



ALASKA STATE LEGISLATURE

REP. MATT CLAMAN

Chairman
State Capitol, Room 118
Juneau, AK 99801
907.465.4919

Rep. Chuck Kopp, Vice-Chair
Rep. Louise Stutes
Rep. Harriet Drummond

Rep. Gabrielle LeDoux
Rep. Laddie Shaw
Rep. Sarah Vance

MEMORANDUM

TO: Invited Testimony

FROM: Rep. Matt Claman, Chairman
House Judiciary Committee

DATE: May 5, 2020

RE: Topics and Questions for House Judiciary Committee Meeting on May 6, 2020

Members of Congress have stated that the Department of Treasury should broadly interpret the CARES Act to allow use of the federal funds to pay for costs and expenses related to the coronavirus pandemic. They have criticized Treasury for issuing initial guidelines that do not allow state and local governments maximum flexibility in spending the federal funds to support the economy and specifically criticized Treasury's guideline that CARES Act funds may not be used to replace lost revenue.

- I. Use of CARES Act Funding and Potential Replacing Lost Revenue
 - a. Is the language of the CARES Act consistent with Treasury's interpretation?
 - b. Is the legislative history of the CARES Act consistent with Treasury's interpretation?
 - c. Do the federal courts apply a different standard for statutory interpretation than the Alaska courts?
 - i. What are the different standards?
 - ii. How does the federal standard affect analysis of the CARES Act provisions?
 - d. How much deference do the courts give to Treasury's interpretation of the CARES Act?
 - i. What is the difference between *Chevron* deference and *Skidmore* deference?
 - ii. Which standard likely applies to interpretation of the CARES Act?
 - e. If there is a problem with statutory language or the legislative history, what options does the Congress have to fix the problem and clarify whether states and local governments may use the funds to replace lost revenue?
 - f. How much weight would the courts likely give to state legislative findings about the appropriate scope for CARES Act funding?
 - g. If a dispute arises between the State of Alaska and the federal government concerning state or local government expenditures, how would they resolve that dispute?

- h. Who is responsible for repayment to the federal government for improper expenditures of CARES Act funding?
 - i. If local government spends improperly, is the State responsible for repayment?
 - ii. If the State repays the federal government, can the State seek reimbursement from the local government?

II. Revised Program/Legislative (RPL) Structure and Legislature's Appropriation Authority

- a. What are the constitutional provisions that establish the legislature's appropriation authority?
- b. What appropriation authority does the governor have under the constitution?
- c. Is there a different analysis on the appropriation authority when federal funds are involved?
 - i. With a state matching fund requirement
 - ii. Without a state matching fund requirement
- d. What are examples of "other program receipts" (*see* AS 37.07.080(h)) that may involve the RPL process?
 - i. Is additional state funding, alone, ever a circumstance in which the RPL process is an option?
 - ii. If there is a requirement for an additional state match to receive the additional federal funding, can the legislature use the RPL process for the state match?
- e. What is the history of the RPL process?
 - i. When did the legislature pass the statute?
 - ii. What events, if any, led to the legislation?
- f. Is AS 37.07.080(h) the only applicable statute to this issue?
 - i. What other statutes apply?
 - ii. How does the 45-day period apply in the current situation where the legislative session is not over, but the legislature is in recess
- g. How does the "catch-all" appropriation language (*see* Legislative Legal Memo re CARES Act RPLs dated April 30, 2020) in the operating budget impact the RPL analysis?
- h. Can a single RPL be used to increase the expenditure in more than one fiscal year?