

LEGAL SERVICES

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MEMORANDUM

June 24, 2025

SUBJECT: Governor's authority to veto a repeal of an appropriation item
(CCS HB 53(brf sup maj fld H); Work Order
No. 34-GH1462\K.A.E)

TO: Representative Andy Josephson
Co-Chair of the House Finance Committee
Attn: Alexander Schroeder

FROM: Marie Marx *Marie Marx*
Legislative Counsel

You have requested an opinion on the validity of the governor's veto of sec. 51 of CCS HB 53(brf sup maj fld H)¹ (hereinafter "CCS HB 53"), which repealed sec. 69(b), ch. 11, SLA 2022, sec. 64(a), ch. 1, FSSLA 2023, and sec. 36(j), ch. 7, SLA 2024.² The short answer is that because the governor's veto of sec. 51 of CCS HB 53 effectively increases an amount reduced by the legislature, a court would likely find the veto to be unconstitutional.

Article II, sec. 15, of the Alaska Constitution grants the governor the power to, by veto, strike or reduce items in appropriation bills.³ The governor's item veto authority only

¹ Ch. 10, SLA 2025.

² Sec. 69(b), ch. 11, SLA 2022, appropriated \$500,000 to the Department of Law "for litigation relating to the Tongass National Forest and protecting state sovereignty in the fiscal years ending June 30, 2023, June 30, 2024, and June 30, 2025." Sec. 64(a), ch. 1, FSSLA 2023, appropriated \$5,000,000 to the Department of Law "for litigation relating to the defense of rights to develop and protect the state's natural resources, to access land, to manage its fish and wildlife resources, and to protect state sovereignty in the fiscal years ending June 30, 2024, June 30, 2025, and June 30, 2026." Sec. 36(j), ch. 7, SLA 2024, appropriated \$500,000 to the Department of Education and Early Development "for payment as a grant to Alaska Resource Education for expanding statewide workforce development initiatives for the fiscal years ending June 30, 2025, and June 30, 2026."

³ Art. II, sec. 15, Constitution of the State of Alaska provides:

SECTION 15. Veto. The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.

includes the power to strike an appropriation item and the power to reduce the amount of an appropriation item. It does not include the power to increase an appropriation, which is an appropriation power held only by the legislature.⁴

The Alaska Supreme Court has described the governor's line-item veto power as "one of limitation," explaining, "[t]he governor can delete and take away, but the constitution does not give the governor power to add to or divert for other purposes the appropriations enacted by the legislature."⁵ The court further explained that the line-item veto power, "permits the governor *only to tighten or close the state's purse strings, not to loosen them* or to divert funds for a use the legislature did not approve."⁶ The court went on to hold that "*a veto that does not delete or reduce the amount of money appropriated is not a valid exercise of the power article II, section 15 grants.*"⁷

It is possible that a court could find that a negative appropriation is not even an appropriation and therefore may not be vetoed by the governor. A 1999 Alaska attorney general's opinion predating the *Knowles* case questioned whether a negative appropriation would even be considered an appropriation, and stated in a footnote that the item veto may not be used to raise the amount of a negative allocation item:

Another possible argument is that a negative appropriation is not an appropriation within the meaning of the statute. As noted above, we do not know whether the courts would accept these arguments. But, as also noted above, we believe that the answer to the question is sufficiently unclear that we are not recommending vetoes of these allocations for unallocated reductions.⁸

...

*Because you may not raise the amount of an appropriation by vetoing a negative allocation item, the effect of vetoing the negative allocation items for unallocated reductions would be to prevent you from applying the reductions department-wide. The reductions would have to come totally out of the appropriation in which the negative item appears.*⁹

⁴ Art. IX, sec. 13, Constitution of the State of Alaska.

⁵ *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001).

⁶ *Id.* at 372 (emphasis added).

⁷ *Id.* at 373 (emphasis added). *See also State Legislative Council v. Knowles*, 86 P.3d 891, 895 (Alaska 2004).

⁸ 1999 Inf. Op. Att'y Gen. (June 28; 883-99-0070).

⁹ *Id.* at n.9 (emphasis added).

I am aware of at least two examples predating the *Knowles* case where the governor vetoed a negative appropriation and the veto was not challenged. I expect that other instances probably exist. In 1988, Governor Cowper exercised his line-item veto authority to increase an appropriation that had been reduced by the legislature. The legislature amended a prior appropriation of \$2,500,000 by reducing the appropriation amount to \$2,000,000. Governor Cowper subsequently "vetoed" the amended amount of \$2,000,000 and wrote in a new amount of \$2,250,000.¹⁰ The attorney general issued an opinion asserting, without analysis or citation to any precedent, that the governor had the authority to reduce the amount of the reduction approved by the legislature and thus increase the amended amount above that was approved by the legislature. The attorney general opinion stated:

We have also been requested to comment on your power to reduce the effect of an amendment to an existing appropriation. That is, [you] might believe that a smaller reduction is in order. We believe that you may use your reduction veto on this sort of item. You may exercise the veto by lining through the amount to which the existing appropriation is amended and inserting a greater amount. This has the effect of retaining a part of the existing appropriation. However, you cannot insert an amount that authorizes the expenditure of more than the unobligated balance of the existing appropriation. Each action regarding spending authority in this bill is an item and, as to these items, your full executive powers of veto apply to them. When the legislature takes action to amend an existing appropriation, you may again take action on the spending authorization.¹¹

In 1994, the legislature amended a prior appropriation to the Department of Health and Social Services for Institutions and Administration to read as follows:

*** Sec. 24.** (a) Section 38, ch. 65, SLA 1993, page 22, line 31, is amended to read:

	APPROPRIATION ITEMS	GENERAL FUND	OTHER FUNDS
Institutions and Administration	<u>31,481,400</u> [31,056,800]	<u>17,153,900</u> [22,729,300]	<u>14,327,500</u> [8,327,500] ¹²

Governor Hickel altered the amounts appropriated by the legislature from the "General Fund" category and from the "Other Funds" category, without changing the total amount of the appropriation. The governor increased the amount appropriated from the General Fund from \$17,153,900 to \$17,499,900 and reduced the amount appropriated from Other

¹⁰ Sec. 144, ch. 173, SLA 1988.

¹¹ 1988 Inf. Op. Att'y Gen. p. 5 - 6 (June 16; 883-88-0176).

¹² Sec. 24(a), SCS CSHB 455(FIN) am S from the 18th Legislature.

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Funds from \$14,327,500 to \$13,981,500.¹³ This action effectively increased the amount appropriated from the general fund beyond that approved by the legislature.

However, as noted above, these examples predate *Knowles*, which explicitly held that "a veto that does not delete or reduce the amount of money appropriated is not a valid exercise of the power article II, section 15 grants."¹⁴ The governor's veto of sec. 51 of CCS HB 53 effectively increases an amount reduced by the legislature. If challenged, a court would likely find this veto to be an invalid exercise of the power art. II, sec. 15, grants and thus unconstitutional.

Please let me know if I may be of further assistance.

MYM:mis

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¹³ Sec. 24, ch. 2, FSSLA 1994.

¹⁴ *Knowles*, 21 P.3d at 373.