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Sponsor Statement
Senate Bill 221
Proposed CS – Version I
Senate State Affairs Committee

SB 221 reforms the statutory revised program legislative (RPL) process that arguably render it unconstitutional.

I believe that the current RPL law is unconstitutional both on its face and in practice. The legislature is the constitutionally authorized appropriating body; this means that, under the Alaska Constitution, the legislature possesses both the *power* and the *duty* of appropriations. The governor cannot overstep this legislative authority, and the legislature cannot avoid its duty.

Current law unconstitutionally delegates the power and the duty of appropriations to the governor. When the legislature is not meeting in session, AS 37.07.080(h) permits the governor to expend additional revenue received by the State—with the governor acting as the appropriating authority, setting state funding priorities. Facially, the law expressly assigns the governor the ability to determine spending of "federal and other program receipts" when the funds were "not specifically appropriated by the full legislature." These provisions enable impermissible actions; they appear to allow the governor to spend not only federal dollars but also, potentially, other funds like general fund surplus dollars that would yet be available for appropriation during the next regular session, while explicitly acknowledging that the *full legislature has never appropriated* the funds.

Procedurally, to the extent that the Legislative Budget & Audit Committee (LB&A) is given an oversight role over the governor's RPL submissions—this too is an unconstitutional delegation of authority. LB&A may not stand in place of the full legislature, but under current law, LB&A can approve the RPL spending to occur in less than 45 days after submission. Moreover, the law allows the governor to spend the funds unilaterally after 45 days, regardless of whether LB&A ever takes up the matter in committee or even if it actually *disapproves* it—so long as in the governor's sole discretion, the governor "determines to authorize the expenditure." I believe this process violates the constitution by its express provisions as well as in separation of powers and checks and balances principles.

SB 221 rectifies these defects while still enabling a mechanism for spending federal dollars when the legislature is not meeting in session. The bill eliminates the governor's ability to use the RPL process for revenue generated from sources that are not federal. It provides a process that

empowers the legislature to appropriate the federal funds by establishing increased amounts in an enacted appropriations bill to be spent on budget items when federal revenue exceeds State forecasts, but only when the legislature has specifically identified those items and set permissible increase limits. The limits may be provided for by percent increases, which would allow the legislature to thoughtfully consider the amounts of potential increases to budget items relative to their base appropriations and to one another.

Under SB 221, the governor may submit RPLs to LB&A for confirmation that spending proposals are maintained within budget items and limits restricted by the legislature in an enacted appropriations bill. LB&A may also make other recommendations for the spending. Finally, under SB 221, the governor may not spend the funds until 45 days have elapsed from the date of the LB&A confirmation, unless LB&A recommends the expenditures are made earlier.

Concerns over the constitutionality of the RPL process notably arose in 2020 when the legislature recessed the regular session due to the Covid-19 pandemic, and the State received large sums of federal dollars that could be spent to address the public health disaster. In particular, the State was given $1.25 billion in Coronavirus Relief Funds that could be expended in a relatively discretionary manner, on "necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19)." The governor purportedly exercised his authority under the current RPL process, including attempting to expend: $569 million for direct municipal relief, and $290 million for small business grants, but only $10 million on relief to individual Alaskans to prevent homelessness. A Juneau resident sued the State, arguing the governor's spending was unconstitutional. The lawsuit prompted the legislature to return to the Capitol to "ratify" the governor's RPL expenditures before the final day of the regular session. The superior court decided the ratification remedied any failure to appropriate the funds. The ruling was not appealed, so there is no final precedent on the issue.

There are only two types of bills contemplated by the Alaska Constitution: (1) substantive bills, like those establishing or changing laws, and (2) bills for appropriations. Because no appropriation bill was passed addressing the governor's RPL spending, to this day I contend that the governor's unconstitutional act could not simply be "ratified."

We should avoid a repeat of what happened with RPL spending in 2020. Please join me in fixing the defective RPL process and ensuring the legislature retains its control over its discretionary appropriations authority as mandated by the Alaska Constitution.

I ask for your support of SB 221.