

**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,)

Defendant.)

Case No.3AN-21-_____ CI

MOTION FOR EXPEDITED CONSIDERATION

Under Alaska Civil Rule 77(g), Plaintiff Treg R. Taylor, acting in his official capacity as Attorney General, moves this Court for expedited consideration of his Motion for Summary Judgment, which seeks a declaratory judgment resolving a dispute over the ability to spend state funds without an effective appropriation enacted by the legislature.

On June 16, 2021, the legislature passed by a simple majority an operating budget identified as CCS HB 69. The bill contained a provision making certain sections retroactive to April 15, June 30, and July 1, 2021, but the legislature failed to pass a special effective date by a two-thirds majority in both the house and the senate. Unless a special effective date is passed by two-thirds of each house, the Alaska Constitution states that the bill does not become effective until ninety days after enactment.¹ At the earliest, CCS HB 69 will become effective in mid-September 2021.

¹ Alaska Const. art. II, sec. 18.

Recognizing that article IX, section 13 mandates that “[n]o money shall be withdrawn from the treasury except in accordance with appropriations made by law,” the executive branch is preparing for a partial government shutdown on July 1. Should such a shutdown occur, the State will be required to, among other things, suspend many state services that, although important, are not essential to meet basic constitutional requirements to protect the public health and safety of Alaska residents or to comply with federal law. The State must suspend such services because they are dependent on lawful appropriations effective July 1. This interruption of state services will also impact and force the lay-off of substantial numbers of state employees. [See Affidavit of Kate Sheehan at ¶¶ 2, 5] This will create significant hardship for employees, undermine the timely and effective delivery of state services, and cause irrevocable consequences because, for many state employees once a separation from state service occurs, that employee’s leave balance must be cashed out and cannot be reinstated. [See Affidavit of Kate Sheehan at ¶ 5]

The Legislative Affairs Agency’s view of the constitution differs from that of the Attorney General. It believes that the Governor has the authority to expend state funds without appropriations effective on July 1—despite the requirements of article II, section 18 and article IX, section 13—and contends the future appropriations contained in CCS HB 69 would be enough. Moreover, it has expressed an intent to expend state funds for legislative branch employees after July 1. [See Affidavit of Kate Sheehan at ¶ 8]

If the circumstances do not change, either the executive branch or the legislative branch will be in violation of the law on July 1. If the Attorney General is correct that a budget effective on July 1 is required to authorize expenditure of state funds, the Legislative Affairs Agency will have spent state funds in violation of article IX, section 13. If the Legislative Affairs Agency is correct, the executive branch will have unnecessarily implemented a partial shutdown and, among other actions, unnecessarily suspended spending on state programs and laid off state employees.

Resolution of the issues raised in the Attorney General's Motion for Summary Judgment will resolve this dispute and prevent unlawful government action. Accordingly, the Attorney General requests a decision on the Motion for Summary Judgment no later than noon on **Wednesday, June 30**. A decision on this motion to expedite is requested by **Wednesday, June 23** because the Attorney General requests a schedule that would require the defendant to respond to the motion for summary judgment by **Friday, June 25**. The Attorney General does not request oral argument on this motion to expedite.

On June 21, 2012, Assistant Attorney General Bill Milks called the Legislative Affairs Agency's Division of Legal and Research Services to discuss this proposed schedule with them. ²Emily Nauman, Deputy Director of the Legislative Affairs Agency, Division of Legal and Research Services, indicated that she could not agree to a schedule until she had reviewed the pleadings to be filed.³

² Affidavit of Counsel at ¶ 2

³ *Id.*

To allow the Court to reach a decision by noon on June 30, the Attorney General proposes the following schedule, with no extensions of time available:

- Defendant's opposition to motion for summary judgment due **Friday, June 25**
- Plaintiff's reply due **Monday, June 28**
- Oral argument **Tuesday, June 29** or **Wednesday, June 30**
- A decision is requested no later than **noon on Wednesday, June 30**

DATED June 21, 2021

TREG R. TAYLOR
ATTORNEY GENERAL

By: 

Margaret Paton Walsh
Alaska Bar No. 0411074
William E. Milks
Alaska Bar No. 0411094
Jessica M. Alloway
Alaska Bar No. 1205045
Assistant Attorneys General

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ALASKA LEGISLATIVE AFFAIRS)
AGENCY,)

Defendant.)

Case No. 3AN-21- _____ CI

**AFFIDAVIT OF KATE SHEEHAN IN SUPPORT OF
MOTION FOR EXPEDITED CONSIDERATION**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Kate Sheehan, being first duly sworn, depose and state that:

1. I am the Director of the Division of Personnel and Labor Relations.
2. On June 17, 2021, I sent an email to all executive branch state employees.

This email is marked as Attachment A to this affidavit. The email provides notice to all executive branch employees that, in the event the legislature does not pass a budget bill with a special effective date by July 1, they will be laid off or placed on furlough status.

3. Some executive branch employees subject to being laid off or furloughed may be recalled to provide essential state services required by the Alaska Constitution or federal law.


4. For any partially exempt or exempt employees that are not recalled to perform essential state services, they will be furloughed for a period of up to 10 days.

5. For any permanent and probationary employees in classified service that are not retained to perform essential state services, they will be laid off from their current position. This will result in them being separated from state service and require leave balances to be cashed out. Once cashed out, leave cannot be reinstated. The total leave liability for all state employees is currently in excess of \$190 million, although recalled employees' leave would not be cashed out.

6. Although state employees' health insurance will extend through July, employees may have to cover the premium that would be deducted from their July paychecks from other funds. If the shutdown extends into August, employees who are laid off will lose their health insurance.

7. The State's ability to place classified employees on furlough requires an agreement with their unions, and in the past, the State has been able to reach such an agreement. Although the State is currently in negotiations, an agreement has not yet been reached.

8. On June 18, 2021, Jessica Geary, Executive Director of the Legislative Affairs Agency, forwarded to me an email she had sent to legislators and legislative staff. That email is marked as Attachment B to this affidavit.

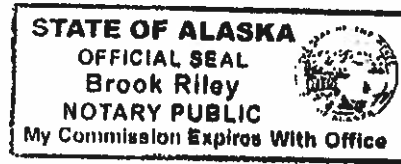

Kate Sheehan

SUBSCRIBED AND SWORN TO before me on this 21st day of June 2021.

Brook Riley

Notary Public, State of Alaska

My commission expires: With office



From: [Sheehan, Kate E \(DOA\)](#)
To: [SOA All Employees Executive Branch](#)
Subject: Potential government shut down
Date: Thursday, June 17, 2021 2:45:26 PM

Dear Alaska State Employee,

I regret to inform you of a potential partial government shutdown. A partial shutdown could occur as a result of the Legislature failing to pass next year's annual budget with language providing an effective date of July 1, 2021. The effective date for the budget provides authority for the Executive Branch to spend certain funds. Under Article II, Section 18 of the Alaska Constitution, a spending bill takes effect 90 days after it is enacted. An earlier immediate effective date is possible only when 2/3 of the legislators in the House (27) and Senate (14) agree. Because that effective date concurrence did not pass both bodies with the 2/3 majority, the earliest the operating budget can come into effect is 90 days from enactment, which would be sometime in September. We are hopeful the legislature will still take action to and we will not need to proceed with the shut down.

This will impact your employment status with the State of Alaska. On behalf of Governor Dunleavy as well as all of Commissioners, I assure you this action is no reflection on your service.

- For permanent and probationary employees in the classified service (typically this means you are represented by a union), you will be placed on layoff from your current position effective July 1, 2021. You will receive notice by email should your layoff be rescinded prior to July 1, 2021, or should you be recalled from layoff after July 1, 2021.
- For partially exempt and exempt employees (statutorily appointed employees), you will not need to report to work as of July 1, 2021. You will receive notice by email prior to July 1, 2021, should there be any changes to this direction, or after July 1, 2021, should your employment return to regular status.
- For non-permanent employees whose positions will continue beyond June 30, you will not need to report to work as of July 1, 2021, until further notice by email.
- For student, college, and graduate interns, you will not need to report to work as of July 1, 2021, until further notice by email.

This letter constitutes notice under your respective bargaining agreements or applicable statutes. No additional notice will be provided.

You have until June 29th to send in a leave cash-in. Please know that you will have health insurance until July but depending on the time of the shut down you may need to self pay your employee contribution. If you are a member of a collective bargaining unit, you may also want to contact your union for additional information; we are working closely with them. We are all here to assist you as much as possible.

Kate Sheehan
Director
Division of Personnel and Labor Relations

Sheehan, Kate E (DOA)

From: Jessica Geary <Jessica.Geary@akleg.gov>
Sent: Friday, June 18, 2021 5:14 PM
To: Sheehan, Kate E (DOA)
Subject: FW: FY22 Budget Status

Follow Up Flag: Follow up
Flag Status: Flagged

FYI

Jessica Geary
Executive Director
Legislative Affairs Agency
Phone 907-465-6622
Cell 907-723-2994

From: Jessica Geary
Sent: Friday, June 18, 2021 5:13 PM
To: allusers@akleg.gov
Subject: FY22 Budget Status

Dear Legislators and Legislative Staff,

By now, many of you have heard that Executive Branch employees received layoff notices yesterday. It will likely be the Legislature's position that a functional budget was passed which allows authorized legislative personnel to continue employment on July 1. Based on past practice and Legal Services interpretation, the retroactivity clause enables the work of the Legislature to continue, despite the House not passing the effective date clause. Therefore, at this time, assuming the governor will sign the budget, the Legislative Affairs Agency will not be issuing layoff notices on behalf of the Legislative Branch.

If the bill is not signed by July 1, the governor vetoes the budget, or there are other delays related to the availability of the new fiscal year's funds, we will update you as soon as possible. It is my sincere hope that these disagreements will be worked out prior to July 1; however, if not, we will be forced to implement a contingency plan that places nonessential staff on furlough status.

Please reach out to either me, Skiff Lobaugh or your appointing authority if you have any questions or concerns.

Best,

Jessica

Jessica Geary
Executive Director
Legislative Affairs Agency

Phone 907-465-6622
Cell 907-723-2994

Jnu.law.ecf@alaska.gov

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ALASKA LEGISLATIVE AFFAIRS)
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Defendant.)

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
MOTION FOR EXPEDITED CONSIDERATION**

STATE OF ALASKA)

) ss.

FIRST JUDICIAL DISTRICT)

I, William E. Milks, being first duly sworn, depose and state that:

1. I am one of the Assistant Attorneys Generals responsible for the above-captioned matter.

2. In the afternoon of June 21, 2021, I called Megan Wallace, the Director of the Legislative Affairs Agency, Division of Legal and Research Services, to inform her of the Attorney General's intention to file this Motion for Expedited Consideration. I was not immediately able to speak with Ms. Wallace and instead got her voicemail. I left a voicemail explaining Department of Law's intent to file an expedited motion and that the subject was seeking an expedited declaratory judgment ruling on the budget, HB 69, and the effective date. I then called the Deputy Director of the Legislative

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
JUNEAU BRANCH
P.O. BOX 110300
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600
FAX: (907) 465-2520

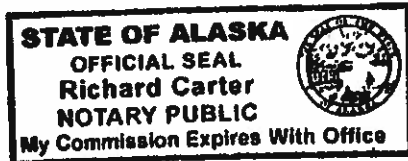
Affairs Agency, Division of Legal and Research Services, Emily Nauman, and explained the expedited motion and that the Department of Law was seeking an expedited briefing schedule on the declaratory judgment that would permit the court to rule by June 30. Ms. Nauman reserved on agreeing to any schedule on briefing until she reviewed the pleadings to be filed.


3. Expedited consideration of the Attorney General's Motion for Summary Judgment is warranted to ensure that state funds are expended in accordance with the requirements of the Alaska Constitution and to prevent either the executive or the legislative branch from acting unlawfully as of July 1. The Attorney General requests a decision on the motion for summary judgment no later than **noon on June 30, 2021.**



William E. Milks

SUBSCRIBED AND SWORN TO before me on this 21st day of June 2021.





Notary Public, State of Alaska
My commission expires: with office

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
JUNEAU BRANCH
P.O. BOX 110300
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600
FAX: (907) 465-2520

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Defendant.)

[PROPOSED] ORDER ON MOTION FOR EXPEDITED CONSIDERATION

The Court GRANTS the Attorney General's Motion for Expedited Consideration.

To allow the Court to reach a decision no later than noon on June 30, 2021, the Court orders the following schedule, with no extensions of time available:

- Defendant's opposition to motion for summary judgment due on **Friday, June 25**
- Plaintiff's reply in support of motion due **Monday, June 28**
- Oral argument on **June __, 2021** at _____

Date

Superior Court Judge