

May 11, 2011

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

Re: CSSB 76(FIN) -- making supplemental appropriations, capital appropriations, and other appropriations; amending appropriations; and making appropriations to capitalize funds
Our file: JU2011200256

Dear Governor Parnell:

At the request of your legislative director, we have reviewed CSSB 76(FIN), making supplemental appropriations, capital appropriations, and other appropriations; amending appropriations; and making appropriations to capitalize funds.

The bill would make and amend supplemental, capital, and other appropriations, and would make appropriations to capitalize funds. The bill would encompass many of the provisions of the version of SB 76 that was introduced at your request earlier this year.

I. Sectional Analysis:

A. Sections 1 - 3:

Section 1 of the bill, pages 2 - 21, would set out supplemental changes in operating expenditures from the general fund or other funds to agencies for the fiscal year ending June 30, 2011. Section 2 of the bill would set out the funding by agency for the appropriations made in sec. 1 of the bill. Section 3 of the bill would set out the statewide funding for the appropriations made in sec. 1 of the bill. The supplemental appropriations in sec. 1 have an effective date of May 17, 2011. *See* sec. 21.

While we have not identified each appropriation difference between original and final versions of the bill, we note that the supplemental appropriations made in sec. 1 of this bill were largely appropriations included in secs. 1 and 6 of SB 76. In merging these two sections of the original version of the bill, we note that this bill would offset certain positive and negative

appropriations made to state agencies.¹ For example, SB 76 included two appropriations to the Department of Administration for the Office of Public Advocacy; \$1,010,000 was appropriated in sec. 1 (page 2, line 15) and -\$5,800 was appropriated in sec. 6 (page 13, line 32) of the bill. The sum of those amounts (\$1,004,200) is the amount appropriated in this bill (page 3, line 11).

B. Sections 4 - 6:

Section 4 of the bill, page 31, would set out the supplemental capital projects and grant appropriations. This section would include two grants to named recipients which were included in sec. 3 of the original version of SB 76. CSSB 76(FIN) does not include other supplemental capital projects and grant appropriations from the original version of SB 76. Section 5 of the bill would set out the funding by agency for the appropriations made in sec. 4 of the bill. Section 6 of the bill would set out the statewide funding for the appropriations made in sec. 4 of the bill. The supplemental appropriations in sec. 4 of the bill have an effective date of May 17, 2011. *See* sec. 21.

C. Sections 7 - 20:

Sections 7 - 20 of the bill would include amendments to prior appropriations and supplemental appropriations. These supplemental appropriations have an effective date of May 17, 2011. *See* sec. 21. Most of these appropriations were included in the original version of SB 76 that was introduced at your request earlier this year. A few sections of the bill have modified language which does not appear to effect significant substantive changes to the original requested supplemental appropriation. *See, e.g.*, secs. 8(a), 14, 16(a),² 18,³ and 22⁴ of CSSB 76(FIN). A few sections of this bill would make appropriations or modify provisions which were not included in the original version of the bill (*see, e.g.*, in SB 76, secs. 9 and 15⁵, and

¹ These appropriations should be researched to determine if any constitute an unallocated reduction. As we have previously opined in the review of other operating appropriations, unallocated reductions that purport to effect more than one appropriation may raise constitutional questions. *See* 2006 Op. Att'y Gen. 1 (June 16; 883-06-0104); 2005 Op. Att'y Gen. (June 22; 883-05-0102). We typically do not recommend a veto of such reductions. *Id.*

² The word "trustee" was deleted in respect to fees for outstanding international airports revenue bonds.

³ The word "STATUTORY" was added to the title of the section.

⁴ Language for non-lapse of capital projects and capitalization of funds is limited to secs. 14, 15, and 18. Omitted from the original version of SB 76 is non-lapse language for bill sections which amended prior appropriations. For those bill sections, the non-lapse provision related to the original appropriation would still apply, so new non-lapse language in CSSB 76(FIN) does not appear to be necessary.

⁵ New appropriations. Sec. 9 appropriates \$75,000 for establishing a workers' compensation medical fee schedule. Sec. 15 appropriates income to capitalize the Alaska Children's trust fund (AS 37.14.200(a)).

sec. 13(b)⁶). And, this bill does not include a few provisions encompassed in the original version of the bill (*See, e.g.*, secs.11, 14(a), 17, and 21 of SB 76).

Our specific comments regarding appropriations that raise particular legal concerns, or are otherwise significant follow.

Section 13 of the bill relates to litigation in *Kasayulie v. State*, 3AN-97-3782. The trial court in that case found that the state breached the public school trust when public school trust lands were legislatively designated general grant lands in 1978. This litigation also involves matters related to construction and maintenance of school facilities in rural Alaska. The trial court ordered that a valuation of all public school trust lands be completed before the trial court would address the appropriate remedy in either the public school trust or rural school facilities sides of the case. Section 13 of the bill would amend prior legislation appropriating funds for the land valuation effort, so that the funding will be available through the fiscal year ending June 30, 2013.

Section 20 of the bill would make the appropriation made in sec. 9 of this bill contingent upon the passage and enactment into law of a version of HB 13. HB 13 passed both houses of the legislature, and awaits transmission to the Governor.

D. Section 21:

Section 21 of the bill would provide that CSSB 76(FIN) becomes effective on May 17, 2011.

II. Conclusion:

In conclusion, we see no significant legal problems presented by this bill.

Sincerely,

John J. Burns
Attorney General

JJB:BDB

⁶ Establishes a lapse date for a prior appropriation.