

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

TREG R TAYLOR, in his official capacity as
ATTORNEY GENERAL for the STATE OF
ALASKA

Plaintiff(s),

vs.

ALASKA LEGISLATIVE AFFAIRS
AGENCY

Defendant(s).

CASE NO. 3AN-

**SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: Legislative Affairs Agency

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) Attorney General's Office, Department of Law, whose address is: 1031 West 4th Avenue, Suite 200, Anchorage, Alaska 99501-1994.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf> to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

This case has been assigned to Superior Court Judge _____ and to a magistrate judge.

This case has been assigned to District Court Judge _____.

CLERK OF COURT

Date

By: _____
Deputy Clerk

I certify that on _____ a copy of this Summons was mailed given to plaintiff plaintiff's counsel along with a copy of the Domestic Relations Procedural Order Civil Pre-Trial Order to serve on the defendant with the summons.

Deputy Clerk _____

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

TREG R. TAYLOR, in his official)
capacity as ATTORNEY GENERAL for)
the STATE OF ALASKA,)

Plaintiff,)

v.)

ALASKA LEGISLATIVE AFFAIRS)
AGENCY,)

Case No. 3AN-21-_____ CI

Defendant.)

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Treg R. Taylor, in his official capacity as the Attorney General for the State of Alaska, pursuant to AS 22.10.020(g) and Alaska Rule of Civil Procedure 57(a), brings this action for declaratory relief against the Alaska Legislative Affairs Agency.

Plaintiff alleges as follows:

PARTIES

1. Plaintiff Treg R. Taylor is the Attorney General for the State of Alaska and is charged with the responsibility to, among other things, “defend the Constitution of the State of Alaska.”¹
2. Defendant Legislative Affairs Agency is the non-partisan support agency of the legislature.

¹ AS 44.23.020(b)(1).

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this declaratory action pursuant to AS 22.10.020(a), (g).

4. Venue is proper in this Court pursuant to Civil Rule 3(c) and AS 22.10.030.

FACTUAL ALLEGATIONS

5. The Alaska Constitution expressly provides that there shall be no spending of state funds without an appropriation by the legislature. Article IX, section 13 states:

No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

6. The Alaska Constitutional also expressly addresses when a law passed by the legislature becomes effective. Article II, section 18 provides:

Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

7. On June 15, 2021, the House considered and passed the conference committee budget, CCS HB 69, by a majority vote, but failed to garner the super-majority needed to authorize withdrawals from the constitutional budget reserve fund, and failed to garner the super-majority needed to pass the bill's effective date clauses.²

8. On June 16, 2021, the Senate considered and passed the conference committee budget, CCS HB 69, by a majority vote, but failed to garner the super-majority

² See House Journal, June 16, 2021, at 1317-18.

needed to authorize withdrawals from the constitutional budget reserve.³ The Senate did garner the required super-majority needed to pass the bill's effective date clauses.⁴

9. Accordingly, since the House failed to pass the effective date clauses by the required two-thirds vote, the conference committee budget (HB0069) passed by both houses reflects both the failed votes on the constitutional budget reserve and the effective date clause.⁵ Section 79 makes certain identified sections retroactive to April 15, 2021, June 30, 2021, and July 1, 2021. However, pursuant to article II, section 18, CCS HB 69 (brf sup maj fld H/S) (efd fld H) will not become effective until ninety days after enactment.

10. The legislative branch has not yet transmitted the bill to the governor. A bill does not become law until the governor signs the bill, allows the bill to become law without signature, or until the legislature overrides the governor's veto.⁶ A law does not become effective until 90 days after enactment unless the legislature by two-thirds of the membership of each house, provides for another effective date.⁷ At the earliest, CCS HB 69 will be effective in mid-September 2021.

11. Without an effective appropriation authorizing the expenditure of state funds beginning on July 1, 2021, the constitution requires a partial shutdown of government

³ See Senate Journal, June 16, 2021, at 1289.

⁴ *Id.*

⁵ See CCS HB 69 (brf sup maj fld H/S) (efd fld H).

⁶ Alaska Const. art. II, secs. 14–17.

⁷ Alaska Const. art. II, sec. 18.

services as of that date, with continuation of state programs and spending restricted to those necessary to meet constitutional or federal obligations.

12. On June 17, 2021, Kate Sheehan, the Director of the Division of Personnel and Labor Relations, notified all State of Alaska executive branch employees of a potential partial shutdown.

13. Consistent with the constitutional provisions discussed in paragraphs 5 and 6, Ms. Sheehan notified executive branch employees that, unless the legislature passes an annual budget with a special effective date, the following will occur on July 1, 2021:

- (a) Non-essential permanent and probationary employees in classified service will be laid off from state service;
- (b) Non-essential partially exempt and exempt employees will be placed on furlough; and
- (c) Non-essential non-permanent employees will be placed on furlough.

14. On June 18, 2021, Jessica Geary, the Executive Director of the Legislative Affairs Agency sent a separate notice to legislators and legislative staff. Ms. Geary's notice is not consistent with the constitutional provisions discussed in paragraphs 5 and 6, instead informing legislators and legislative staff that "[i]t will likely be the Legislature's position that a functional budget was passed which allows authorized legislative personnel to continue employment on July 1." She further notified employees that "the retroactivity clause enables the work of the Legislature to continue, despite the House not passing the effective date clause" and that, assuming the governor signs CCS HB 69, "the Legislative Affairs Agency will not be issuing layoff notices on behalf of the Legislative Branch."

15. The Legislative Affairs Agency relied on a legal memorandum dated June 16, 2021, prepared by its Division of Legal and Research Services, to support its position that it may continue to expend funds without an effective appropriation. In this memorandum, Megan Wallace, the Director of the Division of Legal and Research Services, informed members of the legislature that, among other things, the executive branch may still “allow state government to continue operating before the bill takes effect 90 days later.”

16. In statements to the media, legislators have relied on the opinion from the Legislative Affairs Agency to inaccurately suggest that the government may spend money authorized by CCS HB 69 on July 1 even though the moneys authorized to be spent will not yet be effective appropriations.⁸

CLAIM FOR RELIEF DECLARATORY JUDGMENT

17. Plaintiff realleges paragraphs 1 through 16 as if fully stated herein.

18. Alaska Statute 22.10.020(g) (the “Declaratory Judgment Act”) grants to superior courts the power to issue declaratory judgments in cases of actual controversy.

⁸ See James Brooks, *Alaska Moves Closer to Government Shutdown as Special Legislative Session Ends Without Fix to State Budget*, Anchorage Daily News (July 18, 2021) (available online at <https://www.adn.com/politics/alaska-legislature/2021/06/18/alaska-moves-closer-to-government-shutdown-as-special-legislative-session-ends-without-fix-to-defective-state-budget/>); Natasha Von Imhof, *No Need For A Government Shutdown*, Anchorage Daily News (June 18, 2021) (<https://www.adn.com/opinions/2021/06/18/no-need-for-a-government-shutdown/>).

19. It states in relevant part: “In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought.”

20. Declaratory judgments are rendered “to clarify and settle legal relations, and to ‘terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.’”⁹

21. Under article XII, section 5 of the Alaska constitution, the attorney general must subscribe to the following oath or affirmation: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as Attorney General to the best of my ability.”

22. Alaska Statute 44.23.020(b)(1) and (9) further provide that the attorney general shall “defend the Constitution of the State of Alaska” and “perform all other duties required by law or which usually pertain to the office of attorney general in a state.” The Alaska Supreme Court has interpreted this provision to mean that the Attorney General’s Office has those powers and duties normally ascribed to it at common law, with the

⁹ *Lowell v. Hayes*, 117 P.3d 745, 755 (Alaska 2005) (quoting *Jefferson v. Asplund*, 458 P.2d 995, 997–98 (Alaska 1969)).

attorney general having the ability “to bring any action which he thinks necessary to protect the public interest.”¹⁰

23. Article IX, section 13 limits spending of state funds without an appropriation by the legislature, and article II, section 18 provides that, unless agreed to by third-thirds of membership of each house, a law passed by the legislature becomes effective ninety days after enactment.

24. Given these constitutional provisions, CCS HB 69 may become effective no earlier than mid-September, yet the Legislative Affairs Agency has informed its employees and the legislature that it will have the authority to spend state funds authorized by the FY 2022 budget without limitation.

25. Accordingly, an actual controversy has arisen and now exists between the Attorney General and the Legislative Affairs Agency regarding the Legislative Affairs Agency’s authority to expend funds without an effective appropriation from the legislature.

26. Resolving this dispute is in the public’s interests, and bringing this lawsuit is within the Attorney General’s authority under the common law and fulfills his duty to defend the Alaska constitution.

27. To resolve this legal uncertainty, the Attorney General is entitled to a declaratory judgment that (1) unless approved by two-thirds of membership of each house,

¹⁰ *Public Defender Agency v. Superior Court, Third Judicial Dist.*, 534 P.2d 947, 950 (Alaska 1975) (citing *State v. Finch*, 128 Kan. 665 (1929)).

the effective date of CCS HB 69 will be ninety days after enactment, and (2) without an effective appropriation, no expenditure of state funds is authorized by law except expenditures required to provide essential state services under the Alaska constitution or federal law.

RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that the Court:

- (1) Declare unlawful any expenditure of state funds without an effective appropriation absent expenditure necessary to meet constitutional obligations to maintain the health and safety of residents or federal obligations; and
- (2) Provide such other and further relief as this Court deems just and equitable under the circumstances.

DATED June 21, 2021

TREG R. TAYLOR
ATTORNEY GENERAL

By:



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