



THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
Main: 907.465.3600
Fax: 907.465.2520

May 20, 2020

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

Re: HB 313: Approving and ratifying expenditure
of federal CARES Act receipts
Our file: 2020200375

Dear Governor Dunleavy:

At the request of your legislative director, we have reviewed HB 313, approving and ratifying actions of the governor and the executive branch in expending certain federal receipts and of the Legislative Budget and Audit Committee in approving the expenditure of certain federal receipts during fiscal years 2020 and 2021. The federal receipts at issue were provided to the State of Alaska by Congress in response to the public health emergency caused by the COVID-19 pandemic under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116–136). The bill adds sections to the uncodified law of the State of Alaska to approve, authorize, and ratify the expenditure of CARES Act receipts as proposed by the governor and approved by the Legislative Budget and Audit Committee. As set forth below, we do not have any legal concerns with this bill which is modeled after legislation passed by the legislature in 1987 and upheld by the Alaska Supreme Court in 1988.

Section 1(a) of the bill sets forth the legislative findings, purpose, and intent of the legislation. In paragraphs (1)–(5), the legislature identifies the COVID-19 pandemic and the consequences that have followed from that global public health emergency, including the governor’s March 11, 2020 declaration of a public health disaster emergency under AS 26.23.020 and the extension of that disaster emergency until November 15, 2020 by the legislature through enactment into law of ch. 10, SLA 2020. Section 1 further notes that the President of the United States signed the CARES Act legislation into law on March 27, 2020, that the legislature adjourned indefinitely on March 29, 2020 in response to the COVID-19 pandemic, and that on April 9, 2020 the president approved a major disaster declaration for the State of Alaska.

Section 1(a), paragraphs (6)–(11), describe the process from April 21, 2020 through May 11, 2020 in which the governor submitted a package of Revised Program Legislative Requests (RPLs) to the Legislative Budget and Audit Committee (LB&A) regarding expenditure of the federal CARES Act funds on a variety of efforts to mitigate the impact of COVID-19 on Alaska communities, individuals, and businesses, the modification of some of those RPLs, and the LB&A Committee’s eventual approval of the RPLs. Section 1(a), paragraph (12) sets forth that the approval of the RPLs on May 1 and May 11, 2020 was in response to the public health disaster emergency and was not an abdication of the legislature’s power of appropriation. Section 1(a), paragraph (13) notes that the approval of the RPLs was challenged in court.

Section 1(b) states that it is the “purpose” of the Act to “approve the expenditure of federal receipts proposed by the governor and to ratify the approval of the RPLs” by the LB&A Committee in order to remove any uncertainty as to the status of the expenditures described in the RPLs.

Section 1(c) states that “[i]n authorizing the expenditure of federal receipts as proposed by the governor in the RPLs” it is the intent of the legislature that the appropriations identified in the RPLs are increased as approved by the LB&A Committee.

Section 2 of the bill is titled “APPROVAL AND RATIFICATION” and it provides that the actions of the governor and the executive branch in spending the federal receipts in accordance with the RPLs identified in the bill and the actions of the LB&A Committee in approving the expenditure of these federal CARES Act funds in accordance with the RPLs identified in sec. 1(a) of the bill are “approved and ratified.”

Section 3 of the bill provides that the approval and ratification in sec. 2 are effective notwithstanding any other provisions of law including AS 37.07.080(h). AS 37.07.080(h) sets forth the LB&A process relating to expenditure of an increase in federal or other program receipts. Section 4 provides that the bill is retroactive to May 1, 2020. Section 5 provides that the bill takes effect immediately under AS 01.10.070(c). An immediate effective date requires the concurrence of two-thirds of the membership of each house of the legislature under art. II, sec. 18, of the Alaska Constitution. Both houses concurred with the immediate effective date provision.

As made clear by the language of this bill, it is intended to approve, ratify, and authorize spending of CARES Act funds as described in the RPLs approved by the LB&A Committee on May 1 and May 11, 2020. By the terms of the bill, its purpose is “to remove any uncertainty as to the status of the expenditures under the RPLs.” Sec. 1(b). The uncertainty was caused by a lawsuit that was filed challenging the approval of the RPLs. We note two points regarding this legislation.

First, it is our view that expenditure of the federal CARES Act funds through the RPL process was lawful without the need for this additional legislation. The operating budget bills for fiscal years 2020 and 2021 both authorized the expenditure of additional federal funds upon compliance with the LB&A Committee process established in AS 37.07.080(h), which allows the expenditure of additional federal funds received by the State upon compliance with the RPL process followed here. Moreover, the State is in the midst of a disaster emergency caused by the COVID-19 pandemic and recognized by the governor and the Alaska Legislature through the declaration of a disaster emergency on March 11, 2020 and extended by the legislature through enactment of ch. 10, SLA 2020. This disaster emergency situation provides further support for the conclusion that the process used was lawful because the Alaska Disaster Act specifically provides that “[n]othing in this section limits the governor’s authority to apply for, receive, administer, and spend grants, gifts, or payments from any source, to aid in disaster prevention, preparedness, response, or recovery.” AS 26.23.050(c).

Second, however, it is clear by the language of the bill and from the legislative debate regarding its passage that the bill was intended to serve effectively as an “insurance policy” against any court disagreeing with this analysis and ruling that the process used for expenditure of these CARES Act funds was unconstitutional. Out of concern that those funds could be held up because of litigation, the legislature passed this bill to cure any potential constitutional problems. In addition to the text of the bill described above, the legislative record reveals that legislators wanted an “insurance policy” that made it clear that the legislature intended to authorize the increase in appropriations of the unanticipated federal receipts and disburse the CARES Act funds as set forth in the RPLs approved by the LB&A Committee. The record further reveals that legislators intentionally modeled this bill after legislation from 1987 that the Alaska Supreme Court held to be valid curative legislation that resolved any constitutional infirmities resulting from prior actions by the executive branch in relation to appropriations. In that case, *Fairbanks North Star Borough v. State*, 753 P.2d 1158 (Alaska 1988), the Court held that although the executive branch had infringed on the legislature’s constitutional power of appropriation, those infringements were cured by later legislation authorizing the executive branch action. The Court held that the legislation was valid because the legislature had the authority to authorize the appropriation-related actions taken by the executive branch and there was no unconstitutional impairment of vested rights. Here, also, there is no question that the legislature can authorize the expenditure of the funds at issue, there has been no impairment of vested rights, and the legislature has passed a bill ratifying, approving, and authorizing the executive branch’s actions. Thus, if the RPL process was insufficient and a vote of the full legislature was necessary to lawfully authorize these expenditures, this legislation accomplishes that purpose.

To: Hon. Mike Dunleavy, Governor
Re: 2020200375; HB 313: Ratifying RPLs/COVID-19 Funding

May 20, 2020
Page 4 of 4

For the reasons set forth above, this bill presents no legal problems or other concerns.¹

Sincerely,

KEVIN G. CLARKSON
ATTORNEY GENERAL

By:

William E. Milks
Senior Assistant Attorney General
Legislation & Regulations Section

WEM/SRP/arw

¹ We also do not see any impairment of the governor's constitutional authority to line-item veto expenditures under art. II, sec. 15 of the Alaska Constitution. Since the bill authorizes expenditure of CARES Act funds that the administration submitted as RPLs to the LB&A Committee, we expect that the governor does not wish to veto these expenditures.