

# STATE OF ALASKA

## DEPARTMENT OF LAW

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June 15, 2000

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

Re: CCS HB 312 -- Making and Amending Appropriations for the Operating and Loan Program Expenses of State Government, for Certain Programs, and to Capitalize Funds; and Making Appropriations under Art. IX, Sec. 17(c), Constitution of the State of Alaska, from the Constitutional Budget Reserve Fund  
A.G. file no: 883-00-0096

Dear Governor Knowles:

At your legislative office's request on your behalf, we have reviewed CCS HB 312. This is the operating budget bill for fiscal year 2001.

Because this is a budget bill, we will not attempt to do a section-by-section analysis of this bill. Most of the sections of the bill are similar to those in last year's bill, except of course for the numbers.

We begin with our usual observations about the expressions of legislative intent included in the bill. We note, as we always do, that such expressions are not binding; you may choose to follow them or to ignore them. In the past, you and your predecessors in office have routinely vetoed these expressions, whether or not you agreed with them. As we observed last year, it is not entirely clear that such vetoes would be constitutional -- a major case on the scope of the item veto in appropriations bills is currently pending before the Alaska Supreme Court and has been since we wrote last year's operating budget review letter.

A few of the intent statements are worthy of further comment, as they may be seen as going beyond mere expressions of intent. The first is found on page 14, lines 20-24:

It is the intent of the legislature that the Department of Health and Social Services provide Temporary Assistance for Needy Families (TANF) funding for needy families that are victims of domestic violence and that no requirement for financial eligibility standard be a factor that could limit services. The department shall not impose additional reporting requirements that would compromise confidentiality of services.

In light of the legislature's use of the word "shall" in the last sentence, this sentence might be seen as an attempt to enact a binding restriction on the department. However, including such a restriction in this appropriations bill would violate the confinement clause of the Alaska Constitution, that portion of art. II, sec. 13 that provides that "[b]ills for appropriations shall be confined to appropriations." Therefore this sentence should be construed, so as to avoid constitutional problems, as expressing the legislature's intent that the Department of Health and Social Services should not impose such additional reporting requirement.

A similar issue is raised by the statement on page 25, lines 16-19:

It is the intent of the legislature that the Council on Domestic Violence and Sexual Assault provide services to victims of domestic violence using Temporary Assistance for Needy Families (TANF) funding guidelines that exclude a financial eligibility standard. Victims of domestic violence qualify as "needy families" because mother and children may be considered homeless as a result of domestic violence.

Again, the second sentence cannot be read as a legally binding declaration, because such a reading would violate the confinement clause. So it should be read as expressing intent that victims of domestic violence should qualify as "needy families."

Next, there is the statement on page 29, lines 5-8:

It is the intent of the legislature that the \$257.6 general fund transfer from Northern Region Highways and Aviation to Statewide Highways Snowplowing and Winter Maintenance be used to open the following roads in the spring of 2001: Taylor Highway \$132,000; Boundary Spur \$10,500; McCarthy Road \$8,700; Nome/Teller Road \$35,700; Nome/Council Road \$34,700; Kougarok Road \$36,000.

Despite the detail here, and the fact that the statement suggests allocations for the entire amount of the appropriation, this is still a nonbinding intent statement. If the Department of Transportation and Public Facilities (DOTPF) does not wish to expend this appropriation in the

manner set out in the intent statement, it is free to not do so. It is unclear why the legislature did not incorporate its suggestions as allocations of the appropriation, but it did not. Had the suggestions been allocations, DOTPF could have still departed from them, but it would have had to follow the procedures set out in AS 37.07.080(e).

Finally, there is a statement on page 31, line 31, through page 32, line 4:

It is the intent of the legislature that the Alaska Court System examine the feasibility of moving its information technology network operations from the Department of Administration's Wide Area Network (WAN) to a network provided by commercial carriers. The Court System shall use money appropriated to pay network charges to obtain services from the most cost beneficial network service provider, which may be a network secured for the balance of state government by the Department of Administration.

The second sentence of this statement might be seen as a condition on the "administration and support" appropriation to the court system, thus raising the question of whether the condition is a valid one. Since, however, any possible dispute here is between the other two branches of state government, we will not comment on this question.

The "back part" of the bill raises a few issues. First, sec. 18 of the bill has been superseded by subsequent events, and thus you may wish to veto it. Section 18 relates to amounts appropriated from the four dam pool transfer fund (AS 42.45.050), which is comprised of deposits of payments for power generated by the four dam pool hydroelectric power project. However, SCS CSHB 446(FIN) am S, which you signed on May 18, 2000 (ch. 60, SLA 2000), repeals the four dam pool transfer fund effective July 1, 2000. Amounts to be paid for power generated by the power project in fiscal year 2001 will not be deposited into the repealed four dam pool transfer fund, but instead are appropriated to the power cost equalization and rural capitalization fund (AS 42.45.100) by sec. 4(a) of CSHB 447(FIN) am, which you signed on May 23, 2000 (ch. 75, SLA 2000). The repealed four dam pool transfer fund will have no funds in fiscal year 2001. The unfunded appropriation contemplated by sec. 18 of this bill can have no effect and will not result in the actual disbursement of any amount. While a veto is not necessary, allowing sec. 18 of this bill to stand could generate some potential for confusion regarding the appropriation of amounts to be paid in fiscal year 2001 for power generated by the four dam pool hydroelectric project.

Section 20 of the bill appropriates the unexpended and unobligated portion of a fiscal year 2000 appropriation, not to exceed a maximum amount, for grants to all the school districts of the state "in an amount equal to the school district's average daily membership multiplied by \$43.75." The bill, however, does not specify what will happen if the unexpended and unobligated portion is not sufficient to make all these grants. We certainly are not recommending a veto because of this deficiency, and it seems likely that the \$43.75 figure was

chosen to assure, as far as possible, that there will not be a deficiency. Nevertheless, it would have been preferable had there been a subsection addressing the possibility of a shortfall.

Section 23(c) of the bill contains the only clearly expressed condition on an appropriation in this bill:

(c) The appropriation made by (b) of this section [\$29,960,000 to the Department of Health and Social Services, medicaid services, for FY 2000 from federal funds and designated program receipts] is conditioned upon the Department of Health and Social Services establishing a program of additional payments to insure access for community hospitals under a distribution methodology approved by the Health Care Financing Administration for government-owned and -operated hospitals in Alaska. Hospitals that choose to participate must sign an agreement by May 17, 2000, to return 90 percent of the additional payment amounts to the State of Alaska.

We believe that the condition is a valid one. Under this methodology, which has been approved by the federal Health Care Financing Administration, the state will be able to distribute funds to public hospitals to assure that basic medical services remain available to Medicaid recipients. Through the intergovernmental transfers received from the public hospitals, the state will be able to increase the overall Medicaid budget without increasing the amount of state general funds in that budget, since the funds would not be available unless the state established a Medicaid hospital proportionate share payment program.

We find no other constitutional or legal problems with the bill. However, if you decide to exercise your item veto with regard to this bill, we would refer you to the advice that we rendered two years ago about the constitutionally required statement of reasons for vetoes. 1998 Inf. Op. Att'y Gen. (June 17; 883-98-0127).

Sincerely,

Bruce M. Botelho  
Attorney General

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