

May 13, 2015

Honorable Bill Walker
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: CCS HB 73: Fiscal Year 2016 Mental
Health Budget
Our file: JU2015200331

Dear Governor Walker:

At the request of your legislative director, the Department of Law has reviewed CCS HB 73, making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program. The final bill raises some relatively minor legal issues.

I. Required reports and veto.

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 with your transmittal of original HB 73 to the House of Representatives. A similar report from the legislature 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 the fiscal year 2016 mental health budget, CCS HB 73, do differ from the appropriations proposed by the trust authority, and the legislature has drafted a letter and reports describing the differences. We have reviewed the legislature's letter and reports and believe that they satisfy the statutory requirement.

If you decide to veto all or part of an appropriation in the 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.

Fiscal year 2016 mental health budget, CCS HB 73, contains a number of expressions of legislative intent. In the past, we have advised that expressions of intent may violate the confinement clause of the Alaska Constitution (“[b]ills for appropriations shall be confined to appropriations.” art. II, sec. 13) and therefore may generally be followed as a matter of comity or ignored. 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 more complete discussion of this issue in our review of the fiscal year 2016 operating budget, CCS HB 72(brf sup maj fld 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.

Under the appropriation to the Department of Administration (DOA), sec. 1, p. 2, of the bill, the legislature has expressed its intent for DOA to document cost drivers of services being provided to other departments and establish a method linking cost drivers to rates charged to other departments for Department of Administration services. DOA would provide that method to the legislature for its use in the future. No further explanation of “cost drivers” is supplied. While this language appears to stray into the administration of DOA’s program, thus arguably violating the confinement clause, and probably is not enforceable, the department may want to comply as a matter of comity.

Under the appropriation to the Department of Health and Social Services (DHSS), sec. 1, pp. 3 - 4, of the bill, there are four expressions of legislative intent that (1) reductions to the Juneau Pioneer Home be taken from the contractual line rather than from the personal services line to ensure that staffing levels for direct care are sufficient; (2) DHSS draft regulations to maximize the collection of the cost of the 24/7 program from the participants; (3) the division of health care services pursue federal authority to deny Medicaid travel when services can be provided in local communities; and (4) the division of public health evaluate and implement strategies to maximize collections for billable services where possible. Once again, while these expressions of intent likely stray

into the administration of DHSS programs, and may violate the confinement clause, the department may wish to comply as a matter of comity.

The legislature also has attached the same abortion financing condition to appropriations in this bill as it attached to appropriations in the operating budget bill. The fiscal year 2016 mental health budget, CCS HB 73, contains a statement, beginning in sec. 1, p. 5, line 25, prohibiting the expenditure of money appropriated to DHSS 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 same provision in the fiscal year 2016 operating budget, CCS HB 72(brf sup maj fld H).

For Medicaid services, in sec. 1 p. 5, line 31, through p. 6. line 3, the legislature has expressed its intent that “[no] money appropriated in this appropriation may be expended” for certain medical assistance for persons eligible for Medicaid. Similar language appears in the fiscal year 2016 operating budget, CCS HB 72(brf sup maj fld H), and our review of the potential legal issues with this provision appears in our bill review for fiscal year 2016 operating budget, CCS HB 72(brf sup maj fld H).

Other than as noted above, sec. 1 of the bill would set out the appropriations, funding sources, and other items for the fiscal year 2016 mental health operating budget, and is unremarkable. Section 2 of the bill would set out the funding by agency for the appropriations made in sec. 1 of the bill. Section 3 of the bill would set out the statewide funding for the appropriations made in sec. 1 of the bill. Section 4 of the bill would set out appropriations for mental health capital projects and grants. Section 5 of the bill would set out the funding by agency for the appropriations made in sec. 4 of the bill. Section 6 of the bill would set out the statewide funding for the appropriations made in sec. 4 of the bill. Section 7 of the bill would set 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 would provide 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 9 of the bill sets out that, under AS 23.40.215, the monetary terms of the collective bargaining agreements with the following labor organizations for the fiscal year ending June 30, 2016, are rejected “unless separate legislation is enacted that contains explicit language approving the monetary terms of that agreement”: Alaska Correctional Officers Association; Confidential Employees Association; Alaska Public Employees Association representing the supervisory unit; Alaska State Employees Association; Public Safety Employees Association; Alaska Vocational Technical Center Teachers’ Association; Inlandboatmen’s Union of the Pacific, Alaska Region; International Organization of Masters, Mates, and Pilots; and the Marine Engineers’ Beneficial Association. In addition, sec. 9 would reject the monetary terms of the following collective bargaining agreements entered into by the University of Alaska:

Fairbanks Firefighters' Union, IAFF Local 1324; United Academics - American Association of University Professors, American Federation of Teachers; United Academics - Adjuncts - American Association of University Professors, American Federation of Teachers; Alaska Higher Education Crafts and Trades Employees, Local 6070; University of Alaska Federation of Teachers. There has been no separate legislation passed providing for approval of the monetary terms of any of these agreements for the fiscal year ending June 30, 2016.

As noted, sec. 9 states that the monetary terms of these agreements are rejected under AS 23.40.215. This statute provides that "(t)he monetary terms of any agreement entered into under AS 23.40.070 - 23.40.260 are subject to funding through legislative appropriation." AS 23.40.215(a). The Alaska Supreme Court has considered the issue of funding collective bargaining agreements and held that "the monetary terms [of a collective bargaining agreement] do not become effective unless and until the legislature specifically funds them." *Univ. of Alaska Classified Employees Ass'n v. Univ. of Alaska*, 988 P.2d 105, 108 (Alaska 1999). Further, the court has stated that "a legislative appropriation funding monetary terms in one year of a multi-year collective bargaining agreement does not oblige a public employer to pay according to those terms in subsequent years." *Id.* at 109.

Finally, although the phrase "monetary terms" could be interpreted broadly, it is our understanding from the legislative record that the legislature intended by this provision only to reject general salary increases - often referred to as cost of living or "COLA" - scheduled to become effective in the fiscal year ending June 30, 2016, for employees covered by these collective bargaining units.

Section 10 of the bill would provide for an effective date of July 1, 2015.

III. Conclusion.

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

Sincerely,

/s/

Craig W. Richards
Attorney General