

STATE OF ALASKA

DEPARTMENT OF LAW

SARAH PALIN, GOVERNOR

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May 2, 2008

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

Re: CCS HB 312 -- FY09 Mental Health Budget
Our file: 883-08-0075

Dear Governor Palin:

At the request of your legislative director, the Department of Law has reviewed CCS HB 312, the mental health budget for fiscal year 2009, introduced at your request. The final bill raises some relatively minor legal issues.

I. Required Reports

With the transmittal of original HB 312 to the House, the report required by AS 37.14.003(b), explaining the reasons for any differences between your proposed mental health appropriations and the appropriation requests proposed by the Alaska Mental Health Trust Authority (trust authority), was submitted. A similar report is required by AS 37.14.005(c), which provides that if the appropriations in the bill passed by the legislature differ from the appropriations proposed by the trust authority, "the bill must be accompanied by a report explaining the reasons for the differences between the appropriations in the bill and the authority's recommendations for expenditures from the general fund...." The appropriations in CCS HB 312 do differ from the appropriations proposed by the trust authority, and the legislature submitted a report explaining the differences. We have reviewed the legislature's report and believe that it satisfies the statutory requirement.

If you decide to veto all or part of an appropriation in this bill, AS 37.14.003(c) requires that you must explain the veto "in light of the authority's recommendations for expenditures from the general fund for the state's integrated comprehensive mental health program." There is some question as to whether this statutory provision actually requires a more vigorous explanation of a veto than does art. II, sec. 15, of the Alaska Constitution, which requires that any vetoed bill be returned to the house of origin with a statement of objections. If you determine that a veto of an item in this bill is desirable, the Department of Law would be available to advise you further with regard to the wording of a veto message.

II. Analysis

CCS HB 312 contains a number of expressions of legislative intent. In the past, we have advised that expressions of intent may generally be ignored or followed as a matter of comity. We continue to offer this advice, however, we note that under limited circumstances, expressions of intent in an appropriations bill might be legally enforceable. We refer you to a complete discussion of this issue in our review of the fiscal year 2009 operating budget, CCS HB 310. Accordingly, if your office or a recipient agency is not inclined to follow any intent language as a matter of comity, and we have not specifically addressed such language herein, we recommend further consultation with this office so that we can advise as to the extent such language might be enforceable. As we have previously advised in our reviews of appropriations bills, under *Alaska Legislative Council v. Knowles*, 21 P.3d 367 (Alaska 2001), a statement of intent accompanying an appropriation is not an "item," and may not be vetoed separately from the appropriation to which it applies.

The legislature has attached the same abortion financing condition to appropriations in this bill as it attached to appropriations in the operating budget bill. The mental health budget, CCS HB 312, contains a statement, beginning on page 3, line 9, prohibiting the expenditure of money appropriated to the Department of Health and Social Services on an abortion that is not a mandatory service under AS 47.07.030(a). We note that condition in this review, but refer you to the detailed analysis contained in our review of the operating budget, CCS HB 310.

The legislature has also added intent language requesting that DHSS eliminate report requirements for grant recipients whose grants are \$50,000 or less. The language goes on to provide direction regarding grant procedures. *See* sec. 1, p. 3, line 30, through p. 4, line 13. This intent language strays into the administration of these grant programs and, accordingly, we think it violates the confinement clause and is not enforceable. We also note that this intent language may be inconsistent with other intent language in that it requests that some reporting be terminated, but then requests that future grants be awarded based in part on past performance (*see* sec. 1, p. 5, line 10, through p. 6, line 4). The request for performance based funding might be difficult to comply with if there was no report on which to judge past performance.

Other than as noted above, sec. 1 of CCS HB 312 (the mental health budget bill) sets out the appropriations, funding sources, and other items for the fiscal year 2009 mental health operating budget, and is unremarkable. Section 2 of the bill sets out the funding by agency for the appropriations made in sec. 1 of the bill. Section 3 of the bill sets out the statewide funding for the appropriations made in sec. 1 of the bill. Section 4 of the bill sets out appropriations for mental health capital projects and grants. Section 5 of the bill sets out the funding by agency for the appropriations made in sec. 4 of the bill. Section 6 of the bill sets out the statewide funding for the appropriations made in sec. 4 of the bill. Section 7 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 8 of the bill provides for appropriation of mental health trust authority authorized receipts or administration receipts that are above the amounts appropriated in the bill, and for a reduction in an appropriation affected by a shortfall in receipts.

Section 9(a) of the bill provides that the appropriations made in sec. 1 of the bill include amounts for certain adjustments in salaries and benefits for public officers, employees, of the executive branch, legislative branch, court system and legislators. Those employees were included in a pay bill (HB 417) that increased salaries for non-union represented employees. Section 9(a) also provides that the appropriations made in sec. 1 of the bill include amounts to implement specified collective bargaining agreements entered into by the state that are in effect for the fiscal year ending June 30, 2009. We note that the state entered into agreements late in the legislative session with the PSEA union representing the Alaska State Troopers and airport police and firefighters bargaining unit, and the IBU representing the unlicensed AMHS employees. The capital budget, SB 221, provides for the appropriations for those new bargaining agreements.

Section 9(b) of the bill provides that the appropriations made to the University of Alaska in sec. 1 of the bill include amounts for salary and benefit adjustments for the fiscal year ending June 30, 2009 for employees not members of bargaining units and to implement the monetary terms of employees covered by specified collective bargaining agreements (including the health plan) for university employees.

Section 9(c) of the bill provides that the appropriations for employees covered by collective bargaining agreements described in subsections (a) and (b) will suffer a corresponding reduction if the collective bargaining agreements are not ratified by the membership of these collective bargaining units. This provision covers the possibility that some of the collective bargaining agreements had not been ratified by the unions' memberships at the time that the bill was passed and thus it is possible that the agreements could be rejected by the union memberships. If rejected, the employees pay and salaries would not be adjusted as provided for in the agreements. As we understand it, most if not all of the units listed in (a) have ratified the contracts in question, but this section is an appropriate condition on the appropriation where an agreement has not been ratified.

Section 9(d) of the bill provides that the appropriations for employee salaries and benefits described in subsections (a) and (b) are only for the state's comprehensive mental health program and do not necessarily affect every group of non-union employees or collective bargaining represented employees referred to in subsections (a) and (b). This limitation is expressed because a number of state employees, such as those in AMHS bargaining units, are not involved in the state's mental health program and thus appropriations for their salaries would not come from this bill.

Section 10 of the bill conditions certain appropriations made in section 1 of the bill on the passage and enactment of a version of HB 417 or SB 297. A version of HB 417 was passed by the legislature and transmitted to you on April 16, 2008 (SCS CSHB 417(FIN)). If you sign that bill, or it automatically becomes law, then this section is of no effect. If you veto SCS CSHB 417(FIN), the appropriations specified in section 10 will not be made.

Section 11 of the bill provides for an effective date of July 1, 2008.

III. Conclusion

Other than the issues identified above, we find no significant constitutional or other legal issues for your consideration.

Sincerely,

Talis J. Colberg
Attorney General

TJC:CJM