

May 21, 2014

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

Re: CCS HB 267: Fiscal Year 2015 Mental
Health Budget
Our file: JU2014200337

Dear Governor Parnell:

At the request of your legislative director, the Department of Law has reviewed CCS HB 267, making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program. The final bill raises some relatively minor legal issues.

I. Required Reports and Veto

With the transmittal of original HB 267 to the House or Representatives, 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 from the legislature 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 267 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 the 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 267 contains a number of expressions of legislative intent. In the past, we have advised that expressions of intent may violate the confinement clause of the Alaska Constitution ("[b]ills for appropriations shall be confined to appropriations." art. II, sec. 13) and therefore may generally be followed as a matter of comity or ignored. 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 2015 operating budget, CCS HB 266. 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.

Under the appropriation to the Department of Education and Early Development, sec. 1, p. 2, of the bill, the legislature has prohibited a school district's receipt of state education aid under this section if the school district refuses to allow certain recruiters on campus while allowing others, refuses to allow the Boy Scouts of America to use the school facilities if other non-school groups may use it, or has a policy of refusing to have an in-school Reserve Officers' Training Corps or a Junior Reserve Officers' Training Corps program. We believe this language probably violates the confinement clause and is unenforceable. For a more detailed discussion of this issue, please refer to our review of the same provision in the fiscal year 2015 operating budget, CCS HB 266.

Under the appropriation to the Department of Health and Social Services, sec. 1, p. 3, of the bill, the legislature appears to have provided the commissioner of health and social services with the authority to transfer up to \$50,000,000 between appropriation items provided to the Department of Health and Social Services and expresses its intent that the Department of Health and Social Services provide certain reports of the transfer of funds between appropriation items to the House and Senate Finance Committees and the Legislative Finance Division. A similar provision was contained in last year's budget bill. Because this delegation of authority raises constitutional and budget tracking concerns, we will work with the commissioner of health and social services on this issue should circumstances arise that would give rise to his need to transfer funds between appropriation items.

In sec. 1, p. 3, of the bill, the legislature expresses its intent that the Department of Health and Social Services submit a report to the legislature by January 22, 2015, outlining statutory and regulatory changes that need to occur to ensure that the Alaska Pioneer Homes maximize Medicaid funding. We think this intent language is unenforceable, but the Department of Health and Social Services may want to comply as a matter of comity.

In sec. 1, p. 5, of the bill, the legislature expresses its intent that the Department of Health and Social Services administer the Health Care Professions Loan Repayment and Incentive Program in stricter accordance to statute, that the match requirement be adjusted only under certain circumstances, and that governmental entities pay a match at least equal to that prescribed for nonprofit employers. This intent language attempts to administer the expenditure of funds and is unenforceable, but the department may want to comply as a matter of comity. Please note, however, that compliance with this intent language would trigger the need to amend existing regulation 7 AAC 24.060.

The legislature also 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 267, contains a statement, beginning in sec. 1, p. 6, line 20, 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 same provision in the operating budget, CCS HB 266.

Under the appropriation to the Department of Revenue, sec. 1, p. 7, of the bill, the legislature expresses its intent that the Alaska Mental Health Trust assess and report to the legislature by January 15, 2015, whether and what type of expanded broadband capacity would result in long-term general fund savings and improved access to health care. This provision has a similar counterpart in the operating budget, CCS HB 266, at page 34. This language clearly strays into the administration of the trust authority's program and is not enforceable, but the trust authority may want to comply as a matter of comity.

Under the appropriation to the University of Alaska, sec. 1, p. 8, of the bill, there are five expressions of legislative intent: (1) that the University of Alaska maintain certain offices and explore additional funding opportunities; (2) that the University of Alaska collect certain data on recent and future graduates; (3) that the University of Alaska carefully review programs and conduct certain activities aimed at reducing costs; (4) that the University of Alaska submit a fiscal year 2016 budget in which requests for unrestricted general funds not exceed the amount of additional University of Alaska receipts requested for that year; and (5) 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. Section 1, p. 8, lines 9 - 30. The first three expressions of intent are probably not enforceable but the University of Alaska may want to comply as a matter of comity. The fourth and fifth 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.

Other than as noted above, sec. 1 of the bill sets out the appropriations, funding sources, and other items for the fiscal year 2015 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 would provide 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 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 9(a) of the bill also would provide that the appropriations made in sec. 1 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, 2015: Public Employees Local 71 agreement for the labor, trades, and crafts unit; Teachers' Education Association of Mt. Edgecumbe; Alaska Correctional Officers Association for correctional officers; Confidential 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; Public Safety Employees Association; and Alaska Vocational Technical Center Teachers' Association agreement for the Alaska Vocational Technical Center unit.

Section 9(b) of the bill would provide that the appropriations made to the University of Alaska in the bill include amounts for salary and benefit adjustments for the fiscal year ending June 30, 2015, 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; Fairbanks Firefighters Association, IAFF Local 1324; United Academics - American Association of University Professors, American Federation of Teachers; United Academics - Adjuncts; and Alaska Higher Education Crafts and Trades Employees, Local 6070.

Section 9(c) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in sec. 9(a) of the bill would 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 9(d) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in sec. 9(b) of the bill would suffer 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. This section is an appropriate condition on the appropriation where an agreement has not been ratified.

Section 9(e) of the bill would provide that the appropriations in sec. 1 of the bill for employee salaries and benefits described in secs. 9(a) and 9(b) of the bill are only for the state's comprehensive mental health program and do not necessarily affect every group of nonunion employees or collective bargaining represented employees referred to in secs. 9(a) and 9(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 the bill.

Section 10 of the bill would provide for an effective date of July 1, 2014.

III. Conclusion

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

Sincerely,

/ s /
Michael C. Geraghty
Attorney General

MCG/CJM