

**SB**

**347**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 15, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/10/98

The FINANCE Committee considered:

SB 347

SENATE BILL NO. 347

PROGRAM RECEIPTS

“An Act relating to the increase of an appropriation item based on additional federal or other program receipts.”

recommends it be replaced with the following committee substitute \_\_\_\_\_  the same title  
 a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date)  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) LFD, LAA 4/3/98

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> FOSTER	X			
<i>[Signature]</i> Therrault			*	
<i>[Signature]</i> Mulder	X			
<i>[Signature]</i> Martin	X			
<i>[Signature]</i> Kohring	X			
<i>[Signature]</i> Grissendorf				X
<i>[Signature]</i> J. Davis		<del>X</del>		
<i>[Signature]</i> Kelly				
<i>[Signature]</i> Moses			X	
<i>[Signature]</i> G. Davis			X	
<i>[Signature]</i> Hanley			X	

CHAIR'S SIGNATURE *[Signature]*  
*[Signature]*  
Hanley

**FISCAL NOTE**

**STATE OF ALASKA  
1998 LEGISLATIVE SESSION**

No. 1  
Bill Version: SR 347  
(S) Publish Date: 4-3-98

Revision Date: \_\_\_\_\_  
Title: Program Receipts  
Sponsor: Senate Finance Committee  
Requester: Legislative Budget & Audit Committee

Dept. Affected Legislature  
BRU Budget & Audit  
Component Legislative Finance  
Committee Expenses  
Component Serial No. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES [ ]</b>						
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**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: 0.0

**POSITIONS**

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The legislation will have no fiscal impact on either the Legislative Finance Division or the Legislative Budget & Audit Committee operations.

Prepared by Ike Greany, Legislative Fiscal Analyst  
Division Legislative Finance Division  
Approved by \_\_\_\_\_  
Agency \_\_\_\_\_

Phone 465-3002  
Date 4/3/98  
Date \_\_\_\_\_

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ROLL CALL: HOUSE FINANCE COMMITTEE

DATE

5/10/98

SUBJECT

7 SB 347

MEMBER	YES	NO
MOSES	✓	
MULDER	✓	
DAVIES, JOHN		✓
DAVIS, GARY		✓
GRUSSENDORF		✓
FOSTER	✓	
KELLY	✓	
KOHRING	✓	
MARTIN	✓	
THERRIault	✓	
HANLEY	✓	

TOTAL

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PASSED \_\_\_\_\_

FAILED \_\_\_\_\_

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE


Division of Legislative Finance



P.O. Box 113200  
Juneau, AK 99811-3200  
(907) 465-3795  
FAX (907) 463-4885

November 14, 1997

TO: Chair, Vice-Chair, and Members  
Legislative Budget and Audit Committee

FROM: Mike Greany, Legislative Fiscal Analyst 

RE: Options to Change the RPL "45 Day Rule"

At the October 8 meeting of the Legislative Budget and Audit Committee, I was instructed to bring options to change the "45 day rule" back to the next meeting.

Working with Legal Services, we have come up with five options that would involve either constitutional, statutory, or appropriation process changes. Their legal analysis is included (see October 27, 1997 memorandum).

**Option [1] Grant original appropriation authority to the Legislative Budget and Audit Committee (constitutional amendment required).**

Currently the committee has no original appropriation authority. The actual appropriation of additional federal or other receipts are made in a front section of the general appropriations bill, and then are subject to the RPL review process. The problem lies in the fact that the front section actually makes the appropriation and the expenditure of the funds can go forward either [1] with the approval of the committee or [2] by the Governor after 45 days have lapsed without committee approval – after failure to approve or no action.

Under this option a constitutional amendment would be necessary to grant the committee the power to specifically appropriate additional federal or other receipt funds on an item-by-item basis in lieu of the general and open-ended appropriation in the front section of the general appropriations bill enacted by the full legislature. In this way there would be no 45 day rule – if the committee failed to approve there would simply be no appropriation increase.

The voters rejected a similar constitutional amendment proposed by the 1978 session of the Legislature.

**Option [2] Extend the 45-day period (statutory change required).**

The operation of this option would be that the current front section appropriation would remain in the general appropriations bill, failure by the committee to approve an RPL request would still trigger a waiting period after which the administration could proceed to expend, but the waiting period would be constructed to extend into the next regular session to allow the legislature the opportunity to repeal (dis-appropriate) the additional federal or other receipts amount. The legislature would have to enact a specific appropriation item repealing the expenditure-through-RPL in question.

The Governor could not proceed with the expenditure of funds unless the full legislature failed to take action to implement the committee's denial of approval.

This option would require enactment of substantive law to change AS 37.07.080(2) and (3).

**Option [3] No longer include a front section that makes the appropriation of federal funds and additional program receipts (no statutory change required). This would effectively eliminate the RPL process.**

The legislature would simply stop making the front section appropriation of additional federal or other program receipts. There would be no budget authority under which the RPL process would normally work. Agencies would be limited to the actual amounts appropriated to them in the regular back section of the appropriation bill. Any additional expenditure authority would have to come through the supplemental appropriation process in the subsequent legislative session.

This option would essentially remove the Budget and Audit Committee from the budget process.

**Option [4] Statutory delegation of expenditure authority to the Committee with specific standards (statutory change required).**

The concept would be that specific standards given by the full legislature to the committee in approving or denying RPL requests would replace the 45-day provision. However, legal analysis finds this approach highly unlikely to survive constitutional challenge: improper delegation and separation of powers issues.

For that reason, it would not be fruitful to develop this option further.

**Option [5] Repeal the 45-day provision that authorizes the Governor to make expenditures despite LB & A approval (statutory change required).**

The straight out removal of the 45 provision which allows the Governor to proceed with the expenditure of funds despite LB & A Committee disapproval would only require a statutory change but would likely result in litigation. Again, the constitutional issues of separation of power and the delegation problem would be raised with a favorable outcome for the Legislature doubtful.

*Legislative Fiscal Analyst Recommendation*

It would appear that the most legally defensible options immediately available to the Legislature are Options 2 or 3.

**I recommend Option 2 extending the waiting period into the subsequent session before the Governor can override LB & A denial of an RPL request. This would allow the full legislature the opportunity to implement the committee action by an appropriation measure before any expenditure of funds could occur.**

Option 3 is not recommended because it would effectively eliminate the RPL process -- that has historically served as the LB & A Committee's primary budget oversight function during the interims.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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

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

## MEMORANDUM

October 27, 1997

**SUBJECT:** Expenditure of program receipts (Work Order No. 20-LS1196)

**TO:** Mike Greany  
Legislative Fiscal Analyst

**FROM:** Tamara Brandt Cook  
Director TBC

You have asked me to provide a legal review of options for amending AS 37.07.080(h) so that the Governor may not authorize the expenditure of program receipts if expenditure has been disapproved by the Legislative Budget and Audit Committee.

### **HISTORY OF SUBSECTION**

AS 37.07.080(h) was enacted in 1977 (Chapter 74, SLA 1977) It originally provided for revisions of appropriations upon approval by both the Governor and the Legislative Budget and Audit Committee. It provided in full:

- (h) Appropriations may be revised on approval by the governor and the Legislative Budget and Audit Committee to allow for
- (1) increase of an appropriation item based on additional federal or other program receipts;
  - (2) establishment of a new, permanent position not authorized in the appropriated operating budget; or
  - (3) reallocation between appropriation items.

Upon enactment of this subsection suit was brought. Judge Tom Stewart found all three types of revisions to appropriations to be unconstitutional. With respect to expenditure of "additional program receipts," the Judge found both an improper delegation of the legislative power to appropriate to a committee and a violation of the separation of powers doctrine to the extent that the provision authorized a legislative committee to exercise jointly with the Governor expenditure authority. (Kelley v. Hammond, First Judicial District, Superior Court, C.A. 77-4 (Alaska 1978))

The appeal in the Kelley case was ultimately dismissed and the legislature submitted a proposed constitutional amendment to the voters proposing budget revisions and expenditure

of program receipts upon approval of both the governor and an interim committee of the legislature. The voters rejected the constitutional amendment. (LR 39 Tenth Alaska Legislature, copy attached) During the session held immediately after the voters rejected the proposed constitutional amendment the legislature enacted AS 37.07.080(h) in substantially the form it now appears. (Chapter 60, SLA 1977)

## REVISION OPTIONS

(1) **Constitutional amendment.** A constitutional amendment like LR 39 could again be submitted to the voters to authorize the Legislative Budget and Audit Committee to, essentially, appropriate additional program receipts, or the amendment could grant the committee expenditure authority only after an appropriation of additional program receipts has been made by the full legislature. Currently, the operating budget typically contains an appropriation of excess program receipts in general terms: "Federal or other program receipts that exceed the amounts appropriated in this Act are appropriated conditioned upon compliance with the program review provisions of AS 37.07.080(h)."

(2) **Extend the 45-day period.** AS 37.07.080(h)(2) and (3) could be amended so that the governor could not make an expenditure very quickly. This would enable the legislature to convene in special or regular session and appropriate the program receipts at issue to avoid the expenditure. The weakness in the approach is that the governor could veto the appropriation.

(3) **Stop making appropriations of additional program receipts.** The legislature can avoid the delegation problem litigated in Kelley and still control expenditures by simply making no appropriations of program receipts in a manner that leads to discretionary expenditures, or the legislature could make appropriations of additional receipts only for specific programs it feels comfortable increasing by unknown amounts.

(4) **Statutory delegation to the LBA Committee of expenditure authority over additional program receipts with specific standards.** When the Supreme Court held that AS 37.07.080(g)(2) is an unconstitutional delegation of the power to appropriate to the governor, the court suggested that such a delegation might withstand a constitutional challenge based on improper delegation if the statute included standards to guide the exercise of administrative discretion. However, the court noted that, even with standards, the delegation to the governor would probably still violate the principle of separation of powers. (State v. Fairbanks N. Star Borough, 736 P.2d 1140 (Alaska 1987)) It is remotely possible that, if standards were supplied to guide the LBA Committee in its determination as to whether to approve the expenditure of additional program receipts, the statute would survive attack. I think, however, that the success of this approach is unlikely.

(5) **Repeal the provision that authorizes the Governor to make expenditures despite LBA disapproval.** This would place the legislature in the position of relitigating the

Mike Greany  
October 27, 1997  
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separation of powers question and, to a lesser extent, the delegation problem that was the subject of the Kelley case.

TBC:glc  
97-389.glc

# STATE OF ALASKA

## THE LEGISLATURE

1978

Legislative  
Resolve No.

Source

HCSSJR 16

39



Proposing an amendment to the Constitution of the State of Alaska relating to the work of interim committees of the legislature.

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

\* Section 1. Article II, sec. 11, Constitution of the State of Alaska is amended to read:

SECTION 11. INTERIM COMMITTEES. There shall be a legislative council, and the legislature may establish other interim committees, including a committee to approve jointly with the governor, as provided by law, state budget revisions, including revisions authorizing the receipt and expenditure of federal and other program receipts as defined by law. The council and other interim committees may meet between legislative sessions. They may perform duties and employ personnel as provided by the legislature. Their members may receive an allowance for expenses while performing their duties.

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

"EXTENSION OF AGREEMENT  
ROYALTY OIL" ("Agreement II")  
by the Agreement, modifying  
various provisions to it;

as set out in AS 38.06,  
the Advisory Board has  
approved Agreement II; and

the resources has fulfilled  
its obligation of selling the royalty oil  
and has obtained approval  
of the Development Advisory Board,  
under AS 38.06; and

the provision stating that if  
the legislature does not approve Agreement II  
by a majority of the  
members of each house of no force or effect;

the sale of royalty oil may  
be made by the resources without the  
concurrent resolution  
of each house; and

the resources submitted  
for consideration and approval;

and the legislature has evaluated Agreement  
II and otherwise received back-  
expressions of public  
opposition to its termination with respect

under current federal  
law, the best interests of  
the State of Alaska, and  
the resources, and  
the applicable constitutional

Legislature that the  
AMENDMENT FOR THE SALE AND  
of the State of Alaska,  
the resources, and  
has been approved.