

STATE OF ALASKA

DEPARTMENT OF LAW

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March 19, 2012

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

Re: CSHB 307(FIN) -- making supplemental appropriations, capital appropriations, and other appropriations; amending appropriations; repealing appropriations; and making appropriations to capitalize funds
Our file: JU2012200254

Dear Governor Parnell:

At the request of your legislative office, we have reviewed CSHB 307(FIN), making supplemental appropriations, capital appropriations, and other appropriations; amending appropriations; repealing appropriations; and making appropriations to capitalize funds. This is the "fast track" supplemental budget for fiscal year 2012.

Section 1 of the bill provides for supplemental operating budget appropriations for the Department of Administration; Department of Commerce, Community, and Economic Development; Department of Corrections; Department of Health and Social Services; Department of Labor and Workforce Development; Department of Law; Department of Military and Veterans' Affairs; Department of Natural Resources; Department of Public Safety; Department of Revenue; Department of Transportation and Public Facilities; and the University of Alaska. 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. The supplemental appropriations made in sec. 1 of the bill have an effective date of March 15, 2012. *See* sec. 19 of the bill.

Section 4 of the bill sets out supplemental appropriations for capital projects and grant appropriations. Section 5 of the bill sets out the funding source by agency for the appropriations made in sec. 4 of the bill. Section 6 of the bill sets out the statewide funding source for appropriations made in sec. 4 of the bill. The supplemental appropriations made in sec. 4 of the bill have an effective date of March 15, 2012. *See* sec. 19 of the bill.

While we have not identified each appropriation difference between original and final versions of the bill, we note that the supplemental appropriations made in sec. 1 of the bill were largely included in sec. 1 of HB 307. However, the capital projects contained in sec. 3 of HB 307 were removed in CSHB 307. *See* sec. 4 of the bill. It is our understanding this was done with the intention of adding the removed capital projects into another budget bill.

Section 7(a) of the bill reappropriates the remaining balance of an appropriation from Chugach Electric Association, Inc. to the Alaska Energy Authority for the Battle Creek diversion project. This project is an enhancement to the Bradley Lake Hydroelectric Project and is owned by the Alaska Energy Authority. Section 7(b) of the bill reappropriates a portion of the remaining balance of an appropriation to the Alaska Energy Authority to evaluate the most desirable terminus location for extending the Alaska Intertie. Section 7(b) of the bill reappropriates the remaining balance of this appropriation to the Alaska Energy Authority to extend the Alaska Intertie to the preferred terminus. Section 7(c) of the bill reappropriates the remaining balance of an appropriation, estimated to be \$4,796,355, to the Department of Commerce, Community, and Economic Development for federally approved coastal impact assistance grants to recipients and amounts specified in the bill. This money was previously appropriated to the Department of Commerce, Community, and Economic Development for grants to coastal resource service areas that ceased to exist when the Alaska Coastal Management Program sunset on July 1, 2011. The appropriations in sec. 7 of the bill are for capital projects and lapse under AS 37.25.020. *See* sec. 17 of the bill.

Section 8 of the bill appropriates \$18,000,000 from the general fund to the Department of Education and Early Development to implement the terms of a settlement agreement reached between the state and the plaintiffs in *Moore v. State*, Case No. 3AN-04-9756 CI. In *Moore*, the superior court held that the state had not met its obligation under art. VII, sec. 1 of the Alaska Constitution to oversee local administration of education. This settlement agreement addresses that obligation, and remedies any past violation. Under the settlement agreement, the Department of Education and Early Development will allocate money to school districts for qualifying projects in underperforming schools. No money will be paid directly to the plaintiffs, so the appropriation is to the Department of Education and Early Development rather than to the Department of Law. Money under this appropriation will be available for five years; any unspent money from the appropriation at that time will lapse.

Section 9 of the bill conditionally appropriates up to \$8,500,000 from the general fund to the Department of Health and Social Services to administer heating assistance programs under AS 47.25.621 - 47.25.626, but only if the amounts previously appropriated are insufficient to make home heating assistance payments for the fiscal year ending June 30, 2012. The appropriation made in sec. 9 of the bill has a retroactive effective date of July 1, 2011. *See* sec. 18 of the bill.

Section 10(a) and (b) of the bill make appropriations to the Department of Law for paying judgments and settlements against the state. Section 10(c) of the bill appropriates \$600,000 to the Department of Law, civil division, transportation section, for the purpose of paying the costs associated with fast ferry litigation for the fiscal years ending June 30, 2012, and

June 30, 2013. This litigation involves a suit against the engine manufacturer (MTU) and the shipbuilder (Derecktor) for the vessels Chenega and Fairweather. The lawsuit, venued in superior court in Juneau, alleges breach of contract, breach of warranties, unfair trade practices, misrepresentation, bad faith, and other claims arising from defective engines and other propulsion system components. A 21-day jury trial is scheduled for September 8, 2012. The amount in issue is in excess of \$30 million.

Section 11(a) of the bill expands the scope of an existing appropriation to the Department of Military and Veterans' Affairs to allow funds remaining after replacement of the Anchorage Armory roof to be used for preparation of an expansion to armory. Section 11(b) and (c) of the bill amend the fund sources for prior appropriations to the Department of Military and Veterans' Affairs for federal energy projects and deferred maintenance projects. Section 11(d) of the bill appropriates \$300,000 from the general fund to the Department of Military and Veterans' Affairs to provide base realignment and closure impact assistance for use in fiscal years 2012 and 2013.

Section 12 of the bill extends the lapse date on a reappropriation of funds to the Department of Natural Resources for the state gas pipeline right-of-way work related to bringing North Slope natural gas to market. Specifically, sec. 12 of the bill extends the lapse date from June 30, 2012 to June 30, 2013.

Section 13 of the bill amends a subsection of the state debt and other obligations section in the fiscal year 2011 operating budget by changing the funding sources for the debt service obligation on outstanding international airports revenue bonds for the fiscal year ending June 30, 2012 to include additional passenger facility charges collected and \$10,000,000 from the International Airports Construction Fund under AS 37.15.420(a).

Section 14 of the bill appropriates \$5 million from the general fund to the disaster relief fund as a fund capitalization.

Section 15(a) of the bill ratifies expenditure of \$36,388,900 by the Department of Natural Resources for fire suppression for the fiscal year ending June 30, 2011. AS 26.23.020(j) provides: "If the disaster described in the governor's proclamation to declare a condition of disaster emergency is a fire, the governor may expend state funds as necessary to save lives or protect property and public health and safety." Accordingly, we believe the expenditure of these funds was authorized by AS 26.23.020(j) and the rule of necessity. Section 15(b) of the bill ratifies over-expenditure of previous appropriations to the Department of Public Safety totaling \$154,312 for facility maintenance and crime lab toxicology.

Section 16 of the bill repeals a conditional appropriation to the Department of Health and Social Services to administer the energy assistance program, contingent upon a reduction in federal receipts anticipated. This section is being repealed because the appropriation in sec. 9 of the bill provides backstop funding to administer this program for fiscal year 2012.

Section 17(a) of the bill provides that certain sections of the bill are for capital projects and lapse under AS 37.25.020. Section 17(b) of the bill provides that certain sections of the bill are for capitalization of a fund and do not lapse.

Section 18(a) of the bill provides that a certain section of the bill is effective retroactive to June 30, 2011. Section 18(b) of the bill provides that a certain section of the bill is effective retroactive to July 1, 2011.

Section 19 of the bill provides for an effective date of March 15, 2012, which occurred before the bill passed the legislature. Under AS 01.10.070(c), if a bill provides for a definite effective date and the date is before the governor takes action on the bill, the bill becomes effective at 12:01 a.m., Alaska Standard Time, on the day after the bill is enacted into law.

This bill presents no significant legal or other issues.

Sincerely,

Michael C. Geraghty
Attorney General

MCG:DEB:pav