2) taxes set out in a return not audited by the department at the date of collection; or

(3) taxes collected for a tax year for which the taxpayer did not give notice of appeal of an assessment made by the department. *S*

SENATE FINANCE
COMMITTEE
Amendment Number: *REVISED #2*
Bill Number: *NB 58*
Sponsor: *Sharp* Date: *2/22/94*
Logged In By: *[Signature]*

2-22-94
J Fin
Jim Baldwin

A M E N D M E N T

(Rewritten into
Amendment #1)

TO: CSHB 58 (FIN)

BY:

page 2, line ⁴ after "from " insert the following new material to read:

- (A) the statutory budget reserve fund established in AS 37.05.540;
- (2) (B) the constitutional budget reserve fund under the authority granted in art. IX, sec. 17 (b) Constitution of the State of Alaska; and
- (C) "

delete SR

Effect of amendment: This amendment would add appropriations from the statutory budget reserve fund and majority-approved appropriations from the constitutional budget reserve fund to the non restricted fund appropriations that, added together, make up the "amount appropriated for the previous fiscal year." Access to the constitutional budget reserve fund is determined by measuring amount appropriated in the previous fiscal against the amount available in the target fiscal year.

MEMORANDUM

Budget Reserve Fund
State of Alaska

Office of the Governor
Division of Policy

TO: Doug Baily
Attorney General

DATE: May 22, 1990

and Hugh Malone
Commissioner, Revenue

FROM: *M. Max* Mary Halloran
Director, Policy

PHONE: 465-3568

SUBJECT: SJR 5: Budget Reserve Fund

FILE NO:

The purpose of this memorandum is to establish an administrative record and clarify the provisions of the final version of Senate Joint Resolution Number 5, proposing a constitutional amendment to establish a budget reserve fund. The resolution was approved by the Legislature on May 8, 1990, and will place a proposal to establish a constitutionally-protected Budget Reserve Fund before the voters at the November, 1990 election. (See attached copy of HCS CSSS SJR 5 - Finance, am H.)

You will find little formal legislative history on this proposal, so I thought it prudent to establish some administrative history for the record and to guide further administrative action. The final version of SJR5 was drafted by this Division (Jack Fagnoli and myself) on April 26-29, aided, at various moments, by the Department of Law (Bruce Bothelho, Jim Baldwin, and Jeff Bush), and then put in good drafting form by Tam Cook and Jack Chenowith at the Legal Division of Legislative Affairs on May 1 after the initial draft and accompanying explanation were provided to Representative Kay Brown.

That draft was only slightly modified by subsequent legislative action. The House Finance Committee acted on HJR 66, and converted it from a spending limit/budget reserve fund combination to a budget reserve fund only. That version, read across on May 4, was adopted intact as a House floor amendment to SJR 5 on May 8, and subsequently approved by both bodies. I kept all the internal drafts, and will provide them to the Dept. of Law if you believe it advisable, Doug.

To further examine formal legislative history, if that should be necessary at some point, you need to consider four different joint resolutions under consideration by the legislature this session: SJR 5, HJR 66, HJR 52, and HJR 81. You will find, however, the vast proportion of the testimony on the provisions of the spending limit proposals and little discussion of the budget reserve fund.

A description of SJR5, by subsection, follows.

B: 17(a):

"There is established as a separate fund in the State treasury the budget reserve fund." (Page 2, Lines 2-3)

This permanently establishes the Budget Reserve Fund as a separate fund in the State treasury. The Budget Reserve Fund would be constitutionally protected, not subject to statutory changes.

"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." (Page 2, Lines 3-11)

All "settlement", "litigation" and "back tax" income received by the State after 7/1/90 pertaining to the mineral sources identified above are to be deposited into the Budget Reserve Fund, except for revenue deposits already constitutionally dedicated to the Permanent Fund. This provision "takes off the table" all windfall income deriving from these non-recurring revenue sources. The language does not cover windfall income from non-mineral revenue sources, such as any litigation proceeds from the Exxon Valdez oil spill, disputed receipts from AHFC, and overdue loan payments to the Student Loan Corporation. The language "administrative proceeding" is meant to cover the Department of Revenue's current attempts to

recover mineral revenues which were not paid in a timely manner and are now in the internal appeal process, the so-called "back taxes." As of April 30, 1990, the total in appeal was slightly over \$3 billion. The underlying purpose is to reduce incentives to immediately spend surplus revenue, and to enhance budget stability by minimizing year-to-year surges in overall spending levels.

"Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund." (Page 2, Lines 11-13)

This provision is intended to ensure that a reasonable rate of return is earned on Budget Reserve Fund investments, and that the Fund's balance is not used for subsidized loans.

"Income of the fund shall be retained in the fund." (Page 2, Line 13)

This provision makes explicit the retention of Fund earnings within the principal of the Fund.

"Section 7 of this article does not apply to deposits made to the fund under this subsection." (Page 2, Lines 13-15)

This language exempts deposits to the Budget Reserve Fund made under subsection (a) of the resolution, including deposits of retained earnings, from the prohibition of dedicated funds contained in Article IX, Section 7, of the Alaska Constitution.

"Money may be appropriated from the fund only as authorized under (b) or (c) of this section." (Page 2, Lines 15-16)

Outlays from the Budget Reserve Fund are limited to appropriations made under subsections (b) and (c) of the resolution.

§ 17(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." (Page 2, Lines 17-19)

If the total amount of money available for appropriation for a fiscal year - - including all revenue sources, such as permanent fund earnings, federal funds and other restricted funds - - is less than the total amount appropriated for the prior fiscal year, an appropriation from the Budget Reserve Fund is allowed.

Since appropriations for annual budgets are generally made prospectively, before actual revenue receipts are known for the fiscal year being budgeted, there is a risk that actual receipts during that year may be greater than anticipated, thus causing some portion of any Budget Reserve Fund appropriation for that year to exceed the "ceiling" of the prior fiscal year's appropriation amount. In such a case, the presumption is that the "excess portion" of the Budget Reserve Fund appropriation is invalid and remains within the Budget Reserve Fund. In practice, what we would expect to happen, is that the Legislature would make contingent appropriations from the Budget Reserve Fund, i.e. appropriations contingent upon the actual revenues received.

"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." (Page 2, Lines 19-24)

This provision limits the allowable maximum size of an appropriation from the Budget Reserve Fund. Note, however, that the allowable maximum size is subject to a different limit from the one which triggers the opportunity for such an appropriation. In short, whereas an appropriation can be made whenever revenue for a fiscal year is less than "the amount appropriated for the previous fiscal year" (Page 2, Line 18), the sum of any Budget Reserve Fund

appropriation and other available revenue may not exceed the amount appropriated for the previous fiscal year net of supplemental appropriations for that previous fiscal year. This is the practical effect of the phrase "in the previous calendar year" (Page 2, Line 23).

The phrase "in the previous calendar year" was inserted by the House Finance Committee specifically to preclude stratagems whereby a supplemental appropriation to the current fiscal year, e.g., FY 90, could be made in order to increase the allowable size of a Budget Reserve Fund appropriation for the fiscal year being budgeted, e.g., FY 91.

The meaning and intent of the phrase "in the previous calendar year" is clear, if the assumption is made that the Budget Reserve Fund appropriation is being made during a legislative session for the fiscal year whose main budget is being appropriated. If, however, one assumes that the Budget Reserve Fund appropriation is being made as a supplemental appropriation for the current fiscal year (e.g., FY 90), the phrase "in the previous calendar year" can be interpreted to produce a non-sensical result - - e.g., that the sum of FY 90 revenue and an FY 90 supplemental appropriation from the Budget Reserve Fund can not exceed the total amount appropriated during the preceding calendar year for FY 89, which in this case would simply be the amount of the FY 89 supplemental appropriation.

Though this problem of interpretation may exist in the current wording of B(b), it is clear that the intent of the phrase "in the previous calendar year" in Line 23 is solely to preclude the budget stratagems discussed earlier, rather than to create a non-sensical result.

B 17(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." (Page 2, Lines 25-27)

The intent of this provision is to allow Budget Reserve Fund appropriations to be made for any reason, regardless of year-to-year fluctuations in revenue or appropriation levels, so long as a strong

legislative consensus or "super-majority" exists in each house of the legislature.

β 17(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." (Page 2, Line 28 - Page 3, Line 2)

The intent of this provision is to ensure that, following any appropriation from the Budget Reserve Fund, the Fund is replenished as quickly as revenue levels allow, out of any fiscal year-end balances (e.g., as identified in the State's Annual Financial Report), whether from one or several fiscal years, and without any appropriations being required. This provision was requested specifically by Governor Cowper.

A potential ambiguity may arise from the use of the word "succeeding" in Line 1 on Page 3, as it may be construed to mean that replenishment of the Budget Reserve Fund does not begin until the end of the first-positive-balance fiscal year that "succeeds" the fiscal year for which the Budget Reserve Fund appropriation was made, rather than beginning at the close of the same fiscal year for which the Fund appropriation was made (should a revenue balance materialize by that year's end).

Though this interpretation can be made, the intent of β(d) was not to create such a loophole, but to ensure that replenishment of the Budget Reserve Fund begin as soon as positive balances materialize, and proceed to completion as soon as such balances allow. In this context, the word "succeeding" is intended to refer to the requirement that, if the first positive year-end balance that arises is not sufficient to fully replenish the Budget Reserve Fund for appropriations made out of it, the positive balances of "succeeding" (i.e., successive) fiscal years shall also be used, until replenishment is complete.

Page 7

"The legislature shall implement this subsection by law."
(Page 3, Lines 2-3)

Because a number of provisions in the resolution (including the tracking of appropriations, replenishment of the Budget Reserve Fund, and the determination of positive year-end revenue balances) will require specific implementation procedures, the intent of this provision is to stipulate that clarifying statutory provisions are recognized as necessary and are anticipated.

If you have any questions, or would like additional information, please don't hesitate to contact me or Jack Fagnoli of my staff at 465-3568.

Attachment: HCSCSSS SJR 5 - Finance, am H

BALLOT MEASURE NO. 1

Budget Reserve Constitutional Amendment

[HCS CSSSSJR 5 (Fin) am H]

BALLOT LANGUAGE

This proposal would create the "Budget Reserve Fund" in the state treasury. Money the state receives from mineral revenue lawsuits or administrative actions would be deposited in the Fund, and invested at competitive rates. The Fund could be used when money available for appropriation in the year is less than the year before, but only to make up the shortfall. The legislature could only appropriate from the Fund for other purposes with a 3/4 vote. At the end of each year, the Fund would have to be paid back from money left in the treasury's general fund.

Should this constitutional amendment be adopted?

Yes No

VOTES CAST BY MEMBERS OF THE 16TH ALASKA LEGISLATURE ON FINAL PASSAGE

House: Yeas	38	Senate: Yeas	15
Nays	2	Nays	5

LEGISLATIVE AFFAIRS AGENCY SUMMARY

This measure will amend the state constitution by creating the budget reserve fund. Money from certain mineral revenue sources received by the state from an administrative proceeding or litigation is placed in the fund. Income of the fund is kept in the fund.

Appropriations may be made from the fund if money available for a fiscal year is less than the amount appropriated for the prior year. When this occurs the amount that may be taken from the fund is limited. Only the money needed to make up the difference may be appropriated.

Money may also be appropriated from the reserve fund by special vote of the legislature. Three-fourths of the members of each house must approve. The amount that may be taken is unlimited when this vote is obtained.

Money that is appropriated from the reserve fund must be repaid. Surplus general fund money must be deposited in the reserve fund at the end of each year until the reserve fund is repaid.

FULL TEXT OF PROPOSED LAW

*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.

*Section 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.

STATEMENT IN SUPPORT

Cut the budget.

Reduce state spending.

Get state spending under control.

Each year these battle cries are raised by Alaskans. While elected officials say they listen and promise to do all they can, the simple fact is the Legislature's record shows it consistently spends most or all of the money available in the treasury. Alaska is confronted with an impending fiscal crisis of staggering proportions as a result of an inevitable "gap" between general fund revenues and current state spending levels. Present levels

BALLOT MEASURE NO. 1

of state general fund expenditure simply cannot be sustained over the long term.

Ballot Measure Number 1 is the first step Alaskans can take to *effectively* control state spending.

The measure creates the Budget Reserve Fund in the Constitution. Revenues from mineral or oil and gas legal settlements and administrative proceedings will be deposited into the Budget Reserve. The Legislature will be able to spend money from the Budget Reserve only if:

- revenues are less than the amount appropriated the previous year, in which case money could be appropriated from the Budget Reserve in an amount not to exceed the shortfall; or
- three-fourths of the members of both the House and Senate vote to spend money from the Budget Reserve for a public purpose, such as a disaster.

The Legislature will be required to repay any money it appropriates from the Budget Reserve. If the next year revenues are insufficient the Legislature cannot afford to replenish the Budget Reserve, the "debt" will carry forward until it is repaid.

Legal settlements involving mineral or oil and gas revenues received after July 1, 1990, will be deposited into the Budget Reserve. As an example, if voters approve this ballot measure, \$216 million of the amount the state received in September from ARCO's settlement of royalty litigation will be deposited into this Budget Reserve. Should voters not approve this measure, these funds will be available to the legislature to spend next year. Approval of Ballot Measure Number 1 is the first step toward a long-term spending plan. With Alaska's revenues subject to the whims of the world oil market, trying to take steps which will provide some stability in Alaska's spending is especially difficult. 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. At the very least, this ballot measure will establish a savings account that can help minimize the effects of a "boom" one year, and a "bust" the next.

While other major budget decisions will be necessary to close the future's fiscal gap, this Ballot Measure is a major step toward a long-term spending plan for the state. It is a step we urge Alaskans to support.

If approved by the voters, the Budget Reserve Fund will be a significant help in managing the transition to sustainable spending.

Senator Jan. Faiks
Representative Kay Brown
Representative Randy Phillips

STATEMENT IN OPPOSITION

In sharp contrast to what its proponents have been telling us, the proposed budget reserve fund

- will *not* save any windfalls,
- does *not* require a $\frac{3}{4}$ vote to gain access to it,

- *endorses* the legislature's bloated \$3 billion budget
- will result in *slower growth* of the Permanent Fund, and
- will *reduce the amount* of future PFD checks.

Your vote *against* Ballot Measure #1 will send a signal to the legislature that you do not approve of their excessive spending, and that you want the windfalls deposited into the Permanent Fund.

The most significant danger of this proposal is that it will establish a budget floor at \$3 billion, and allow it to increase every year. Under paragraph (b) of the proposed constitutional change, a simple majority in the legislature could "borrow" funds from the reserve, to make up any shortfall in revenues, *up to the amount appropriated in the previous year*. This year the legislature spent more than \$3 billion. Some of that was vetoed by the governor, but it is expected the legislature will restore the funding and add supplemental appropriations in January. In other words, *the total amount appropriated for FY 91 has not yet been determined*. A "yes" vote on this ballot measure amounts to rubber-stamping a blank check of at least \$3 billion!

How would the budget continue to increase? Legislative leaders can easily get a $\frac{3}{4}$ vote out of their members by dangling capital project plums in front of them.

The appeal of this ballot measure is to save the "windfalls" of oil tax settlements, variously estimated at between \$2 billion and \$5 billion. This can easily be spent in three years.

Constitutionally, 25% of our oil income is dedicated to the Permanent Fund. And under state law, an additional 25% of income from certain leases is put into the Permanent Fund. In other words, as much as 50% of the windfalls should be deposited in the Permanent Fund, by law. The language in this constitutional amendment is unclear regarding the second 25%, and could be interpreted by big-spending legislators to rationalize putting only the constitutionally-dedicated 25% into the Permanent Fund, and leaving 75% for them to spend.

It would be better to save all of these anticipated windfalls, by putting 100% into the Permanent Fund. There, these funds will help the Permanent Fund produce greater annual income, for use as Permanent Fund Dividends to all Alaskans, or to fund necessary functions of state government. In the Permanent Fund, the windfalls would definitely be saved, and would not be accessible by big spenders in the legislature.

If you are one of the 65% of Alaskans who in opinion polls consistently ask the legislature to cut the budget, or if you believe the windfalls should *truly* be saved, you owe it to yourself not to be taken in by the proponents of Ballot Measure #1. Vote NO on the budget reserve amendment.

Representative Terry Martin