

STATE OF ALASKA

DEPARTMENT OF LAW

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May 14, 2010

The Honorable Sean Parnell
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: CCS HB 300 -- making appropriations
for the operating and loan program
expenses of state government, for certain
programs, and to capitalize funds
Our file: JU2010201314

Dear Governor Parnell:

At the request of your legislative office, we have reviewed CCS HB 300 (HB 300), making appropriations for the operating and loan program expenses of state government, for certain programs, and to capitalize funds. This bill is otherwise known as the fiscal year 2011 operating budget (beginning on July 1, 2010, and ending on June 30, 2011). We review the highlights of the bill below.

I. INTRODUCTION

This budget, as well as the budgets for the last few years, has set out the following introductory language in sec. 1: "[a] department-wide, agency-wide, or branch-wide unallocated reduction set out in this section may be allocated among the appropriations made in this section to that department, agency, or branch." Section 1, p. 2, lines 4 - 6; *see also* sec. 2, p. 48, lines 9 - 11. Despite this language, however, there are no unallocated reductions in this bill.

II. GENERAL INTENT LANGUAGE

As in prior years, the bill has numerous expressions of legislative intent accompanying certain appropriation items. *See, e.g.*, sec. 1, p. 4, lines 6 - 8; p. 10, lines 13 - 15; p. 11, lines 20 - 25. The issue with respect to intent language concerns the extent to which such language violates the confinement clause of the Alaska Constitution ("[b]ills for appropriations shall be confined to appropriations." art. II, sec. 13). In *Alaska State Legislature v. Hammond*, Judge (now Justice) Carpeneti adopted a five-factor test to determine whether such language violates the confinement clause:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is, appropriate, to an appropriations bill.

Memorandum of Decision at 44 - 45, No. 1JU-80-1163 (Alaska Super., May 25, 1983). Judge Carpeneti observed that this test could not "easily or mechanistically be applied" and that every section of challenged intent language "is a new case which must be examined separately." *Id.* at 45. The Alaska Supreme Court subsequently adopted Judge Carpeneti's test on a "non-exclusive" basis in the *Knowles II* decision. *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001).

The courts have had relatively few opportunities to consider whether certain instances of intent language violate the confinement clause. Judge Carpeneti determined that most (but not all) of the intent language at issue in *Hammond* was invalid under the confinement clause. *Hammond*, No. 1JU-80-1163 at 46-58. In *Knowles II*, the Court found certain contingency language invalid (21 P.3d at 379-81), and certain descriptive language non-binding (*Id.* at 383), but upheld the following language:

This appropriation is for new CRC beds, not owned or controlled by municipalities, to provide space in institutions for violent felons. All beds will meet department standards for Community Residential Centers. Contracts will be competitively bid.

Id. at 381 - 82. The Court found that while portions of this language violated some of the *Hammond* factors, these violations were offset by the fact that the language did not amend existing law and it did not extend beyond the life of the appropriation. *Id.* Accordingly, we think it is possible to craft intent language that is permissible under the confinement clause. In our experience, however, most uses of intent language in the budget violate the confinement clause. Nevertheless, we cannot rule out the possibility that some uses of intent language could be found by a court to be enforceable.

In the past, we have advised that expressions of intent may generally be ignored or followed as a matter of comity. We continue to offer this advice; however, in the event your office or a recipient agency is disinclined to follow intent language as a matter of comity, and we have not specifically addressed such language herein, we recommend further consultation with this office so that we may advise as to the extent such language may be enforceable under the *Hammond* factors.

Finally, as we advised in our reviews of intent language in previous appropriations bills, an expression of legislative intent may no longer be vetoed by the governor as a line item veto separate from the appropriation itself. In *Knowles II*, the Alaska Supreme Court ruled that expressions of intent do not constitute "items" subject to your veto power under art. II, sec. 15, of the Alaska Constitution. *Id.* at 377.

We also note that the legislature is increasingly using intent language that is not connected with any appropriation. These are expressions of intent set out at the beginning of a department's budget but before any appropriation line item. *See* sec. 1, pp. 13, 17, 27 - 28, 44. We think non-appropriation related intent language probably violates the confinement clause and is unenforceable.

III. DEPARTMENT OF CORRECTIONS

The legislature has expressed its intent that the Department of Corrections "develop cost containment strategies regarding the provision of health care" and report on such to the next legislature. Section 1, p. 10, lines 13 - 15. Additionally, the legislature requests, via intent language, quarterly reporting on the success of offender habilitation programs. Section 1, p. 10, lines 19 - 21. We have previously advised that reporting requirements are normally set out in statute. 2007 Op. Att'y Gen. 2 (June 6; 883-07-0070). The Department may wish to comply as a matter of comity.

The legislature also expresses its intent that the Department of Corrections "purchase agricultural products directly from Alaskan Farmers whenever practical." Section 1, p. 35, lines 4 - 5. This intent language is found within the Department of Natural Resources budget. This language strays into the administration of the Department of Corrections' purchasing program, may impact procurement rules, and therefore is probably unenforceable.

IV. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT

As it did the last two years, the legislature has stated that a school district may not receive state education aid if it has a policy barring military, ROTC, CIA and FBI recruiters, the boy scouts, or ROTC programs from its schools. Section 1, p. 11, lines 7 -

18. As we have previously stated, we think this language probably violates the confinement clause. *See* 2009 Op. Att'y Gen. 4 (May 8; JU2009200407); 2008 Op. Att'y Gen. 3 (May 9; 883-08-0074).

In *Knowles II*, the legislature sought to make certain appropriations to the Alaska Seafood Marketing Institute contingent on ASMI not having any employees located outside the state with a salary over a certain level. The Alaska Supreme Court held that such conditional language violated four of the five *Hammond* factors (discussed above) in that the language (i) went beyond the minimum necessary language because it did not describe how the appropriated money was to be spent, (ii) sought to administer the agency's program, (iii) was not germane to the appropriations, and (iv) was substantive in nature. *Knowles II*, 21 P.3d at 380-81.

For similar reasons, we think the military recruiter language in the Department of Education and Early Development's budget violates the confinement clause. It is not the minimum necessary language because it does not describe how the appropriation is to be spent. It seeks to administer the agency's program by requiring that certain policies to be adopted. The military recruiter language is not germane to the foundation program appropriation. By requiring certain military recruiter policies on school districts, it resembles substantive law.

We recognize that in some cases, courts have upheld language conditioning an appropriation. *Knowles II*, 21 P.3d at 379. But there needs to be a substantial nexus between the condition and the appropriation -- this appears to be the purpose of the "germaneness" requirement. Here there is little nexus between a military recruiter access policy and the foundation formula.

Accordingly, we believe this language is unenforceable. The legislature may seek to pass a substantive bill that requires schools to provide recruiter access.

V. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The legislature expresses its intent that the Department of Environmental Conservation "work closely with molluscan shellfish producers to explore methods of lowering cost to the public and private sectors of certifying the water quality of shellfish harvest areas." Section 1, p. 13, lines 18 - 22. We note that this intent language is not connected to an appropriation. The Department may comply as a matter of comity.

The legislature further expresses its intent that the Department make a proposal to the legislature to make the spill prevention and response fund sustainable (sec. 1, p. 14, lines 17 - 19), that the Department collaborate with the Department of Labor and Workforce Development to develop a plan to train Alaskans for jobs as ocean rangers (sec. 1, p. 14, lines 31 - 33), and that the Department work with the Departments of Fish

and Game and Natural Resources to develop a plan to remove fish waste from the Kenai and Kasilof Rivers dipnet fishery (sec. 1, p. 15, lines 3 - 7). We think the Department may comply with this language as a matter of comity.

VI. DEPARTMENT OF HEALTH AND SOCIAL SERVICES

As in past years, the legislature includes lengthy statements of intent with respect to the Department of Health and Social Services (DHSS). Some of these statements of intent are identical to past years. Much of the intent language in the Department's budget appears to be an attempt to administer the program of expenditures (such as identifying a private vendor as a candidate for funding (sec. 1, p. 20, lines 9 - 11)), and thus raises confinement clause concerns. With the exception of the intent to restrict funding medically necessary abortions (discussed below), the Department may comply as a matter of comity.

A. Abortion Funding

This year's budget, as did the past several years' budgets, contains the following language regarding abortion funding:

No money appropriated in this appropriation may be expended for an abortion that is not a mandatory service required under AS 47.07.030(a). The money appropriated for Health and Social Services may be expended only for mandatory services required under Title XIX of the Social Security Act and for optional services offered by the state under the state plan for medical assistance that has been approved by the United States Department of Health and Human Services.

Section 1, p. 27, lines 22 - 27. As we opined before, this language is intended to prevent expenditures from these appropriations for therapeutic or medically necessary abortions. DHSS, however, is under a superior court order to operate its Medicaid program in a constitutional manner by providing payment for them. That superior court order has been upheld by the Alaska Supreme Court, which specifically rejected an argument that the separation-of-powers doctrine precluded the superior court from ordering the state to pay. *State, Dept. of Health & Social Services v. Planned Parenthood of Alaska*, 28 P.3d 904 (Alaska 2001). Thus, DHSS is faced with a ruling from the state's highest court that the limit on payment for abortion services results in the operation of the Medicaid program in an unconstitutional manner, while DHSS is ostensibly without the money available to pay for services to operate the program legally. A veto of this provision is not available under as described in our analysis of *Knowles II*.

Eight years ago, the plaintiffs in the Planned Parenthood case asked the superior court to clarify how similar budget restrictions impacted its judgment. The superior court, three days after the Supreme Court affirmed the judgment, issued an opinion ordering the DHSS not to comply with the restrictions. To date, therefore, DHSS has obeyed the superior court's order and we must advise DHSS to continue to obey it; *i.e.*, to continue to pay for these medically necessary abortions, until such time as a court reverses the order that is now in effect.

B. Grant Programs

The legislature has added intent language requesting that DHSS eliminate report requirements for grant recipients whose grants are \$50,000 or less. Section 1, p. 18, lines 22 - 25. The language goes on to provide direction regarding grant procedures. *Id.* at p. 18, line 26 - p. 19, line 5; *see also id.* at p. 19, line 30 - p. 20, line 8. This intent language strays into the administration of these grant programs, and accordingly we think violates the confinement clause. We also note that this intent language is internally inconsistent in that it requests that some reporting be terminated, but then requests that future grants be awarded on past performance, which might be difficult to comply with if there were no report on which to judge past performance.

C. Pioneer Homes

The bill contains the same intent language from previous years regarding an appropriation to DHSS, Alaska Pioneers' Homes, which arguably goes beyond an expression of intent. The language appears to make changes to program requirements through an appropriation bill:

It is the intent of the legislature that all pioneers' homes and veterans' homes applicants shall complete any forms to determine eligibility for supplemental program funding, such as Medicaid, Medicare, SSI, and other benefits as part of the application process. If an applicant is not able to complete the forms him/herself, or if relatives or guardians of the applicant are not able to complete the forms, Department of Health and Social Services staff may complete the forms for him/her, obtain the individuals' or designee's signature and submit for eligibility per AS 47.25.120.

Section 1, p. 19, lines 7 - 16. The expression of intent that pioneers' home and veterans' home applicants complete forms to determine eligibility for supplemental program funding must be accomplished by statute or, if appropriate, regulations. Thus, we think there are confinement clause concerns with this language.

D. Fiscal Audit Directives

The legislature has set out intent language related to fiscal audits required in ch. 66, SLA 2003 of Medicaid providers. Section 1, p. 25, line 27 - p. 26, line 10. The intent language requests that the DHSS develop certain regulations and training standards. This would effectively result in a retroactive application of any new regulations if the department did not, under its existing authority in AS 47.05 and AS 47.07, have those regulations in effect by that date. The retroactive application of any new regulations likely would conflict with the Administrative Procedure Act's limitations on retroactive effect. *See* AS 44.62.240. Also, under AS 44.62.180, a regulation is effective 30 days after filing by the Lieutenant Governor, unless "otherwise specifically provided by the statute under which the regulation . . . is adopted." A statement of intent in an appropriations bill would be doubtful authority for a retroactive application of any new regulation. The appropriate place for this language is in a substantive law bill amending the original fiscal audit legislation.

VII. DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

The legislature expresses its intent that the Department of Labor and Workforce Development assist recipients of Alaska technical and vocational education program account funding apply for a federal job training grant. Section 1, p. 27, line 33 - p. 28, line 9. We note that this intent language is not connected to an appropriation. The Department may comply as a matter of comity.

The legislature expresses its intent that the Construction Academy pursue other sources of funding in FY 2011, including applying for State Training and Employment Program funding. Section 1, p. 30, lines 5 - 8. We understand that these alternative funding sources do not provide funding for general operations. The Department may comply as a matter of comity, but may also wish to review further with the legislature whether the legislature had proposed such alternative funding sources as a means to fund general operations or for some other purpose.

The legislature also requests that the Department report by January 15, 2010, on the number of federal grants obtained by the Alaska Vocational Technical Center for the last five fiscal years. Section 1, p. 31, lines 4 - 6. We assume that this is a typographical error, and the legislature intends for the report to be submitted by January 15, 2011.

VIII. DEPARTMENT OF NATURAL RESOURCES

The legislature expresses its intent that the Department of Natural Resources submit for review its plan for the guide concession area program prior to implementation (sec. 1, p. 34, lines 16 - 18), and that the Department report on options to expand the

domestic production and export of seed potatoes (sec. 1, p. 35, lines 8 - 10). The Department may comply as a matter of comity.

IX. DEPARTMENT OF PUBLIC SAFETY

The legislature has expressed its intent that the Department of Public Safety "provide additional state trooper coverage for international border communities to help meet Federal and Homeland Security requirements." Section 1, p. 36, line 33 - p. 37, line 4. We think this language strays into the administration of the Department's program with respect to how it deploys its personnel. But if such additional coverage is consistent with the Department's mission, the Department may comply as a matter of comity.

With respect to the Council on Domestic Violence and Sexual Assault (CDVSA) appropriation, the legislature provides as follows:

Notwithstanding AS 43.23.028(b)(2), up to 10% of the amount appropriated by this appropriation under AS 43.23.028(b)(2) to the Council on Domestic Violence and Sexual Assault may be used to fund operations and grant administration.

Section 1, p. 38, lines 12 - 14. Under AS 43.23.028(a)(3), the commissioner of revenue is required to disclose to the public the amount by which each permanent fund dividend has been reduced as a result of appropriations from the dividend fund. However, money appropriated from the dividend fund to specified corrections and crime victims programs is not subject to the disclosure requirement, to the extent the amount appropriated from the fund to all the programs is less than the dividends that would have been paid to criminals who are ineligible under AS 43.23.005(d) or 43.23.021(b) if they had been eligible. Under AS 43.23.028(b)(2), appropriations from the dividend fund to the CDVSA "for grants for the operation of domestic violence and sexual assault programs" are among the appropriations that need not be included in the disclosure under AS 43.23.028(a)(3).

The exemption from disclosure under AS 43.23.028(b)(2) is limited to appropriations "for grants for the operation of domestic violence and sexual assault programs." To the extent that the "notwithstanding" language in the bill is intended to allow the CDVSA to use up to 10 percent of its appropriation from the dividend fund for the CDVSA's operations and grant administration, without affecting the appropriation's exemption from the disclosure requirement, this should be accomplished by a substantive amendment to AS 43.23.028(b)(2), not by language in an appropriation bill. Therefore, this provision is ineffective to alter the limitations on the exemption from the statutory disclosure requirement for appropriations to the CDVSA. If this is not the legislature's

intent, it seems to us that the legislature could simply drop the "notwithstanding" language in the future -- there is nothing in AS 43.23.028(b)(2) that limits the legislature's authority to appropriate for fund operations and grant administration.

X. DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

As we have noted in previous years, there is a special lapse provision in the Department of Transportation and Public Facilities budget: "The amounts allocated for highways and aviation shall lapse into the general fund on August 31, 2011." Section 1, p. 43, lines 6 - 7. This special lapse provision makes the appropriations available for expenditure until they lapse into the general fund on August 31, 2011.

XI. UNIVERSITY OF ALASKA

The legislature appropriates an additional \$40 million as a budget addition for the University of Alaska. The legislature requests reporting from the University regarding the allocation of certain of these funds. Section 1, p. 44, lines 20 - 23. The University may comply as a matter of comity.

XII. ALASKA COURT SYSTEM

The legislature expresses its intent that transcript funding for the next budget cycle be requested from the agencies that request such transcripts. Section 1, p. 46, lines 9 - 10. The legislature also expresses intent that contracts related to therapeutic courts be for amounts that are "in the best interest of operating therapeutic courts in an efficient and effective manner." Section 1, p. 46, lines 13 - 16. The judicial branch will likely take its own counsel on the extent to which such intent language is enforceable.

XIII. NEW LEGISLATION

Section 2 of the bill sets out the appropriations for several pieces of new legislation. If the legislation should fail to pass, then the appropriation lapses.

XIV. LANGUAGE SECTIONS

Section 5 of the bill expresses a legislative finding that savings of approximately \$114.081 million from the increased FY 2011 federal medical assistance percentage (FMAP) provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) are being used to finance appropriations in the FY 2011 budget. Expenditure of such general fund savings is required by Division B, section 5001(f)(3) of P.L. 111-5, which prohibits the deposit of amounts attributable to the FMAP increase "into any reserve or rainy day fund" of the state.

Section 6 of the bill ratifies negative account balances for amounts less than \$1,000 for prior fiscal years. The ratification accomplishes this by reducing the FY 2011 operating budget appropriation for that department by the amount of the negative account balance. In other words, the legislature is using the FY 2011 operating appropriation to pay off the negative account balance. The legislature requests that the Office of the Governor, Office of Management and Budget (OMB) report to the legislature on the amounts ratified. We discussed the ratification issue in our bill review on the FY 2010 supplemental budget. *See* 2010 Inf. Op. Att'y Gen. 3 (April 30; JU2010201317).

Section 7 of the bill sets out legislative intent that the amounts appropriated in the operating budget are the full amounts to be appropriated for the identified purpose.

Section 8 of the bill states that funds appropriated in the operating budget include any amounts necessary to pay for job reclassifications. This section is contemplated by AS 39.25.150(2)(C) which provides for legislative approval of the state's pay plan.

Section 9 of the bill sets out intent language that "agencies restrict transfers to and from the personal services line." Moreover, the legislature requests that OMB submit two reports with respect to such transfers during FY 2011. The legislature has authorized transfers between allocations in AS 37.07.080(e). Thus, this intent language seeks to amend existing law and therefore violates the *Hammond* factors. Moreover, it contains a reporting requirement, which as we have elsewhere noted, is normally set out in statute. Agencies and OMB may comply as a matter of comity.

Section 10 of the bill appropriates to the Alaska Aerospace Corporation all federal receipts in excess of the amounts appropriated in sec. 1.

Section 11 of the bill provides for appropriation of approximately \$42.5 million of Alaska Housing Finance Corporation (AHFC) net income from FY 2009 for various purposes including debt service and deposit to the Alaska capital income fund. Section 11(e) appropriates various AHFC revenues to AHFC to hold as corporate receipts which in turn will be allocated to its housing revolving funds. Section 11(f) appropriates \$36 million of federal receipts to AHFC for section 8 housing assistance payments.

Section 12 of the bill appropriates from the earnings reserve account of the permanent fund the amount necessary to pay for permanent fund dividends and to inflation-proof the permanent fund. The legislature has estimated these amounts, but because both of these estimated amounts are dependent on investment returns and inflation that have yet to occur, these estimated amounts are fairly speculative. This section also appropriates oil and gas revenue to the principal of the permanent fund as required by the constitution and statute.

Section 13 of the bill provides for appropriation of approximately \$23.4 million of funds from the Alaska Industrial Development and Export Authority for various purposes including deposit to the Alaska capital income fund.

Section 14 of the bill appropriates from the state insurance catastrophe reserve account to the Department of Administration amounts necessary to fund the uses set out in AS 37.05.289(a).

Section 15 of the bill makes appropriations related to the Department of Commerce, Community and Economic Development. Section 15(a) appropriates national forest income that will lapse at the end of FY 2011 to the Department of Transportation and Public Facilities and to political subdivisions. Section 15(b) appropriates from federal receipts for national forest receipt payments. Section 15(c) and (d) make the usual appropriations related to the salmon enhancement and seafood development taxes to qualified regional associations and qualified regional seafood development associations, respectively. Section 15(e) and (f) provide for power cost equalization appropriations. Section 15(g) appropriates from federal receipts for payment in lieu of taxes allocation. Section 15(h) and (i) make grants to Bering Sea Fishermen's Association and the Alaska Travel Industry Association, respectively.

Section 16(a) of the bill appropriates \$1.2 million from the general fund to the Department of Health and Social Services for purposes of complying with the terms of the settlement in *Native Village of Curyung v. Sandoval*, 3DI-02-197 CI. Section 16(b) provides that if the additional federal medical assistance percentage (FMAP) contemplated to be paid to the state by the federal government under the American Recovery and Reinvestment Act (P.L. 111-5) is not received, such amounts will be appropriated from the general fund instead. Section 16(c) appropriates anticipated receipts for reimbursement of school-based Medicaid claims for various purposes.

Section 17(a) - (c) of the bill appropriates amounts necessary from the fishermen's fund (AS 23.35.060), second injury fund (AS 23.30.040(a)), and workers' compensation benefits guaranty fund (AS 23.30.082) to make all benefit payments related to those funds in FY 2011 not covered by amounts appropriated in sec. 1 of the bill. Section 17(d) appropriates surplus contributions received by the Alaska Vocational Technical Center (AVTEC) to AVTEC.

Section 18 of the bill appropriates amounts related to the Alaska veteran's memorial endowment fund (AS 37.14.700).

Section 19 of the bill makes various appropriations to the Department of Natural Resources for purposes of fire suppression, a navigable water identification project, mine

reclamation, and operation of an oil production platform in Cook Inlet, pending reclamation.

Sections 20 and 21 of the bill make various appropriations to the Departments of Public Safety and Revenue.

Section 22 of the bill appropriates certain amounts from the general fund to the Office of the Governor for distribution to agencies for relief from high energy costs. The amounts of the appropriations are tied to the price of oil and decrease as the price of oil declines. This section also sets forth a methodology for allocating the appropriation between agencies. Section 22(e) appropriates \$3 million from the general fund to the Office of the Governor for a program to reduce the incidence of domestic violence and sexual assault.

Section 23 of the bill appropriates certain license plate fees to the University of Alaska.

Section 24 of the bill appropriates proceeds, if any, from claim settlements against reclamation bonds for the purpose of reclaiming land covered by the bond.

Section 25 of the bill appropriates federal and other program receipts.

Section 26 of the bill makes several fund transfers.

Section 27 of the bill provides for the capitalization of various funds.

Section 28 of the bill appropriates retained fees and bankcard service fees. This provision now explicitly covers contingency fees.

Section 29 of the bill makes an appropriation in the amount of approximately \$190.85 million for the state's additional contribution under AS 14.25.085 to pay teachers' retirement system unfunded liability, and in the amount of \$165.84 million for the state's additional contribution under AS 39.35.280 to pay public employees' retirement system unfunded liability. Section 29 also makes appropriations of \$84,175 to the Department of Military and Veterans' Affairs for the Alaska National Guard and Naval Militia retirement system and \$788,937 to the Department of Administration for the judicial retirement system.

Section 30(a) of the bill provides that appropriations in secs. 1 and 2 include salary costs and benefit adjustments for public officials and employees in the executive branch, court system, and the legislature, and for legislators. HB 421 was passed this year by the legislature and contained increases of two percent for certain employees not covered by

collective bargaining agreements to be effective July 1, 2010. This section acknowledges that funding has been appropriated for those increases.

Section 30(a) also provides that funding has been appropriated to implement state collective bargaining agreements covering the following bargaining units: Alaska Vocational Technical Center Teachers' Association-NEA for the Alaska Vocational Technical Center unit; Public Safety Employees Association for the regularly commissioned public safety officers unit; Inlandboatmen's Union of the Pacific for the unlicensed marine bargaining unit; International Organization of Masters, Mates, and Pilots for the masters, mates, and pilots unit; Marine Engineers Beneficial Association for the marine engineers unit; Public Employees Local 71 for the labor, trades, and crafts unit; Teachers' Education Association of Mt. Edgecumbe bargaining unit; Alaska Public Employees Association for the confidential unit; Alaska Public Employees Association for the supervisory unit; and Alaska State Employees Association for the general government unit. The appropriations for the Alaska Correctional Officers Association bargaining unit are addressed in HB 326 (supplemental appropriations, sec. 5, ch. 13, SLA 2010).

Section 30(b) of the bill provides that the appropriations made to the University of Alaska include amounts for salary and benefit adjustments for the fiscal year for university employees who are not members of bargaining units and to implement the monetary terms of employees covered by collective bargaining agreements (including the health plan) for employees in the following bargaining units: Alaska Higher Education Crafts and Trades Employees; University of Alaska Federation of Teachers; United Academics; and United Academics-Adjuncts.

Section 30(c) of the bill provides that the appropriations for employees covered by collective bargaining agreements described in subsecs. (a) and (b) will suffer a corresponding reduction if the collective bargaining agreements are not ratified by the membership of these collective bargaining units. This contingent language is a proper condition on the appropriation.

Section 31 of the bill appropriates the proceeds of certain taxes and fees for refund to local governments. Section 31(c) sets out intent language to the effect that these payments to local governments may be assigned to another state agency. The Department of Revenue has encountered instances when a political subdivision has assigned the right to receive such shared taxes to a state agency, usually as a means to pay an existing obligation. This intent language seeks to enact substantive law and should be set out in statute.

Section 32 of the bill appropriates amounts necessary for debt service on a range of bonds.

Section 33 of the bill provides a funding backstop from the statutory budget reserve (AS 37.05.540(a)) if general fund revenue is insufficient to fund the FY 2011 general fund appropriations.

Section 34(a) of the bill appropriates funds from the general fund necessary to compensate the constitutional budget reserve (CBR) for any use by the general fund of CBR monies for cash flow purposes during the fiscal year. Section 34(b) appropriates approximately \$2 million from the general fund for management costs of the CBR.

Section 35 of the bill provides for lapse extensions for previous appropriations

Section 36 of the bill sets out those sections of the bill for which the appropriations do not lapse as they are for capitalization of funds.

Section 37 of the bill allows for retroactive effect to June 30, 2010, for certain appropriations made in sec. 1 of the bill.

Sections 38 - 39 of the bill set out the effective dates of the various sections of the bill.

XV. CONCLUSION

Although we have identified no other constitutional or legal issues in this bill, please be advised that it is not always possible to identify or comment on all legal issues in a bill of this complexity. However, we will assist the agencies throughout the year in interpreting and applying the provisions of this bill, as well as related legislation, to make certain that appropriations are implemented in a manner that is consistent with enabling statutes and valid legislative intent.

Sincerely,

Daniel S. Sullivan
Attorney General

DSS:MAB:vs