

May 20, 2011

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

Re: CCS HB 108 -- making appropriations
for the operating and loan program
expenses of state government and for
certain programs, capitalizing funds,
amending appropriations, and making
reappropriations
Our file: JU2011200282

Dear Governor Parnell:

At the request of your legislative office, we have reviewed CCS HB 108 (HB 108), making appropriations for the operating and loan program expenses of state government and for certain programs, capitalizing funds, and amending appropriations. This bill is otherwise known as the fiscal year 2012 operating budget (beginning on July 1, 2011, and ending on June 30, 2012). We review the highlights of the bill below.

I. INTRODUCTION

This budget, as well as the budgets for the last few years, sets 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. 44, lines 5 - 8. 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 12 - 17; p. 7, lines 6 - 7. And, as we have opined in the past, such expressions of legislative intent in the operating budget may violate 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 court has had 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 violates 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 the particular language at issue 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. The Court removed any ambiguity on this point in a subsequent case also brought by the Legislative Council against Governor Knowles: "We now explicitly adopt *Knowles II's* exclusively monetary characterization of article II appropriations items and hold that the governor's appropriations veto applies only to monetary appropriations." *Alaska Legislative Council v. Knowles*, 86 P.3d 891, 895 (Alaska 2004).

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. 4, 17. Such non-appropriation related intent language likely violates the confinement clause and may therefore be unenforceable.

III. DEPARTMENT OF ADMINISTRATION

In the appropriation for Enterprise Technology Services, the legislature expresses its intent that "the Commissioner of Administration will deliver a report on the future viability of the Alaska Land Mobile Radio network to the legislature not later the 15th day of the second session of the 27th Alaska Legislature." Section 1, p. 4, lines 12 - 17. We have previously advised that reporting requirements are normally set out in statute. 2007 Op. Att'y Gen. 2 (June 6; 883-07-0070). To the extent that this reporting requirement is not otherwise set out in statute, the commissioner of administration may wish to comply as a matter of comity.

The appropriation to the Alaska Oil and Gas Conservation Commission includes "permit fees under AS 31.05.090." Section 1, p. 5, line 10. However, AS 31.05.090 was amended in 2007 to eliminate all such fees.

The appropriation to the Alaska Energy Authority, sec. 1, page 7, lines 6 - 7, expresses the legislative intent that "the Alaska Energy Authority continue to work with the University of Alaska on small-scale nuclear power feasibility research." We note that this intent language does not appear to be connected to an appropriation and so does not appear to be enforceable under the constitutional confinement clause and separation of powers.

IV. DEPARTMENT OF CORRECTIONS

In the appropriation for Population Management, there are three expressions of legislative intent that the Department of Corrections (1) "provide an analysis to the legislature by January 31, 2012 showing the cost differences between paying overtime to correctional officers versus hiring new employees;" (2) "will prepare its FY 13 budget request based on a current shift relief factor applied to updated and approved post orders; that the Department will calculate that shift relief factor by facility and will differentiate between mandatory and and essential posts; and that the Department will update and approve post orders to ensure the safety of correctional staff, the general public, and inmates in custody;" and (3) "will develop and promulgate construction plans that expand capacity at the Yukon-Kuskokwim Correctional Center and the Fairbanks Correctional Center to accommodate offender populations, and that the Department will request funding in its FY 13 budget for the development and construction of those facility expansions." See sec. 1, p. 8, lines 15 - 28. As stated above, such intent language likely violates the confinement clause and may therefore be unenforceable. However, the Department of Corrections may wish to comply as a matter of comity.

Under the appropriation for Inmate Health Care, the legislature also expresses its intent that the Department of Corrections "contract for in-house health care services rather than transporting prisoners to outside health care facilities, when cost effective." Section 1, p. 10, lines 13 - 15. This intent language is probably unenforceable, as violating the Hammond factor against the legislature administering the program.

Under the appropriation for Offender Habilitation, the legislature also expresses its intent that the Department of Corrections (1) "increase the percentages of its budget towards Offender Habilitation, particularly towards the Substance Abuse and Treatment and Sex Offender Management Programs;" (2) "will work over the interim to devise a budget re-prioritization and re-investment strategy focused on research-based cost-effective offender habilitation and reentry measures," and (3) will request funding in its FY 13 budget for expanding the Department's substance abuse treatment programs, behavioral and mental health programs, the Probationer Accountability with Certain Enforcement, and the Electronic Monitoring Program (Section 1, p. 10, lines 22 - 27); (4) "provide an analysis and programmatic options for a Domestic Violence Offender Treatment Program within the Department." See sec. 1, p. 10, lines 32 - 33 – p. 11, lines

3 - 4. These provisions are probably not enforceable, but the Department of Corrections may wish to comply as a matter of comity.

IV. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT

As it did the last three years, the legislature has stated that a school district may not receive state education aid for K - 12 support if the school district has a policy barring military, Reserve Officers' Training Corps, Central Intelligence Agency, or Federal Bureau of Investigation recruiters, the Boy Scouts of America, or in-school Reserve Officer's Training Corps programs or Junior Reserve Officers' Training Corps programs from its schools under certain conditions. Section 1, p. 11, lines 17 - 27. 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 (ASMI) 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 be adopted. The military recruiter language is not germane to the foundation program appropriation. By imposing certain military recruiter policies on school districts, this language 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 as part of the operating budget. The legislature may seek to pass a substantive bill that requires schools to provide recruiter access.

Under the appropriation for Mt. Edgecumbe Boarding School, sec. 1, p. 12, lines 26 - 28, the legislature expresses its intent that the state Board of Education and Early Development maintain graduation standards for Mt. Edgecumbe high school that are at least as rigorous as those in place on April 11, 2011. Again, this language most likely violates the confinement clause.

V. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The legislature expresses its intent that the Department of Environmental Conservation "that in future budgets, inter-agency receipt authorization in the Administrative Services Division be adjusted to reflect actual expenditures." Section 1, p. 13, lines 27 - 28. This intent language is not connected to an appropriation. The Department of Environmental Conservation may comply as a matter of comity.

Under the appropriation for Environmental Health, the legislature expresses its intent that the Department of Environmental Conservation "work closely with molluscan shellfish producers to explore methods of lowering the cost to the public and private sectors of certifying the water quality of shellfish harvest areas," and "shall produce a written report on progress to the Legislature during the first month of the 2012 legislative session." See p. 14, lines 10 - 14. While the directive to work closely, and produce a report are most likely not enforceable, the Department of Environmental Conservation may comply as a matter of comity.

VI. DEPARTMENT OF FISH AND GAME

Under the appropriation for Wildlife Conservation, the legislature expresses its intent that the Department of Fish and Game not import into the state or relocate wood bison to a new area of the state without prior legislative approval, and that the Department of Fish and Game obtain a letter from the appropriate federal agency(s) stating that Wood Bison will not be considered for threatened, endangered, or other protective status in Alaska, now, or at any time in the future, before releasing any Wood Bison onto State of Alaska lands. Section 1, p. 16, lines 5 - 13. We do not think that this intent language is enforceable under the *Hammond* standard, but the Department of Fish and Game may comply as a matter of comity. Additionally, the existing statutes state that the commissioner of fish and game has the authority "to take, capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific, public safety, or stocking purposes." AS 16.05.050(a)(5). We also note that, the Department of Fish and Game and the Department of Law have been working for several years to achieve the referenced goal of avoiding the potential for Endangered Species Act barriers to resource development related to the planned reintroduction of Wood Bison in Alaska.

VII. DEPARTMENT OF HEALTH AND SOCIAL SERVICES

In a departure from past years, the legislature has not included lengthy statements of intent with respect to the Department of Health and Social Services (DHSS). There are several brief statements of intent, not connected to specific appropriations. Section 1, p. 17, line 33 - p. 18, line 8. These likely violate the confinement clause and are not enforceable. Nonetheless, the Department of Health and Social Services may wish to 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. 23, lines 15 - 20. As we have opined previously, this language appears to be intended to prevent expenditures from these appropriations for therapeutic or medically necessary abortions. Department of Health and Social Services (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 as described in our analysis of *Knowles II*.

Nine 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.

VIII. DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

A number of Department of Labor and Workforce Development (DOLWD) programs receive federal funds. The operating budget continues the practice of including in the amounts appropriated for certain programs any federal receipts from prior fiscal years that have not been spent or obligated:

- Sec. 1, p. 23, line 31: Management Services
- Sec. 1, p. 25, lines 27 - 28: Vocational Rehabilitation Administration
- Sec. 1, p. 26, lines 8 - 9: Americans with Disabilities Act (ADA)

A number of DOLWD programs receive non-public funds for services provided or as contributions from taxpayers. The operating budget continues the practice of including in the amounts appropriated for certain programs any amounts received in prior fiscal years that have not been spent or obligated:

-Sec. 1, p. 24, lines 25 - 27: Alaska Safety Advisory Council, which receives fees from persons attending the Alaska Safety Advisory Conference, as provided in AS 18.60.840.

-Sec. 1, p. 26, lines 17 - 18: Alaska Vocational Technical Center, which may receive fees for services or contributions by individual or certain organizational taxpayers. One difference is that the legislature no longer includes contributions to the center under AS 43.65.018 on the list of contributions included in the appropriation. That provision in subsection (a)(3) addresses tax credits to mining businesses for contributions to state-operated vocational technical education and training schools for vocational education courses, programs, and facilities. However, in sec. 16, p. 74, lines 24 - 31, the legislature provides that DOLWD may spend certain contributions from business interests received in excess of the amounts that the legislature appropriated in sec. 1. This list does include contributions from mining businesses in AS 43.65.018. As a result, the legislature has authorized the spending of any such contributions over the amount appropriated in sec. 1.

The operating budget also includes expressions of intent, which may violate the confinement clause. At sec. 1, p. 25, lines 24 - 26, the legislature states its intent that DOLWD "work actively with tribal entities to improve vocational rehabilitation services provided to Alaskans across the state, particularly in rural areas." At sec. 1, p. 26, lines 21 - 25, the legislature states its intent that DOLWD reconsider programs that were expanded with funds from the federal Health Professions Opportunity grant to the

Cook Inlet Tribal Council after that funding expires on September 30, 2015. Further, the legislature states its understanding that the Department of Labor and Workforce Development "will discontinue these programs if federal funding is not available." See sec. 1, p. 26, lines 23 - 25.

IX. DEPARTMENT OF LAW

The portion of sec. 1 of the operating budget appropriating funds to the Department of Law has no apparent legal issues.

X. DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

The portion of sec. 1 of the operating budget appropriating funds to the Department of Military and Veterans Affairs has no apparent legal issues.

XI. DEPARTMENT OF NATURAL RESOURCES

In the appropriation for Mining, Land and Water, the legislature has included an expression of intent that the funding provided be used to reduce the backlog of permit applications in the Division of Mining, Land and Water, in accordance with a memorandum dated February 22, 2011 submitted by the Department of Natural Resources to the House Finance Budget Subcommittee, and that the funding in following budgets for the Department be contingent upon the achievement of permit application targets put forward in that memorandum. Section 1, p. 30, lines 22 - 28. The Department of Law has historically taken the position that expressions of legislative intent and contingencies accompanying appropriations items of this type are not binding, as they may violate the confinement clause of the Alaska Constitution. It is unusual for an operating budget to reference another document, such as the memorandum submitted by the Division of Mining, Land and Water. To the extent that the reference to the memorandum is considered to constitute an inclusion or sanction of the policies and procedures espoused in the memorandum, or to the extent that the memorandum itself is considered enforceable, the reference could be considered a violation of proper rulemaking or lawmaking procedures.

Additionally, at sec. 1, p. 30, lines 29 - 31, the legislature expresses its intent that the Division of Mining, Land and Water give priority toward seeking lands supplementing and benefiting the Susitna Hydroelectric project when seeking federal conveyances. The federal government charges annual land use fees for federal lands associated with any hydroelectric project. Obtaining federal conveyances of lands associated with the Susitna Hydroelectric project would likely reduce the long-term operating cost of the project. While public benefit would likely arise from the intent language, it appears unenforceable under the confinement clause and separation of

powers doctrine, by directing executive branch actions and by not being directly connected to an appropriation.

XII. DEPARTMENT OF PUBLIC SAFETY

The appropriation for the Alaska State Troopers contains language stating that it is the intent of the legislature that significant resources be deployed for enforcement efforts for the highway safety corridors between Milepost 44.5 and Milepost 53 of the Parks Highway, and Milepost .6 and Milepost 17.2 of the Knik Goosebay Road. It is also the intent of the legislature that Alaska State Troopers resources be deployed to those communities that actively participate in the Rural Trooper Housing Program, and that, when able and with the approval of family members, the Department of Public Safety provide a state trooper in full dress to attend funerals of deceased peace officers. Section 1, p. 32, lines 10 - 18. We believe this language strays into the administration of the Department of Public Safety's program with respect to how it deploys its personnel. But if such additional coverage is consistent with the Department of Public Safety's mission, the Department of Public Safety 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. 33, lines 26 - 28. 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.

XIII. DEPARTMENT OF REVENUE

The portion of sec. 1 of the operating budget appropriating funds to the Department of Revenue does not contain any intent language, and there are no apparent issues with this section.

XIV. 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, 2012." Section 1, p. 38, lines 27 - 28. This special lapse provision makes the appropriations available for expenditure until they lapse into the general fund on August 31, 2012. We have not identified any other issues with the portion of sec. 1 appropriating funds to the Department of Transportation and Public Facilities.

XV. UNIVERSITY OF ALASKA

There are two expressions of legislative intent set out at the beginning of the University of Alaska budget that are not connected with any appropriation: That "the University of Alaska submit an FY 13 budget in which requests for unrestricted general fund increments do not exceed the amount of additional University Receipts requested for that year," and that the University of Alaska move toward a long-term goal of requesting unrestricted general funds of 125 percent of actual University Receipts for the most recently closed fiscal year. Section 1, p. 40, lines 6 - 10. Because this intent language is not connected to a specific appropriation, it is probably not enforceable.

XVI. ALASKA COURT SYSTEM

Under the appropriation to the Alaska Judicial Council, there is an expression of legislative intent that the Judicial Council provide a cost benefit analysis and research for a 24/7 sobriety program modeled after similar programs in South Dakota, North Dakota, Arkansas, and Montana, and an expression of intent that this program operate within a

therapeutic court and monitor DUI offenders with twice daily breathalyzer tests for 18 months and that program graduates receive mitigated sentences. Section 1, p. 42, lines 8 - 12. This intent language is probably unenforceable, as it appears the legislature is attempting to define and administer the program. Nonetheless, the Judicial Council may comply as a matter of comity.

XVII. LEGISLATURE

The portion of sec. 1 of the operating budget appropriating funds to the Legislature does not appear to raise any legal issues.

XVIII. NEW LEGISLATION

Section 2 of the bill sets out the appropriations for several pieces of new legislation. If a particular piece of legislation should fail to pass, or if its substance is not incorporated in some other measure, or is vetoed by the governor, then the appropriation for that legislation lapses.

XIX. LANGUAGE SECTIONS

Section 5 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 6 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), which provides for legislative approval of the state's pay plan.

Section 7 of the bill states the intent of the legislature concerning agency transfers to and from personal services line items. The intent is that agencies restrict such transfers and that the office of management and budget submit a report to the legislature on January 15, 2012, that describes and justifies all such transfers during the first half of the fiscal year, and again submit a report on October 1, 2012, that describes and justifies all such transfers during the second half of the fiscal year. This section is nonbinding in its entirety under *Knowles*, 21 P.3d at 379-80, however, the Administration may comply as a matter of comity.

Section 8 of the bill appropriates to the Alaska Aerospace Corporation all federal and other corporate receipts received during the fiscal year ending June 30, 2012, that are in excess of the amounts appropriated in sec. 1 for operations during the fiscal year ending June 30, 2012.

Section 9 of the bill makes appropriations to the Alaska Housing Finance Corporation out of the adjusted net income from the second preceding fiscal year, for various purposes including debt service and deposit to the Alaska capital income fund. We have not identified any issues here that should cause concern.

Section 10 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 Alaska permanent fund as required by the Alaska Constitution and statute.

Section 11 of the bill appropriates to the Alaska capital income fund (AS 37.05.565) amounts not otherwise appropriated from the \$29,400,000 dividend declared by the Alaska Industrial Development and Export Authority. We see no legal problems with this appropriation.

Section 12 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). We see no legal problems with this appropriation.

Section 13 of the bill makes appropriations related to the Department of Commerce, Community, and Economic Development. Section 13(a) appropriates national forest income that will lapse at the end of fiscal year 2012 to the Department of Transportation and Public Facilities and to political subdivisions. Section 13(b) appropriates from federal receipts for national forest receipt payments. Sections 13(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. Sections 13(e) and (f) provide for appropriations to the Alaska Seafood Marketing Institute. Section 13(g) makes appropriations for contracts with a qualified trade association for tourism marketing activities. Section 13(h) - (k), p. 72, lines 2 - 19, appropriates funds related to programs of the Alaska Energy Authority. Section 13(h) provides for the administration of the renewable energy fund grant program. Sections 13(i) and 13(j) appropriate funds for power cost equalization. Section 13(k) appropriates federal receipts from a financial assistance award amounts to fund certain operational activities associated with the emerging energy technology fund. Section 13(l) appropriates from federal receipts for payment in lieu of taxes allocation. Section 13(m) amends sec. 56(e), ch. 43, SLA 2010 to continue an appropriation through fiscal year 2012, and sec. 13(n) appropriates \$20,000,000 from the general fund for community revenue sharing payments. We see no legal problems with the various appropriations in sec. 13.

Section 14 of the bill reappropriates to the Department of Education and Early Development the unexpended balance of the previous appropriation for EduJobs, and appropriates \$20,000,000 for state aid to districts. We see no legal problems with these appropriations.

Section 15(a) of the bill appropriates \$1,200,000, which was part of a settlement resolution in March of 2009 of *Native Village of Curyung et. al. v. Tammy Sandoval*. This suit challenged the way the Division of Family and Youth Services (now the Office of Children's Services) (OCS) provided child protection services to the village members. The 1.2 million dollars will be used allow the 12 regional non-profit native corporations to apply for Indian Child Welfare Act (ICWA) compliance grants; the amount of the grants will be dependant upon how many grant applications are received. The Settlement also contemplates improving day-to-day practice at OCS related to documentation requirements under ICWA regarding placement preferences and under the federal Medicaid Act regarding medical assessment and treatment. This is the third and final year for such payment under the settlement. Section 15(b) provides that if the additional federal medical assistance percentages (FMAP) contemplated to be paid to the state by the federal government is not received, such amounts will be appropriated from the general fund instead. Section 15(c) appropriates anticipated receipts for reimbursement of school-based Medicaid claims for various purposes. We see no legal problems with these appropriations.

Section 16(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 16(d) appropriates surplus contributions received by the Alaska Vocational Technical Center (AVTEC) to AVTEC. We see no legal problems with these appropriations.

Section 17 of the bill appropriates amounts related to the Alaska veterans' memorial endowment fund (AS 37.14.700). We see no legal problems with this appropriation.

Section 18 of the bill makes various appropriations to the Department of Natural Resources for purposes of fire suppression, mine reclamation, and operation of an oil production platform in Cook Inlet, pending reclamation. We see no legal problems with these appropriations.

Section 19 of the bill makes various appropriations to the Department of Public Safety for drug and alcohol enforcement efforts. We see no legal problems with these appropriations.

Section 20 of the bill makes an appropriation to the Department of Revenue for the required state match of federal receipts received for child support enforcement efforts. We see no legal problems with this appropriation.

Section 21 of the bill appropriates certain amounts from the general fund to the Office of the Governor for distribution to state 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 out a methodology for allocating the appropriation between agencies. We see no legal problems with this appropriation.

Section 22 of the bill appropriates to the University of Alaska the amounts of fees collected in fiscal year 2011 for the issuance of special request university license plates, less the cost of issuing the license plates. We see no legal problems with this appropriation.

Section 23 of the bill appropriates the amount received in a settlement of a bond claim, approximately \$50,000, to the agency secured by the bond to reclaim state, federal, or private land lands affected by a use covered by the bond. We see no legal problem with this appropriation.

Section 24 of the bill appropriates certain federal receipts, information services fund program receipts, Exxon Valdez oil spill trust receipts, Alaska Housing Finance Corporation receipts, Alaska marine highway receipts, and University of Alaska receipts. We see no legal problems with these appropriations.

Section 25(a) of the bill appropriates to the Alaska permanent fund (art. IX, sec. 15, Constitution of Alaska) and to the public school trust fund (AS 37.14.110) according to AS 37.05.530(g)(1) - (3), amounts not appropriated for grants from the National Petroleum Reserve - Alaska special revenue fund (AS 37.05.530). The appropriation to the public school trust fund is required to help satisfy the state's obligation to compensate the public school trust for trust lands redesignated as general grant lands in 1978 (Chapter 182, SLA 1978). Matters related to compensating the public school trust for trust lands are currently pending in litigation captioned *Kasayulie v. State*, 3AN 97-3782 Civil. We see no legal problems with this appropriation.

Section 25(b) of the bill appropriates the loan origination fee collected by the Alaska Commission on Postsecondary Education. We see no legal problem with this appropriation.

Section 25(c) of the bill states that the balance of the mine reclamation trust fund income account, estimated to be \$50,000, and money deposited in that account during the

fiscal year ending June 30, 2012 are appropriated to the mine reclamation trust fund operating account. There are no legal issues with this provision.

Section 25(d) of the bill appropriates an amount equal to the amount (if any) drawn from the Alaska municipal bond bank authority reserve fund by the Alaska Municipal Bond Bank Authority because of a default by a borrower. We see no legal problem with this appropriation.

Section 25(e) of the bill makes an appropriation to the public education fund. We see no legal problem with this appropriation.

Section 25(f) of the bill appropriates from the general fund to the bulk fuel revolving loan fund, fees collected by the Alaska Energy Authority during FY 2011 from that fund program. We see no legal problems with this appropriation.

Section 25(g) of the bill appropriates to the oil and hazardous substance release prevention account and 25(h) appropriates to the oil and hazardous substance release response account. We see no legal problem with these appropriations.

Section 25(i) of the bill makes an appropriation for reimbursement of the federally allowable portion of the principal balance payment on the sport fishing revenue bonds series 2006. We see no legal problem with this appropriation.

Section 25(j) of the bill appropriates fees collected at boating and angling access sites to the fish and game fund. We see no legal problem with this appropriation.

Section 25(k) of the bill makes an appropriation from the Alaska sport fishing enterprise account in the fish and game fund to the Alaska fish and game revenue bond redemption fund. We see no legal problem with this appropriation.

Section 25(l) of the bill makes an appropriation to the Alaska municipal bond bank authority reserve fund. We see no legal problem with this appropriation.

Section 25(m) of the bill appropriates the amount of punitive damages deposited into the general fund under AS 09.17.020(j) to the civil legal services fund. We see no legal problem with this appropriation.

Section 26 of the bill makes appropriations to the commercial vessel passenger tax account, the large passenger vessel gaming and gambling tax account, the power cost equalization endowment fund, the Alaska marine highway system vessel replacement fund, and the budget reserve fund. We see no legal problems with these appropriations.

Section 27 of the bill provides for capitalization of various funds, including the Alaska children's trust grant account, the crime victim compensation fund, the disaster relief fund, the community revenue sharing fund, the oil and gas tax credit fund, the Alaska clean water fund, the Alaska drinking water fund, and the election fund. We see no legal problems with these appropriations.

Section 28 of the bill appropriates retained fees and bankcard service fees. This provision now explicitly covers contingency fees. We see no legal problem with this appropriation.

Section 29 of the bill makes appropriations for retirement system funding. Section 29(a) makes an appropriation in the amount of \$234,517,333 for the state's additional contribution under AS 14.25.085 to pay teachers' retirement system unfunded liability. Section 29(b) appropriates \$242,609,397 for the state's additional contribution under AS 39.35.280 to pay public employees' retirement system unfunded liability. Section 29(c) makes an appropriation of \$13,411 to the Department of Military and Veterans' Affairs for the Alaska National Guard and Naval Militia retirement system and Section 29(d) makes an appropriation of \$2,331,725 to the Department of Administration for the judicial retirement system. We see no legal problems with these appropriations.

Section 30(a) of the bill provides for the appropriation of funds covering salary costs and benefit adjustments for public officials and employees in the executive branch, court system, the legislature, and for legislators. This section provides the funding for increases to those salary costs and benefit adjustments. This includes funding for salary increases effective July 1, 2011 for certain employees not covered by collective bargaining agreements pursuant to HB 421 passed last year by the legislature. AS 39.27.011(e). Additionally, pursuant to AS 39.23.540, the State Officers Compensation Commission recommended salary increases for the governor and the lieutenant governor and those recommendations were not disapproved by the legislature pursuant to AS 39.23.540(d). According to AS 39.23.540(g), the recommendations for increasing these officials' salaries are not effective unless each of the recommended salary increases is fully funded. Section 30(a) provides for appropriation of funds for salary increases for those public officials.

Section 30(a) of the bill also appropriates funds to implement state collective bargaining agreements covering the following bargaining units: Alaska Public Employees Association, for the confidential unit; Alaska State Employees Association, for the general government unit; Alaska Public Employees Association, for the supervisory unit; Alaska Vocational Technical Center Teachers' Association, National Education Association, for the Alaska Vocational Technical Center unit; Public Employees Local 71, for the Labor, Trades and Crafts unit; Alaska Correctional Officers Association, for the correctional officers' unit; Teachers' Education Association of Mt. Edgecumbe, for the

Mt. Edgecumbe bargaining unit; International Organization of Masters, Mates, and Pilots, for the masters, mates, and pilots unit; Inlandboatmen's Union of the Pacific, Alaska Region, for the unlicensed marine bargaining unit; Marine Engineers Beneficial Association, for the marine engineers unit; and Public Safety Employees Association, for the regularly commissioned public safety officers unit.

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 ending June 30, 2012, for university employees who are not members of collective bargaining units and to implement the monetary terms of employees covered by collective bargaining agreements for employees in the following bargaining units: Alaska Higher Education Crafts and Trades Employees; University of Alaska Federation of Teachers; United Academics; United Academics-Adjuncts; and Fairbanks Firefighters Association, IAFF Local 1324.

Section 30(c) of the bill provides that the appropriations for employees covered by collective bargaining agreements described in subsec. (a) will have a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit. This contingent language is a proper condition on the appropriation.

Section 30(d) of the bill provides that the appropriations for employees covered by collective bargaining agreements described in subsec. (b) will have a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit and approved by the Board of Regents of the University of Alaska. 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. We see no legal problems with these appropriations.

Section 33 of the bill provides that the unexpended and unobligated balance on June 30, 2011, of the previously appropriated federal funding available under the American Recovery and Reinvestment Act of 2009 is reappropriated to various departments. We see no legal problem with this appropriation.

Section 34 of the bill reduces the appropriation to each department to reverse negative account balances in amounts of \$1,000 or less. We see no legal problem with this appropriation.

Section 35 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 fiscal year 2012 general fund appropriations.

Section 36 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. We see no legal problem with this appropriation.

Section 37 of the bill provides that certain appropriations in the bill are for capitalization of funds and do not lapse, that the appropriation in sec. 13(k) for emerging technology for the Denali Commission will lapse June 30, 2015, and an appropriation to the Department of Education and Early Development in the amount of \$500,000 for teaching and learning support will lapse in 2014.

Section 38 of the bill provides for a lapse extension for a previous appropriation to Alaska Northern Waters Task Force.

Section 39 of the bill allows for retroactive effect to June 30, 2011, for certain appropriations made in sec. 1 of the bill.

Sections 40 and 41 of the bill set out the effective dates of the various sections of the bill.

XX. 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.

The bill presents no significant legal issues or other concerns.

Sincerely,

John J. Burns
Attorney General

JJB:TAD