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Senator Tom Begich  
Senate Democratic Leader

Senator Elvi Gray-Jackson

Senator Scott Kawasaki



ALASKA SENATE DEMOCRATS

Senator Jesse Kiehl

Senator Donny Olson

Senator Bill Wielechowski

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14 April 2020

The Honorable Michael Dunleavy  
Governor of Alaska  
P.O. Box 110001  
Juneau, AK 99801

Dear Governor Dunleavy,

Last week you vetoed \$261 million in funding for important state programs and services that the legislature had included in the fiscal year 2021 budget. During your budget press conference, you said that you plan to substitute these vetoed sums with federal funds that will be made available to Alaska later this month under Congress' Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-35), enacted on March 27, 2020. In a media briefing yesterday, you stated that your understanding of the ability to use those federal funds was based on guidance by Attorney General Kevin Clarkson.

We are concerned that your belief that CARES Act funding may be used in this manner is erroneous. We therefore request an explanation of your presumed authority for using the CARES Act funding to compensate for the vetoed state budget amounts.

It does appear that Title V of the CARES Act, establishing the "Coronavirus Relief Fund" and amending Title VI of the Social Security Act, will provide Alaska with \$1.25 billion in federal support in light of the COVID-19 emergency. However, the use of the funds is not without restrictions. Section 601(d)(1) of the Coronavirus Relief Fund framework makes clear the funds may be expended "to cover only those costs" to the state that "are *necessary expenditures incurred due to the public health emergency* with respect to Coronavirus Disease 2019 (COVID-19)." (Emphasis added.)

When you announced your vetoes last week, you claimed the "majority" of the reductions and eliminations would be "replace[d] with COVID money" according to your administration's interpretation of the CARES Act. We're troubled by your reading of the 601(d)(1) required condition; we do not see how it would validly permit the state to use the relief funds to compensate for the substantial proportion of items you vetoed. These items may therefore—possibly mistakenly on your part—go unfunded for FY21.

Our concern is reinforced by an opinion by nonpartisan Legislative Legal Division attorneys that addresses the state's expenditures of the relief funds. The legal memo is attached.

In fact, the Congressional Research Service (CRS), the nonpartisan research group serving an advisory role to and under the express direction of Congress, published an April 1 report that would further indicate that your interpretation of the allegedly broad and flexible nature of the uses of the funds is dubious. "The Coronavirus Relief Fund (CARES Act, Title V): Background and State and Local Allocations" report reasons:

Coronavirus Relief Fund payments may not be used to directly account for revenue shortfalls related to the COVID-19 outbreak. Such funds, however, may indirectly assist with revenue shortfalls in cases where expenses paid for by the Coronavirus Relief Fund would otherwise widen the gap between government outlays and receipts. For instance, if \$3 billion in Coronavirus Relief Fund assistance is sent to a government with revenues that are \$10 billion lower than expected and \$5 billion in new COVID-19-related expenses, that assistance will reduce the fiscal gap (from \$15

billion to \$12 billion) by the same amount regardless of whether it applies to revenues or spending. Only in cases where governments have revenue shortfalls and less [COVID-19-]related spending than the program provides are governments limited by the eligible purpose restrictions. For instance, in that same example but with no new COVID-19-related expenses, the government could not use Coronavirus Relief Fund assistance despite its decrease in revenues. (Emphasis omitted.)

The CRS analysis demonstrates that not only must the relief funds be used only for necessary COVID-19 expenses—as condition 601(d)(1) plainly conveys—but that in the event that the state does not need the full \$1.25 billion for the COVID-19 expenses, that allocating the funds for other purposes would be legally inappropriate. The commentary indicates that the state cannot expect to simply supplant the costs of non-coronavirus-related budget items with the forthcoming federal relief funds.

Notably, under the CARES Act, if the Inspector General of the Department of Treasury later determines that funds were improperly allocated against their eligible purposes, Alaska would be held in debt to the federal government to the extent of the misuse.

Documents published by your Office of Management & Budget point to at least seven items for which you hope to replace \$232.5 million in state general funds with CARES Act funding. However, only two of the items, \$2.7 million for Anchorage COVID-19 Response Funding and \$5.0 million for Alaska Housing Finance Corporation Prevention of COVID-19 Homelessness, apparently represent permissible uses of the funds.

During the budgeting process, the legislature did not exhibit intent for the other \$224.8 million in expenditures to address Coronavirus emergency costs—including sums of about \$100 million for school bond debt reimbursement, \$36.7 million for school maintenance and construction, \$31.1 million for community assistance grants, and \$30.0 million one-time additional K-12 education funding—which suggests ineligibility for the federal funding. These items would fund important state services regardless of the coronavirus emergency.

If your interpretation of the CARES Act is misguided, items critical to the necessary, healthy functioning of our state and of our local communities may be left without funding during FY21. Or, if the state unlawfully uses the funds, Alaska will have to pay back the federal government.

Please clarify your rationale for how the CARES Act permits federal replacement funding of your various vetoed budget items.

In addition, as the process moves forward, please advise on your plan for utilizing the federal CARES Act relief dollars Alaska will receive. Based on the attached legal opinion, we believe any use of the funds would require an approval by the legislature through its appropriation power.

Sincerely,



Senator Bill Wielechowski



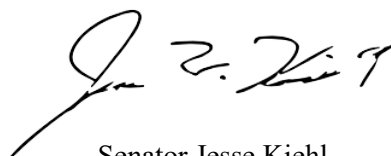
Senator Tom Begich



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Attachment: As stated