

STATE OF ALASKA

DEPARTMENT OF LAW

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GOVERNOR**

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May 13, 2010

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

Re: CCS HB 302 -- making appropriations for
the operating and capital expenses of the
state's integrated comprehensive mental
health program
Our file: JU2010201315

Dear Governor Parnell:

At the request of your legislative director, the Department of Law has reviewed CCS HB 302, making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program, introduced at your request. The final bill raises some relatively minor legal issues.

I. Required Reports

With the transmittal of original HB 302 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 302 do differ from the appropriations proposed by the trust authority, and the legislature has submitted a letter and reports describing the differences. We have reviewed the legislature's letter and reports and believe that they satisfy 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 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 302 contains a number of expressions of legislative intent, including highly specific expressions of legislative intent regarding appropriations to the Department of Health and Social Services, Office of Children's Services, found in sec. 1, p. 6, lines 21 through 33, and p. 7, lines 3 through 21. In the past, we have advised that expressions of intent, even such specific expressions of intent as identified above, 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 2011 operating budget, CCS HB 300. 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 again has included intent language requesting that the Department of Health and Social Services 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. 4, lines 8 through 22. 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, lines 14 through 26). The request for performance-based funding might be difficult to comply with if there were no report on which to judge past performance.

Other than as noted above, sec. 1 of CCS HB 302 (the mental health budget bill) sets out the appropriations, funding sources, and other items for the fiscal year 2011 mental health operating budget, and is unremarkable. Section 2 of the bill sets out appropriations for operating expenditures related to new salary legislation affecting public employees' salaries for fiscal year 2011. If the new legislation does not take effect, the associated appropriations will lapse. Section 3 of the bill sets out the funding by agency for the appropriations made in secs. 1 and 2 of the bill. Section 4 of the bill sets out the statewide funding for the appropriations made in secs. 1 and 2 of the bill. Section 5 of the bill sets out appropriations for mental health capital projects and grants. Section 6 of the bill sets out the funding by agency for the appropriations

made in sec. 5 of the bill. Section 7 of the bill sets out the statewide funding for the appropriations made in sec. 5 of the bill. 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 for appropriation of Alaska 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 10(a) of the bill provides that the appropriations made in secs. 1 and 2 of the bill include amounts for certain adjustments in salaries and benefits for public officials, officers, and employees of the executive branch, employees of the court system, employees of the legislature, and legislators. Section 10(a) also provides that the appropriations made in secs. 1 and 2 include amounts to implement the following collective bargaining agreements entered into by the state that are in effect for the fiscal year ending June 30, 2011: APEA agreement for the confidential unit; ASEA agreement for the general government unit; APEA agreement for the supervisory unit; Alaska Vocational Technical Center Teachers' Association-NEA agreement for the Alaska Vocational Technical Center unit; PSEA agreement for regularly commissioned public safety officers; Public Employees Local 71 agreement for the labor, trades and crafts unit; Marine Engineers Beneficial Association for the MEBA unit representing certain AMHS employees; Inlandboatmen's Union of the Pacific agreement for the unlicensed marine unit; International Organization of Masters, Mates, and Pilots agreement for the masters, mates, and pilots unit; and Teachers' Education Association of Mt. Edgecumbe. We note that the operating budget, CCS HB 300, provides for appropriations for salaries and benefits for employees of each branch of government and legislators and addresses salaries and benefits for certain state bargaining units not listed in this bill. The bill review for CCS HB 300 contains a full discussion regarding these appropriations and reference is made to that bill review.

Section 10(b) of the bill provides that the appropriations made to the University of Alaska in this bill include amounts for salary and benefit adjustments for the fiscal year ending June 30, 2011 for employees who are not members of bargaining units and to implement the monetary terms of employees covered by collective bargaining agreements (including the health plan) for university employees in the following unions: Alaska Higher Education Crafts and Trades Employees; University of Alaska Federation of Teachers; United Academics; and United Academics-Adjuncts.

Section 10(c) of the bill provides that the appropriations for employees covered by collective bargaining agreements described in subsecs. (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. This section is an appropriate condition on the appropriation where an agreement has not been ratified.

Section 10(d) provides that the appropriations in secs. 1 and 2 of the bill for employee salaries and benefits described in subsecs. (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 subsecs. (a) and (b). This limitation is expressed because a number of state employees are not involved in the state's mental health program and thus appropriations for their salaries would not come from this bill.

Section 11 of the bill provides for an effective date of July 1, 2010.

III. Conclusion

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

Sincerely,

Daniel S. Sullivan
Attorney General

DSS:CJM:pav