ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
Anchorage, Alaska
May 6, 2020
10:00 a.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Chuck Kopp
Representative Harriet Drummond (via teleconference)
Representative Louise Stutes (via teleconference)
Representative Gabrielle LeDoux (via teleconference)
Representative Laddie Shaw
Representative Sarah Vance (via teleconference)

OTHER MEMBERS PRESENT

Senator Cathy Giessel (via teleconference)
Representative Bart LeBon (via teleconference)
Representative Dan Ortiz (via teleconference)
Representative Andy Josephson (via teleconference)

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION(S): RPL LEGAL FRAMEWORK & TREASURY INTERPRETATION OF THE CARES ACT

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

KATE VOGEL, Municipal Attorney
Municipality of Anchorage
Anchorage, Alaska
POSITION STATEMENT: Offered testimony pertaining to CARES Act funds.

JASON BOCKENSTADT

Chief of Staff
Mayor's Office
Municipality of Anchorage
Anchorage, Alaska
POSITION STATEMENT: Answered questions pertaining to CARES Act funds.

MEGAN WALLACE, Director
Division of Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska
POSITION STATEMENT: Answered questions pertaining to the RPL structure.

ACTION NARRATIVE

10:00:36 AM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 10:00 a.m. Representatives Kopp, Shaw, LeDoux (via teleconference), Stutes (via teleconference), and Claman were present at the call to order. Representative Vance (via teleconference) and Drummond (via teleconference) arrived as the meeting was in progress.

PRESENTATION(S): RPL Legal Framework & Treasury Interpretation of the CARES Act

10:01:38 AM

CHAIR CLAMAN announced that the only order of business would be a presentation on RPL legal framework and the Department of Treasury's interpretation of the CARES Act.

10:03:56 AM

KATE VOGEL, Municipal Attorney, Municipality of Anchorage, determined that Anchorage can spend CARES Act funds that are awarded to the municipality. She addressed the list of frequently asked questions (FAQs) [included in the committee packet] that were issued from the U.S. Department of Treasury, which supplement the Treasury's initial Coronavirus Relief Fund Guidance that outlines the use of CARES Act funds. She said the FAQ's clarify that the fund is designed to provide "ready funding to address unforeseen financial needs." She continued to read the following from the FAQs:

> For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency ...

MS. VOGEL said the previous statement clearly indicates that CARES Act money can fund the municipality's payroll costs for first responders and health officials. She reiterated that Anchorage will be able to fully utilize CARES Act funds. She noted that she is not at liberty to answer all of the questions submitted by the committee because she does not share attorney-client privilege with the House Judiciary Committee; furthermore, this meeting is not an executive session. She added that some of the questions hinge on future litigation, which she declined to speculate on.

10:06:23 AM

MS. VOGEL turned attention to the memorandum from the House Judiciary Committee [included in the committee packet], which provided a list of questions regarding the use of CARES Act funds. She addressed the first question, which asked if the language of the CARES Act is consistent with Treasury's Interpretation. She stated that the language of the CARES Act is not as restrictive as Treasury's interpretation. She opined that the municipality of Anchorage could fit within Treasury's guidelines with the latest FAQ update. She explained that the CARES Act has three requirements pertaining to the use of funds for local governments: Firstly; funds can be used to cover costs that are necessary expenditures incurred due to the public health emergency; secondly; for costs that were not accounted for in the budget most recently approved as of the date of the CARES Act passage; thirdly; for costs that were incurred during the period that begins March 1, 2020 and ends December 30, 2020. She pointed out that the [CARES Act] language is not particularly expansive; consequently, Treasury's guidelines provide clarification that was not included in the law itself. Additionally, the guidelines define "an expenditure due to the current public health emergency" and "not accounted for in the budget." She noted that the guidelines' restrictiveness has prompted outcry from U.S. senators requesting more expansive and permissive guidance to effectuate congressional intent.

10:09:41 AM

MS. VOGEL directed attention to a letter [included in the committee packet] from U.S. Senators Reed and Schumer to Secretary of the Treasury, Steven Mnuchin, which stated:

> ... a plain text reading of the law leads to the logical conclusion that lost or delayed revenues are a direct cost created by the coronavirus that were never accounted for in any budget.

MS. VOGEL noted that Senator Murkowski and 16 other senators also wrote to Secretary Mnuchin to advocate for the eligibility of emergency payments from states to units of local government based on the intent of congress when it passed the CARES Act. She reiterated that despite the restrictiveness, the Municipality of Anchorage will be able to fully spend its CARES Act funds consistent with Treasury's interpretations.

MS. VOGEL in reference to whether the legislative history of the CARES Act is consistent with Treasury's interpretation, noted that she has not reviewed the entire legislative history of the CARES Act. Nonetheless, she said the congressional record indicates that most speakers do not delve into detail on revenue replacement; however, they do discuss that it is providing the needed relief for state and local governments. She quoted a direct passage from Congresswoman Rosa Delauro's congressional testimony record, which read:

> with state revenues collapsing at the same time, demand for services is skyrocketing. We have had broad agreement that something needs to be done to help the states. Although some might have preferred to increase the federal matching rate for Medicaid, this legislation goes a different route with a fiscal relief fund for state and local governments. In any case, the key is to help states plug the enormous fiscal gaps they are currently facing. I am pleased that the final legislative language, unlike some earlier proposals that we rejected, gives states broad flexibility in how they spend the money they will receive. At this point, it has become impossible to separate the effects on state budgets, a rising demands for services, and shortfalls in revenues. States cannot spend the money on new projects unrelated to the public health emergency and its economic fallout. I doubt any state would have done that anyway, but the legislation clearly says that it

> cannot. Beyond that, we trust states' discretion about what expenditures are necessary in light of the current crisis. We also know that states planned many expenditures assuming revenues that they are no longer receiving. An activity without the revenue to support it is not accounted for in a state's budget. The state should understand that they can apply this money to prevent the cuts that would devastate their necessary functions that they can no longer cover from their general funds because of the loss of sales and income tax revenue. We are assured that the Treasury department appreciates the importance of getting this money out to states quickly, flexibly, and with a bare minimum of paperwork.

10:12:59 AM

MS. VOGEL pointed out that Congresswoman DeLauro's testimony is the kind of statement that the municipality would want to see in the legislative history; however, that expansive explanation is not fully embedded within Treasury's guidelines.

MS. VOGEL turned attention to the next question, which asked if the federal courts apply a different standard for statutory interpretation than the Alaska courts. She said the Alaska Supreme Court takes a sliding scale approach to legislative history. She stated that "the plainer the language, the more convincing legislative history would need to be to the contrary in order to be a factor in interpreting a law." By contrast, she said, federal courts adopt the principal that "if the plain meaning of the statute is unambiguous on its face then the legislative history should not be [considered] at all." She noted that to some extent, this is a matter of judicial philosophy; therefore, it's not a prediction of how a court might rule. She continued to explain that any legal battle over interpreting CARES Act provisions would occur in federal court, so arguably, the plain language of the CARES Act should be of more importance than the legislative history.

MS. VOGEL continued to the next question, which asked how much deference the courts give to Treasury's interpretation of the CARES Act. She indicated that the amount of deference would depend on the situation. She noted that there are two types of deference that are relevant: Chevron deference and Skidmore deference. Chevron deference stipulates that when a statute is silent or ambiguous on a specific issue there should be deference to the agency's interpretation, as long as it’s a

permissible or reasonable construction. In Contrast, Skidmore deference requires a lesser degree of deference and relies on persuasive authority as opposed to reasonability. She surmised that Skidmore deference would likely apply to interpretation of the CARES Act.

10:17:36 AM

MS. VOGEL directed attention to the next question, which asked if there is a problem with statutory language or the legislative history, what options Congress has to fix the problem and clarify whether states and local governments may use the funds to replace lost revenue. She stated that the CARES Act expressly delegated to Treasury the authority to determine whether payments are used for eligible purposes; however, that determination must be consistent with statutory language. She pointed out that so far, the response from members of Congress has been to write to Treasury in an attempt to shape or clarify the guidelines in an effort to interpret CARES Act language in a way that benefits states or local governments. She added that beyond writing new laws, she is not aware of other federal options that might be available.

MS. VOGEL addressed the following question, which asked how much weight the courts would likely give to state legislative findings about the appropriate scope for CARES Act funding. She said she couldn't think of a scenario in which a federal court would give weight to state legislative findings while interpreting Congress's intentions for the CARES Act. She continued to the next question, which asked how the State of Alaska and the federal government would resolve a dispute concerning state or local government expenditures. She explained that the CARES Act delegates the authority to determine whether payments are used for eligible purposes to the Treasury; nonetheless, she said she is unfamiliar with the process that would be used to resolve a dispute. She noted that there is a provision in the law stating that if a State, local, or tribal government has failed to comply with proper expenditures, "an amount equal to the amount of funds used in violation of such subsection shall be booked as a debt owed to the federal government." She noted that the same answer applies to the final question about who is responsible for repayment to the federal government for improper expenditures of CARES Act funding. She added that no local governments in Alaska met the threshold to receive payments from Treasury. She offered her understanding that Treasury's interaction with the state

regarding government CARES Act funds would be directly with the state.

10:22:20 AM

REPRESENTATIVE KOPP asked if the municipality has experienced any expenses related to COVID-19, such as the homeless camp cleanups, that have been difficult to recover.

MS. VOGEL said she is not concerned that Treasury's guidelines would prevent the municipality from spending any CARES Act funds it receives.

REPRESENTATIVE KOPP questioned whether state or local governments can save CARES Act funds beyond December 30, 2020 to use for the long-term impacts of the coronavirus pandemic.

MS. VOGEL said she does not know. She reiterated that the law states the funds can be used to cover costs incurred between March 1, 2020 and December 30, 2020. She deferred further explanation to Jason Bockenstadt.

10:26:27 AM

JASON BOCKENSTADT, Chief of Staff, Mayor's Office, Municipality of Anchorage, said the FAQs clarify that if a government has not used the funds cover costs incurred by December 30, 2020 as required, those funds must be returned to the U.S. Department of Treasury.

REPRESENTATIVE KOPP asked if a local government could have an expenditure plan for encumbered funds related to COVID-19 that extends into 2021.

MR. BOCKENSTADT offered his understanding that the federal funds could not be used for expenses incurred on or after January 1, 2021.

10:29:42 AM

REPRESENTATIVE KOPP opined that allowing local governments flexibility in spending CARES Act funds past December 30, 2021 would prevent municipalities from having a dramatic drop in stimulus and revenue. He suggested advocating to Alaska's congressional delegation for the ability to manage the funds into 2021 for coronavirus related costs and expenses.

10:31:09 AM

REPRESENTATIVE LEDOUX asked if a COVID-19 related expense incurred after December 30, 2020 could be prepaid.

MR. BOCKENSTADT said he does not think so. He reiterated that according to the law, expenditures must be incurred between March 1, 2020 and December 30, 2020. He deferred to Ms. Vogel.

MS. VOGEL agreed with Mr. Bockenstadt.

10:33:18 AM

CHAIR CLAMAN directed attention to the second question on the list of FAQs. He asked if the Municipality of Anchorage could use CARES Act funds to pay the entire payroll for public health and public safety employees during the period in question.

MS. VOGEL answered yes.

10:35:35 AM

MEGAN WALLACE, Director, Division of Legal and Research Services, Legislative Affairs Agency, noted that she focused her attention on the RPL structure. She opined that Ms. Vogel answered the questions regarding the use of CARES Act funds sufficiently.

10:36:54 AM

REPRESENTATIVE KOPP asked Ms. Wallace if the State is liable for misappropriation.

MS. WALLACE answered yes. She explained that Alaska's CARES Act funds have been deposited into the state's treasury account and from there, will be disbursed to local governments. She added that Treasury's guidelines allow states to disburse the federal funds to local governments for spending; however, the local governments are still bound by provisions in the CARES Act. She opined that the state would be liable for repayment because the federal government sent the funds to the state. She speculated that the state may have some opportunity to collect funds back from a local government depending on the circumstance of how they were distributed.

10:40:12 AM

REPRESENTATIVE LEDOUX asked to what degree the state is required to manage the municipalities' use of CARES Act funds.

MS. WALLACE said it's circumstantial. Nonetheless, she recommended that the state put local governments on specific notice that the funds must be spent in accordance with Treasury guidelines and according to the CARES Act. She offered her belief that in time, there will be further guidance on use and oversight of CARES Act funds.

10:43:31 AM

REPRESENTATIVE LEDOUX asked whether the state could require municipalities to sign a hold harmless agreement (HHA) before disbursing the funds.

MS. WALLACE said if the state would like to ensure an HHA, she would recommend that the legislature consider a substantive law provision outlining the criteria and expectations. She noted that it could be uncodified temporary law, similar to SB 241, rather than a "gentlemen's agreement."

REPRESENTATIVE LEDOUX said, "I wasn't talking actually about a gentlemen's agreement ... I was talking about a signed hold harmless agreement."

MS. WALLACE opined that the executive branch does not have the authority to demand or require an HHA before disbursing the federal funds. She offered to research the matter further.

10:46:18 AM

MS. WALLACE informed the committee that her office provides policy neutral nonpartisan legal advice. She stated that her comments on the RPL process and the CARES Act should not be viewed as advocating for or against any particular process for appropriating or spending the federal funds. She directed attention back to the memorandum from the House Judiciary Committee [included in the committee packet] and proceeded to address the questions pertaining to the RPL structure and the legislature's appropriation authority. The first question asked for the constitutional provisions that establish the legislature's appropriation authority. She said Article 9, Section 13 of the Alaska Constitution states, "no money shall be withdrawn from the treasury except in accordance with appropriations made by law." She added that the legislature is the body of government that makes those appropriations by law.

She also referenced a confinement clause, found in Article 2, Section 13, which states, "bills for appropriation shall be confined to appropriation." She explained that substantive law and appropriations cannot comingle in a single bill; however, appropriations are not bound by the single subject restrictions that substantive measures are.

10:48:39 AM

MS. WALLACE turned attention to the next question, which asked what appropriation authority the governor has under the constitution. She stated that the governor has no appropriation power under the Alaska Constitution; however, the governor does have budget requirements. Under Article 9, Section 12, the governor is required to submit a budget to the legislature for the next fiscal year. She said that is the extent of the governor's constitutional requirements pertaining to the budget. She added that Title 37 includes an Executive Budget Act, which outlines additional budget requirements that the executive branch must follow with respect to submission of proposed budgets, revenue measures, and the like.

10:49:51 AM

MS. WALLACE continued to the next question, which asked if there is a different analysis on the appropriation authority when federal funds are involved. She indicated that there is not a different analysis. Federal funds, she said, are deposited into the state treasury and under Article 9, Section 13, cannot be withdrawn from the treasury except in accordance with appropriation. She explained that all the state's federal receipts are appropriated through the budget process with or without a state matching fund requirement.

MS. WALLACE directed attention to the next question, which asked for examples of "other program receipts" that may involve the RPL process. She noted the RPL process is set forth in AS 37.07.080(h), which states:

> 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:

MS. WALLACE noted that AS 37.05.146 [Definition of Program Receipts and Non-General Fund Program Receipts] provides the following explanation under subsection (a):

> In AS 37.05.142 - 37.05.146 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other state money received by a state agency in connection with the performance of its functions.

MS. WALLACE added that AS 37.05.146 provides 79 different types of program receipts with specific examples. She explained that if a state agency collected more fees or revenue than expected during a regular budget process, the RPL process could be used to increase that agency's budget to allow it to spend the additional program receipts received during the fiscal year.

10:53:51 AM

CHAIR CLAMAN established a scenario in which the budget expected $100,000 in fishing license receipts but ended up with $120,000. He asked if that is an example of "other program receipts," which could be adjusted through the RPL process.

10:54:10 AM

MS. WALLACE confirmed that. She continued to the next question, which asked for the history of the RPL process. She stated that AS 37.07.080(h) was originally enacted in 1977 and initially required both the governor and the Legislative Budget and Audit Committee (LB&A) to explicitly approve the RPL before the expenditure could be made. In 1977, the provision's original language read as follows:

> Appropriations may be revised on approval by the governor and the Legislative Budget and Audit Committee to allow for an increase of an appropriation item based on additional federal or other program receipts, establishment of a new permanent position not authorized in the appropriated operating budget, or reallocation between appropriation items.

MS. WALLACE explained that following the original enactment of that subsection, a lawsuit was filed [Kelly v. Hammond] challenging the provision. Judge Thomas Stewart of the Juneau Superior Court found that all three types of revisions were unconstitutional. Specifically, he found that the statute was

an improper delegation of the legislative power to appropriate to a committee; additionally, it was a violation of the separation of powers doctrine to the extent that the provision authorized the legislative committee to exercise jointly with the governor's expenditure authority. After a decision was reached in the Superior Court, the appeal was dismissed. She noted that there is little precedential value to the case. She stated that after Kelly v. Hammond was decided, the legislature proposed a constitutional amendment to the voters, which proposed that budget revisions and expenditure of program receipts upon approval of the governor and an interim committee, be permissible; however, the voters rejected the constitutional amendment. In the subsequent session, the legislature enacted AS 37.07.080(h) in substantially the same form that currently exists. She noted that there have been no further challenges to the statute.

10:58:07 AM

MS. WALLACE noted that in recent litigation history, Governor Walker proposed Medicaid expansion through utilization of the RPL process; however, the issue was primarily related to the interpretation of who was covered under the state Medicaid statute and not the RPL process itself.

10:58:59 AM

CHAIR CLAMAN sought to clarify how the current statute compares to the original 1977 statute that Judge Stewart found unconstitutional. He asked how the statute was modified.

10:59:29 AM

MS. WALLACE explained that the primary difference in the existing statute is that LB&A approval is no longer required. Instead, a 45-day wait period now exists and if LB&A does not recommend that the governor move forward with the proposed expenditure, the governor must review the program again and provide a written statement explaining his or her decision to approve the expenditure. Therefore, LB&A does not have the power to reject the expenditures like it did under the 1977 provision. She noted that a second key difference is that the current statute states that an increase of an appropriation item can be made for additional federal or program receipts not specifically appropriated by the full legislature - a clause that did not exist in the 1977 statute.

11:02:35 AM

REPRESENTATIVE LEDOUX asked if Judge Stewart based his ruling on the delegation of powers to the LB&A committee, as well as the separation of powers between the legislature and the governor.

MS. WALLACE confirmed that. She said Judge Stewarts opined that there was a violation of the separation of powers doctrine to the extent that the provision was allowing the legislative committee to exercise its power jointly with the governor's expenditure authority.

REPRESENTATIVE LEDOUX pointed out that under current statute, the LB&A committee must concede its power to the governor after 45 days. She asked if that is correct.

MS. WALLACE noted that the "catch-all" appropriation is a key portion of the RPL process and appropriates the additional federal and program receipts conditioned on compliance with the RPL process under AS 37.07.080(h). She opined that because the legislature has appropriated the receipts conditioned on compliance with the RPL process, the governor's expenditure of those funds after the 45-day wait period is contemplated as part of the appropriation bills that the legislature passes.

11:05:29 AM

REPRESENTATIVE LEDOUX asked if that's true even if the LB&A committee recommends the governor not to move forward with the additional expenditures.

MS. WALLACE answered yes. She said as long as the governor complies by providing a written statement explaining the decision to move forward, the process is satisfied. She noted that historically, there have been disagreements on whether an RPL submitted by the governor complies with AS 37.07.080(h), which presents an argument that it's not appropriate to move forward with those expenditures. She said that could lead to a legal dispute on whether the initial RPL complied with 37.07.080(h).

REPRESENTATIVE LEDOUX expressed her concern with the current statute, which allows the governor to move forward with additional expenditures after 45 days despite potential opposition by LB&A. She questioned the constitutionality of the current statute.

11:08:57 AM

CHAIR CLAMAN asked Ms. Wallace to forward a copy of the Kelly v. Hammond decision to the legislature.

11:10:09 AM

MS. WALLACE turned attention to the next question, which questioned whether AS 37.07.080(h) is the only applicable statute to this issue. She confirmed that AS 37.07.080(h) is the primary statute applicable to the RPL process. She noted that depending on the RPL under review, there could be other statutory provisions that are analyzed. She continued to explain that the Division of Legal and Research Services (Legislative Legal Services) is of the opinion that the RPL process can not be utilized to amend the purpose of an appropriation made by the full legislature. She suggested reviewing the underlying purpose of the appropriation in question and whether the agency has the statutory authority to assume the proposed expenditure.

11:13:56 AM

MS. WALLACE explained that the RPL process is traditionally utilized during the interim; however, she anecdotally reported that the RPL process has previously been used while the legislature is in session. She added that AS 37.07.080(h) does not specifically provide a timeframe in which the RPL process must be utilized. She said LB&A has the statutory authority to meet during session and in the interim. She opined that in the current situation where the legislature is in recess, utilization of the RPL process by LB&A would not be invalidated by the courts.

11:17:36 AM

MS. WALLACE continued to the next question, which asked how the "catch-all" appropriation language in the operating budget impacts the RPL analysis. She reiterated that the "catch-all" provision appropriates the additional receipts conditioned on compliance with AS 37.07.080(h). She said the "catch-all" language has never been the subject of litigation; thus, the constitutionality has never been reviewed by the Alaska Supreme Court. She noted that there are two elements of appropriation: firstly, the amount appropriated must be stated or ascertainable; secondly, the appropriation's purpose must be stated or ascertainable. She indicated that someone could argue

the "catch-all" language is too broad if it does not provide an ascertainable appropriation; however, as long as the RPL process is complied with, the additional amount is considered an ascertainable increase to the appropriation. She noted that sometimes the legislature adds restrictive language in an attempt to prohibit certain appropriations from being increased through the RPL process. She read the "catch-all" language as follows:

> Federal or other program receipts that exceed the amounts appropriated in this act are appropriated conditioned upon compliance with the program review provisions of AS 37.07.080(h).

11:21:50 AM

MS. WALLACE directed attention to the final question, which asked if a single RPL can be used to increase the expenditure in more than one fiscal year. She noted that the question pertains to the specific language in AS 37.07.080(h), which states that an increase of "an" appropriation item may be made. She recounted that the issue of using a single RPL to increase the expenditure in more than one fiscal year was raised with the current RPL put forward by the governor with respect to expenditure of the CARES Act. She said many of the proposed RPLs sought multi-year expenditure authority. Ms. Wallace explained that she raised issue with those RPLs because it's improper to categorically request to spend money over multiple fiscal years unless the appropriation amount is specifically identified for each year. She said that issue was cured with the administration's submission of a new batch of RPLs that provided how much money was to be expended in FY 20 versus FY 21.

11:25:35 AM

REPRESENTATIVE KOPP referenced a legal memorandum submitted by Ms. Wallace on April 30, 2020 to the LB&A committee regarding the RPL process and 45-day period. He asked if Ms. Wallace's opinion has changed with respect to the RPLs that pertain to community assistance payments and small business relief for the economic stimulus of Alaskan fisheries.

11:27:06 AM

CHAIR CLAMAN clarified that there are two memorandums dated April 30, 2020 that Ms. Wallace provided to the LB&A committee.

One pertains to the 45-day period and the other is an eight-page memorandum that addresses several RPLs.

11:27:32 AM

MS. WALLACE explained that the administration revised the community assistance RPLs in the May 1, 2020 RPL submissions, which reduced the amount to $200,000. She said the cited statutory authority was revised to grant Department of Commerce, Community & Economic Development (DCCED) the general authority to administer grants and federal community assistance programs. She stated that the general conclusion regarding the appropriateness of utilizing the RPL process has not changed. The formula that was utilized to determine the amount that each local government would receive was changed to provide more assistance to several communities; however, the formula itself did not change. She opined that there continues to be no statutory authority that provides the governor the power to develop or create a new community assistance payment formula. She further noted that the small business relief RPL was also modified by removing the proposal to utilize Alaska Housing Finance Corporation (AHFC) as part of the small business loans. The revised RPL exclusively utilizes DCCED's authority in cooperation with Alaska Industrial Development and Export Authority (AIDEA). She reiterated that her general conclusion has not changed.

11:31:22 AM

CHAIR CLAMAN remarked:

> It's your general analysis that because there is no appropriation for COVID-19 in 2019 that the legislature would need to make the appropriation, there would be no appropriation to increase for COVID-19 in the 2020 budget through the RPL process. Whereas if there [are] appropriations in the 2021 budget process for COVID-19 the RPL process would be appropriate to make those adjustments.

11:32:35 AM

MS. WALLACE answered that is correct. She pointed out one of the strictest readings of 37.07.080(h) indicates that if the legislature didn't appropriate any CARES Act funds then there are no appropriations eligible to be increased. She stated that a less restrictive approach could find it permissible to allow

an appropriation that has some federal receipt authority to be utilized through the RPL process to increase that appropriation to allow for expenditures of the CARES Act funds, so long as the purpose of the appropriation is consistent with the purpose for utilization of the CARES Act funds.

11:35:52 AM

CHAIR CLAMAN provided an example referencing federal receipts for school lunches. He established a scenario in which the CARES Act provided more money for schools and asked whether it would be appropriate to increase that appropriation because the purpose is consistent with the federal receipts.

MS. WALLACE confirmed that.

11:36:24 AM

CHAIR CLAMAN said in contrast, there's not a federal component to community revenue sharing; additionally, there's no budget for community revenue sharing. He surmised that even if there were money to be used for revenue sharing from the federal funds, there's no appropriation for that in the budget, which is why Ms. Wallace's opinion has not changed regarding the revenue sharing.

11:36:55 AM

MS. WALLACE said that's generally correct. She stated that the appropriation identified for the community revenue sharing is an appropriation to the Division of Community and Regional Affairs for the purpose of funding the division's operations. She opined that the purpose of that appropriation is not to carry out a community assistance function. She pointed out that there's not a federal component for any existing community assistance program or a formula for distributing funds in this manner for community assistance programs. The RPL, she said, doesn't rely exclusively on the community assistance formula provided under AS 29.68.50 - 29.68.879, it also includes a component of other tax revenue based on information that DCCED collects for municipalities. All that information helped establish a new formula for distribution to communities, she said.

11:38:34 AM

CHAIR CLAMAN returned attention to the 45-day requirement under AS 37.07.080(h). He observed that whether the LB&A committee does not take action in the 45-day period or they take action and recommend that authority is not granted to the governor, the 45-day period allows the legislature to return from recess or call themselves back in to specifically prohibit the governor from accessing the funds. He theorized that if the "catch-all" gives the governor access to $100 million the governor could spend those funds unless the legislature calls a session to prevent that. In contrast, if the LB&A approves the expenditure, then the governor could spend the funds earlier; however, without LB&A concurrence the governor must wait 45-days during which the legislature could prohibit the governor from spending the money from the "catch-all."

MS. WALLACE acknowledged that the 45-day wait period provides the legislature with an opportunity to reconvene, during which time there are many policy decisions that could be made, such as explicitly approving the recommendations for expenditure as proposed or formulating a new way to appropriate the funds.

11:40:51 AM

REPRESENTATIVE KOPP suggested looking at the original language in the 1977 statute. He asked if that would be relevant to this discussion.

MS. WALLACE said if there were a challenge to the process it might be relevant for understanding the legislative history. She offered to follow-up with the requested information.

11:42:23 AM

REPRESENTATIVE KOPP offered his belief that the discussion revolves around the fundamental issue of getting the urgently needed funding out to the impacted communities and industries in the most lawful manner possible. He said his questions are in the spirit of helping the legislature and the administration come to a consensus on the best way forward in the interest of all Alaskans.

11:44:36 AM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at [11:44] a.m.