

# STATE OF ALASKA

TONY KNOWLES,  
GOVERNOR

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June 7, 2001

The Honorable Tony Knowles  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811-0001

Re: SCS CSHB 117(FIN) -- making  
supplemental and other appropriations  
Our file: 883-01-0006

Dear Governor Knowles:

At your legislative office's request on your behalf, we have reviewed SCS CSHB 117(FIN), the "fast-track" supplemental and other appropriations bill for fiscal year 2001. We note that the "fast-track" supplemental and other appropriations bill is designed to cover only the most pressing of needs for state government for fiscal year 2001, although certain of those needs are provided with financing that does not lapse until June 30, 2002. The remainder of the supplemental needs for this fiscal year are currently being debated before the legislature.

This bill is basically straightforward, and we see no significant legal problems with it. However, a few sections warrant comment.

Section 2 of the bill makes three appropriations to the Department of Community and Economic Development (DCED) for grants to named recipients under AS 37.05.316. They are \$1,600,000 to Arctic Power for "education efforts" to open the Arctic National

Wildlife Refuge (ANWR) to oil and gas exploration and development, \$250,000 to Arctic Power for "educational media efforts for targeted Congressional districts" to further the opening of ANWR, and \$90,000 to the Northern Forum for operations for the current fiscal year. The two appropriations to Arctic Power are for both the current fiscal year and the upcoming one, and the larger appropriation "includes \$100,000 for the participation of the City of Kaktovik" in support of Arctic Power's education efforts.

As with similar appropriations made to Arctic Power in earlier years (sec. 90, ch. 103, SLA 1995; sec. 13, ch. 2, FSSLA 1999; and sec.1, ch. 135, SLA 2000), the legal issue presented here is whether the legislature is attempting to avoid using the procurement code in selecting Arctic Power and Northern Forum to receive grant money. We cautioned that when a private entity is delegated the responsibility to perform functions such as these, adequate safeguards should be established by the grantor state agency to ensure that the public money is expended prudently and that the grantee's use of the money satisfies the public purpose clause of the Alaska Constitution (art. IX, sec. 6). We also note that AS 37.05.316(a) prescribes the procedures for the grants and allows DCED not to make some or all of these grants if it determines that one or more would not be in the public interest.

Section 4 of the bill appropriates \$26,000 to the Department of Environmental Conservation (DEC) to provide money to pay for temporary personnel for the State Pipeline Coordinator's Office for the fiscal year ending June 30, 2001. Similarly, subsec. 5(d) appropriates to the Department of Fish and Game (ADF&G) \$43,900 for temporary personnel for that office for the same fiscal year. Both sec. 4 and subsec. 5(d) state that the terms of service of these personnel "are intended not to exceed two years." Based on the specific words used, we would construe this two-year language as a nonbinding expression of legislative intent. To construe it otherwise would also raise constitutional problems, as the two-year restriction is inconsistent with various statutes on temporary employees (such as AS 39.25.195-39.25.200) and appropriation bills may not amend general law.

Because we understand that ADF&G had been intending to use this money to staff the State Pipeline Coordinator's Office with two current, full-time employees, we must address another question, whether the condition that the appropriation be used for "temporary" personnel is constitutional and hence binding. We have often in the past expressed our view that the legislature may not "micromanage" state agencies because of the separation-of-powers doctrine central to the Alaska Constitution, and that conditions attached to appropriations that have the effect of micromanaging are unconstitutional and hence not binding on the executive. *See, e.g.*, 1998 Inf. Op. Att'y Gen. at 185 (June 17; 883-98-0127) (legislature may not constitutionally allocate amounts appropriated to a commissioner's office for specific positions in that office). We believe that this requirement that only temporary employees be hired with the appropriation is

unconstitutional micromanaging. It is up to the ADF&G commissioner to determine how he will furnish staff to the State Pipeline Coordinator's Office, including the question of whether such staff will consist of temporary or permanent employees.

Subsections 11(a), (b), and (c) of the bill make appropriations to the Department of Natural Resources (DNR) for a variety of studies. Each subsection purports to require DNR to provide the study or studies to the legislature. As noted above, the legislature cannot impose substantive law requirements in an appropriation bill, and the language requiring submission of the studies to the legislature does create new substantive law and is thus unenforceable. However, DNR may of course choose to supply the studies to the legislature.

Subsection 11(f) of the bill makes three separation appropriations to DNR; they are for personnel for the State Pipeline Coordinator's Office (\$177,700), contractual services (\$79,900), and equipment (\$36,000). It is highly unusual for appropriations to be made at the object level (i.e., contractual services and equipment): money for these types of expenses is usually made available through allocations of a broader appropriation. Although we believe that the legislature's approach is legal, it could be argued that the legislature is trying to unconstitutionally micromanage the operations of the pipeline office, in violation of the separation-of-powers doctrine. We believe that the legislature should try to avoid this practice in the future, so that DNR has the flexibility to properly manage the functions assigned to that office.

We would also note that although, strictly speaking, the appropriations for contractual services and equipment are not limited to services and equipment for the State Pipeline Coordinator's Office, the intent of the legislature seems to be that the appropriations be so limited. Since the personnel appropriation is limited to the pipeline office, it is simply not logical to believe that the legislature intended the other two appropriations to be used anywhere that DNR wanted.

Subsection 12(c) of the bill makes an appropriation to the Department of Revenue (DOR) for \$25,000 for a study of the state's fiscal regime for development of Alaska North Slope natural gas. The subsection also contains the requirement that DOR provide the study to the legislature. Our discussion above, in connection with bill subsecs. 11(a), (b), and (c), is equally applicable here.

Finally, please be advised it is not always possible to identify or comment on all legal issues in this "fast-track" supplemental and other appropriations bill. However, we will assist the agencies throughout the year in interpreting and applying the provisions of this bill, as well as related legislation, to make sure that appropriations are implemented consistent with enabling statutes.

We note no other legal or constitutional problems with this bill.

Sincerely,

Bruce M. Botelho  
Attorney General

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