



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
Main: 907.465.3600
Fax: 907.465.2520

August 5, 2019

The Honorable Michael J. Dunleavy
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811

Re: HB 2001 – Second Fiscal Year 2020
Operating Budget (SCS CSHB
2001(FIN) am S
Our file: 2019200632

Dear Governor Dunleavy:

At the request of your legislative director, we have reviewed SCS CSHB 2001(FIN), am S, making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; making supplemental appropriations, reappropriations, and other appropriations; and making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program. We review the highlights of the bill below.

Introduction.

This bill is basically the second fiscal year 2020 operating budget. It largely seeks to restore funding for vetoed appropriations from the first operating budget passed (ch. 1, FSSLA 19; HB 39). This bill, sec. 8, also includes an appropriation for a permanent fund dividend. Additionally, we note that the bill sets out the following introductory language in sec. 1 of the bill: “[a] department-wide, agency-wide, or branch-wide unallocated reduction set out in this section may be allocated among the appropriations made in this section to that department, agency, or branch” (sec. 1, p. 2, lines 4 - 6). We have previously advised that because AS 37.07.080(e) authorizes the transfer of money between allocations, a department-wide or agency-wide unallocated reduction is likely

permissible so long as the unallocated reduction is for a specific amount.¹ A branch-wide unallocated reduction would require further legal review, but there are no branch-wide unallocated reductions in this bill.

I. Section 1 – appropriations to individual departments, the University of Alaska, the legislature, and the court system.

Section 1 of the bill seeks to restore funding for various appropriations vetoed from the fiscal year 2020 operating budget (HB 39) passed by the legislature. It includes appropriations to the Departments of Administration; Commerce, Community and Economic Development; Education and Early Development; Environmental Conservation; Fish and Game; Health and Social Services; Law; Military and Veterans' Affairs; Natural Resources; Public Safety; Revenue; and Transportation and Public Facilities. Additionally, sec. 1 includes appropriations for the University of Alaska and the Alaska Court System.

II. Sections 2 - 3 – Funding sources.

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.

III. Sections 4 - 6.

Section 4 includes supplemental appropriations for fiscal year 2019 for the senior benefits payment program. Sections 5 and 6 set out the funding sources and statewide funding for the fiscal year 2019 appropriations made in sec. 4.

VI. Sections 7 - 16.

The following sections contain specific appropriations for particular purposes. Unless identified, we see no legal concerns with the appropriations.

Section 7 reappropriates funds to the Department of Education and Early Development for the maintenance and operation of the Mt. Edgecumbe Aquatic Center for the fiscal years 2019 - 2021.

¹ See 1993 Inf. Op. Att'y Gen. (June 17; 883-93-0073); 1992 Inf. Op. Att'y Gen. (June 30; 883-92-0141).

Section 8 includes appropriations related to the Alaska Permanent Fund. Subsections (a) and (b) are appropriations from the earnings reserve account to the general fund, and then to the principal of the Alaska permanent fund of an amount estimated to be \$99,800,000 which in addition to the appropriation made in sec. 24(a), ch. 1, SSSLA 2017 satisfies a statutory provision, AS 37.13.010(a)(2), calling for a deposit of 50 percent of royalties for certain leases. Subsections (c) and (d) provide for the same series of appropriations from the earnings reserve account to the general fund and then to the principal of the Alaska permanent fund of an amount estimated to be \$80,000,000, which in addition to the appropriation made in sec. 9(a), ch. 17, SLA 2018, satisfies a statutory provision, AS 37.13.010(a)(2), calling for a deposit of 50 percent of royalties for certain leases. The Alaska Constitution requires the deposit of a minimum of 25 percent of certain mineral royalties into the permanent fund (art. IX, sec. 15).

Section 8(e) provides for an appropriation of \$1,000,000,000 from the earnings reserve account to the general fund for fiscal year 2020.

Sections 8(f) and (g) are appropriations for the payment of permanent fund dividends and for administrative and associated costs for fiscal year 2020. Specifically, sec. 8(f) appropriates the unobligated and unexpended balance of the statutory budget reserve fund (AS 37.05.540(a)), estimated to be \$172,200,000, and sec. 8(g) appropriates \$896,470,000 from the general fund to the dividend fund, for the payment of dividends and associated costs.

Section 8(h) provides that after the appropriations in (a), (c), and (e) of this section, an appropriation of the remaining balance of the earnings reserve account, not to exceed \$5,400,000,000, is appropriated from the earnings reserve account to the principal of the permanent fund. The legislature expresses its intent that this additional appropriation be used to satisfy the inflation proofing requirement under AS 37.13.145(c) for the next eight fiscal years and that it not include associated unrealized gains.

Section 9 makes an appropriation from the civil legal services fund (AS 37.05.590) to the Department of Commerce, Community, and Economic Development for a grant under AS 37.05.016 to the Alaska Legal Services Corporation.

Section 10(a) makes an appropriation from the general fund for the payment of debt service on outstanding debt authorized by AS 14.40.257, AS 29.60.700, and AS 42.45.065 for projects involving the University of Alaska, the Department of Transportation and Public Facilities, and the Alaska Energy Authority. Section 10(b) makes an appropriation of the amount necessary for state aid for school construction costs under AS 14.11.100 after the appropriation made in sec. 31(n), ch.1, FSSLA 2019 (HB 39, operating budget) from the general fund to the Department of Education and Early Development.

Sections 11(a) - (d) provides for capitalization of various funds. Section 11(a) provides for a \$30,000,000 appropriation from the general fund to the community assistance fund (AS 29.60.850).

Sections 11(b) and (c) seek to make appropriations from the general fund to the public education fund (AS 14.17.300) for fiscal year 2021 education spending of the amount necessary to fund state aid calculated under the public school funding formula (AS 14.17.410(b)), and the amount necessary to fund pupil transportation under AS 14.09.010. The Attorney General advised in an opinion dated May 8, 2019 that similar appropriations that sought to “forward fund” education through the commitment of future state revenues was unconstitutional under article IX of the Alaska Constitution. The appropriations in sec. 11(b) and (c) suffer from this same legal infirmity and thus would be considered to be invalid appropriations by the Department of Law. We recommend using the line-item veto authority to strike these unlawful appropriations.

Section 11(d) appropriates \$19,694,500 from the general fund to the regional educational attendance area and small municipal school district school fund.

Section 12(a) appropriates from the general fund to the civil legal services fund (AS 37.05.590) an amount equal to 10 percent of the filing fees received by the court system during fiscal year 2018 for the purpose of making appropriations from the fund to organizations that provide civil legal services to low-income individuals. Section 12(b) makes an appropriation of \$454,000 from the power cost equalization endowment fund (AS 42.45.070(a)) to the renewable energy grant fund (AS 42.45.045).

Section 13 provides that certain appropriations in the bill are for capitalization of funds and do not lapse.

Section 14(a) provides for retroactive effect to May 1, 2019 of appropriations made in secs. 4 - 6 of the bill. Section 14(b) provides for retroactive effect to June 30, 2019, of appropriations made in sec. 7 of the bill. Section 14(c) provides that appropriations in secs. 1 - 3, 8 - 10, 11(a) and (d), 12 and 13 are retroactive to July 1, 2019.

Section 15 provides that secs. 11(b) and (c) of this bill take effect July 1, 2020.

Section 16 provides that except as provided in sec. 15, the bill takes effect immediately under AS 01.10.070(c).

VII. Conclusion.

Although we have identified no other constitutional or legal issues in the bill outside of what is included in this letter, please be advised that it is not always possible to identify or comment on all legal issues in a bill of this complexity. However, we will assist the agencies throughout the year in interpreting and applying the provisions of the bill, as well as related legislation, to make certain that appropriations are implemented in a manner that is consistent with enabling statutes and valid legislative intent.

Sincerely,

KEVIN G. CLARKSON
ATTORNEY GENERAL

By:

William E. Milks
Senior Assistant Attorney General