

STATE OF ALASKA

DEPARTMENT OF LAW
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June 28, 2002

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

Re: CCS HB 404 -- Fiscal year 2003 mental health budget
Our file: 883-02-0027

Dear Governor Knowles:

At the request of your legislative director, the Department of Law has reviewed CCS HB 404, relating to appropriations for the fiscal year 2003 operating and capital expenses of the state's integrated comprehensive mental health program.

This version of the bill is similar to the original versions of the mental health budget, SB 246 and HB 336, which were introduced by the Senate and House Rules Committees at your request. The comprehensive mental health program was funded at the amount of \$140,624,600, as compared to your proposed budget amount of \$155,833,800. The specific changes to your proposed budget are outlined in the legislature's report to the Alaska Mental Health Trust Authority (Trust Authority).

I. Required Reports

With the transmittal of SB 246 and HB 336, your administration submitted a report to the Trust Authority in accordance with AS 37.14.003(b) explaining the reasons for differences between the proposed appropriations in the bills and the recommendations

of the Trust Authority for expenditures from the general fund for the state's integrated comprehensive mental health program. The legislature is required by AS 37.14.005(c) to provide a similar report explaining the reasons for differences between the appropriations in the final bill and the Trust Authority's recommendations. The legislature has provided a report explaining changes made to the Trust Authority's fiscal year 2003 mental health budget, including comparisons between the final bill and your recommended budget. The legislature's report and attachment, when read in conjunction with your own report, substantially complies with AS 37.14.005.

We note that if you veto all or a part of an appropriation in this bill, AS 37.14.003(c) requires that your veto message explain the veto in light of the Trust Authority's recommendations. A requirement to explain a veto is also imposed by art. II, sec. 15 of the Alaska Constitution. In our opinion, it is not likely that a court would find that the legislature has the power to make the constitutional duty more detailed or burdensome. In other words, we do not believe that the veto explanation requirement in AS 37.14.003(c) differs from the constitutional requirement.

II. Analysis

The mental health budget bill contains a number of expressions of legislative intent regarding medical assistance. In *Alaska Legislative Council v. Knowles*, 21 P.2d 367 (Alaska 2001), the Alaska Supreme Court held that you may not veto legislative expressions of intent, as they do not constitute "items" subject to your veto power in regard to appropriation bills. However, the opinion does indicate that the expressions of intent are not binding. Therefore, our advice remains that you can choose to follow or ignore these non-binding expressions, but they are not subject to veto. The expressions of intent are found in section 1 of the bill.

The legislature has attached the same abortion financing conditions to appropriations in this bill as it attached to appropriations in the operating budget bill, CCS HB 403. We note those conditions in this review, but refer you to the detailed analysis contained in our review of CCS HB 403.

Section 1 of the mental health budget bill sets out the appropriations, funding sources, and other items for the fiscal year 2003 operating budget. Section 1 also contains "unallocated reductions," which are negative allocation items in certain appropriations. Section 1 provides for an agency-wide unallocated reduction to the Department of Education and Early Development (page 3, lines 10 - 12) and to the Department of Law (page 6, lines 17 - 19). The legislature has included similar

unallocated reductions in prior appropriation bills, and we have expressed the view that these allocations would probably survive legal challenge.*

Section 2 of the bill sets out the funding for operating expenditures for the purposes of new legislation presumed to have passed during the legislative session. Section 3 of the bill sets out the funding by agency for the operating budget appropriations made in sections 1 and 2 of the bill. Section 4 of the bill sets out the statewide funding for appropriations made in sections 1 and 2. Section 5 of the bill sets out the funding by agency for capital projects and grants. Section 6 of the bill sets out the funding for sources other than general funds for appropriations made in section 5. Section 7 of the bill sets out the statewide funding for appropriations made in section 5. Section 8 of the bill sets out the purpose of the bill, which is to make appropriations for the state's integrated comprehensive mental health program. Section 9 of the bill provides that Trust Authority-authorized receipts or administration receipts that exceed the amounts appropriated by the bill are appropriated conditioned on compliance with the program review provisions of AS 37.07.080(h). Without this provision, state agencies might not be able to seek Legislative Budget and Audit Committee approval to expend Trust Authority-authorized receipts or administration receipts in excess of the amounts appropriated by this bill. Section 10 of the bill provides for an effective date of July 1, 2002.

III. Conclusion

Other than the issues noted above and the issues addressed in detail in our review of CCS HB 403, we find no constitutional or other legal issues for your consideration.

Sincerely,

Bruce M. Botelho
Attorney General

BMB:SEF:mw

* See 1999 Inf. Op. Att'y Gen. (June 28; 883-99-0070).