

STATE OF ALASKA

DEPARTMENT OF LAW

SARAH PALIN, GOVERNOR

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May 8, 2009

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

Re: CCS HB 83 -- FY10 Mental Health
Budget
Our file: JU2009200406

Dear Governor Palin:

At the request of your legislative director, we have reviewed CCS HB 83, the mental health budget for fiscal year 2010, introduced at your request. The final bill raises some relatively minor legal issues.

I. Required Reports

With the transmittal of original HB 83 to the House, 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 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 83 do differ from the appropriations proposed by the trust authority, and the legislature submitted a report describing the differences. We have reviewed the legislature's report and believe that it satisfies the statutory 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. 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 83 contains a number of expressions of legislative intent. In the past, we have advised that expressions of intent may generally be ignored or followed as a matter of comity. 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 2010 operating budget, CCS HB 81(brf sup maj pfld H). 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.

The legislature 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 83, contains a statement, beginning on page 3, line 9, 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, CCS HB 81(brf sup maj pfld H).

The legislature has also added intent language requesting that DHSS eliminate report requirements for grant recipients whose grants are \$50,000 or less. The language goes on to provide direction regarding grant procedures. *See* sec. 1, p. 3, line 20, through p. 4, line 3. This intent language strays into the administration of these grant programs and, accordingly, we think it violates the confinement clause and is not enforceable. We also note that this intent language may be inconsistent with other intent language in that it requests that some reporting be terminated, but then requests that future grants be awarded based in part on past performance (*see* sec. 1, p. 5, lines 9 through 21). The request for performance based funding might be difficult to comply with if there was no report on which to judge past performance.

Other than as noted above, sec. 1 of CCS HB 83 (the mental health budget bill) sets out the appropriations, funding sources, and other items for the fiscal year 2010 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 is an appropriation to the office of the governor for the Department of Health and Social Services' behavioral health data sharing partnership and sets out the funding sources for that appropriation. Section 9 of the bill provides for appropriation of 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 10(a) of the bill provides that the appropriations made in sec. 1 of the Act 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 10(a) also provides 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, 2010: APEA agreement for the confidential unit; ASEA agreement for the general government unit; APEA agreement for the supervisory unit; Alaska Vocational Technical Center Teachers Association-NEA agreement for the Alaska Vocational Technical Center unit; PSEA agreement for regularly commissioned public safety officers; Public Employees Local 71 agreement for the labor, trades and crafts unit; and Marine Engineers Beneficial Association for the MEBA unit representing certain AMHS employees. We note that the operating budget, CCS HB 81(brf sup maj pfld H), provides for appropriations for salaries and benefits for employees of each branch of government and legislators and addresses salaries and benefits for certain state bargaining units not listed in this bill. The bill review for CCS HB 81(brf sup maj pfld H) contains a full discussion regarding these appropriations and reference is made to that bill review.

Section 10(b) of the bill provides that the appropriations made to the University of Alaska in this bill include amounts for salary and benefit adjustments for the fiscal year ending June 30, 2010 for employees who are not members of bargaining units and to implement the monetary terms of employees covered by collective bargaining agreements (including the health plan) for university employees in the following unions: Alaska

Higher Education Crafts and Trades Employees; University of Alaska Federation of Teachers; United Academics; and United Academics-Adjuncts.

Section 10(c) of the bill provides that the appropriations for employees covered by collective bargaining agreements described in subsecs. (a) and (b) 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 10(d) of the bill provides that the appropriations for employee salaries and benefits described in subsecs. (a) and (b) are only for the state's comprehensive mental health program and do not necessarily affect every group of non-union employees or collective bargaining represented employees referred to in subsecs. (a) and (b). 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 this bill.

Section 11 of the bill would provide for an effective date of July 1, 2009.

III. Conclusion

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

Sincerely,

Richard A. Svobodny
Acting Attorney General

RAS:CJM:pav