

LEGAL SERVICES

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MEMORANDUM

April 30, 2020

SUBJECT: RPL process: 45-day wait period (Work Order No. 31-LS1793)

TO: Representative Chris Tuck
Attn: Aurora Hauke

FROM: Megan A. Wallace 
Director

You have asked what happens if the governor seeks to expend funds via the RPL process before the 45 day wait period expires under AS 37.07.080(h).

AS 37.07.080(h) provides:

(h) The increase of an appropriation item based on additional federal or other program receipts not specifically appropriated by the full legislature may be expended in accordance with the following procedures:

(1) the governor shall submit a revised program to the Legislative Budget and Audit Committee for review;

(2) 45 days shall elapse before commencement of expenditures under the revised program unless the Legislative Budget and Audit Committee earlier recommends that the state take part in the federally or otherwise funded activity;

(3) should the Legislative Budget and Audit Committee recommend within the 45-day period that the state not initiate the additional activity, the governor shall again review the revised program and if the governor determines to authorize the expenditure, the governor shall provide the Legislative Budget and Audit Committee with a statement of the governor's reasons before commencement of expenditures under the revised program.

The above language plainly requires that 45 days elapse before commencement of expenditures under the revised program unless the Legislative Budget and Audit Committee (LB&A) earlier approves the RPL. If the governor does not comply with the 45-day wait period, he will not be in compliance with AS 37.07.080(h).

Both the fiscal year 2020 and fiscal year 2021 operating budgets appropriate federal receipts that exceed the amounts otherwise appropriated in those budgets, which the

governor may seek to utilize as an appropriation for the CARES Act money. The appropriations state, in pertinent part,

Federal receipts . . . that exceed the amounts appropriated by this Act are appropriated conditioned on compliance with the program review provisions of AS 37.07.080(h).^[1]

If the governor does not abide by the 45-day wait period and is not in compliance with the program review provisions of AS 37.07.080(h), he will also lack the expenditure authority under the above appropriations. Expenditure of funds before the 45-day wait period will result in a violation of art. IX, sec. 13 of the Alaska Constitution, which provides that "[n]o money shall be withdrawn from the treasury except in accordance with appropriations by law" and may be subject to legal challenge. If the governor were to expend money before the 45-day wait period, the legislature might consider seeking a temporary restraining order from the court.²

If you have additional questions, please advise.

MAW:mjt
20-148.mjt

¹ Section 32, ch. 1, FSSLA 2019; sec. 37, ch. 8, SLA 2020.

² Another option would be for the legislature to reconvene and specifically appropriate the funds the governor is seeking to expend or to later ratify the governor's expenditures. See *Fairbanks North Star Borough v. State*, 753 P.2d 1158 (Alaska 1988).