

June 4, 2013

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

Re: CCS HB 66: Fiscal Year 2014 Mental  
Health Budget  
Our file: JU2013200213

Dear Governor Parnell:

At the request of your legislative director, we have reviewed CCS HB 66, making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program and making a reappropriation. The final bill raises some relatively minor legal issues.

**I. Required Reports and Veto**

With the transmittal of original HB 66 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 66 do differ from the appropriations proposed by the trust authority, and the legislature has drafted 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 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 66 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 2014 operating budget, CCS HB 65. 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.

In sec. 1 of the bill, the legislature has provided the commissioner of the Department of Health and Social Services with the authority to transfer up to \$50,000,000 between appropriations to the Department of Health and Social Services and expresses its intent that the Department of Health and Social Services submit a quarterly report on any such transfers to the Legislative Finance Division. Section 1, p. 3, lines 13 - 15 and 18 - 20. To the best of our knowledge, this is the first time the legislature has authorized the transfer of funds between appropriation items. Because this delegation of authority raises constitutional and budget tracking concerns, the Department of Law and office of management and budget will work closely with the commissioner of health of social services should circumstances arise that would give rise to the need to transfer funding between appropriation items.

In sec. 1 of the bill, appropriation to the Department of Health and Social Services, the legislature expresses its intent that the Department of Health and Social Services grantees not expend more than 15 percent of a grant award on administrative costs and to provide a report to the legislature by January 21, 2014 identifying which grantees were allowed to charge to the grant award administrative costs in excess of 15 percent and identify the statute or regulation authorizing this level of administrative expense. Section 1, p. 3. To the extent that this administrative expense limitation is not otherwise set out in statute, the Department of Health and Social Services may wish to comply as a matter of comity.

In sec. 1 of the bill, appropriation to the University of Alaska, there are three expressions of legislative intent: (1) that the University of Alaska submit a fiscal year 2015 budget in which requests for unrestricted general funds not exceed the amount of additional University of Alaska receipts requested for that year; (2) that the University of Alaska move toward a long-term goal of requesting unrestricted general funds of 125 percent of actual University of Alaska receipts for the most recently closed fiscal year; and (3) that the University of Alaska submit a fiscal year 2015 budget that includes debt service allocations. Section 1, p. 7, lines 15 - 23. The first two expressions of legislative intent are probably not enforceable but should be considered by the University of Alaska as an indication the legislature is expecting this agency's budget to be at or near the amount of receipts brought in by the agency. Regarding the third expression of

legislative intent, our office has previously advised that although the legislature has a tradition of appropriating assets from a revenue reserve fund to satisfy debt service, such an appropriation is not constitutionally required. 1984 Inf. Op. Att'y Gen. (January 18; 366-335-84). The University of Alaska may comply with this request as a matter of comity.

Other than as noted above, sec. 1 of the bill sets out the appropriations, funding sources, and other items for the fiscal year 2014 mental health operating budget, and is unremarkable. Section 2 of the bill purports to set out appropriations from the general fund or other funds for new legislation the bill assumed to have passed during this session, SB 95. The language of sec. 2 of the bill does not make a specific appropriation, however, but gives notice of appropriations made in sec. 1 of the bill. Section 3 of the bill sets out the funding by agency for the appropriations made in sec. 1 and sec. 2 of the bill. Section 4 of the bill sets out the statewide funding for the appropriations made in sec. 1 and sec. 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 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 would provide that the appropriations made in sec. 1 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) of the bill also would provide that the appropriations made in sec. 1 of the bill 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, 2014: Alaska Public Employees Association agreement for the confidential unit; Alaska Public Employees Association agreement for the supervisory unit; Alaska State Employees Association agreement for the general government unit; Alaska Vocational Technical Center Teachers' Association - National Education Association agreement for the Alaska Vocational Technical Center unit; Public Employees Local 71 agreement for the labor, trades, and crafts unit; Teachers' Education Association of Mt. Edgecumbe; International Organization of Masters, Mates, and Pilots agreement for the masters, mates, and pilots unit; Inlandboatmen's Union of the Pacific agreement for the unlicensed marine unit; Marine Engineers' Beneficial Association representing certain Alaska marine highway system employees; Alaska Correctional Officers Association for correctional officers; and Public Safety Employees Association agreement for regularly commissioned public safety officers. We note that the operating budget, CCS HB 65, provides for appropriations for salaries and benefits for employees of each branch of government and legislators and addresses salaries and benefits for the same state bargaining units listed in this bill. The bill review for CCS HB 65 contains a full discussion regarding these appropriations and reference is made to that bill review.

Section 10(b) of the bill would provide 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, 2014 for employees who are not members of bargaining units and to implement the monetary terms of the following collective bargaining agreements: University of Alaska Federation of Teachers; United Academics-American Association of University Professors, American Federation of Teachers; United Academics-Adjuncts; and Fairbanks Firefighters Association, IAFF Local 1324.

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

Section 10(d) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in subsec. (b) of the bill would have a corresponding reduction if the collective bargaining agreements are not ratified by the membership of these collective bargaining units and approved by the Board of Regents of the University of Alaska. This provision covers the possibility that some of the collective bargaining agreements had not been ratified by the unions' memberships or approved by the Board of Regents at the time that the bill was passed and thus it is possible that the agreements could be rejected by the union memberships or the board. If rejected, the employees' pay and salaries would not be adjusted as provided for in the agreements. The section is an appropriate condition on the appropriation where an agreement has not been ratified.

Section 10(e) of the bill would provide that the appropriations in sec. 1 of the bill for employee salaries and benefits described in subsecs. (a) and (b) of the bill 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) of the bill. 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 would reappropriate certain unexpended and unobligated balances from prior bills to the Department of Health and Social Services for the development of community-based support facilities providing transitional housing and training to high-risk, transition-age youth.

Section 12 of the bill would make an appropriation to the Office of the Governor to implement a lump sum payment negotiated between the State and the Alaska State Employees Association on behalf of the general government unit. We see no legal concerns with the appropriation.

Section 13 of the bill would provide for the lapse, in accordance with AS 37.25.020, of the capital project appropriation made in sec. 11 of the bill.

Section 14 of the bill would provide that sec. 11 of the bill take effect June 30, 2013.

Section 15 of the bill would provide for an effective date of July 1, 2013, except as provided in sec. 14 of the bill.

### **III. Conclusion**

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

Sincerely,

Michael C. Geraghty  
Attorney General

MCG:DEB:pav