

SJR

24



Alaska State Senate


Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

DATE: March 18, 2002

TO: Representative Norm Rokeberg, Chair
House Judiciary Committee

FROM: Senator Dave Donley, Co-Chair 
Senate Finance Committee

RE: CS SJR 24 (rls), Constitutional Budget Reserve

I ask that you schedule a hearing on Committee Substitute for Senate Joint Resolution 24 (Rules), "Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund," at your earliest convenience.

During the February 4, 2002, House Judiciary Committee hearing on SJR 24, Jim Baldwin of the Department of Law raised four issues regarding this resolution: 1) it is a policy change from the current use of CBR funds; 2) the term "unrestricted general funds" is not currently defined in statute; 3) repealing the sweep provision without repaying the \$3.8 billion liability could potentially cause problems with Wall Street; and 4) CS SJR 24(rls) is too late to be effective—the CBR will be empty when the provision becomes effective.

My staff researched these issues and consulted with the Divisions of Legal Services, Legislative Finance and Legislative Budget and Audit. In short, there is no problem with the resolution as it currently reads, and the issues raised by Mr. Baldwin are not reasons for concern. Below is a discussion of the issues raised at the hearing for your and the committee members' information.

Policy Change

Mr. Baldwin stated that CS SJR 24 (Rls) changes the current policy regarding the use of CBR funds to a more restrictive use of only general fund shortages. **This is intentional; CS SJR 24 (rls) does limit flexibility on the way CBR funds appropriated with a simple majority vote may be used.**

As currently written, section 17(b) allows CBR appropriations to be used to replace **any fund source**, as long as total appropriations do not exceed total appropriations for the prior year. This resolution would not permit "majority vote CBR draws" to replace federal or other funds directly.

CS SJR 24 (rls) is intended to limit flexibility, but it is not intended to change past use of CBR draws. CBR appropriations to the general fund can be used (and have been used) only to fill "hollow appropriations" of unrestricted general funds. The unrestricted fund codes are GF, GF match and GF mental health. CS SJR 24 (Rls) restricts the use of CBR funds appropriated with a simple majority for shortfalls in unrestricted general funds only.

- If a program/division/service is funded entirely by unrestricted general funds, CBR funds can be used to make up any shortage
- If a program/division/service is funded partially by unrestricted general funds and partially by other funds—designated funds, program receipts, other state funds, federal funds—CBR funds can be used to make up a shortage of funds because the program/division/service was partially funded by GF.
- If a program/division/service is funded entirely by funds other than unrestricted general funds, CBR funds cannot be used to make up any shortage unless appropriated with a $\frac{3}{4}$ vote.

For example: The education foundation formula is funded using unrestricted general funds and funds from the Public School Trust. If additional money was needed for the foundation formula, CBR funds appropriated with a simple majority vote could be used. If the formula was funded purely with public school trust funds, a $\frac{3}{4}$ vote would be necessary to use CBR funds for any shortfalls.

Use of the term "unrestricted general funds"

The use of the term "unrestricted general funds" was of concern to Mr. Baldwin because that term is not currently defined in statute.¹ Although there is no current statutory definition of unrestricted general funds are, AS 37.05.146(b) specifically lists what unrestricted general funds are not (copy attached). **Tam Cook, with the Division of Legal Services does not believe there is a problem with the use of the term unrestricted general funds.** It is more of a policy question.

The resolution provides that for the purposes of the subsection, "unrestricted general fund" shall be defined by law. Any potential difficulty arising from the use of the term "unrestricted general funds" would do so when legislation defining the term was introduced. The issue could be debated and resolved at that time.

If the House Judiciary Committee members believe this is a potential problem, the words "and used to fund appropriations from the unrestricted general fund" (page 1, line 8) could be replaced with "to the general fund." This change would expand the allowable use of a simple majority vote CBR appropriation, but would not change the primary intent of the

¹ AS 37.10.420(c) contained the closest definition; however, the court found AS 37.10.420(a) – (b) unconstitutional, presumably making (c) ineffective as well. AS 37.10.420(c) states:

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

March 18, 2002

Page 3

resolution or change past practice. Doing so would avoid legal issues raised by referring to the unrestricted general fund.

SJR 24 does not resolve the GF liability to the CBR.

Mr. Baldwin brought up the possibility that deleting the "sweep" provision without dealing with the current indebtedness of \$3.8 billion could place the state in an uncomfortable position with the bond market. This is money we "owe" ourselves. It is not a major technical issue. Section 17(d) does not create a liability that must be repaid, it simply states that year-end general fund surpluses will be used to repay outstanding draws from the CBR. **Once section 17(d) is repealed, there is no year-end sweep of funds into the CBR. The liability is meaningless.**

There are also several actions that could be taken after the amendment was passed if for any reason the bond market needed to be appeased. A "round-trip" appropriation from the general fund to the CBR and back—just as is done annually with year-end balances—is only one option that would extinguish the liability. A round-trip appropriation would require a $\frac{3}{4}$ vote and could be done after the public approves the Constitutional amendment.

SJR 24 is too late to be effective—the CBR will be empty when the provision becomes effective.

Although CS SJR 24 (RIs) will have less impact if the CBR is empty, it can certainly do no harm. Additionally, without the passage of CS SJR 24 (rls), **even if the CBR is drained, the sweep provision would remain and have to be addressed every year.**

The point of this resolution is to address a future that is not so dismal. Alaska's continued dependence on oil prices implies a "shock absorber" account (and perhaps a "final resort" account) will continue to be necessary. The CBR—with its supermajority vote requirement—is the most fiscally conservative tool available for those purposes.

DD:dld

Attachment



Alaska State Senate

Senate Finance Committee

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Juneau, Alaska 99801-1182

CS SJR 24, Constitutional Budget Reserve Fund

APPROPRIATIONS NOT MADE FROM THE UNRESTRICTED GENERAL FUND

Sec. 37.05.146. Definition of program receipts and non-general fund program receipts.

(a) In AS 37.05.142 - 37.05.146 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other state money received by a state agency in connection with the performance of its functions. Unless otherwise provided in this section, program receipts are accounted for within, and appropriated from, the general fund of the state.

(b) The program receipts listed in this subsection are accounted for separately, and **appropriations from these program receipts are not made from the unrestricted general fund:**

- (1) federal receipts;
 - (2) University of Alaska receipts (AS 14.40.491);
 - (3) designated program receipts; in this paragraph, "designated program receipts" means money received by the state from a source other than the state or federal government that is restricted to a specific use by the terms of a gift, grant, bequest, or contract;
 - (4) receipts of the following:
 - (A) highway working capital fund (AS 44.68.210);
 - (B) correctional industries fund (AS 33.32.020);
 - (C) loan funds;
 - (D) international airport revenue fund (AS 37.15.430);
 - (E) corporate receipts earned or managed by a public corporation of the state;
 - (F) fish and game fund (AS 16.05.100);
 - (G) school fund (AS 43.50.140);
 - (H) training and building fund (AS 23.20.130);
 - (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and former AS 39.37);
 - (J) permanent fund (art. IX, sec. 15, Alaska Constitution);
 - (K) public school trust fund (AS 37.14.110);
 - (L) second injury fund (AS 23.30.040);
 - (M) fishermen's fund (AS 23.35.060);
 - (N) FICA administration fund (AS 39.30.050);
 - (O) receipts of the employee benefits program established under AS 39.30.150 - 39.30.180;
 - (P) receipts of the deferred compensation program established under AS 39.45;
 - (Q) clean air protection fund (AS 46.14.260);
 - (R) receipts of the group insurance programs established under AS 39.30.090;
 - (S) mental health trust fund (AS 37.14.031);
 - (T) Alaska children's trust (AS 37.14.200);
 - (U) commercial fisheries test fishing operations (AS 16.05.050(a)(15));
 - (V) Regulatory Commission of Alaska under AS 42.05 and AS 42.06;
 - (W) Alaska Oil and Gas Conservation Commission under AS 31.05;
 - (X) receipts of the Department of Community and Economic Development under AS 08.01.065(a),
- (c), and (f);

(Y) receipts from the seafood marketing assessment under AS 16.51.120 - 16.51.170, the salmon marketing tax under AS 43.76.110 - 43.76.130, and other receipts of the Alaska Seafood Marketing Institute;

(Z) the administrative cost charge under AS 44.33.113 for the state's role in the federal community development quota program;

(AA) dive fishery management assessment receipts (AS 43.76.150);

(BB) process service fees collected by the Department of Public Safety;

(CC) Alaska Commercial Fisheries Entry Commission under AS 16.05.490, 16.05.530, and AS 16.43;

(DD) receipts of the Alaska Vocational Technical Center;

(EE) Alaska Pioneers' Home care and support receipts under AS 47.55.030;

(FF) receipts of the Department of Transportation and Public Facilities from tolls charged for use of the Whittier Tunnel;

(GG) receipts of the Department of Community and Economic Development, division of insurance, from license fees and fees for services;

(HH) receipts of the division of the Department of Community and Economic Development that regulates banking, securities, and corporations;

(II) receipts of the Department of Corrections from the electronic prisoner monitoring program under AS 33.30.065(d);

(JJ) receipts of the Department of Corrections from the operation of community residential centers;

(KK) receipts of the Alaska Police Standards Council;

(LL) receipts of the Department of Public Safety from fees for fire and life safety plan checks under AS 18.70.080(b);

(MM) receipts of the Department of Transportation and Public Facilities from the measurement standards and commercial vehicle enforcement program;

(NN) receipts of the Department of Education and Early Development for teacher certification under AS 14.20.020;

(OO) receipts of the Professional Teaching Practices Commission from professional certification fees;

(PP) receipts of the Department of Health and Social Services, Bureau of Vital Statistics;

(QQ) receipts of the Department of Corrections from the inmate telephone system;

(RR) receipts of the Department of Public Safety from the Alaska automated fingerprint system under AS 44.41.025(b);

(SS) receipts of the Department of Administration from the boat registration program under AS 05.25.096;

(TT) state land disposal program (AS 38.04.022);

(UU) shore fisheries development lease program account (AS 38.05.082(f));

(VV) timber receipts account (AS 38.05.110);

(WW) workers' safety and compensation administration account (AS 23.05.067);

(XX) receipts of fees for recording and related services of the Department of Natural Resources (AS 40.17.030(a)(10), 40.17.070; AS 44.37.025(b), 44.37.027(c); AS 45.29.303(b), 45.29.525, and 45.29.619(b));

(YY) receipts described in AS 46.03.482(b)(1) and (2) received under the commercial passenger vessel environmental compliance program;

(ZZ) receipts of the Department of Community and Economic Development for fees for business license endorsements for tobacco products (AS 43.70.075);

(5) receipts of or from the trust established by AS 37.14.400 - 37.14.450, except reimbursements described in AS 37.14.410;

(6) receipts of the Alaska Fire Standards Council for which a taxpayer is allowed a credit under AS 21.89.075.Sec.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSJR 24(RLS)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title Constitutional amendment relating BRU Elections
to the budget reserve fund Component Elections
 Sponsor Finance
 Requester House Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenuniai, Election Administrative Supervisor Phone 465-3935
 Division Division of Elections Date/Time 1/31/02 3:27 PM
 Approved by: Lieutenant Governor Fran Ulmer Date 01/31/2002
 Agency Office of the Lieutenant Governor

**SENATOR DAVE DONLEY'S
HOUSE JUDICIARY COMMITTEE
SJR 23 & SJR 24 PRESENTATION
OCTOBER 19, 2001**

(SLIDE 1)

Senator Dave Donley

Co-Chair Senate Finance Committee

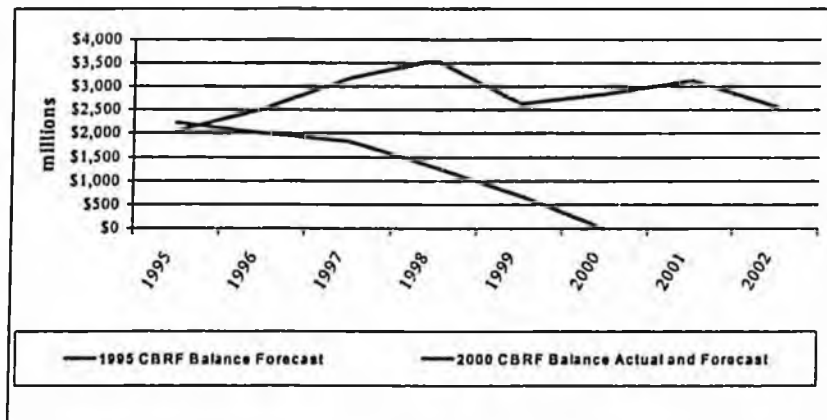
**SJR 23
Reforming the
Constitutional
Spending Limit**

**SJR 24
Restoring the
Original Intent of
the 1990 CBR
Amendment**

**MOST ALASKANS AGREE THAT DEVELOPMENT OF A LONG-RANGE FISCAL PLAN
IS ONE OF THE GREATEST CHALLENGES FACING OUR STATE.**

(SLIDE 2)

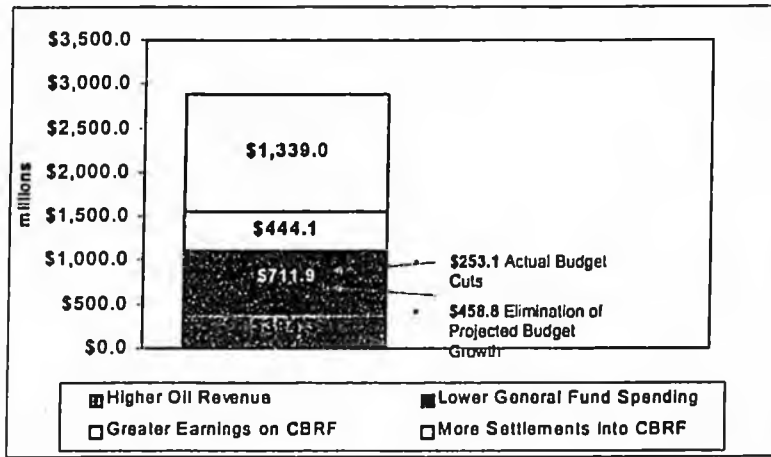
CBRF: The View from Here



A VERY SURPRISING FACT TO MOST ALASKANS IS THAT OVER THE PAST FIVE YEARS, THE CONSTITUTIONAL BUDGET RESERVE, INCLUDING THE PCE ENDOWMENT, ACTUALLY INCREASED TO OVER \$3 BILLION IN JUNE.

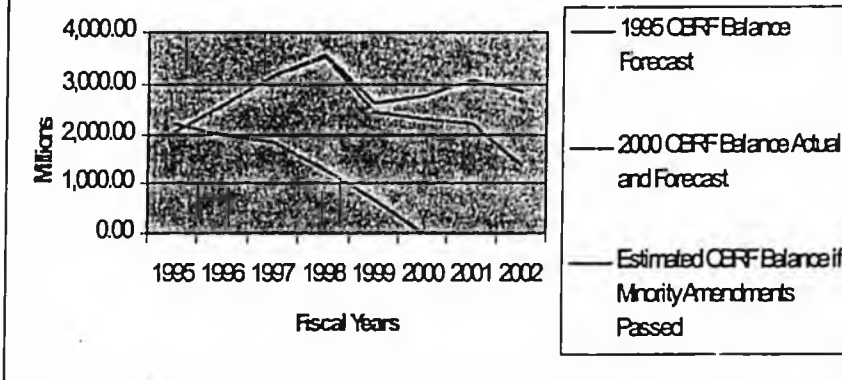
(SLIDE 3)

Why We Had More in the CBRF in FY 2000 than We Forecast in 1995



(SLIDE 4)

CBRF: Impact of Minority Amendments



THE SENATE MAJORITY BELIEVES THAT BEFORE CONSIDERING MAJOR NEW TAXES ON ALASKANS, GOVERNMENT SHOULD FIRST BE AS WELL RUN AS POSSIBLE.

THE BASIS OF GOVERNMENT IN AMERICA IS OUR CONSTITUTIONS. WHEN WE START TO CREATE A NEW FINANCIAL PLAN WE NEED TO LOOK AND MAKE SURE THAT OUR STATE CONSTITUTION IS FUNCTIONING PROPERLY.

IT'S CLEAR THAT THERE ARE TWO PARTS OF OUR STATE CONSTITUTION THAT DEAL WITH FISCAL POLICY THAT ARE NOT FUNCTIONING PROPERLY. THEY ARE THE EXISTING CONSTITUTIONAL APPROPRIATION LIMIT AND THE EXISTING CONSTITUTIONAL BUDGET RESERVE PROVISION.

(SLIDE 5)

SJR 23

Reforming the Constitutional Spending Limit

- The current constitutional appropriation limit is not working
- The language is misleading
- The language is unclear
- The limit has grown too large

ONE THING WAS CLEAR FROM THE OVERWHELMING REJECTION IN SEPTEMBER 1999 OF THE LAST FISCAL PLAN PROPOSAL. . . .

ALASKANS DO NOT WANT TO GIVE GOVERNMENT A BLANK CHECK.

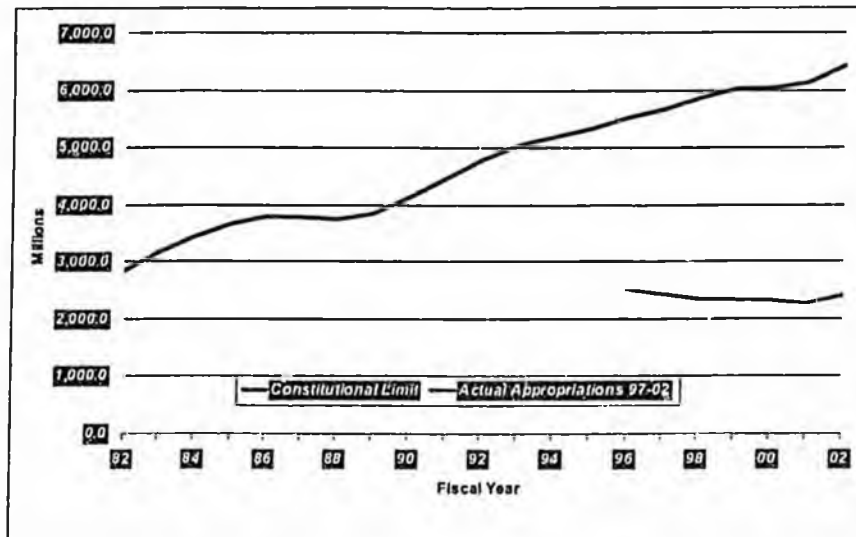
TO BE ACCEPTABLE TO THE MAJORITY OF ALASKANS, ANY NEW PLAN MUST START WITH REASONABLE LIMITS ON GOVERNMENT SPENDING.

THE FIRST STEP TO THE SENATE FINANCE COMMITTEE'S FISCAL PLAN IS EXACTLY THAT. . . .

TO LIMIT THE EXPANSION OF GOVERNMENT SPENDING THROUGH THE ADOPTION OF SENATE JOINT RESOLUTION 23 REVISING THE EXISTING CONSTITUTIONAL APPROPRIATION LIMIT.

TALK ABOUT SLIDE 5 (SLIDE 6)

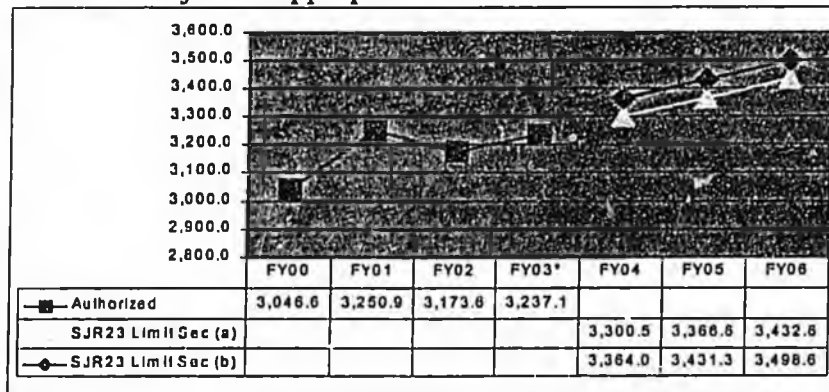
The Current Spending Limit vs Recent Appropriations



THE EXISTING CONSTITUTIONAL APPROPRIATION LIMIT WAS ADOPTED BY THE VOTERS IN 1982. THIS PROVISION CURRENTLY LIMITS GOVERNMENT SPENDING TO ABOUT \$6 BILLION; HOWEVER, WE ONLY CURRENTLY SPEND ABOUT \$3 BILLION. THE ENORMOUS SIZE OF THE CURRENT APPROPRIATION LIMIT OCCURRED BECAUSE THE CONSTITUTIONAL PROVISION HAS A BUILT-IN ESCALATOR CLAUSE FOR INFLATION AND POPULATION. TO CORRECT THIS, THE PROPOSED COMMITTEE SUBSTITUTE PROPOSES TO BASE ANY ALLOWABLE INCREASES ON PREVIOUS YEAR'S BUDGETS AND TO LIMIT THOSE INCREASES TO ONLY 2 PERCENT. SJR 23 ALSO CLARIFIES WHAT IS AND IS NOT INCLUDED IN THE APPROPRIATION LIMIT.

(SLIDE 7)

Projected Appropriation Limits under SJR 23



*FY03 Authorized budget estimated at 2% increase over FY02.

Sec (a) allows for up to a 4% increase over the amount appropriated 2 years prior.
Sec (b) states an additional 2% may be appropriated with a two-thirds vote of both houses.

Not included in SJR23 Limit: Permanent Fund dividends, G.O. & revenue bond proceeds, reappropriations, duplicated funds, and funds from non-State sources.

All numbers taken from LFD Fiscal Summaries in Summary of Appropriations

IN REVISING THE EXISTING CONSTITUTIONAL APPROPRIATION LIMIT, WE ARE LEARNING FROM THE MISTAKES OF THE PAST. WE RECOGNIZE, HOWEVER, THAT CIRCUMSTANCES CHANGE. THAT'S WHY THE PROPOSED COMMITTEE SUBSTITUTE FOR SJR 23 CONTAINS A SPECIAL PROVISION TO HAVE VOTERS REVIEW IT AGAIN IN 4 YEARS AND THEN EVERY 6 YEARS THEREAFTER. IF IT IS NOT FUNCTIONING CORRECTLY, IF PEOPLE WANT TO SPEND MORE THAN THE LIMIT ALLOWS, OR IF WE SOLVE THE FISCAL CRISIS, ALASKANS CAN VOTE IT OUT OF THE CONSTITUTION.

(SLIDE 8)

SJR 24

Restoring the Original Intent of the 1990 CBR Amendment

- The CBR is functioning well as a fiscal shock absorber, but is not working as intended to control spending
- Small groups of legislators can force increased spending by withholding CBR votes
- Last year this budget blackmail increased spending by about \$150 million
- What will this cost grow to in future years?

THE CONSTITUTIONAL BUDGET RESERVE LANGUAGE OF THE CONSTITUTION IS WORKING WELL AS A FISCAL SHOCK ABSORBER, BUT IT IS NOT WORKING AS INTENDED TO CONTROL SPENDING.

THE CONSTITUTIONAL BUDGET RESERVE (CBR) WAS ESTABLISHED IN 1990, AND HAS BEEN USED TO HELP FILL THE GAP BETWEEN STATE REVENUES AND EXPENDITURES. WHEN THE CBR WAS CREATED, THE ORIGINAL INTENT WAS THAT FUNDS COULD BE WITHDRAWN WITH A SIMPLE MAJORITY VOTE TO HELP COVER A BUDGET DEFICIT AS LONG AS CURRENT SPENDING DID NOT EXCEED THE PREVIOUS YEAR'S SPENDING, BUT A THREE-QUARTERS VOTE OF THE LEGISLATURE WOULD BE NECESSARY TO WITHDRAW ANY FUNDS IN EXCESS OF THE PREVIOUS YEAR'S SPENDING.

IN 1994, THE ALASKA SUPREME COURT MISINTERPRETED THIS PROVISION TO REQUIRE A $\frac{3}{4}$ VOTE TO WITHDRAW ANY FUNDS FROM THE CBR. THIS CREATES A SITUATION IN WHICH A SMALL GROUP OF LEGISLATORS CAN "BLACKMAIL" THE MAJORITY AND HOLD THE BUDGET. THESE LEGISLATORS CAN TRADE THEIR VOTES, WHICH ARE CRUCIAL TO WITHDRAW CBR FUNDS AND BALANCE THE STATE'S BUDGET, IN EXCHANGE FOR ADDITIONAL SPENDING.

WE ESTIMATE THE COST THIS YEAR TO ACCESS THE CBR WITH A $\frac{3}{4}$ MAJORITY VOTE TO BALANCE THE BUDGET WAS NEARLY \$150 MILLION.

SENATE JOINT RESOLUTION 24 CORRECTS THIS BIZARRE IMBALANCE OF SPENDING POWER BY PROPOSING A CONSTITUTIONAL AMENDMENT THAT MAKES IT CLEAR A $\frac{3}{4}$ VOTE IS NOT NECESSARY WHEN SPENDING DOES NOT EXCEED THE PREVIOUS YEAR'S.

IF THIS RESOLUTION PASSES, THE AMENDMENT WILL BE PLACED ON THE NEXT STATE GENERAL ELECTION BALLOT IN FALL 2002 FOR APPROVAL BY THE PEOPLE OF ALASKA.

(SLIDE 9)

SJR 23 Reforming the Constitutional Spending Limit

SJR 24 Restoring the Original Intent of the 1990 CBR Amendment

ONCE AGAIN, WE DO NOT CONTEND THAT THESE TWO CONSTITUTIONAL AMENDMENTS ALONE CONSTITUTE A COMPLETE PLAN, BUT THESE PROPOSALS ARE IN PLACE TO PASS NEXT YEAR AND THEY ARE AN EXCELLENT AND NECESSARY FIRST STEP FOR ANY COMPREHENSIVE NEW PLAN TO BE ACCEPTABLE TO THE MAJORITY OF ALASKANS.

CS FOR SENATE JOINT RESOLUTION NO. 24(RLS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Offered: 5/1/01
Referred: Rules

Sponsor(s): SENATE FINANCE COMMITTEE

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to the budget
2 reserve fund.

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

4 * Section 1. Article IX, sec. 17(b), Constitution of the State of Alaska, is amended to read:

5 (b) If the amount available for appropriation for a fiscal year is not sufficient
6 to fully fund the amount appropriated for that year [LESS THAN THE AMOUNT
7 APPROPRIATED FOR THE PREVIOUS FISCAL YEAR], an appropriation may be
8 made from the budget reserve fund and used to fund appropriations from the
9 unrestricted general fund. However, the amount appropriated from the fund under
10 this subsection may not exceed the amount necessary, when added to other funds
11 available for appropriation, to provide for total funding [APPROPRIATIONS] equal
12 to the amount of appropriations made [IN THE PREVIOUS CALENDAR YEAR] for
13 the previous fiscal year. For purposes of applying this subsection, amounts
14 available for appropriation or appropriated from federal funds, income of the
15 permanent fund, or this budget reserve fund may not be considered. For
16 purposes of this subsection, "unrestricted general fund" shall be defined by law.

1 * Sec. 2. Article IX, sec. 17(d), Constitution of the State of Alaska, is repealed.

2 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
3 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
4 State of Alaska, and the election laws of the state.



Alaska State Senate

Senate Finance Committee

Official Business

Sponsor Statement
for
CS SJR 24 (Rules)

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

“Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund”

Senate Joint Resolution 24 would amend Article IX, sec 17 of Alaska’s Constitution to promote fiscal discipline and provide a more efficient budgetary process. The purpose of SJR 24 is to restore the legislative intent of subsection (b). That section was intended to allow the legislature to fill a portion of the fiscal gap using funds from the Constitutional Budget Reserve (CBR) with a majority vote when the amount available for appropriation for a fiscal year is less than the amount available in the previous year.

The Alaska Supreme Court, in Hickel v Cowper, determined that “the amount available for appropriation” was improperly defined in statute. The Court improperly interpreted the true legislative intent of the $\frac{3}{4}$ vote, which is now required to access the CBR. This has allowed a small minority of legislators to “blackmail” the majority into increased spending each year.

SJR 24 addresses this problem by clearly defining subsection (b), and allows the legislature to transfer the difference between *current year revenue* and *appropriations for the previous year* from the CBR to the General Fund (GF) without a $\frac{3}{4}$ vote. Funds appropriated from the CBR may be spent only as unrestricted GF. That is, the CBR couldn't be used to fill gaps in GF program receipts or in any of the fund codes the legislature classifies as “other.” If current year appropriations exceed appropriations for the previous year, that gap will not be covered by the transfer from the CBR, but additional money can be appropriated from the CBR with a $\frac{3}{4}$ vote, just as it is done now.

SJR 24 amends Article IX, sec 17 of Constitution by:

- reestablishing the trigger mechanism for accessing the CBR with a majority vote when;
Available money (this year) is less than Appropriations (last year)
The original trigger, declared invalid in Hickel v Cowper, was:
Available money (this year) is less than Appropriations (this year)
- redefining the CBR gap-filler provision (subsection b), which is not used because it was declared unconstitutional, as an appropriation.
- defining money available for appropriation (it will exclude federal receipts, income of the Permanent Fund, and the CBR).
- specifying that money transferred from the CBR can be used only to replace unrestricted GF appropriations.
- repealing the repayment provision

The existing trigger comparing revenue in the current year to appropriations in the prior year has little to do with determining whether a fiscal gap exists or how large it might be. The revised trigger is based on revenue and appropriations for the same fiscal year, making the comparison a valid indicator of a fiscal gap.

In addition, the original intent of using the CBR to fund no more than the level of appropriations for the prior year without a $\frac{3}{4}$ vote is not changed under SJR 24.

Definitions of the terms "amount available for appropriation" and "amount appropriated" are the root of problems with interpreting the CBR provision. The revised language in SJR 24, in addition to the court decision, makes it clear that federal receipts, Permanent Fund earnings (PFDs, inflation proofing and excess income) and the CBR are excluded from both definitions, as are monies excluded from the existing "sweep" provision (subsection d).

Essentially, that leaves the GF fund group and many of the "other" fund codes subject to the trigger. However, appropriations under the revised subsection (b) of SJR 24 can be used only to fund appropriations from the unrestricted general fund. The purpose of this limitation is to make sure that the CBR is not used when non-general fund receipts fall short of expectations. For example, the CBR could not be used to make up a shortfall in University tuition or Aerospace Corporation receipts without a $\frac{3}{4}$ vote.

The appropriation from the CBR is limited to prior year appropriations less the amount available for appropriation in the current year. If appropriations in the current year exceed appropriations in the prior year, only getting the $\frac{3}{4}$ vote can fill that portion of the fiscal gap.

Money withdrawn from the CBR with a $\frac{3}{4}$ vote can be used for any purpose.

SJR 24 also repeals the "sweep" provision because it can be reversed only with a $\frac{3}{4}$ vote. Since the sweep reversal would be an annual requirement, failing to delete it would defeat the purpose of the proposed amendments to subsection (b).



Alaska State Senate

Senate Finance Committee


Official Business

Mail Stop 3100
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Juneau, Alaska 99801-1182

MEMORANDUM

October 8, 2001

TO: House Judiciary Committee Members

FROM: Senator Dave Donley, Co-Chair 
Senate Finance Committee

RE: Committee Substitute to Senate Joint Resolution 24 (Rules), "Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund"

I ask that you support the passage of CS SJR 24 (Rules) which amends the Constitutional Budget Reserve Fund (CBRF). Briefly, this proposed amendment revises the conditions under which a $\frac{3}{4}$ vote is required for appropriating money from the CBR

If appropriations in a current year are more than the amount available for appropriation, then funds equal to the difference between what is available for appropriation in the current year and the actual amount appropriated the previous year may be appropriated from the CBRF to the general fund with a majority vote. If the appropriations in a current year are greater than the previous year, the amount of CBR funds needed to make up the additional difference requires a $\frac{3}{4}$ vote of each house.

Attached for your further information are the following documents:

- Committee Substitute to Senate Joint Resolution 24 (Rules)
- Existing Article IX, Section 17 of the Alaska Constitution
- Sectional Summary
- Sponsor Statement to CS SJR 24 (Rules)
- Talking Points for CS SJR 24 (Rules)
- 1990 Election Pamphlet information regarding the original Constitutional Budget Reserve Fund amendment
- *Hickel v Cowper*, 874 P.2d 922 (1994) in which the Supreme Court interprets "amount available for appropriation"

DD:jjj

**Existing Provision
Alaska Constitution
Article IX, Section 17**

Section 9.17 - 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.

LEGAL SERVICES

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

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

October 5, 2001

SUBJECT: Budget Reserve Fund; sectional summary for CS SJR 24(RLS)
(Work Order No. 22-LS0794\O)

TO: Senator Dave Donley

FROM: Pamela Finley 
Revisor of Statutes

Sec. 1. Amends subsection (b) of art. IX, sec. 17 (constitutional budget reserve fund). Permits transfers from the constitutional budget reserve fund to be used to fund appropriations from the unrestricted general fund if the amount otherwise available for appropriation is not sufficient to fully fund the appropriations. The amount transferred under subsection (b) is limited to that amount necessary to provide for total funding, when added to other funds available for appropriation, equal to the amount of appropriations made for the previous fiscal year. In applying this subsection, federal funds, income of the permanent fund, or constitutional budget reserve fund money is not to be considered. "Unrestricted general fund" is to be defined by law.

Sec. 2. The budget reserve fund repayment or "sweep" provision is repealed.

Sec. 3. The proposed amendments are to be submitted to the voters in 2002.

PF:glc
01-329.glc

CS SJR 24 (Rules) —Budget Reserve Fund
Talking Points
Prepared by Senator Donley's Office

- Adoption of CS SJR 24 promotes fiscal discipline and provides a more efficient budgetary process.
- CS SJR 24 clarifies the situations under which funds are withdrawn from the CBRF and restores the legislature's original intent regarding the circumstances under which a $\frac{3}{4}$ vote is required.
- The original intent of the legislature was to allow the use of the CBR by majority vote to fund no more than the level of prior year appropriations. If appropriations for the new budget year are more than the prior year's, that gap can only be filled with a CBR draw by a $\frac{3}{4}$ vote.
- The existing trigger compares revenue in the current year with appropriations from the prior year. This has little to do with determining how large a fiscal gap exists. The trigger under CS SJR 24 compares revenue and appropriations from the same fiscal year making the determination of a fiscal gap more relative to the actual situation
- CS SJR 24 clarifies that federal receipts, PF earnings and CBR are excluded from the definition of both "amount available for appropriation" and "amount appropriated." The lack of clarification under the existing provision is the root of the problem with the court interpretation of when a $\frac{3}{4}$ vote is required.
- Under CS SJR 24, transfers from the CBR which may be made by majority vote are limited to prior year appropriations less the amount available for appropriation in the current year. These funds may only be used as unrestricted GF. They cannot be used to fill gaps in program receipts or "other funds." The original resolution was written in a way that made this transfer automatic. The CS is written to provide that although not automatic, this amount of money needs approval by only a majority of each house.
- Additional CBR funds may still be made, but require approval by a $\frac{3}{4}$ vote of each house.
- CS SJR 24 also repeals the "sweep" provision. The sweep reversal is an annual requirement and failing to delete it works counter to the purpose of this change.

THE
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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 Nays 2 Senate: Yeas 15 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

Walter J. HICKEL, Governor of the State of Alaska, Darrel J. Rexwinkel, Commissioner of the Department of Revenue for the State of Alaska, and the State of Alaska, Petitioners and Cross-Respondents,

v.

Steve COWPER, Respondent
and Cross-Petitioner.

Nos. S-6294, S-6304.

Supreme Court of Alaska.

May 27, 1994.

Action was brought challenging as unconstitutional statute defining terms contained within section of the Alaska Constitution establishing budget reserve fund. The Superior Court, Third Judicial District, John Reese, J., declared statute unconstitutional, and the state petitioned for emergency review. Petitioner cross-petitioned on same issue. After granting petitions, the Supreme Court, Matthews, J., held that statute was unconstitutional because it did not provide accurate definition of constitutional terms.

Affirmed.

1. Appeal and Error \S 842(1)

Proper interpretation of a constitutional provision is a question of law to which Supreme Court applies its independent judgment.

2. States \S 131

"Amount available for appropriation" within meaning of section of the Constitution authorizing appropriation from budget reserve fund if amount available for appropriation for fiscal year is less than amount appropriated for previous fiscal year includes all monies over which legislature has retained power to appropriate and which require further appropriation before expenditure; in addition, all amounts actually appropriated, whether or not they would have been considered available prior to appropriation, are "available" within meaning of section; illiquid assets, such as land and unexploited natural

resources, are not "available" so long as they remain illiquid. Const. Art. 9, \S 17(b).

See publication Words and Phrases for other judicial constructions and definitions.

3. States \S 131

Statute defining "amount available for appropriation," for purposes of constitutional provision allowing appropriation from budget reserve fund if amount available for appropriation for fiscal year is less than amount appropriated for previous fiscal year, is unconstitutional, as it does not provide accurate definition of constitutional term; statute fails to include several funds in the "amount available for appropriation" which are in fact available within meaning of the constitutional provision, including trust receipts, "restricted accounts" within the general fund, and permanent fund earnings reserve account. AS 37.10.420(a)(1); Const. Art. 9, \S 17(b).

4. States \S 131

Statute defining term "amount appropriated for the previous fiscal year" for purposes of constitutional provision authorizing appropriation from budget reserve fund if amount available for appropriation for fiscal year is less than amount appropriated for the previous fiscal year, is unconstitutional because it does not include all actual appropriations made for previous fiscal year in the "amount appropriated for the previous fiscal year," and thus it does not accurately reflect meaning of constitutional term. AS 37.10.420(a)(2); Const. Art. 9, \S 17(b).

5. States \S 131

Statutory section defining "amount of appropriations made in the previous calendar year for the previous fiscal year" for purposes of constitutional provision authorizing appropriation from budget reserve fund if amount available for appropriation for fiscal year is less than amount appropriated for previous fiscal year, is unconstitutional, since it relies primarily on unconstitutionally limited number of appropriation sources identified in other statutory sections, and it cannot be severed from such subsections. AS 37.10.420(a)(1-3); Const. Art. 9, \S 17(b).

6. States ⇨131

Statutory section designating means by which appropriations from budget reserve fund are paid back to fund is unconstitutional because it fails to consider all amounts which are "available for appropriation" within meaning of constitutional provision. AS 37.10.420(b); Const. Art. 9, § 17(d).

James L. Baldwin, Stephen C. Slotnick, Juneau, Jenifer A. Kohout, Anchorage, Asst. Attys. Gen., and Bruce M. Botelho, Atty. Gen., Juneau, for petitioners and cross-respondents.

Douglas Pope, Thomas A. Ballantine, Wagstaff, Pope & Katcher, Anchorage, for respondent and cross-petitioner.

Before MOORE, C.J., RABINOWITZ, MATTHEWS and COMPTON, JJ., and BRYNER, J. Pro Tem.*

MATTHEWS, Justice.

OPINION

In *Hickel v. Halford*, 872 P.2d 171 (1994) (*Halford*), we addressed the meaning of the term "administrative proceeding" as used in article IX, section 17 of the Alaska Constitution.¹ This is one of the terms which de-

scribes state revenues which must be deposited into the budget reserve fund. We are now required to interpret several other key terms of section 17, including "amount available for appropriation" and "amount appropriated for the previous fiscal year." § 17(b). These terms govern the legislature's ability to withdraw from the budget reserve fund by a simple majority vote.

This case arises out of a legislative attempt to define these terms. While final decision in *Halford* was pending, the Alaska Legislature passed and Governor Hickel signed Senate Committee Substitute for Committee Substitute for House Bill 58 (FIN) (the Act). Chapter 5, SLA 1994. Section 1 of the Act amends AS 37.10 by adding new sections AS 37.10.410 and .420. Alaska Statute 37.10.410 defines what money is received as a result of the termination of an administrative proceeding under article IX, section 17(a) of the Alaska Constitution. Alaska Statute 37.10.420 defines several other key phrases and concepts used in section 17, including "amount available for appropriation," "amount appropriated for the previous fiscal year," and "amount of appropriations made in the previous calendar year for the previous fiscal year." Alaska Statute 37.10.420 also establishes the means by which appropriations from the budget reserve fund are

*Sitting by assignment made pursuant to article IV, section 16 of the Alaska Constitution.

1. Article IX, section 17 provides as follows:

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.

repaid.² Section 2 of the Act states that the provisions of section 1 "are declaratory of existing law and represent the intent of the legislature when the Sixteenth Alaska State Legislature passed [the resolution proposing the constitutional amendment creating section 17]." Ch. 5 SLA 1994.

Following passage of the Act, the current respondent and cross-petitioner, former Governor Steve Cowper, applied to this court for a limited remand in the pending *Halford* case so that he could challenge the constitutionality of the Act.³ Petitioners and cross-respondents, Governor Walter J. Hickel, Commissioner of Revenue Darrel J. Rexwinkel, and the State of Alaska (hereafter referred to as the State), applied to this court for original jurisdiction to consider the constitutionality of the Act. We granted a limited remand to the superior court so that Gov. Cowper could

move to amend his complaint in order to challenge the constitutionality of the Act.⁴

On remand, the consolidated cases were severed and Gov. Cowper was allowed to amend his complaint to allege that the Act was unconstitutional. He then moved for partial summary judgment on this question. The State also moved for a partial summary judgment declaring the Act constitutional. The superior court granted expedited consideration of the summary judgment motions. Following briefing and oral argument, the court declared the Act unconstitutional on April 8, 1994.⁵ In a written decision the superior court held that AS 37.10.420 is unconstitutional because it unduly limits the funds counted as available for appropriation. The court explained that "[i]f a simple majority vote can withdraw the funds . . . it is

2. AS 37.10.420 provides:

(a) For purposes of applying art. IX, sec. 17(b), Constitution of the State of Alaska,

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

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

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

(C) the unreserved, undesignated general fund balance carried forward from the preceding fiscal year that is not subject to the repayment obligation imposed by art. IX, sec. 17(d), Constitution of the State of Alaska; and

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

(2) "the amount appropriated for the previous fiscal year" means the amount appropriated from the

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

(B) same revenue sources used to calculate the money available for appropriation for the current fiscal year; and

(3) "the amount of appropriations made in the previous calendar year for the previous fiscal year" means appropriations made from sources identified in (2) of this subsection for a fiscal year that were enacted during the calendar year that ends on December 31 of that same fiscal year.

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

before December 16 of the following fiscal year.

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

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

3. See *Halford*, 872 P.2d at 174-76, for a full statement of the earlier proceedings in this case.

4. This court does not possess original jurisdiction over the case. AS 22.05.010. In addition, no Alaska court could normally adjudicate an action by the State seeking to have a statute declared constitutional, in the absence of the willing participation of a truly adverse party. See *Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027, 1036 (Alaska 1972) ("Parties seeking a judicial determination of a hypothetical, advisory or moot question will be denied relief.").

5. The superior court found AS 37.10.410 unconstitutional based on an inconsistency between the statute and this court's interpretation of the term "administrative proceeding" in *Halford*. The State does not challenge this portion of the court's decision in this petition.

available for appropriation . . . [unless] it belongs to someone else . . . or would not be there without the purpose and permission of the source." The superior court also ruled that AS 37.10.420(b), which provides for repayment of funds appropriated out of the budget reserve, unconstitutionally limits the source of these funds. The superior court did not attempt to identify which funds were and were not available for appropriation under section 17(b).

The State petitioned this court for emergency review of the superior court's decision with respect to AS 37.10.420. Gov. Cowper cross-petitioned on the same issue. We granted both petitions. After expedited briefing, we heard oral argument on April 22, 1994.

I. STANDARD OF REVIEW

The State argues that this court should defer to the legislature's interpretation of section 17. The State bases this argument on a "strong presumption" in favor of legisla-

tive interpretations, *State ex rel. Udall v. Colonial Penn Ins. Co.*, 112 N.M. 123, 812 P.2d 777, 783 (1991), and the presumption that statutes are constitutional, *Bonjour v. Bonjour*, 592 P.2d 1233, 1237 (Alaska 1979). Further, the disputed terms in section 17(b) involve appropriations, and the power to appropriate is wholly legislative, Alaska Const. art. IX, § 13. The State misconstrues the applicable standard of review.

The cases cited by the State do not support the proposition that courts should defer to legislative interpretations of ambiguous constitutional provisions. On the contrary, in each of the cases cited by the State, the court clearly is engaged in interpreting the constitutional provision.⁶ Nor does the legislature's role in making appropriations somehow alter or increase its authority to define constitutional terms merely because the terms contain the word "appropriation." This court retains the same power to interpret constitutional terms regardless of the subject matter of the term.⁷

6. See *Heckendorn v. City of San Marino*, 42 Cal.3d 481, 229 Cal.Rptr. 324, 327, 723 P.2d 64, 67 (1986) ("We must determine what the term 'ad valorem tax' means in Article XIII A."); *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal.3d 208, 149 Cal.Rptr. 239, 257, 583 P.2d 1281, 1300 (1978) (en banc) (discussing rules of construction used by courts in interpreting constitutional provisions); *State ex rel. Udall v. Colonial Penn Ins. Co.*, 112 N.M. 123, 812 P.2d 777, 782-83 (1991) ("We interpret our constitution to carry out its spirit."); *Coronado Oil Co. v. Grieves*, 603 P.2d 406, 411 (Wyo.1979) ("Though the legislature's interpretation of the constitution is not binding on the supreme court, we would be loath to interpret the constitution otherwise. We must give weight to legislative interpretation, though not conclusive.") (citations omitted).

7. The legislature's interpretation of the constitutional terms at issue in this case may be considered more persuasive than otherwise because of its greater familiarity with appropriations. Deference in such circumstances is at most, however, a single tool for use by this court in interpreting the constitution. If the legislature adopted AS 37.10.420 contemporaneously with its approval of the Legislative Resolve No. 129 (eventual Article IX, section 17), that would be considered a significant indication of the actual meaning of section 17. A statement by the Eighteenth Legislature of the intent of the Sixteenth Legislature would not bear great weight even if the subject was the meaning of a statute; the applicable degree of deference is lessened by the fact

that at issue is the meaning of a constitutional amendment for which the legislature is not the ultimate adopting authority. Our discussion of the weight to be afforded a subsequent legislative statement of the meaning of an earlier statute in *Hillman v. Nationwide Mut. Fire Ins. Co.*, 758 P.2d 1248, 1252-53 (Alaska 1988), is relevant here.

While the legislature is fully empowered to declare present law by legislation, it is not institutionally competent to issue opinions as to what a statute passed by an earlier legislature meant. If the legislature were in some form to declare its opinion as to the meaning of prior law, that declaration would be entitled to the same respect that a court would afford to, for example, an opinion of a learned commentator; that is, the court would examine the reasoning offered in support of the opinion and either reject or accept it based on the merit of the reasons given. . . . It is possible to argue that the legislature has knowledge superior to a disinterested commentator because there may be some legislators in the current legislature who were also members of the legislature which passed the prior law and thus have special insight into the intent of the legislature. However, the force of this is dispelled when one considers that it is not permissible to allow a legislator to testify on the question of his unexpressed legislative intent or on the unexpressed legislative intent of others.

Id. (citing *Kenai Peninsula Borough Sch. Dist. v. Kenai Peninsula Educ. Ass'n*, 572 P.2d 416 (Alaska 1977)).

[1] This court's task, therefore, is identical to that faced whenever a statutory enactment is claimed to run afoul of a constitutional provision. "Questions concerning the constitutionality of a statute are questions of law and are reviewed *de novo*." *Sun v. State*, 830 P.2d 772, 775 n. 4 (Alaska 1992). We must first determine what the constitution actually means. The proper interpretation of a constitutional provision is a question of law to which this court applies its independent judgment. *Arco Alaska, Inc. v. State*, 824 P.2d 708, 710 (Alaska 1992). We then examine the statute to see whether it conflicts with the constitutional requirement. "[S]tatutes should be construed if reasonably possible to avoid the conclusion that they are unconstitutional." *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992).

The appropriate approach to interpreting language in the Alaska Constitution is well established. "Constitutional provisions should be given a reasonable and practical interpretation in accordance with common sense. The court should look to the plain meaning and purpose of the provision and the intent of the framers." *Arco Alaska*, 824 P.2d at 710; *see also Kochutin v. State*, 739 P.2d 170, 171 (Alaska 1987).

Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe ab-

strusely any constitutional term that has a plain ordinary meaning. Rather, absent some signs that the term at issue has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision. Normally, such deference to the intent of the people requires "[a]dherence to the common understanding of words."

Citizens Coalition for Tort Reform, Inc. v. McAlpine, 810 P.2d 162, 169 (Alaska 1991) (citations omitted) (quoting *Division of Elections v. Johnstone*, 669 P.2d 537, 539 (Alaska 1983)).

II. DISCUSSION

A. "Amount Available for Appropriation"

[2] The primary issue in this case is the meaning of the term "amount available for appropriation" as used in article IX, section 17(b) of the Alaska Constitution.⁹ The State asserts, in accordance with the definition set forth in AS 37.10.420(a)(1), that the "amount available for appropriation" consists only of 1) unrestricted revenue accruing to the general fund during the fiscal year; 2) general fund program receipts as defined in AS 37.05.146;⁹ 3) the unreserved, undesignated

fore, these funds are not made dedicated funds by virtue of the Act.

9. AS 37.05.146 provides:

In AS 37.05.142—37.05.146 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other state money received by a state agency in connection with the performance of its functions; all program receipts except the following are general fund program receipts:

- (1) federal receipts;
- (2) University of Alaska receipts (AS 14.40.-491);
- (3) individual, foundation, or corporation gifts, grants, or bequests that by their terms are restricted to a specific purpose;
- (4) receipts of the following funds:
 - (A) highway working capital fund (AS 44.-68.210);
 - (B) correctional industry fund (AS 33.32.-020);
 - (C) loan funds;
 - (D) international airport revenue fund (AS 37.15.430);

8. As preliminary matters, Gov. Cowper argues that the statutes are invalid irrespective of their substantive content because (1) they violate the separation of powers doctrine; (2) they constitute an impermissible attempt by the legislature to influence an ongoing judicial controversy; (3) they intrude on the judicial realm of constitutional interpretation; and (4) the statute violates article IX, section 7's prohibition against dedicated funds. The "influencing" claim pertains entirely to AS 37.10.410 and therefore is not relevant to the present petitions which deal exclusively with AS 37.10.420. The "intrusion on the judicial realm" argument is without merit.

Gov. Cowper's argument that the Act establishes a dedicated fund is also without merit. Although the Act defines certain funds as not available for appropriation under section 17(b), it does not prohibit the executive branch from requesting that these funds be reassigned to different purposes or the legislative branch from allocating these funds differently. *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992). In addition, because the Act does not dedicate any state revenue to any particular fund, it cannot implicate the prohibitions of section 7. There-

general fund balance carried forward from the preceding fiscal year; and 4) the balance in the statutory budget reserve fund, AS 37.05.540. In addition to the program receipts excluded under AS 37.05.146, this definition excludes the funds listed in AS 37.05.-146, several other funds which have been established by the legislature,¹⁰ and the surplus assets of public corporations.¹¹ Gov. Cowper argues that the "amount available for appropriation" includes the total amount accessible by the legislature, including all of the funds and assets referred to above. Under this argument, funds are available for appropriation so long as a simple majority can make the funds available.

We reject both interpretations. The text of section 17 cannot support the State's narrow interpretation. However, Gov. Cowper's position would require a complete restructuring of the established financial system of the state government. We are unwilling to add "missing terms" to the Constitution or to

interpret existing constitutional language more broadly than intended by the framers or the voters. Instead, we consider it appropriate, as well as consistent with both the language of the amendment and the intent of the framers, to focus on the legal status of the various funds implicated in relationship to the legislative power of appropriation. The "amount available for appropriation" must include all funds over which the legislature has retained the power to appropriate and which are not available to pay expenditures without further legislative appropriation. It must also include all amounts which the legislature actually appropriates for the fiscal year, whether or not they could have been considered available prior to the appropriation.

Our analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself. We are not vested with the authority to add missing terms or hypothesize differently worded pro-

(E) funds managed by the Alaska Housing Finance Corporation (AS 18.56.020), the Alaska Railroad Corporation (AS 42.40.010), the Municipal Bond Bank Authority (AS 44.85.-020), the Alaska Aerospace Development Corporation (AS 14.40.821), or the Alaska Industrial Development and Export Authority (AS 44.88.020);

(F) fish and game fund (AS 16.05.100);

(G) school fund (AS 43.50.140);

(H) training and building fund (AS 23.20.-130);

(I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and former AS 39.37);

(J) permanent fund (art. IX, sec. 15, Alaska Constitution);

(K) public school fund (AS 37.14.110);

(L) second injury fund (AS 23.30.040);

(M) fishermen's fund (AS 23.35.060);

(N) FICA administration fund (AS 39.30.-050);

(O) receipts of the employee benefits program established under AS 39.30.150—39.30.-180;

(P) receipts of the deferred compensation program established under AS 39.45;

(Q) clean air protection fund (AS 46.14.260);

(R) receipts of the group insurance programs established under AS 39.30.090.

(S) receipts of or from the trust established by AS 37.14.400—37.14.450, except reimbursements described in AS 37.14.410.

10. These additional funds include the Railbelt energy fund, AS 37.05.520, the Alaska marine highway system vessel replacement fund, AS 37.-

05.530, the educational facilities maintenance and construction fund, AS 37.05.560, the oil and hazardous substance release response fund, AS 46.08.010, the power cost equalization and rural electric capitalization fund, AS 42.45.100, the power project fund, AS 42.45.010, the Alaska science and technology endowment, AS 37.17.-020, and the permanent fund earnings reserve account, AS 37.13.145.

11. In 1985, the Department of Law issued an informal opinion, written by Assistant Attorney General James L. Baldwin, which concluded that "unrestricted money in the [Alaska Housing Finance Corporation] revolving fund is probably available for appropriation." 1985 Informal Op. Att'y Gen. 307 at 309 (emphasis added). The Opinion recommended that the statute governing the Alaska Housing Finance Corporation (AHFC) be amended to specifically authorize interim transfers of unrestricted surplus assets of AHFC to the general fund and to provide that the board of directors annually determine the amount of surplus available for transfer. *Id.* at 310-11.

The statutes governing the AHFC and the Alaska Industrial Development and Export Authority (AIDEA) now require each organization to annually determine whether it has assets in excess of the amount required to fulfill its purposes. See AS 18.56.089(b)(1); AS 44.88.205(b)(1). Each organization must present this determination to the legislature by January 10 of each year. AS 18.56.089(b)(2); AS 44.88.205(b)(2); See Ch. 12 SLA 1991.

visions in order to reach a particular result.¹² Our task is to identify the meaning that the people probably placed on the term. *Halford*, 872 P.2d at 176. The dictionary definitions of the controlling words "amount" and "available" provide a helpful starting point. *Webster's Third New International Dictionary* defines "amount" as "a: the total number or quantity . . . ; b: the sum of individuals . . . ; c: the quantity at hand or under consideration." *Id.* at 72. Relevant definitions of "available" are "3: such as may be availed of: capable of use for the accomplishment of a purpose: immediately utilizable . . . ; 4: that is accessible or may be obtained . . . : at disposal esp. for sale or utilization." *Id.* at 150.

From similar dictionary definitions, Gov. Cowper paraphrases "amount available for appropriation" as meaning "the total funds accessible by the legislature for appropriation." He further interprets this paraphrase as meaning that all funds which the legislature can make available to itself by a majority vote, whatever their current use or designation, are "available for appropriation."¹³ At the outer limits, this construction would

12. On this basis alone, we must reject the State's plea to convert the term "amount available for appropriation," as used in section 17(b), to either "amount available for appropriation from the [unrestricted] general fund" or "revenues available for appropriation." If the definition of "amount available for appropriation" in AS 37-10.420 is to withstand constitutional scrutiny, it must be because it is in conformity with the text of section 17(b), and not because section 17(b) is missing words which would make it conform to AS 37.10.420.

13. The State argues that the "common understanding" of the phrase "available for appropriation" is more limited. It states that the term should have the same meaning in the Constitution that it has in the budget process, meaning only "revenue sources customarily considered by the legislature." The State asserts that only unrestricted revenues are so considered. To be distinguished are "restricted revenues," the use of which is restricted in some way, usually by the source of the funds, predominantly the federal government.

The State never asserts or shows evidence, however, that the term "available for appropriation" is actually used in any particular way in the budget process. Rather, it argues that the term "should be interpreted with reference to revenue sources customarily considered by the legislature

require that all net assets held by the State, however liquid, be considered available in determining whether the amount available was less than the amount appropriated for the previous year.¹⁴ Such an expansive reading of the constitutional language would render section 17(b) superfluous for all practical purposes.¹⁵ It would also involve the adoption of a radically different approach to government financing. Neither result is consistent with the purpose of the amendment, the intent of the framers, or extrinsic indications of the voters' probable understanding of section 17's terms.

Section 17(b) allows a simple legislative majority to use the constitutional budget reserve fund in order to make up the difference between the "amount available for appropriation" for a given fiscal year and the "amount appropriated for the previous fiscal year." If net state assets are included in the total amount available, then they would have to be actually expended before the budget reserve fund could be reached by a simple majority to keep spending at a constant level. Even if we consider only net assets which exist in a cash form—such as the balances contained in

when it considers the state budget." It is also not clear that the legislative definition of "amount available for appropriation" includes all monies "customarily considered by the legislature." Although it probably does include all revenues customarily considered, it may not include all amounts so considered.

14. Gov. Cowper does limit his argument to cash funds, presumably because of the relative ease with which cash funds can be converted to different purposes, as compared to illiquid assets. This is a reasonable limitation. Although we have held, in a different context, that property other than money may be "appropriated," see *McAlpine v. University of Alaska*, 762 P.2d 81, 87-89 (Alaska 1988), it does not follow that it is necessarily "available for appropriation" within the meaning of section 17(b).

There does not appear to be any significant difference, however, in the type of legislative action necessary to reach cash funds and less liquid state assets. Gov. Cowper's interpretation therefore recognizes that "available," as used in section 17(b), requires more than mere accessibility.

15. Under this interpretation, if state assets are in excess of annual appropriations, even a total lack of revenue would not allow a simple majority to withdraw from the budget reserve fund.

any one of the State's several revolving loan funds¹⁶—the existing state programs dependent on these funds would have to be curtailed if these funds were expended on another purpose. These funds are maintained, however, because in the judgment of the legislature they serve worthwhile purposes. Therefore, one of the uses the legislature presumably would want to make of the newly available money would be to reestablish these funds. Yet, to the extent that any of these funds were started and funded before the previous year, there would not be an equivalent appropriation in the previous year to balance out the appropriation required in the present year. Gov. Cowper's interpretation of section 17(b)'s majority access formula would, in effect, require reductions in the level of government service until no liquid funds remained before a simple majority could reach the budget reserve.

One of the purposes of the budget reserve amendment, however, was to provide a "stabilizing mechanism" in the budgetary process.¹⁷ The formula in section 17(b), which compares funds currently available to the amount appropriated for the previous fiscal year, and allows simple majority appropriation from the budget reserve fund to the extent necessary "to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year," Alaska Const. art. IX, § 17(b), reflects this purpose and clearly anticipates use of the budget reserve fund to maintain "equal" appropriation levels from year to year. Gov. Cowper's interpretation is inconsistent with this purpose because it would only allow simple majority access to the budget reserve fund if all state programs involving cash funds were eliminated or if

state spending were reduced by the total amount retained in such funds.

Similarly, both the legislative history of section 17 and extrinsic evidence of the voter's understanding of the amendment's provisions indicate that elimination of state services and/or liquidation of state assets was not considered a necessary prerequisite to simple majority access to the budget reserve. Both Representative Rieger and Representative Brown stated in committee that if revenues declined, a simple majority could appropriate from the fund to make up the difference.¹⁸ Statements in the voter pamphlet indicated similar conditions for appropriation. The statement in support of the amendment in the voter pamphlet states:

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[.]

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.

The statement in opposition expresses a similar understanding:

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.

(Emphasis eliminated.)

These statements demonstrate that Gov. Cowper's expansive reading of "amount avail-

16. See, e.g., AS 03.10.040 (agricultural revolving loan fund); AS 14.43.090 (scholarship revolving loan fund); AS 14.43.630 (teacher scholarship revolving loan fund); AS 16.10.340 (commercial fishing revolving loan fund); AS 42.45.010 (power project fund); AS 42.45.250 (bulk fuel revolving loan fund); AS 44.29.210 (alcoholism and drug abuse revolving loan fund); AS 44.88.400 (small business economic development revolving loan fund); AS 45.95.060 (small business revolving loan fund); AS 45.98.010 (historical district revolving loan fund).

17. See, e.g., Testimony of budget officer Mary Halloran, House Finance Comm. TR. 37, May 1, 1990.

18. See Statement of Rep. Rieger, H. Finance Comm., HFC tape 90-97, tr. at 31 (May 3, 1990) ("[I]f oil prices went to \$9, it would take a simple majority to use the Budget Reserve Fund to bring you back to what you had last year."); Statement of Rep. Brown, *Id.* at 30 ("[T]o get back to last year's spending level, a simple majority could appropriate from the budget reserve.").

able for appropriation" is not consistent with the purpose of the amendment or the probable understanding of the drafters and voters.

On the surface, these statements may appear to support the State's interpretation of "amount available for appropriation" as including only revenues received by the State within the fiscal year.¹⁹ This interpretation is, however, plainly inconsistent with the language of section 17(b). If the drafters of the amendment had intended that a decline in revenues alone would trigger access, it would have been easy to formulate a test which compared current revenues to prior revenues. The formula in section 17(b), however, compares the "amount available for appropriation" to the amount previously appropriated. In order to accept the various secondary indications of the people's possible understanding as dispositive, it would be necessary to read "amount available for appropriations" as meaning only current revenue. Yet it is clear that in the normal functioning of state government, other funds are routinely available including, at a minimum, the general fund balance carried forward. Nor is an understanding that the reserve fund could be reached by a simple majority when revenues decline necessarily inconsistent with requiring some standing funds to be considered available for appropriation. The State concedes that the statutory budget reserve and the general fund balance would have to be considered available. See 37.10.420(a)(1)(C)-(D). Eliminating even these funds from the calculation would allow majority access to the budget reserve whenever there was even the slightest decline from year to year in revenues, even if in the prior year a huge sum was left unappropriated or placed in the statutory budget reserve. The language of sec-

tion 17 and the purposes behind the establishment of the fund do not support such easy access.

The flaw in Gov. Cowper's analysis of the text of section 17(b) is in his assumption that "available" can only mean "accessible by any means." The dictionary definitions of the word indicate narrower meanings which are more consistent with the purpose and intent of the provision and with the probable understanding of the voters. As quoted above, one of the definitions of "available" is "immediately utilizable," indicating that the ease with which funds may be accessible is a factor in determining their availability. This is in accord with a common sense understanding of section 17. As demonstrated above, the purpose and common understanding of the language in section 17(b) allows the budget reserve to be used by a simple majority as necessary to maintain state appropriations at a constant level. Although all funds might be available by some means, counting funds already validly appropriated to a specific purpose as still "available" would disrupt existing state programs and would constitute an inflexible constitutional intrusion on the legislature's authority to evaluate the wisdom of particular appropriations. Although such a constitutional intrusion is conceivable, we are unwilling to read it into a provision with quite a different purpose.

It is far more reasonable to interpret "amount available for appropriation" in light of the relative consequences of and circumstances attendant in making appropriations from different sources. In this light, monies which already have been validly committed by the legislature to some purpose should not

19. The State asserts that this reading is further supported by newspaper descriptions of the amendment prior to the 1990 general election. Some of the statements in these articles do support the State's position:

If State revenues decline, money could be taken out to fill the gap. For example, let's say our state earned \$2.5 billion in fiscal year 1995. For some reason, such as a drop in production or a drop in price, we earned just \$1.5 billion in fiscal year 1996. The legislature could tap into the Budget Reserve Fund to make up the gap.

"Vote Yes on Ballot Measure No. 1," *Fairbanks Daily News-Miner*, Nov. 2, 1990, at 4; see also John Enders, "Cowper pushes for economic stability in form of state budget reserve fund," *Juneau Empire*, Oct. 25, 1990, at 3; John Enders, "Budget Reserve-Account Would Cushion State Revenue," *Anchorage Daily News*, Oct. 28, 1990, at M16; John Enders, "Ballot measure would set up budget reserve," *Fairbanks Daily News-Miner*, Oct. 22, 1990, at 6 ("[I]f state revenues fell from one year to the next the Legislature could tap the reserve to make up the difference."). These articles cannot, however, control over contrary wording in the constitution.

be counted as available.²⁰ In addition, illiquid assets owned by the state are not available so long as they remain illiquid. Given the "stabilizing" purpose of the amendment, it would make little sense to interpret section 17 as requiring the costly and time-consuming process of liquefying state assets before allowing majority access to the constitutional budget reserve fund. See *supra* note 14. The "amount available for appropriation" would include, however, all monies from which the legislature can make an appropriation and which require a legislative appropriation before they can be expended, as well as any amount which would not otherwise be counted as "available" but from which the legislature does in fact appropriate. This interpretation is consistent with the stabilizing purpose of section 17 and with the extrinsic evidence of the voter's understanding of the amendment. Most importantly, it is consistent with the text of section 17(b), as it is based on a reasonable and practical interpretation of the words of that section, in accordance with common sense.²¹

20. To do otherwise would be to continue to count sums of money as "available for appropriation" after they have been appropriated, so long as they have not been paid out or converted from cash to some other type of asset. Instead, we recognize that any given sum of money can only be appropriated once during a given time period. Of course, if an appropriation lapses or if the legislature does in fact reappropriate money from an excluded fund to another purpose, it is no longer necessary to exclude that money from the "amount available for appropriation" in order to protect the legislature's authority to make such decisions.

21. This interpretation is related to the State's argument that AS 37.10.420 properly excludes "restricted funds" because those funds, at least in part, have already been appropriated. We reject, however, the State's conception of relevant fund restrictions and the State's definition of when an amount has been validly appropriated. Therefore, our definition of the "amount available for appropriation" includes several funds excluded by the statutory definition.

22. "Trust receipts" include all funds, whatever the source, which the State can only use for a specific stated purpose under applicable law. The largest "trust receipt" category is federal funding, which may only be appropriated by the State for the purposes prescribed by the federal government. Private entities may also grant the

This definition necessarily includes all amounts which are in fact appropriated for a fiscal year, including "trust receipts."²² There is nothing in the text or history of section 17 which would justify classifying money actually appropriated as *unavailable* for appropriation.²³

The State argues that "[s]ound policy" requires that these trust receipts be excluded because they "are not available for discretionary appropriation by the legislature." Even if we were to agree that policy considerations favored a system which compared only amounts available for discretionary appropriation to the previous year's appropriations from such amounts, we could not impose that policy choice on a differently worded constitutional provision.

Moreover, it is not clear that excluding these receipts would constitute a better policy. The appropriations made from these receipts represent a significant portion of state spending. The purposes to which these funds are restricted include many core state government functions, including education,

State money to use for specific purposes. State appropriations from trust accounts, such as the Public Employees Retirement Fund, for purposes relating to the trust, such as fund administration, are also properly characterized as trust receipts. Although the amount of the appropriation is apparently set by the legislature, it must be made in accordance with trust principles. Therefore, the amount which the legislature appropriates in accordance with trust principles is the amount available to the legislature for such appropriation. Finally, amounts appropriated by the legislature out of other funds within executive agencies for purposes of administering these funds, under explicit statutory authority, may also be treated as a type of trust receipt. See, e.g., AS 03.10.040(b) (agricultural revolving loan fund); AS 16.10.340 (commercial fishing revolving loan fund); AS 45.95.060(o) (small business revolving loan fund). Although these funds are not trust funds, the statutes do limit legislative authority to appropriate from them.

23. Money appropriated from the AHFC and the AIDEA therefore must be counted as available for appropriation. However, money which either organization determines to be in excess of the amount required to fulfill its purposes, see AS 18.56.089(b)(1); AS 44.88.205(b)(1), should not be counted unless actually appropriated to another purpose or transferred to the general fund. The statutes do not automatically transfer these funds out of the respective organizations.

health, social services, public safety, and transportation. See State of Alaska, Dep't of Revenue, *Revenue Sources Book* (Fall 1993) at 54 (listing historical grants-in-aid by category). Because these funds are an integral part of the State's annual spending, changes in the amounts received would certainly affect other budget decisions. Policy considerations therefore appear to favor including trust receipts in the amount available, so that, for example, declines in federal funding might result in increased access to the budget reserve fund. The budget reserve amendment does anticipate that all budget decisions be made in relation to one another. We need not choose between these alternative policies, however. Regardless of which policy argument is in fact more compelling, the text of section 17(b) clearly requires that all funds which are in fact appropriated be counted as "available for appropriation."

The key question in applying our interpretation of the term "amount available for appropriation" to particular funds²⁴ is what constitutes a valid appropriation such that the funds involved are no longer available. "Appropriation" is defined as

something that has been appropriated; *specif.*: a sum of money set aside or allotted by official or formal action for a specific use (as from public revenue by a legislative body that stipulates the amount, manner, and purpose of items of expenditure).

24. In this regard, the State argues that the question of whether funds outside the unrestricted general fund are "available for appropriation" is "not justiciable in a court of law." To the extent the State argues that this court cannot decide the meaning of the term "available for appropriation" or the legal status of different funds under this definition, its position is without merit. The meaning of the constitution and its application to particular facts are questions squarely within the jurisdiction and inherent power of the judiciary. "[T]he judicial branch of government has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including compliance by the legislature." *Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982). The State's error is in assuming that the "power of appropriation necessarily includes the power to determine what amounts are available to finance appropriations enacted." Compare *Aboud v. Gorsuch*, 703 P.2d 1158, 1161-62 (Alaska 1985) ("What quorum is necessary for the

Webster's Third New Int'l Dictionary 106 (1969). *Black's Law Dictionary* defines "appropriation" as

[t]he act of appropriating or setting apart; prescribing the destination of a thing; designating the use or application of a fund

....

In governmental accounting, an expenditure authorized for a specified amount, purpose, and time.

....

Public law. The act by which the legislative department of government designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, or to some individual purchase or expense. Authority given by legislature to proper officers to apply distinctly specified sum from designated fund out of treasury in given year for specified object or demand against the state.

Black's Law Dictionary 101-02 (6th ed. 1990); see generally *McAlpine v. University of Alaska*, 762 P.2d 81, 87-88 (Alaska 1988) (discussing definitions of "appropriation").

In *Thomas v. Rosen* we cited with approval the following definition of appropriation by the Wisconsin Supreme Court:

An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such man-

confirmation votes is a question of Alaska constitutional law. It is therefore a question to which the nonjusticiability doctrine does not apply."). Although the court cannot say what particular funds should be used for appropriations, or set the amount of appropriations, it can and must determine the status of particular funds when such a determination is necessary for constitutional interpretation or enforcement.

The State is correct, however, insofar as it asserts that decisions to appropriate certain funds and withdraw other appropriations are political questions. All this means, however, is that the court cannot second guess the wisdom of individual appropriation or non-appropriation decisions. This limitation supports a definition of "available for appropriation" which does not require amounts validly appropriated to specific purposes to be counted. As these amounts have already been appropriated, counting them as available is functionally equivalent to questioning the wisdom of the original appropriation.

ner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other. 569 P.2d 793, 796 (Alaska 1977) (quoting *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622, 624 (1936)). Finally, in *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, in determining that a local initiative did not make an appropriation, we asked "whether the initiative would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action." 818 P.2d 1153, 1157 (Alaska 1991).

Under these definitions, it is clear that one of the fundamental characteristics of an appropriation, in the public law context, is that it authorizes governmental expenditure without further legislative action. Therefore, funds established by the legislature which may be used to pay state expenditures without further legislative action are not available for appropriation, to the extent that expenditures are authorized. This is true regardless of whether the fund is nominally established within the general fund or within a state agency. For example, the oil and hazardous substance release response fund is a restricted fund within the general fund. AS 46.08.010. The commissioner of environmental conservation is authorized to

use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment.

AS 46.08.040(a). The entire balance of the fund could potentially be used by the com-

25. AS 46.08.040 lists eight other purposes for which the commissioner of environmental conservation may use money from the fund. See AS 46.08.040(a)(2)-(7) and (d)(1)-(2). Except as provided for in AS 46.08.040(d)(1), however, expenditures for these purposes are limited to amounts available from appropriations made specifically for the purposes listed. AS 46.08.

missioner of environmental conservation under this provision without any further authorization by the legislature.²⁵ In addition, AS 46.08.040(b) authorizes the governor to use money from the fund to respond to an oil or hazardous substance discharge emergency during the effective period of such an emergency declared under AS 26.23.020(c). Because the legislature has made the entire balance of this fund available for expenditure, the amounts deposited into the fund are validly appropriated and therefore no longer available for appropriation.

On the other hand, funds which require further legislative appropriation before expenditures can be made against them are available for appropriation. Thus, the Railbelt energy fund, AS 37.05.520, the Alaska marine highway system vessel replacement fund, AS 37.05.550, and the educational facilities maintenance and construction fund, AS 37.05.560, remain "available for appropriation," within the meaning of section 17(b). Each of these funds has the same general structure. Each is established as a "restricted" fund within the general fund, and each consists of money "appropriated" to it by the legislature. AS 37.05.520, .550(a), .560(a). These initial appropriations, however, are not sufficient to support any expenditure. Further legislative appropriations are necessary. See AS 37.05.520 ("The legislature may appropriate money from the fund for programs, projects, and other expenditures to assist in meeting Railbelt energy needs, including projects for retrofitting state-owned buildings for and facilities for energy conservation."); AS 37.05.550(a) ("The legislature may appropriate money from the fund for refurbishment of existing state ferry vessels, or replacement of retired or outmoded state ferry vessels."); AS 37.05.560(b) ("Money in the fund may be appropriated (1) to finance the design, construction, and maintenance of public school facilities; and (2) for mainte-

040(c). AS 46.08.040(d)(1) provides that the commissioner of environmental conservation shall, upon request of the Alaska Legislative Council, "use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances."

nance of University of Alaska facilities."').²⁶ Because the initial "appropriations" to these funds cannot support any expenditure, the money in these funds remains "available for appropriation" until further appropriations are made.²⁷

A similar analysis applies to the permanent fund earnings reserve account (earnings reserve account), AS 37.13.145. This fund is established as a separate account within the permanent fund under the authority of the last sentence of Article IX, § 15 of the Alaska Constitution: "All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law." AS 37.13.145(a) provides otherwise: "The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited by the corporation into the account as soon as it is received." Therefore, money in the earnings reserve account never passes through the general fund, and is never appropriated as such by the legislature.

A percentage of the money in the reserve account is automatically transferred to the

dividend fund at the end of each fiscal year, AS 37.13.145(b). After that transfer has been made, an additional amount is transferred from the earnings reserve account to the principal of the permanent fund in order to "offset the effect of inflation on principal of the fund." AS 37.13.145(c). No regular provision is made for amounts in the earnings reserve account in excess of that necessary to fund dividends and inflation proof the permanent fund principal. Absent an appropriation, this excess accumulates from year to year. The unencumbered balance of this account was \$1.087 billion as of February 28, 1994.

The balance remaining in the earnings reserve account each year after the dividend and inflation-proofing transfers have been made is liquid, has never been appropriated by the legislature, and is not subject to expenditure without further legislative action. There are no statutory or constitutional prohibitions against direct appropriations from this account.²⁸ The earnings reserve account is therefore available for appropriation.²⁹

26. The lists of specific purposes in each statute for which these second appropriations "may" be made are not sufficient to make the assignment of money to these funds "appropriations." Further appropriations are necessary before expenditures can be made. In addition, we have previously recognized that statutory statements that the legislature "may" appropriate money from funds within the general fund for specific purposes "impose no legal restraint on the appropriations power of the legislature." *Sonneman v. Hickel*, 836 P.2d 936, 939-40 (Alaska 1992).

27. In a hybrid situation, where expenditures can be made from part but not all of a fund, the fund is not available for appropriations to the extent that it is subject to expenditure without further legislative approval. We express no opinion on the possible status of funds which technically are subject to full expenditure, but which are funded well beyond any reasonably expectable need, as there is no evidence in the record before us that any such fund exists.

We also make no attempt to name and classify as "available" or "unavailable" every fund within the treasury of the State of Alaska. We leave it, in the first instance, to executive and legislative branch officials more familiar with all of the funds involved to apply the general definition we adopt today.

28. In a May 1990 memorandum describing the budget reserve amendment, budget officer Mary

Halloran states that the amount available for appropriation includes "all revenue sources, such as permanent fund earnings, federal funds and other restricted funds."

In addition, the language of section 17, and specifically the difference in language between sections 17(b) and (d), suggests that at least some funds outside the general fund may be available for appropriation. Compare § 17(b) ("the amount available for appropriation for a fiscal year") with § 17(d) ("the amount of money in the general fund available for appropriation").

29. In oral argument before the superior court, the State argued that the earnings reserve account should not be considered available because, under current projections of the Alaska Permanent Fund Corporation, the entire balance will be used for dividend payments and inflation proofing by the year 2010. This argument rests on reasoning similar to that which prompted us to conclude that the oil and hazardous substance release response fund was not available for appropriation: the entire account may be expended without further legislative action. Unlike the release response fund, which may be needed for expenditure at any time, the earnings reserve account balance will not be used for many years to come. In the meantime, there are no restrictions on its use. Something more than a possibility of future use is necessary before a fund is considered no longer available for appropriation.

[3] Alaska Statute 37.10.420 fails to include several funds—including trust receipts, “restricted” accounts within the general fund which require further legislative appropriation before they can be expended, and the permanent fund earnings reserve account—in the “amount available for appropriation” which are in fact available within the meaning of article IX, section 17 of the Alaska Constitution. It therefore does not provide an accurate definition of the constitutional term. Therefore, although we differ from the superior court in our analysis of the “amount available for appropriation,” we affirm the superior court’s decision declaring AS 37.10.420(a)(1) unconstitutional.

In summary, the “amount available for appropriation” within the meaning of article IX, section 17 of the Alaska Constitution includes all monies over which the legislature has retained the power to appropriate and which require further appropriation before expenditure. In addition, all amounts actually appropriated, whether or not they would have been considered available prior to appropriation, are available within the meaning of section 17. Illiquid assets, such as land and unexploited natural resources, are not available so long as they remain illiquid. For these reasons, trust receipts are available for appropriation, as are funds like the Railbelt energy fund and the educational facilities maintenance and construction fund, which are not available for expenditure without additional appropriations. In contrast, the oil and hazardous substance release response fund is not counted as available because the entire balance of the fund may be expended at any time without further legislative action. The availability of funds not specifically discussed in this opinion must be determined in accordance with this opinion. Finally, the permanent fund earnings reserve account must be counted as available for appropriation, because appropriations may be made from it and it is not subject to expenditure without legislative action.

30. This amount would include appropriations made from the constitutional budget reserve fund. It would not include “appropriations” made to funds from which additional appropriations are necessary before expenditures can be made. If the legislature both appropriates mon-

B. “Amount appropriated for the previous fiscal year”

[4] The meaning of the term “amount appropriated for the previous fiscal year” in article IX, section 17(b) of the Alaska Constitution follows logically from the definitions of the word “appropriation” listed above. The “amount appropriated for the previous fiscal year” means all amounts set aside for the previous fiscal year by the legislature “for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action.” *Fairbanks Convention and Visitors Bureau*, 818 P.2d at 1157. In short, the “amount appropriated” includes every dollar appropriated by the legislature, whatever its source.³⁰ Because our definition of the amount available for appropriation includes all amounts actually appropriated, it is unnecessary to exclude artificially any amount actually appropriated from the “amount appropriated” in order to achieve symmetry in the comparison. The State correctly argues that this symmetry is necessary in order to insure that the comparison required by section 17(b) fairly measures the need for access to the budget reserve fund. Contrary to the State’s argument, however, symmetry can be obtained without abandoning the plain meaning of the words used in the constitution. Because AS 37.10.420(a)(2) does not include all actual appropriations made for the previous fiscal year in the “amount appropriated for the previous fiscal year,” it does not accurately reflect the meaning of the constitutional term. We therefore affirm the superior court’s decision declaring AS 37.10.420(a)(2) unconstitutional.

C. “Amount of appropriations made in the previous calendar year for the previous fiscal year”

[5] Alaska Statute 37.10.420(a)(3) defines the “amount of appropriations made in the previous calendar year for the previous fiscal

ey into a fund which is not available for appropriation and removes money from the same fund to appropriate to a different purpose in the same year, the amounts should be offset so that the same amount of money is not counted twice in determining the total amount appropriated.

year" in terms of the unconstitutionally limited number of appropriation sources identified in subsection (a)(2) of the statute, which itself relies primarily on the sources identified in subsection (a)(1). It cannot be severed from these subsections and therefore is also unconstitutional, as the superior court properly held.

This term is meant to prevent the legislature from increasing prior year appropriations in order to increase access to the budget reserve in the present year.³¹ Other than its unduly narrow interpretation of what counts as an appropriation, the definition of the term in AS 37.10.420(a)(3) appears to be consistent with this purpose. The "amount of appropriations made in the previous calendar year for the previous fiscal year" means the amount of all appropriations made in the calendar year in which the previous fiscal year began.

D. Constitutionality of AS 37.10.420(b)

[6] Alaska Statute 37.10.420(b) designates the means by which appropriations from the budget reserve fund are paid back to the fund. Article IX, § 17(d) provides:

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.

Pursuant to the authority granted it by § 17(d), the legislature enacted AS 37.10.420(b), which provides:

If the amount appropriated from the budget reserve fund has not been repaid under art. IX, sec. 17(d), Constitution of the State of Alaska, the Department of Admin-

31. See Halloran memorandum, at 5 ("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 ... could be made in order to increase the allowable size of a Budget Reserve Fund appropriation for the fiscal year being budgeted.")

32. We see no reason to give "available for appropriation" a different meaning in subsection (d)

istration shall transfer to the budget reserve fund the amount of money comprising the unreserved, undesignated general fund balance to be carried forward as of June 30 of the fiscal year, or as much as necessary to complete the repayment. The transfer shall be made on or before December 16 of the following fiscal year.

This definition excludes restricted funds within the general fund from the calculation of the amount available to pay back appropriations from the budget reserve fund. As discussed above, some of these funds remain "available for appropriation" within the meaning of section 17.³² Although the constitution gives the legislature authority to implement subsection (d), the legislature's authority must be exercised within the constraints of subsection (d)'s own requirements. Because AS 37.10.420 fails to consider all amounts which are "available for appropriation" within the meaning of section 17 in determining the State's repayment obligation, it is unconstitutional. The superior court's decision declaring AS 37.10.420(b) unconstitutional is therefore affirmed.

III. CONCLUSION

The decision of the superior court is AFFIRMED, for the reasons stated in this opinion.



than we did in subsection (b). We recognize, however, that the payback provision in section 17(d) is limited to only those funds which are "available for appropriation" and "in the general fund." Thus, available amounts outside the general fund, such as the earnings reserve account, need not be deposited in the budget reserve. This additional limitation has no effect on funds which exist within the general fund.



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Quotes from the 1990 Voters Guide Statement on the Budget Reserve Constitutional Amendment in 1990

In 1990, the voters approved the Budget Reserve Constitutional Amendment which created the Constitutional Budget Reserve Fund (CBRF). In the ballot measure presented to the voters, there were several references to how the fund could be used. The statements clearly indicate that the intent was that in years where there is a budget shortfall, monies from the CBRF can be accessed by a simple majority vote.

- The ballot language explanation prepared by the Lt. Governor's office said, in part,
"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 summary prepared by the Legislative Affairs Agency said, in part,
"Appropriations may be made from the fund if money available for a fiscal year is less than the amount appropriated for the prior year."
- The Statement in Support of the Ballot Measure said, in part,
"Ballot Measure 1 is the first step Alaskans can take to effectively control state spending." and "revenues are less than the amount appropriated in the previous year, in which case money could be appropriated from the Budget Reserve in an amount not to exceed the shortfall".

These statements were signed by Senator Faiks and Representatives Brown and Randy Phillips.

- The Statement in Opposition to the Ballot Measure said, in part,
"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 statement was signed by Representative Martin.
- In addition, in 1994, the Legislature passed AS37.10.420, which reiterated that CBR funds could be used in this manner with a simple majority vote.

Prepared By Senator Donley

Co-Chair: Senate Finance Committee

Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SJR 24
(S) Publish Date: 4/23/01

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title: Constitutional Amendment relating to the BRU: Elective Operations
budget reserve fund Component: Elections
Sponsor: Senate Finance Committee
Requester: Senate Finance Committee Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	1.5	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	1.5	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenuniai Phone 465-3935
Division: Division of Elections Date/Time 04/10/01 4:28PM
Approved by: Lieutenant Governor Fran Ulmer Date 04/10/2001
Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office

05/02/01	<u>1443</u>	(S)	READ THE THIRD TIME CSSJR 24(RLS)
05/02/01	<u>1444</u>	(S)	HELD IN THIRD READING TO 5/3 CALENDAR
05/03/01	<u>1472</u>	(S)	HELD IN THIRD READING TO 5/4 CALENDAR
05/04/01	<u>1503</u>	(S)	BEFORE THE SENATE IN THIRD READING
05/04/01	<u>1503</u>	(S)	PASSED Y14 N6
05/04/01	<u>1504</u>	(S)	ELLIS NOTICE OF RECONSIDERATION
05/05/01	<u>1527</u>	(S)	RECON TAKEN UP - IN THIRD READING
05/05/01	<u>1527</u>	(S)	PASSED ON RECONSIDERATION Y14 N6
05/05/01	<u>1559</u>	(S)	TRANSMITTED TO (H)
05/05/01	<u>1559</u>	(S)	VERSION: CSSJR 24(RLS)
05/05/01	<u>1571</u>	(H)	READ THE FIRST TIME - REFERRALS
05/05/01	<u>1571</u>	(H)	JUD, FIN
05/05/01	<u>1571</u>	(H)	REFERRED TO JUDICIARY
10/19/01	<u>Text</u>	(H)	JUD AT 11:00 AM Anch LIO Conf Rm

Similar Subject Match or Exact Subject Match

APPROPRIATIONS

BUDGET RESERVE FUND

CONSTITUTIONAL AMENDMENTS

PUBLIC FINANCE

Bill Root:

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Senate FINANCE Minute



Apr 17, 2001

SENATE JOINT RESOLUTION NO. 24
Proposing amendments to the Constitution of the State of
Alaska relating to the budget reserve fund.

This was the first hearing for this resolution in the Senate Finance Committee.

Co-Chair Donley detailed the history of the CBR. He surmised that this resolution would restore "the original intent" of the constitutional language. He stated it would also clarify the conditions under which funds are drawn from the CBR and when a three-quarters legislative vote is required.

Co-Chair Donley explained that currently a three-quarters vote is determined by a comparison of revenue in the current fiscal year with appropriations from the prior fiscal year. He stressed that this has little to do with the size of the fiscal gap. He detailed how the proposal compares revenue and appropriations from the same fiscal year, thus making a more accurate determination of a fiscal gap.

Co-Chair Donley informed the intent of the existing CBR constitutional amendment is in years where the legislature is proposing to spend less than in a previous year, the CBR could be accessed by a simple majority vote. He continued that if a legislature proposed to spend more than in the previous year, a three-quarters vote would be necessary to draw from the CBR to fund the extra spending.

Co-Chair Donley remarked that this creates a "natural limitation" on the growth of government by requiring three-quarters of legislators agree that the increased spending was necessary.

Co-Chair Donley spoke to court cases dealing with interpretation of the original constitutional amendment. He said that the court granted a more expansive definition of funds available for appropriation than the legislature normally considers during the budget process. As a result, he said the three-quarters vote is now needed even if spending is not higher than in the previous year. He noted that in the past five years, the spending was not higher, yet the three-quarters vote was required to access funds from the CBR to balance the spending.

Co-Chair Donley asserted that the dynamic that occurred is "the exact opposite from what was intended by the Republican minority" when the original constitutional amendment was proposed. This dynamic, he expressed is that the three-quarters vote has been used by the current minority to encourage additional spending on additional items. He concluded that the original intent has changed from establishing a method to limit government growth to a vehicle almost requiring growth.

Co-Chair Donley continued that the situation was even worse because of a "sweep provision" included in the original CBR language. This provision he detailed, stipulates that even if the CBR funds are

not required to balance the budget in a particular year, such as when oil revenues were high, money borrowed in previous years must be paid back into the CBR and a three-quarters vote is needed to do so. He stressed that because the legislature has withdrawn several billion dollars from the CBR in the past, the three-quarters vote is required each year to avoid the sweep provision, which would confiscate all non-general fund revenues for deposit into the CBR as payment toward the debt.

Co-Chair Donley opined that although the CBR has been successful as a savings account, the mechanism to access this account is flawed and does not operate as originally intended.

Co-Chair Donley addressed the resolution, explaining that it revises the CBR constitutional amendment clarifying that in years with proposed spending less than the prior year, the CBR could be accessed with a simple majority vote and also eliminates the sweep provision. He noted that the three-quarters legislative vote would still be necessary in years of increased spending.

Co-Chair Kelly asked what would happen if the three-quarter vote to appropriate money from the CBR failed, but the appropriation legislation passed.

Co-Chair Donley replied that the sweep provision would apply. He stressed that while, "a lot of people would not like the consequences of the sweep, life would go on."

Co-Chair Kelly remarked the reason for hearing this resolution at this time is to begin debate on the issue. He did not want the legislature to be allowed to have "a runaway budget" and opined that future legislatures would benefit from the restraint exercised in the past few years.

Senator Austerman stated that the entire CBR has been "a thorn in my side" since he was first elected to the legislature. He did not think the current method operates as it was originally intended and instead functions as a savings account used to balance the state budget each year. He surmised that the intent of the fund was to provide a buffer for years of hardship, such as in 1986 when the oil prices dropped. He understood that each year the legislature would be required to prepare and approve a budget and would argue over it, but suggested that at least guidelines could be put in place.

Co-Chair Kelly stated that SJR 23 was an appropriate first step in getting the public to consider different funding sources.

Senator Ward shared recent discussions on the CBR he participated in while in his district. He said the conversation expanded to include future revenue from oil development and other sources. He stated that the public must know that there is a spending plan.

Co-Chair Kelly ordered the resolution HELD in Committee.

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BASIS HAS BEEN RE-PROGRAMMED THIS YEAR



Senate FINANCE Minute



Apr 23, 2001

SENATE JOINT RESOLUTION NO. 24

Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund.

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Donley testified this resolution would reform the language governing the Constitutional Budget Reserve fund (CBR) in the Alaska Constitution (Article IX, Section 17). He stated that when the constitutional amendment creating this section was initially proposed, the intent was that the CBR could be accessed by a simple majority vote of the legislature in years where the amount of general fund spending was not higher than the previous year's spending. However, in a series of rulings, he pointed out the court "misinterpreted the meaning of the language of 'all funds available' or 'unrestricted funds'". The resulting definition, he said, requires a three-quarters vote every time the CBR is accessed.

Co-Chair Donley opined, "This turned the intent of the amendment effectively on its head" and transformed it from a vehicle to restrain state spending into "a vehicle that actually promotes increased state spending." He explained any group of legislators constituting at least one-fourth of either the House of Representatives or the Senate could "force additional spending to occur" by refusing to vote for the CBR draw until their budget requests are included. He stated this reverses the original intent of the constitutional amendment approved by the voters.

Co-Chair Donley informed this resolution clarifies the language in the constitution to allow the provision to function as originally intended. He detailed that in years of spending higher than in the previous year, the three-quarters vote would be necessary to access the CBR.

Co-Chair Donley noted the "sweep provision" is removed from the constitution by this resolution. He defined the provision, saying that without a specific three-quarters vote, non-general funds, such as from the Marine Highway System and Aerospace development, are used to repay the CBR for previous withdrawals. He stated that this provision is "unpalatable" to those working in the state government as well as most Alaskans, who would be "injured" from reductions to the affected programs.

Co-Chair Donley summarized that the resolution corrects an "erroneous court interpretation of amounts available for appropriation language." He remarked this would help restrain the current practice of a small group of legislators forcing increased spending, resulting in a "more fiscally responsible system that reasonably allows access" to the CBR in those years the legislature "exercises fiscal discipline" and does not spend more than in the previous year.

Co-Chair Kelly asked for clarification of how this resolution

addresses the sweep provision.

Co-Chair Donley answered the provision is removed from the constitution thereby eliminating the necessity of a three-quarter vote to prevent "the sweep."

Senator Austerman understood the current system requires a three-quarter vote to draw from the CBR. He cited language deleted from the constitution shown on page 2, lines 5 and 6 of the committee substitute, "less than the amount appropriated for the previous fiscal year, an appropriation may be made". He asked if the amount were higher than the previous year, would the three-quarter vote still be necessary.

Co-Chair Donley responded if the legislature adopts a budget that spends more than the amount of general funds available for that fiscal year, a three-quarters vote would be required in order to withdraw the remaining amount from the CBR.

Senator Austerman asked for the section in the resolution that addresses the three-quarter vote.

Co-Chair Donley referred to the existing language in the constitution.

AT EASE 9:20 AM / 9:25 AM

Co-Chair Kelly understood the resolution allows the legislature to draw from the CBR without a three-quarter vote if the general fund spending is no more than that of the previous year. He continued that if the spending were higher, a three-quarter vote would be necessary. He explained funds could be withdrawn from the CBR, without a three-quarter vote, to pay the difference between the amount of general funds available and the total spending from the previous year. He commented that this would eliminate "the dance that we go through down here" to secure necessary votes for the CBR draw.

Co-Chair Kelly opined the sweep provision is "probably the most threatening" aspect of the CBR language currently in the constitution.

Senator Olson spoke to concerns that in a few years, the CBR would be exhausted. He asked how this resolution guarantees cost savings or increases the longevity of the fund.

Co-Chair Donley noted the CBR had been expected to decline in the past few years, but that it actually has grown to a projected \$3 billion at the end of the current fiscal year. He agreed the fund is still projected to decrease in the upcoming several years and remarked this resolution would protect the CBR in multiple ways and would "reverse the whole presumption of access to the CBR." He reiterated the current system "forces more spending" and larger withdrawals from the CBR because "certain elements in the legislature" "blackmail" the majority until their spending items are included in the budget. Under the proposed constitutional amendment, he continued, this practice could only occur during years of increased general fund spending. He read language from page 2, lines 7 through 12 of the committee substitute to demonstrate: "However, the amount transferred from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total funding equal to the amount of appropriations made for the previous fiscal year." He stated spending could "fill in the gap" from the previous year but that a three-quarters vote would be required for

any additional spending. This, he stressed, would "hold down" withdrawals from the CBR thus making the fund last longer.

Senator Wilken asked for clarification that the withdrawal from the CBR would be automatic, provided the amount of spending was no greater than in the previous year.

Co-Chair Donley specified a majority vote is required to pass the budget and would serve as approval to withdraw funds from the CBR.

Senator Green expressed that she hoped this resolution would provide an incentive to spend less.

Co-Chair Donley affirmed it would be by preventing "a very small number of legislators to force higher spending" than in the previous year by "utilizing the courts' misinterpretation of the original intent of the CBR language."

Co-Chair Kelly emphasized, "the beauty of it is that we are able to fight over just the increases," which he said was the original intent of the constitutional amendment.

Senator Green referred to page 2, lines 12 through 14 of the committee substitute, "For purposes of applying this subsection, amounts available for appropriation or appropriated from federal funds, income of the permanent fund, or this budget reserve fund may not be considered." She asked if this should include retained earnings, such as from the Alaska Housing Finance Corporation or the Alaska Development and Export Authority as exclusions. She noted the court excluded these earnings in Hickle vs. Halford and was concerned whether the court would reverse itself if the items were left out of the resolution if it was adopted.

Co-Chair Kelly recalled that the matter of corporate receipts was discussed in relationship to the spending limit during a previous meeting. Because of this, he wanted to merge this resolution with SJR 23, Constitutional Amendment: Appropriation Limit, but that there were title restraints preventing this.

Co-Chair Donley responded the issue is addressed in language on page 2 lines 14 and 15 of the committee substitute, "For the purposes of this subsection, 'unrestricted general fund' shall be defined by law." This he explained, "leaves it to the legislature to, by statute, have the flexibility to define that question." He reminded that the legislature had passed a law providing this definition after the constitutional amendment was first adopted in 1990. He stated this law was consistent with the original intent of the amendment however the court overturned it and "adopted their own interpretation of the definition" of unrestricted general funds.

Senator Hoffman posed a scenario of an initial appropriation that is no greater than that of the previous year's spending until supplemental funds are appropriated thus raising the total amount above the limit. He asked if the supplemental budget would require a three-quarter vote in this situation.

Co-Chair Donley surmised a three-quarter vote would be required to access those CBR funds because the spending occurs within the same fiscal year and exceeds that of the previous year. He noted if the original budget were low enough to allow for a supplemental appropriation, the three-quarter vote would not be required.

Co-Chair Kelly shared that he wished the resolution to continue.

Co-Chair Donley offered a motion to move SJR 24 from Committee with a zero fiscal note from the Office of the Governor, Division of Elections.

There was no objection and the bill MOVED from Committee.

Bill Root:

BASIS HAS BEEN RE-PROGRAMMED THIS YEAR



TO REPORT PROBLEMS WITH BASIS INQUIRY

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Senate RULES Minute



May 01, 2001

SJR 24-AMEND CONSTITUTIONAL BUDGET RESERVE FUND

SENATOR COWDERY moved to adopt CSSJR 24(RLS), Version L, as the working document of the committee. There being no objection, the motion carried.

SENATOR DAVE DONLEY, Co-Chair of the Senate Finance Committee, sponsor of SJR 24, explained the intent of this constitutional amendment is to restore the original intent of the constitutional budget reserve (CBR) as adopted. The original draft of the legislation contained a provision for an automatic draw from the CBR for the amount of money in the budget that was less than or equal to the prior year's appropriation. That was not requested by the Senate Finance Committee. The Committee debated that provision and worked with the Legislative Finance Division. All agreed it would be better to have a separate simple majority vote for the withdrawal of CBR funds. That is the only change made to the Senate Rules Committee substitute.

CHAIRWOMAN PEARCE asked if there would be a separate section that would trigger another CBR vote.

SENATOR DONLEY answered there would probably be a separate section in the budget that would require a separate vote to withdraw money from the CBR.

There being no further questions or testimony, SENATOR COWDERY moved to calendar all Senate versions of SJR 24.

SENATOR ELLIS objected.

The motion to calendar all Senate versions of SJR 24 carried with Senators Cowdery, Phillips, Therriault and Pearce voting "yea," and Senator Ellis voting "nay."

Bill Root: Display Bill Root

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Subject: Comments on SJR 24

Date: Mon, 04 Feb 2002 12:23:03 -0900

From: "Luke Hopkins" <lhopkins@fs.uaf.edu>

Organization: UAF Facility Services

To: Heather_Nobrega@legis.state.ak.us

HJC Members,

I am requesting the House Judiciary not pass this resolution out of committee. I do not support the ability of any legislature, whatever the current political make up, be able to take money out of the budget reserve on a smaller majority vote. I want to maintain a 3/4 vote required to "dip" into the reserve.

Thank you

Luke Hopkins

PO Box 81622

Fairbanks, AK 99708