

June 29, 2017

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

Re: CCS HB 59: Fiscal Year 2018 Mental  
Health Budget  
Our file: JU2017200376

Dear Governor Walker:

At the request of your legislative director, the Department of Law has reviewed CCS HB 59, 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. Bill Analysis.**

CCS HB 59 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 complete discussion of this issue in our review of the fiscal year 2018 operating budget, CCS HB 57. 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 the language, 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 Corrections, sec. 1 (p. 2, lines 19 - 21), of the bill, the legislature has asked the Commissioner of the Department of Corrections to prioritize funding and implement solutions to the disparity in Alaska Native incarceration rates throughout the state. This expression of intent strays into the administration of the Department of Corrections' programs, likely violates the confinement clause, and probably is not enforceable, but the department may want to comply as a matter of comity.

The appropriation to the Department of Health and Social Services, sec. 1 (p. 3, lines 8 - 14), provides that the commissioner of health and social services may transfer up to \$25,000,000 between appropriation items provided to the department, except Medicaid. Because this delegation of authority raises constitutional and budget tracking concerns, the Department of Law and the office of management and budget will work with the commissioner on this issue should circumstances arise that would require the commissioner to consider the need to transfer funds between appropriation items.

Also, under the appropriations to the Department of Health and Social Services, sec. 1 (p. 5, lines 24 - 31), the legislature included a provision providing that no money appropriated within the Medicaid services appropriation may be spent to pay increases to providers that result from an annual inflation adjustment required by regulation to an existing Medicaid payment rate. Current department regulations require the department to make an annual inflationary adjustment to the rates paid to enrolled Medicaid providers. In addition, under AS 47.07.036, the department is required to take certain cost containment actions when there are budget shortfalls or pressure. That statute requires that before the department can look at reducing optional categories of eligible consumers, it must address rates paid to providers. In fiscal year 2016, the department implemented emergency regulations to suspend the automatic inflationary increase to providers and to implement the authority authorized by AS 47.07.036 to avoid reduction in services or persons who are eligible for Medicaid. This language encourages the department to take similar action in fiscal 2018 by expressing the legislature's belief that similar action is required under the statute. However, the restriction is not binding because the statute requires the department to make the assessment as to whether it is necessary.

Under the appropriation to the Department of Public Safety, sec. 1 (p. 6, lines 30, 31), the legislature states its intent that recidivism reduction funding appropriated to the Council on Domestic Violence and Sexual Assault in this allocation may be used to fund victim services programs. This expression of intent strays into the administration of the Department of Public Safety's programs, likely violates the confinement clause, and probably is not enforceable, but the department may want to comply as a matter of comity.

Under the appropriation to the Department of Revenue, sec. 1 (p. 7, lines 6 - 10), the legislature provided that, of the amount appropriated under this section, up to \$500,000 of budget authority may be transferred between the following fund codes: Group Health and Life Benefits Fund 1017, FICA Administration Fund Account 1023, Public Employees Retirement Trust Fund 1029, Teachers Retirement Trust Fund 1034, Judicial Retirement System 1042, National Guard Retirement System 1045. We see no legal issues with this provision.

Under the appropriation to the University of Alaska, sec. 1 (p. 7, lines 21 - 24) of the bill, the legislature expressed its intent that cuts or reallocations of unrestricted

general funds to the University of Alaska Anchorage, University of Alaska Fairbanks and University of Alaska Southeast, on a percentage basis, not exceed cuts or reallocations of unrestricted general funds to the University of Alaska statewide administration. Because of the University of Alaska's unique position in the Alaska Constitution, efforts by the legislature to manage its internal operations through statements of intent in appropriations bills may be even more problematic than the expressions of intent directed at executive branch departments. We refer you to the detailed analysis contained in our review of the same statements of intent in the operating budget, CCS HB 57.

Under the appropriation to the judiciary, sec. 1 (p. 7, lines 32, 33) of the bill, the legislature expressed its intent that the court system raise the filing fee from \$200 to \$500 for superior court monetary damage claims of \$100,000 or more. This expression of intent strays into the administration of the judiciary, likely violates the confinement clause, and probably is not enforceable, but the judiciary may want to comply as a matter of comity.

Other than as noted above, sec. 1 of the bill sets out the appropriations, funding sources, and other items for the fiscal year 2018 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 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 sets out that the appropriations in the bill are for the state's integrated comprehensive mental health program.

Section 8 of the bill would provide for appropriation of mental health 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.

Sec. 9 of the bill addresses the recidivism reduction fund under AS 43.61.010(c). That section provides that if the funds in the recidivism reduction fund are insufficient to fund the appropriations in sec. 1 of the bill, a portion of the funds collected from the alcoholic beverage tax that are not deposited into the alcohol and other drug abuse

treatment and prevention fund established in AS 43.60.050 will be appropriated into the recidivism reduction fund to fund the appropriations in sec. 1 of the bill.

Section 10(a) of the bill would provide that the appropriations made in sec. 1 of the bill include amounts for adjustments in salaries and benefits for public officials, officers and employees of the executive branch, employees of the Alaska Court System, employees of the legislature, and legislators. Section 10(a) of the bill also would provide 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, 2018: Alaska Correctional Officers Association, representing the correctional officers unit; Alaska State Employees Association, for the general governmental unit; Alaska Public Employees Association, for the supervisory unit; Public Employees Local 71, for the labor, trades, and crafts unit; Alaska Vocational Technical Center Teacher's Association, National Education Association, representing the employees of the Alaska Vocational Technical Center; Confidential Employees Association, representing the confidential unit; Marine Engineers' Beneficial Association, representing licensed engineers employed by the Alaska marine highway system; Teachers Education Association of Mt. Edgecumbe; Inlandboatmen's Union of the Pacific, Alaska Region, representing the unlicensed marine unit; Public Safety Employees Association, representing the regularly commissioned public safety officers unit; International Organization of Masters, Mates, and Pilots, representing the masters, mates, and pilots unit.

We note that four state bargaining units referred to in sec. 10(a) (Inlandboatmen's Union of the Pacific; Marine Engineers Beneficial Association; International Organization of Masters, Mates, and Pilots; and Teachers Education Association of Mt. Edgecumbe) have not entered into a collective bargaining agreement for fiscal year 2018. We understand that the bargaining units may have been included in sec. 10(a) in order to address possible health care cost increases for bargaining units during fiscal year 2018. But, we also note that section 1 of the bill does not include funding for any salary adjustments for state bargaining units that had not entered into an agreement covering fiscal year 2018 at the time the bill passed the legislature. Of course, an agreement must be entered into and have known financial terms in order to be the subject of a valid appropriation. *See Alaska Leg. Council v. Knowles*, 86 P.3d 891, 898 (Alaska 2004) ("an act must authorize the expenditure of an ascertainable sum of money in order to qualify as an appropriation."); *Univ. of Alaska Classified Employees Ass'n v. Univ. of Alaska*, 988 P.2d 105, 108 (Alaska 1999) ("the monetary terms [of a collective bargaining agreement] do not become effective unless and until the legislature specifically funds them.") Thus, the state collective bargaining agreements funded under the bill are the agreements that had been entered into at the time the legislature passed the bill.

Section 10(b) of the bill would provide that the appropriations made to the University of Alaska in the bill include amounts for salary and benefit adjustments for the

fiscal year ending June 30, 2018, for employees who are not members of bargaining units and to implement the terms of the following collective bargaining agreements that are in effect for the fiscal year ending June 30, 2018: University of Alaska Federation of Teachers (UAFT); Alaska Higher Education Crafts and Trades Employees, Local 6070; Fairbanks Firefighters Union, IAFF Local 1324; United Academic – Adjuncts – American Association of University Professors, American Federation of Teachers.

Section 10(c) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in sec. 10(a) would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit. 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 would provide that that the appropriations for employees covered by collective bargaining agreements described in sec. 10(b) would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit and approved by the Board of Regents of the University of Alaska. This provision covers the possibility that some of the collective bargaining agreements had not been ratified by the unions' memberships or approved by the Board of Regents at the time that the bill was passed and thus it is possible that the agreements could be rejected by the union memberships or the board. 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(e) of the bill would provide that the appropriations in sec. 1 of the bill for employee salaries and benefits described in secs. 10(a) and (b) of the bill are only for the state's comprehensive mental health program and do not necessarily affect every group of nonunion employees or collective bargaining represented employees referred to in secs. 10(a) and (b) of the bill. 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 the bill.

Section 11 of the bill would provide for an effective date of July 1, 2017.

## **II. Required Reports and Veto.**

In addition to the analysis discussed above, AS 37.14.005(c) requires that if the appropriations in the bill passed by the legislature “differ from those proposed by the

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[.]” Under that statute, the legislature sent the Alaska Mental Health Trust Authority a letter on June 19, 2017, with attached reports.

Upon reviewing the legislature's letter and reports, we believe the legislature's explanation of reasons for differences in the operating budget appropriations satisfies the requirements of AS 37.14.005(c). With regard to the capital budget appropriations, the legislature's letter simply notes the monetary differences between the appropriations in the bill and the authority's recommendations, but does not contain any narrative explanation of the differences. It is uncertain whether this approach satisfies the requirement of AS 37.14.005(c) that the legislature provide a reason for the differences. Even if it does not, we do not see a significant legal consequence arising from the legislature failing to provide a narrative explanation for the deviations. Nonetheless, it is recommended that future explanations of reason contain additional detail to avoid any question as to whether the explanation satisfies AS 37.14.005.

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.

**III. Conclusion.**

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

Sincerely,

JAHNA LINDEMUTH  
ATTORNEY GENERAL

By:

Susan R. Pollard  
Andrew R. Naylor  
Assistant Attorneys General

JL/ARN/ads