

STATE OF ALASKA

DEPARTMENT OF LAW

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GOVERNOR**

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April 30, 2010

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

Re: CSHB 326(FIN) -- making supplemental
appropriations and other appropriations;
amending appropriations; repealing
appropriations; making appropriations to
capitalize funds
Our file: JU2010201317

Dear Governor Parnell:

At the request of your legislative office, we have reviewed CSHB 326(FIN), making supplemental appropriations and other appropriations; amending appropriations; repealing appropriations; making appropriations to capitalize funds. This is the supplemental budget for fiscal year 2010.

Section 1 of the bill provides for supplemental operating budget appropriations for the Departments of Administration; Commerce, Community and Economic Development; Corrections; Education and Early Development; Environmental Conservation; Fish and Game; Health and Social Services; Labor and Workforce Development; Law; Military and Veterans Affairs; Natural Resources; Public Safety, Revenue; and Transportation and Public Facilities, and Office of the Governor and the Court System.

Section 2 of the bill sets out the funding sources for the appropriations in sec. 1.

Section 3 of the bill expresses a legislative finding that general fund savings of \$106,261 million from the increased fiscal year 2010 federal medical assistance percentage (FMAP) provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) are being used to finance appropriations in the fiscal year 2010 budget. Expenditure of such general fund savings is required by Division B, section 5001(f)(3) of P.L. 111-5, which prohibits the deposit of amounts attributable to the FMAP increase "into any reserve or rainy day fund" of the state.

Section 4 of the bill appropriates \$12,770 from the general fund to the Department of Administration for payment to the union directed health trust as required by the terms of the collective bargaining agreement for the Teachers' Education Association of Mt. Edgecumbe.

Section 5(a) of the bill appropriates funds to implement the 2009 interest arbitration decision establishing monetary terms for the state's collective bargaining agreement with the Alaska Correctional Officers Association bargaining unit for fiscal year 2010 and fiscal year 2011. Section 5(b) expresses the legislature's intent for the Department of Administration to mitigate certain costs as a result of an interest arbitration decision and for the Department. As we state in our bill review regarding the operating budget, we think it is possible to craft intent language that is enforceable under the confinement clause. In this case, however, this intent language appears to violate one or more of the *Hammond* factors, and is likely not enforceable. *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 379-80 (Alaska 2001). The Department of Administration may comply with this intent language as a matter of comity if it so desires. Subsection (b) also expresses the legislature's intent that the Department of Administration not assume that the legislature agrees with certain arbitration award provisions regarding personal leave accrual. This language merely communicates a view of this legislature.

Section 6 of the bill appropriates \$242.72 from the general fund to the Department of Health and Social Services, division of juvenile justice, to pay unpaid bills for services received in 2003 and 2004.

Section 7 of the bill changes a fund source for a re-appropriation in the fiscal year 2009 supplemental budget, making an appropriation for fiscal year 2010, to finance gas pipeline activities for the Department of Labor and Workforce Development. Under sec. 22 of the bill, this appropriation is retroactive to June 30, 2009.

Section 8 of the bill makes appropriations to the Department of Law for paying judgments and settlements against the state.

Section 9(a) of the bill appropriates \$40,000 from the general fund to the Department of Natural Resources for trash and sanitation services at Kasilof Beach for fiscal year 2010 and fiscal year 2011. Section 9(b) appropriates the interest, in the approximate amount of \$175,000, earned during fiscal year 2010 on the reclamation bond posted by Cook Inlet Energy for operation of an oil production platform in Cook Inlet under lease with the Department of Natural Resources, to the Department of Natural Resources for purposes of the bond. Under sec. 21(b) of the bill this appropriation lapses on June 30, 2014.

Section 10 of the bill appropriates \$97,000 of federal economic stimulus funds to the Department of Public Safety for combating Internet crimes in fiscal year 2010 and fiscal year 2011.

Section 11 of the bill re-appropriates the remaining balances of various appropriations to the Department of Transportation and Public Facilities to provide marine vessel service to

Unalaska and other communities along the Aleutian chain for fiscal year 2011 and to the marine highway system fund.

Section 12 of the bill appropriates \$5 million from the general fund to the disaster relief fund as a fund capitalization.

Section 13 of the bill makes certain fund transfers. In particular, sec. 13(c) re-appropriates the sum of \$600,000 to the agricultural revolving loan fund (ARLF). This money was originally appropriated for assistance to the Matanuska Maid Dairy. The money was never used because the dairy ceased operations. The ARLF returned the money to the state and then asked that it be re-appropriated to the ARLF for general lending purposes.

Section 14 of the bill ratifies three categories of expenditures made in past fiscal years. Concern was raised during the session that ratifications reflect past expenditures by the executive branch without appropriation. These concerns are addressed here.

The first category (sec. 14(a)) is for fire suppression (\$10,297,678.22 in fiscal year 2009). We recognize that the need to expend funds without appropriation to address an emergency or preserve state assets from damage or destruction is in tension with legislative appropriation power. In a past opinion we stated: "The extraordinary power to spend before an appropriation takes effect is based in part on the rule of necessity. That is, a sovereign state may, in the absence of appropriations, expend amounts to perform necessary functions mandated by statute or the state constitution. . . .[a]dvance obligations should be incurred only if immediate expenditure is necessary to protect the public interest."1989 Inf. Op. Att'y Gen. 4 (May 25; 883-89-0076). The legislature has recognized this need in the case of fire suppression: "If the disaster described in the governor's proclamation to declare a condition of disaster emergency is a fire, the governor may expend state funds as necessary to save lives or protect property and public health and safety."AS 26.23.025(j). Accordingly, we believe the expenditure of these funds was authorized by AS 26.23.025(j) and the rule of necessity.

The second category is for over-expenditure of previous appropriations (sec. 14(b)). Many of these items are for small amounts. Intermittent over-expenditure is bound to occur on occasion in any large organization, and agencies are to be credited with bringing these items to the attention of the legislature even if they are for small amounts. This ensures that the books balance at the end of the day and every penny of public money is properly accounted for. Larger amounts, however, are of concern and agencies are cautioned to structure their accounting systems to prevent inadvertent over-expenditure. We understand that measures have been undertaken to prevent these occurrences in the future. In this case, the legislature has increased the appropriation to cover the over-expenditures and therefore the lack of authorization has been cured by legislative appropriation.

The third category reflects uncollectable accounts receivable (sec. 14(c)). Uncollectible receivables are also bound to occur. In some instances, the uncollectible is the result of an unexpected change in federal government participation in a project or program. Most of these items are minor, but agencies should structure their accounting systems to avoid expenditures with undue reliance on large receivables.

Section 15 of the bill amends the retained fees and bankcard services appropriation section in the fiscal year 2010 operating budget to include amounts needed to compensate bankcard or credit card providers for restitution payments by bank card or credit card under AS 47.12.170.

Section 16 of the bill amends a subsection of the state debt and other obligations section in the fiscal year 2010 operating budget by changing out a fund source for an appropriation for debt service on international airports revenue bonds.

Section 17(a) of the bill provides that the supplemental budget appropriations made in sec. 1 include money for salary and benefit adjustments to implement the state's collective bargaining agreement with Public Employees Local 71 for the labor, trades, and crafts unit for the fiscal year ending June 30, 2010. Section 17(b) provides that the appropriations for employees covered by the labor, trades and crafts collective bargaining agreement with Public Employees Local 71 described in subsec. (a) will incur a corresponding reduction if the collective bargaining agreement is not ratified by the membership of Public Employees Local 71. This contingent language is a proper condition on the appropriation.

Section 18 of the bill appropriates fiscal year 2010 general fund surplus to the statutory budget reserve fund (AS 37.05.540).

Section 19(a) of the bill appropriates from the general fund the amount necessary, estimated to be \$401,617,000, to fully repay the constitutional budget reserve. Section 19(b) provides a funding backstop from the statutory budget reserve in the event that unrestricted revenue is insufficient to cover fiscal year 2010 general fund appropriations. Section 19(c) and (d) amends the fiscal year 2010 operating budget to provide that the general fund will be the funding source for constitutional budget reserve management fees.

Section 20 of the bill repeals sec. 43(c) of the fiscal year 2010 capital budget. This section authorized a majority vote draw on the constitutional budget reserve in the amount authorized by art. IX, sec. 17(b) of the Alaska Constitution.

Section 21 of the bill provides that certain sections of the bill are for the capitalization of funds and do not lapse.

Section 23 of the bill provides for an effective date of April 18, 2010. Since April 18, 2010 has occurred and the bill passed by the requisite two-thirds vote in each house, therefore an immediate effective date is operative. *See* AS 01.10.070.

This bill presents no significant legal or other issues.

Sincerely,

Daniel S. Sullivan
Attorney General

DSS:MAB:vs