

STATE OF ALASKA

DEPARTMENT OF LAW CIVIL DIVISION

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June 10, 2005

The Honorable Frank H. Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: CCS HB 66 -- fiscal year 2006 mental
health budget
Our file: 883-05-0103

Dear Governor Murkowski:

At the request of your legislative director, the Department of Law has reviewed CCS HB 66, the mental health budget for fiscal year 2006, introduced at your request. The final bill raises some relatively minor legal issues.

I. Required Reports

With the transmittal of original HB 66 to the House, the report required by AS 37.14.003(b), explaining any differences between your proposed mental health appropriations and the appropriation requests proposed to you 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, so a report is required.

We have reviewed the legislature's draft report and have identified no legal problems with the report. The report, however, has not yet been finalized. We will maintain communications with legislative staff to facilitate the legislature's compliance with the report 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. We have advised that 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. Each of the statements appears to be pure expression of intent. Consequently, each is non-binding. Under *Alaska Legislative Council v. Knowles*, 21 P.3d 367 (Alaska 2001), a statement of intent accompanying an appropriation may not be vetoed separately from the appropriation to which it applies. Our review of the fiscal year 2006 operating budget, CCS HB 67(brf sup maj fld H) (HB 67), contains further discussion of these issues.

The legislature has also attached the same abortion financing condition to appropriations in this bill as it attached to appropriations in the operating budget bill. CCS HB 66 (the mental health budget) contains a statement, on page 3, line 6, 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 operating budget, HB 67.

Section 1 of CCS HB 66 (the mental health budget bill) sets out the appropriations, funding sources, and other items for the fiscal year 2006 mental health operating budget. Section 2 of the bill sets out the funding for mental health operating expenditures for the purposes of new legislation for fiscal year 2006. Section 3 of the bill sets out the funding by agency for the appropriations made in secs. 1 and 2 of the bill. Section 4 of the bill sets out statewide funding for the appropriations made in secs. 1 and 2. Section 5 of the bill sets out the funding by agency for mental health capital projects and grants. Section 6 of the bill sets out the funding for the appropriations made in sec. 5. 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 provides for an appropriation of \$3,000,000 for costs associated with the demolition and asbestos abatement of the old Alaska Psychiatric Institute. Section 9 of this bill provides for appropriation of trust authority authorized receipts or administration

receipts that are above the amounts appropriated in the bill. Section 10 of the bill provides that the appropriation made in sec. 8 is for a capital project and lapses under AS 37.25.020. Section 11 of the bill provides for an effective date of July 1, 2005.

III. Conclusion

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

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:

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Deputy Attorney General
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