

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MADILYN SHORT, RILEY VON
BORSTEL, KJRSTEN SCHINDLER,
and JAY-MARK PASCUA,

Plaintiffs,

v.

GOVERNOR MICHAEL J.
DUNLEAVY
in his official capacity, THE
STATE OF ALASKA, OFFICE OF
MANAGEMENT AND BUDGET, and
THE STATE OF ALASKA,
DEPARTMENT OF
ADMINISTRATION,

Defendants.

Case No. 3AN-22-04028CI

**ORDER DENYING PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND GRANTING
DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT**

Plaintiffs brought this lawsuit challenging Defendants' decision to sweep all of the Higher Education Investment Fund into the Constitutional Budget Reserve pursuant to article IX, section 17(d) of the Alaska Constitution. Both parties have moved the Court for summary judgment on this issue. The Alaska Legislative Council, acting on behalf of the Alaska Legislature, filed a Brief of Amicus Curiae effectively opposing Defendants' Cross-Motion for Summary Judgment. As will be explained below, the Higher Education Investment Fund is "in the general fund" and is "available for appropriation," making it

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subject to the sweep by Defendants. Therefore, the Court **DENIES** Plaintiffs' Motion for Summary Judgment and **GRANTS** Defendants' Cross-Motion for Summary Judgment.

Background

I. The Congressional Budget Reserve

In 1990, the Alaska Legislature drafted a proposed amendment to the Alaska Constitution, article IX, section 17, (section 17) which would create the Congressional Budget Reserve (CBR).¹ Section 17 was placed on the November 1990 ballot after being approved by legislative resolution.² The voters ultimately voted in favor of section 17 and the CBR was created.³ Section 17 contains four sections which reads in full:

(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

¹ *Hickel v. Halford*, 872 P.2d 171, 172 (Alaska 1994).

² *Id.*

³ *Id.*

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.⁴

In short, section 17 created a government savings account accessible by the legislature under two circumstances; however, any money withdrawn from the CBR must be repaid. Section 17(a) established the CBR, its funding sources, and also directs how the CBR can only be appropriated pursuant to section 17(b) and (c).⁵ Section 17(b) authorizes appropriations from the CBR by a simple majority vote of the members of each house of the legislature “[i]f the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year[.]”⁶ Section 17(c) authorizes appropriations from the CBR “for any public purpose” upon affirmative vote of three-fourths of the members of each house of the legislature.⁷ Section 17(d) directs how any funds withdrawn from the CBR must be repaid. When an appropriation is made out of the

⁴ ALASKA CONST. art. IX, § 17.

⁵ ALASKA CONST. art. IX, § 17(a).

⁶ ALASKA CONST. art. IX, § 17(b).

⁷ ALASKA CONST. art. IX, § 17(c).

CBR, the “money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited” into the CBR by the Executive Branch.⁸ This is known as the “sweep” or “CBR sweep.”

Pursuant to section 17(c), the legislature may—and has in the past—offset the sweep of 17(d) by using a “reverse sweep.”⁹ But the legislature did not achieve the three-fourths vote in both houses to effectuate the reverse sweep for the FY2022 operating budget.¹⁰

II. The Higher Education Investment Fund

In 2012, the legislature established the Higher Education Investment Fund¹¹ (HEIF) for the purpose of making grants to support the Alaska Education Grant (AEG) program¹² and the Alaska Performance Scholarship Award (APS) program.¹³ The legislature made an initial appropriation of \$400 million in 2011 to create the HEIF, but no money was borrowed from the CBR to originally fund the HEIF.¹⁴ Recently, the legislature appropriated money from the HEIF to also support the Washington-Wyoming-Alaska-Montana-Idaho (WWAMI) medical school program.¹⁵

The HEIF consists of the following: (1) money appropriated to the fund; (2) income earned on investment of fund assets; (3) donations to the fund; and (4) money redeposited

⁸ ALASKA CONST. art. IX, § 17(d).

⁹ Complaint ¶ 16 (Jan. 4, 2022).

¹⁰ Motion for Summary Judgment at 13 (Jan. 4, 2022) (hereinafter Motion).

¹¹ AS 37.14.750; *See also* ch. 74, SLA 2012.

¹² AS 14.43.915(a).

¹³ AS 14.43.915(b).

¹⁴ Motion at 6.

¹⁵ Motion at 9-10; Exhibit 6 to Lindemuth Affidavit (Jan. 4, 2022); *See* AS 14.43.510.

under AS 14.43.915(c).¹⁶ Money in the HEIF does not lapse,¹⁷ but the HEIF is not a dedicated fund.¹⁸ “As soon as is practicable after July 1st of each year, the commissioner of revenue must determine the market value of the” HEIF as of June 30th for the immediately preceding fiscal year.¹⁹ Then the commissioner must identify 7% of the HEIF’s market value as “available for appropriation” to fund the grant and scholarship programs the HEIF was created for.²⁰ As of December 31, 2021, the HEIF consisted of \$422 million, with 65% invested in equities; 29% in fixed income securities, 5% in a real estate investment trust pool, and 1% in cash and cash equivalents.²¹

III. Defendants history of determining whether the HEIF is subject to the CBR sweep

In April 2019, Governor Dunleavy introduced legislation to repeal the HEIF’s enabling statute, but the legislature did not advance or pass the proposed legislation.²² In July 2019, the legislature failed to achieve the required three-fourths vote in both houses to complete the reverse sweep of the FY2020 operating budget.²³ Subsequently, the Office of Management and Budget (OMB) Director Donna Arduin issued a memorandum to the legislature providing an analysis of which funds the OMB intended to sweep into the CBR

¹⁶ AS 37.14.750(a).

¹⁷ *Id.*

¹⁸ AS 37.14.750(b).

¹⁹ AS 37.14.750(c).

²⁰ *Id.*

²¹ Brief of Amicus Curiae at 8 (Jan. 28, 2022); Exhibit 2 to Cuddy Affidavit (Jan. 28, 2022) (The \$119.67 remaining in the HEIF is in the form of income receivables/payables.)

²² Motion at 12; *See* Exhibits 10, 11 to Lindemuth Affidavit.

²³ Motion at 10.

pursuant to section 17(d). The HEIF in its entirety was included as being subject to the sweep.²⁴ After the OMB determined that the HEIF was subject to the sweep, the legislature achieved the three-fourths vote of both houses to reverse sweep the funds at the end of July 2019.²⁵

In 2021, the FY2022 operating budget passed by the legislature included approximately \$21 million appropriated from the HEIF to fund the relevant scholarship and grant programs, but for the first time in the HEIF's existence, the legislature failed to achieve the required three-fourths vote to reverse the forthcoming sweep.²⁶ Immediately after the FY2022 operating budget was passed, the Executive Branch confirmed that it intended to sweep the entirety of the HEIF and that the \$21 million appropriated from the HEIF to its supported programs would not be honored.²⁷

In August 2021, the Anchorage Superior Court²⁸ issued Order on Motion for Summary Judgment and Cross-Motion for Summary Judgment analyzing section 17(d) and its application to the Power Cost Equalization Endowment Fund (PCE Fund)—finding the PCE Fund was not subject to the sweep because it was not in the general fund.²⁹ Following this decision, Attorney General Treg Taylor issued a memorandum on August 25, 2021, recommending that the Executive Branch release the swept funds that were validly

²⁴ *Id.* at 10-11; Exhibit 7 to Lindemuth Affidavit.

²⁵ *Id.* at 12.

²⁶ *Id.* at 13.

²⁷ *Id.*; Exhibit 12 to Lindemuth Affidavit.

²⁸ The Honorable Josie Garton.

²⁹ Motion at 14; *See Alaska Federation of Natives, et al. v. Dunleavy, et al.*, No. 3AN-21-06737CI, 2021 WL 6288659, *6-7 (Alaska Super. Aug. 11, 2021).

appropriated out of the HEIF and placed into the relevant grant and scholarship programs for FY2022.³⁰ Based on this recommendation, Governor Dunleavy then directed the OMB to honor the FY2022 appropriations that were originally directed to be swept, including appropriations made out of the HEIF.³¹ This action ensured that the scholarship and grant programs were fully funded for FY2022.

On December 15, 2021, Attorney General Taylor indicated in a letter to the University of Alaska that its interpretation of section 17(d) leaves the Executive Branch bound to sweep all monies which are in the “general fund” and “available for appropriation,” and the HEIF is subject to sweep because of the language of its enabling statute.³² Attorney General Taylor clarified that the memorandum issued on August 25, 2021 only spoke to monies (the \$21 million to fund the scholarships and grants) which were already appropriated out of the HEIF and placed into the relevant programs, but any money left in the HEIF was subject to the sweep.³³

IV. Proceedings

On January 4, 2022, Plaintiffs filed their Complaint alleging Defendants’ decision to sweep the HEIF into the CBR is in violation of article IX, sections 13 and 17(d) of the Alaska Constitution.³⁴ Plaintiffs seek declaratory and injunctive relief in order to protect

³⁰ *Id.*; Exhibit 16 to Lindemuth Affidavit.

³¹ *Id.* at 14-15.

³² Exhibit 17 to Lindemuth Affidavit.

³³ *Id.*

³⁴ Complaint ¶ 2.

the programs the HEIF helps fund.³⁵ Filed simultaneously with the Complaint, Plaintiffs moved the Court for summary judgment and argue as a matter of law that the HEIF is not subject to the CBR sweep.³⁶

On January 19, 2022, Defendants filed their Opposition to Plaintiffs' Motion and Cross-Motion for Summary Judgment.³⁷ Defendants argue as a matter of law that the HEIF is subject to the CBR sweep.³⁸ The parties filed a joint motion for expedited briefing and decision on both summary judgment motions, which was granted by this Court.³⁹ On February 8, 2022, oral argument was held for both motions.

Legal Standard

Summary judgment is warranted where “there is no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.”⁴⁰ “Questions of constitutional and statutory interpretation . . . are questions of law to which we apply our independent judgment.”⁴¹ When interpreting a constitutional provision, the court “should look to the plain meaning and purpose of the provision and the intent of the framers.”⁴²

Lower courts, such as this Court, are obligated to apply precedent set by higher courts, like the applicable holdings of the Alaska Supreme Court. Plaintiffs argue this

³⁵ *Id.*

³⁶ Motion at 1.

³⁷ Opposition and Cross-Motion for Summary Judgment (Jan. 19, 2022) (hereinafter Cross-Motion).

³⁸ *Id.* at 2.

³⁹ See Joint Motion for Expedited Briefing and Decision Schedule (Jan. 5, 2022).

⁴⁰ *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 517 (Alaska 2014) (quoting Alaska R. Civ. P. 56(c)).

⁴¹ *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017) (quoting *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016) (footnote omitted) (citations omitted)).

⁴² *Hickel v. Cowper*, 874 P.2d 922, 926 (Alaska 1994).

Court does not need to apply the holding of *Hickel v. Cowper*⁴³ for section 17(d) because *Hickel* was primarily concerned with section 17(b) and any application to 17(d) is dicta, and this Court is not bound by dicta of higher courts.⁴⁴ Defendants argue the definition and analysis of “available for appropriation” set forth in *Hickel* is not dicta and is binding on this Court for its section 17(d) analysis.⁴⁵

Dicta are comments expressed in a judicial opinion, but which are not necessary to the holding of the case, rendering the comments not precedential.⁴⁶ The Alaska Supreme Court in *Hickel* defined what “available for appropriation” means within section 17(b) and applied it to AS 37.10.420(a)—which the Court held to be unconstitutional.⁴⁷ But the Court also held AS 37.10.420(b) to be unconstitutional when analyzing it against section 17(d).⁴⁸ The Court expressly applied the same definition of “available for appropriation” in section 17(d), as it did in section 17(b), to come to its holding. Stating, “[w]e see no reason to give ‘available for appropriation’ a different meaning in subsection (d) than we did in subsection (b).”⁴⁹ The Court performed an exhaustive analysis defining what “available for appropriation” means within section 17(b) and then made a conscious decision to apply the

⁴³ 874 P.2d at 936.

⁴⁴ Motion at 28-30.

⁴⁵ Cross-Motion at 12-15.

⁴⁶ *VECO, Inc. v. Rosebrock*, 970 P.2d 906, 922 (Alaska 1999) (holding statement in previous opinion not dictum because it “was necessary for our holding”); *Obiter dictum*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive)”).

⁴⁷ *Hickel*, 874 P.2d at 935-36.

⁴⁸ *Id.* at 936.

⁴⁹ *Id.* at 936, n. 32.

same meaning to section 17(d). This decision was not superfluous, but rather a part of the Court's overall conclusion in *Hickel*. As such, this Court is bound by the holding of *Hickel* as to what "available for appropriation" means under section 17(d) when analyzing the HEIF.

Hickel also affirmed the Alaska Constitution's plain-language two-part test for determining which funds are susceptible to the CBR sweep under section 17(d).⁵⁰ A fund is susceptible to the sweep and is to be deposited into the CBR if the fund is both: (1) in the general fund; and (2) available for appropriation at the end of each succeeding fiscal year.⁵¹

Therefore, the Court must determine whether the HEIF is "in the general fund" and "available for appropriation at the end of [this] fiscal year."⁵²

Discussion

I. The HEIF is in the general fund

There is no dispute between the parties that the HEIF is in the general fund.⁵³ The HEIF's enabling statute states in part, "[t]he Alaska higher education investment fund is established in the *general fund*."⁵⁴

This is where this case differs from *Alaska Federation of Natives, et al. v. Dunleavy*,

⁵⁰ *Id.* ("[T]he payback provision in section 17(d) is limited to only those funds which are 'available for appropriation' and 'in the general fund.'"); ALASKA CONST. art. IX, § 17(d).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Motion at 22; Cross-Motion at 11.

⁵⁴ AS 37.14.750(a) (emphasis added).

et al. (AFN).⁵⁵ In *AFN*, the Superior Court applied the section 17(d) analysis to the PCE Fund and concluded the PCE Fund was “available for appropriation” but *not* “in the general fund,” exempting it from the CBR sweep.⁵⁶ The PCE Fund is not in the general fund because its enabling statute establishes it in a fund outside of the general fund. “The power cost equalization endowment fund is established as a separate fund[.]”⁵⁷ But here, the HEIF is established in the general fund according to its enabling statute.

Therefore, under the plain language of AS 37.14.750(a), the HEIF is in the general fund.

II. The HEIF is available for appropriation within the meaning of section 17(d)

The main issue of this case is what does “available for appropriation” mean within section 17(d), and does the HEIF fall within section 17(d)’s definition of “available for appropriation.” Plaintiffs argue that “available for appropriation,” within the meaning of section 17(d), means “only excess monies in the general fund that have not been appropriated for some purpose, are vetoed appropriations, or have since lapsed.”⁵⁸ This would mean “only surplus funds—i.e., unobligated monies that are not subject to a legislative appropriation—are subject to the annual CBR sweep.”⁵⁹

Defendants argue the definition set forth in *Hickel* for “available for appropriation”

⁵⁵ 3AN-21-06737CI, 2021 WL 6288659.

⁵⁶ *Id.* at *4-6.

⁵⁷ AS 42.45.070(a).

⁵⁸ Motion at 19.

⁵⁹ *Id.*

is the appropriate and binding definition the Court must apply here.⁶⁰ The Court agrees with Defendants. As stated above, the language in *Hickel* is not dicta and its holding as to the definition of “available for appropriation” is binding for the section 17(d) analysis of the HEIF.

Under *Hickel*, “available for appropriation” for section 17 “includes all monies over which the legislature has retained the power to appropriate, and which require further appropriation before expenditure.”⁶¹ *Hickel* provided examples as to what funds were “available for appropriation” at the time the case was decided. For example, the Railbelt energy fund,⁶² the Alaska marine highway vessel replacement fund,⁶³ and the educational facilities and construction fund,⁶⁴ all are “restricted funds” within the general fund, and each consist of money appropriated to the fund by the legislature.⁶⁵

But these initial appropriations establishing the respective funds do not support any expenditure and a further appropriation is necessary before the money in the fund can be spent, and because of this, the funds remain “available for appropriation.”⁶⁶ The current language of these statutes either remain unchanged or are substantially similar to the language when cited by the Supreme Court in *Hickel*.⁶⁷

⁶⁰ Cross-Motion at 12-13.

⁶¹ *Hickel*, 874 P.2d at 935.

⁶² AS 37.05.520.

⁶³ AS 37.05.550.

⁶⁴ AS 37.05.560.

⁶⁵ *Hickel*, 874 P.2d at 934.

⁶⁶ *Id.*

⁶⁷ See AS 37.05.520 (“There is established in the general fund the Railbelt energy fund. The fund consists of money appropriated to it by the legislature and interest received on money in the fund. The department of revenue shall

The HEIF did not exist at the time the Court decided *Hickel*. However, the Court held that “[t]he availability of funds not specifically discussed in this opinion *must* be determined in accordance with this opinion.”⁶⁸ The HEIF’s enabling statute follows a similar structure compared to the funds in *Hickel* mentioned above. “The Alaska [HEIF] is established in the general fund for the purpose of making grants . . . *by appropriation* to the account established under AS 14.43.95(a) and making scholarship payments . . . *by appropriation* to the account established under AS 14.43.915(b).”⁶⁹ “Money in the fund does not lapse.”⁷⁰ The commissioner of revenue “shall identify seven percent” of the HEIF’s market value “*as available for appropriation.*”⁷¹

Funds which were initially appropriated to create the HEIF do not support any further expenditure without more legislative action because the plain language of the statute shows further appropriations are necessary before the money in the HEIF can be spent. The legislature must appropriate the money out of the HEIF and into the relevant programs it supports for it to fall outside the definition of “available for appropriation.”

manage the fund. 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 and facilities for energy conservation.”; AS 37.05.550(a) (“There is in the general fund the Alaska marine highway system vessel replacement fund. The fund consists of money appropriated to it by the legislature. Money appropriated to the fund does not lapse. . . . The legislature may appropriate money from the fund for refurbishment of existing state ferry vessels, acquisition of additional state ferry vessels, or replacement of retired or outmoded state ferry vessels.”); AS 37.05.560(a) (“The educational facilities maintenance and construction fund is established as a separate fund in the general fund.”); 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 maintenance of University of Alaska facilities.”)

⁶⁸ *Hickel*, 874 P.2d at 935 (emphasis added).

⁶⁹ Compare AS 37.14.750 (emphasis added) with AS 37.05.520, AS 37.05.550(a), AS 37.05.560(a) and AS 37.05.560(b).

⁷⁰ AS 37.14.750(a).

⁷¹ AS 37.14.750(c) (emphasis added).

And, the legislature has in fact taken this additional step in order to fund the various scholarship, grant, and WWAMI programs out of the HEIF. Without further legislative action, the funds in the HEIF stay in the general fund. This interpretation of the HEIF follows *Hickel*'s binding definition of "available for appropriation" and its examples of other funds which are also considered to be "available for appropriation."⁷²

Additionally, Plaintiffs argue *Hickel* failed to consider section 17(d)'s temporal distinction in contrast to section 17(b) for the analysis of "available for appropriation."⁷³ Section 17(d) states in part, "available for appropriation at the end of each succeeding fiscal year." Plaintiffs argue "at the end of each succeeding fiscal year" goes to when the analysis of what money remains "available for appropriation" must be considered, and the analysis is at a different time than under section 17(b).⁷⁴ The Court does not believe the temporal component of section 17(d) changes the meaning of "available for appropriation," or how it is applied; and the *Hickel* Court had the opportunity to apply a different meaning in section 17(d) but chose to explicitly apply the same definition it set out for section 17(b).⁷⁵

Therefore, the HEIF is "available for appropriation" within the meaning of section 17(d).⁷⁶

⁷² *Hickel*, 874 P.2d at 933-35.

⁷³ Reply in Support of Motion for Summary Judgment and Opposition to Cross-Motion for Summary Judgment at 5-8 (Jan. 28, 2022) (hereinafter Reply to Motion).

⁷⁴ *Id.* at 6; ALASKA CONST. art. IX, § 17(b) ("If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund.").

⁷⁵ *Hickel*, 874 P.2d at 936, n. 32.

⁷⁶ Plaintiffs also argue there is a separation of powers issue pursuant to Article IX, section 13 of the Alaska Constitution based on Defendants interpretation of section 17(d). Section 17(d) is a constitutional directive which was approved by Alaska voters. The *Hickel* Court had every opportunity to address a separation of powers issue, but

III. Appropriations already made out of the HEIF and into its related programs are not subject to the CBR sweep under section 17(d)

The legislature, for the FY2022 operating budget, appropriated approximately \$21 million out of the HEIF and into the APS, AEG, and WWAMI programs.⁷⁷ The money which was appropriated out of the HEIF and into the programs must be honored. The money was appropriated out of the general fund, and the money is no longer available for appropriation because the money can now be expended without further legislative action. Defendants appear to agree with this interpretation and did honor the approximate \$21 million appropriations.⁷⁸ Additionally, any donations made into the HEIF should not be subject to the sweep. Defendants do not dispute this but have stated in their briefing and during oral argument that there is no evidence any donations have been made into the HEIF.⁷⁹

Conclusion

Although this case would not be before the Court if the legislature achieved the required three-fourths vote for the reverse sweep of the FY2022 operating budget, the programs the HEIF currently helps fund—APS, AEG, and WWAMI—do not have to become obsolete following the Court’s decision here today. If the legislature believes these

did not. The Court’s silence on any possible conflict of section 17(d) with the separation of powers shows there is no conflict. Section 17(d) does not create a separation of powers issue. Any statutes which apply to section 17(d) must conform to the language and directive of the constitutional provision. Because the Executive Branch performed a valid sweep of funds, there cannot be a conflict creating a separation of powers question.

⁷⁷ Motion at 13; Exhibit 7 to Lindemuth Affidavit.

⁷⁸ Exhibits 15, 16 to Lindemuth Affidavit.

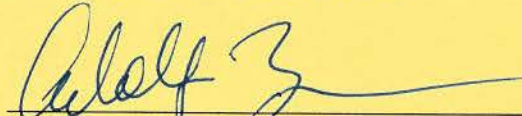
⁷⁹ Cross-Motion at 10; Steininger Affidavit ¶ 18(c) (Jan. 19, 2022).

programs should be funded, it possesses the power to establish the HEIF as a separate fund outside the general fund or to appropriate money from other sources—for example, a reverse sweep of the CBR—to fund the programs in the future.⁸⁰ However, this is not within the Court’s power. The power of appropriation belongs solely to the Legislative Branch. The Court’s decision here today stems from its interpretation of legal precedent, precedent it must follow and apply.

Defendants have shown they are entitled to judgment as a matter of law. As such, Defendants’ Cross-Motion for Summary Judgment is **GRANTED** and Plaintiffs’ Motion for Summary Judgment is **DENIED**. In accordance with this Order, the HEIF is subject to the CBR sweep pursuant to article IX, section 17(d) of the Alaska Constitution. Defendants shall file a proposed final judgment within 20 days of service of this decision.⁸¹

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 17th day of February, 2022.


ADOLF V. ZEMAN
Superior Court Judge

I certify that on 17 February, 2022, a
copy was mailed to:

K. Cuddy; J. Lindemuth; S. Kendall; S. Gottstein; M. Paten-Walsh

Brandon Smith
Brandon Smith, Law Clerk

⁸⁰ See AS 14.43.915(a)-(b); The APS and AEG programs enabling statute expressly states the programs may be funded from the HEIF “and from other sources.” The WWAMI program has not always received HEIF funding and was recently appropriated funds by the legislature out of the HEIF.

⁸¹ Alaska R. Civ. P. 56(c).