

STATE OF ALASKA

DEPARTMENT OF LAW

SEAN PARNELL, GOVERNOR

P.O. Box 110300
Juneau, Alaska 99811-0300
Phone: (907) 465-3600
Fax: (907) 465-2075

May 4, 2012

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

Re: HCS CSSB 160(FIN) am H -- making and amending appropriations, including capital appropriations, supplemental appropriations, and other appropriations; and making appropriations to capitalize funds (Fiscal Year 2013 Capital Budget)
Our file: JU2012200406

Dear Governor Parnell:

At the request of your legislative director, we have reviewed HCS CSSB 160(FIN) am H, making and amending appropriations, including capital appropriations, supplemental appropriations, and other appropriations; and making appropriations to capitalize funds. The bill is commonly referred to as the fiscal year 2013 capital budget.

This is our legal review of the fiscal year 2013 capital budget.

I. General Comments

We have reviewed all appropriations set out in this bill and have several comments on general legal issues affecting the bill overall. Unless specifically noted, we found no legal issues with the appropriations made in this bill.

A. Legislative Intent Language

As in prior years, the bill has numerous expressions of legislative intent and contingencies accompanying certain appropriation items. We believe that most expressions of legislative intent are not binding on the executive branch because such expressions violate the confinement clause of the Alaska Constitution ("[b]ills for appropriations shall be confined to appropriations." art. II, sec. 13).

In *State Legislature v. Hammond*, Judge (now Chief Justice) Carpeneti adopted a five-factor test to determine whether language added to an appropriations bill violates the

confinement clause. Under this test, the qualifying language must (1) not administer the program of expenditures; (2) not enact law or amend existing law; (3) be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent; (4) be germane, that is, appropriate, to an appropriations bill; and, (5) not extend beyond the life of the appropriation. Memorandum of Decision at 44 - 45, No. 1JU-80-1163 (Alaska Super., May 25, 1983). The Alaska Supreme Court adopted Judge Carpeneti's test on a "nonexclusive" basis in *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001) (*Knowles II*).¹

The courts have had relatively few opportunities to consider whether certain instances of intent language violate the confinement clause. Judge Carpeneti observed that the five-part 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." *Hammond*, No. 1JU-80-1163 at 44 - 45. This individualized analytical process makes it difficult to predict the outcome of a potential confinement clause dispute. Judge Carpeneti determined that most (but not all) of the intent language at issue in *Hammond* was invalid under the confinement clause. *Id.* at 46-58. In *Knowles II*, the Court found certain contingency language invalid (*e.g.*, 21 P.3d at 379-81), and certain descriptive language non-binding (*e.g.*, *id.* at 383), but upheld certain contingency language (*e.g.*, *id.* at 381-82).

Analysis by the Alaska Supreme Court in *Knowles II* suggests how the Hammond test would be applied to confinement clause issues. The basic purpose of the confinement clause is to prevent the legislature from enacting substantive policy in the context of making an appropriation. "An appropriation for a statutory program may not include provisions changing the requirements of that program, even temporarily for the purposes of that appropriation." *Id.* at 377-78. The "minimum necessary" language test limits language to that necessary to explain the "legislature's purpose"; *i.e.*, to explain how, when, or on what the money is authorized to be spent. *Id.* "This factor limits the legislature's ability to include in an appropriation bill legislation cloaked as a "description." *Id.* Similarly under the "germaneness" test, courts generally will uphold conditions expressed as purposes for the appropriation. *Id.* at 379. Thus, courts will generally uphold appropriation language identifying the facilities, employee positions, buildings or types of buildings on which the money could be spent. And courts will uphold contingencies on appropriations that relate to the receipt or non-receipt of specific funds, or relate to the occurrence or nonoccurrence of something that would make the expenditure desirable. 'However, contingencies that relate to things other than the need for or use of the money or the need for the activity, may be found insufficiently "connected" to the appropriation.' *Id.*

The legislative intent language in the bill appears unlikely to be enforceable under the *Hammond* test. For example, the bill includes language expressing the legislative intent that the University of Alaska coordinate with the Federal Aviation Administration to establish a research and development program and possible test facility for unmanned aerial systems in Alaska. Section 1, page 151, lines 17 - 20. Interpreting this language to mandate certain action by an agency would apparently violate the *Hammond* test. That interpretation would suggest the

¹ The court described that it approaches confinement clause disputes with an assumption that an act of the legislature is constitutional.

legislature was administering the program of expenditures and enacting new law by establishing substantive provisions regarding how the funding is to be utilized. The language would also be more than the minimum necessary language to explain the appropriation, and would not being germane to the appropriation.

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, 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.

B. Grants to Tribal Entities

Several sections of the bill refer to tribes or tribal entities.² The entities fall into three categories: corporations under state law, federally recognized tribes, and village councils.

While theoretical limitations exist on the legislature's ability to appropriate money to tribes,³ as a general rule nothing prevents properly implemented appropriations to native corporations, federally recognized tribes, or village councils. Our general comment regarding such grants is to remind state agencies that they must obtain a waiver of sovereign immunity from the tribal entity on a form that has been approved by this office before grant money can be dispersed to the entity. To the extent that the state enters a contract or commercial transaction with a tribe, contract or grant language specifying state court jurisdiction may be advisable as the

² For example, sec. 1, Capital Grants and Projects:
Page 94, lines 4 - 17 (Metlakatla Indian Community)
Page 95, lines 10 - 14 (Native Village of Eyak)
Page 95, lines 15 - 17 (Native Village of Mekoryuk)
Page 95, lines 18 - 20 (Native Village of Ruby)
Page 103, lines 22 - 26 (Tlingit-Haida Regional Housing Authority)

³ See, e.g., 1981 Inf. Op. Att'y Gen. 543, 544-545, 1981 WL 38636 (noting potential equal protection, public purpose, and local government constitutional issues associated with state revenue sharing with councils). The expenditure of state funds will sometimes be contingent on agreement by a tribe to anti-discrimination clauses, and to waivers of sovereign immunity.

state might otherwise submit itself to tribal jurisdiction.⁴ The grantee must, as with all grantees that receive public funds, agree that the expenditure of the grant money will serve a public purpose. See 1981 Inf. Op. Att'y Gen. (April 27; File No. J-66-335-81) citing art. IX, sec. 6, of the Alaska Constitution (public purpose clause). Finally, some caution should be exercised about the specific entity to whom the appropriation or grant money should be distributed. While councils and the tribes may be closely related, they are technically separate. A tribal council is merely the "elected lawmaking bod[y] of tribal governments."⁵

C. Grants to Religious Entities

The bill contains several appropriations for grants to named recipients that are religious or religious-affiliated entities, the Alaska Christian College (sec. 1, page 44, line 33, and page 45, lines 3 - 4), Catholic Community Services (sec. 1, page 76, lines 9 - 29 (Grants totaling \$515,000 for various projects)), St. Vincent De Paul Society Diocesan Council of Southeast Alaska (sec. 1, page 102, lines 8 - 12 (\$100,000 grant for Smith Halls Studio Senior Housing)); and Wellspring Revival Ministries (sec. 1, page 104, lines 19 - 22 (\$100,000 grant for repair and paving of youth center parking lot)). Such grants raise legal concerns since the Alaska and United States Constitutions both prohibit the establishment of religion. Article I, sec. 4, Alaska Constitution; First Amendment, United States Constitution. The United States Supreme Court evaluates establishment clause issues with three tests:

First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster "an excessive government entanglement with religion.

Lemon v. Kurtzman, 403 U.S. 602, 612-13, 91 S.Ct. 2105, 2111 (1971). The Court continues to use these tests. See *McCreary County, Ky v. American Civil Liberties Union*, 73 U.S.L.W. 4639, 125 S.Ct. 2722 (2005).

These religious or religious-affiliated entities provide social services to the general public in the areas in which they are located. We understand that each of these grants is to assist the entity in its delivery of social services to the general public. We further understand that the social services these organizations provide are made available to those in need on a non-sectarian basis. Accordingly, we believe that the *Lemon* tests are satisfied. Providing social services on a non-sectarian basis is a legitimate secular purpose that neither advances nor inhibits religion. Moreover, we do not see excessive government entanglement through these grants.

⁴ See, e.g., *Montana v. United States*, 450 U.S. 544, 565 (1981) (person who enters a consensual relationship with a tribe through commercial dealings or contracts may be subject to tribal jurisdiction).

⁵ Cohen's Handbook of Federal Indian Law sec. 4.04[3][c], at 260 (Nell Jessup Newton ed., 2004 ed.). Note that the council or council members may also be able to assert sovereign immunity. *Id.* at 636 (immunity protects tribal officials acting within the scope of their authority).

D. Pre-existing Debt

There is at least one appropriation in this bill that merits mention as an appropriation made for the purpose, in whole or in part, of paying a pre-existing debt: sec. 1, page 86, lines 12 - 15 of the bill, appropriation to Haines Assisted Living for debt reimbursement.

It is a general rule that the retirement of a pre-existing debt confers no benefit on the public. See 1995 Inf. Op. Att'y Gen. (June 15; 883-95-0113). Failure to confer a public benefit violates the public purpose doctrine set out in art. IX, sec. 6, of the Alaska Constitution. When the purpose of expenditure is to retire a pre-existing debt, there is no new consideration passing to the public. However, as long as the debt was originally incurred through the provision of a public service, we have opined in the past that the debt reimbursement is likely to survive scrutiny. 2006 Inf. Op. Att'y Gen. (June 23; 883-06-0109).

II. Sectional Analysis

A. Sections 1 - 3

Section 1, pages 2 - 153, of the bill would make appropriations for capital projects and grants, including grants to municipalities, grants to named recipients, and grants to unincorporated communities. The appropriations made in this section take effect on July 1, 2012 under sec. 53 of the bill, and, except as otherwise noted, lapse under AS 37.25.020.⁶ Section 2 of the bill sets out the funding by agency for the appropriations made in sec. 1 of the bill. Section 3 of the bill sets out the statewide funding for the appropriations made in sec. 1 of the bill.

B. Sections 4 - 6

Section 4, pages 160 - 163, of the bill would make appropriations for capital projects and grants related to transportation. The appropriations made in this section take effect on July 1, 2012 under sec. 53 of the bill, and except as otherwise noted, lapse under AS 37.25.020. Section 5 of the bill sets out the funding by agency for the appropriations made in sec. 4 of the bill. Section 6 of the bill sets out the statewide funding for the appropriations made in sec. 4 of the bill. The funding for the appropriations made in sec. 4 of the bill is from general obligation bonds.

⁶ AS 37.25.020 reads: "An appropriation made for a capital project is valid for the life of the project and the unexpended balance shall be carried forward to subsequent fiscal years. Between July 1 and August 31 of each fiscal year, a statement supporting the amount of the unexpended balance required to complete the projects for which the initial appropriation was made and the amount that may be lapsed shall be recorded with the Department of Administration."

C. Sections 7 - 9

Section 7, pages 166 - 168, of the bill would make appropriations for supplemental capital projects and grants. Section 8 of the bill sets out the funding by agency, and sec. 9 of the bill sets out the statewide funding for the appropriations made in sec. 7 of the bill.

The appropriations made in this section take effect on April 15, 2012 under sec. 49 of the bill, and except as otherwise noted, would lapse under AS 37.25.020.

D. Sections 10 - 12

Section 10, pages 171 - 174, of the bill would make appropriations for operating expenditures. Although this bill is purported to be the capital budget, not the operating budget, there does not appear to be a legal problem with including operating expenditures. The confinement clause of the Alaska Constitution demands that "[b]ills for appropriations shall be confined to appropriations." Article II, sec. 13. It does not make a distinction between appropriations for capital and operating expenses. The appropriations made in sec. 10 of the bill take effect on April 15, 2012 under sec. 50 of the bill, and except as otherwise noted, lapse under AS 37.25.020.

Section 11 of the bill sets out the funding by agency for the appropriations made in sec. 10 of the bill. Section 12 of the bill sets out the statewide funding for the appropriations made in sec. 10 of the bill.

E. Sections 13 - 29

Sections 13 - 29 of the bill would make or amend various appropriations, as described below. Except as otherwise noted, the appropriations take effect on July 1, 2012 under sec. 52 of the bill.

Section 13, page 175, of the bill would appropriate \$5,900,000 from the Alaska sport fishing construction account (AS 16.05.130(f)) to the state bond committee for redemption or defeasance (*i.e.* early retirement) and associated fees of the Sport Fishing Revenue Bonds, Series 2006, or Sport Fishing Revenue Refunding Bonds, Series 2011. We find no legal issues with this appropriation.

Section 14, page 175, of the bill would appropriate federal and other statutorily designated program receipts, and would provide for reductions and shortfall of receipts where necessary for consistency with federal law and state law. We find no legal issues with this appropriation.

Section 15, page 175, of the bill would appropriate federal and general fund monies to capitalize certain funds. Under sec. 47(b) of the bill, the appropriations made by sec. 15 of the bill do not lapse. We find no legal issues with this appropriation.

Section 16, page 175, of the bill would make an appropriation from the general fund to the renewable energy grant fund (AS 42.45.045(a)). Under sec. 47(b) of the bill, the appropriation made by sec. 16 of the bill does not lapse. We find no legal issues with this appropriation.

Section 17, page 175 - 176, of the bill would appropriate amounts received in settlement of insurance claims from the general fund to the state insurance catastrophe reserve account or to the appropriate state agency to mitigate the loss. The appropriation to the state insurance catastrophe reserve account capitalizes that fund and does not lapse under sec. 47(b) of the bill. We find no legal issues with this appropriation.

Section 18, page 176 - 177, of the bill sets out the appropriations to municipalities under the National Petroleum Reserve - Alaska Impact Grant Program (AS 37.05.530; former 42 U.S.C. 6508), which is administered through the Department of Commerce, Community, and Economic Development. Section 18(b) would authorize the department to work with municipalities to reduce allocations if the amount received is less than the allocations. The appropriations in this section lapse under AS 37.25.020 under sec. 47(a) of the bill. We find no legal issues with this appropriation.

Section 19, page 177, of the bill would appropriate funds to the Department of Commerce, Community, and Economic Development for community revenue sharing payments for the fiscal year ending June 30, 2013, to be distributed proportionally to the amounts received by communities under AS 29.60.855 and 29.60.860. This appropriation is an operating item and would take effect on June 30, 2012, under sec. 51, page 192 of the bill, for the fiscal year ending June 30, 2013. We find no legal issues with this appropriation.

Section 20, page 177, of the bill would reappropriate unexpended and unobligated amounts, not to exceed \$100,000, from the Department of Corrections, Spring Creek Correctional Center Seward land transfer to the Department of Corrections for the combined Hiland Mountain Correctional Center. This appropriation lapses under AS 37.25.020 under sec. 47(a) of the bill. This appropriation takes effect on June 30, 2012 under sec. 51 of the bill. We find no legal issues with this appropriation.

Section 21, page 177, of the bill would appropriate money from the general fund to the Department of Education and Early Development to be distributed as state aid to districts according to the average daily membership for each district adjusted under AS 14.17.410(b)(1)(A) - (D) for the fiscal year ending June 30, 2013. We find no legal issues with this appropriation.

Section 22(a), page 177, of the bill would amend sec. 10, ch. 29, SLA 2008, page 67, lines 19 - 20, sec. 22(b) of the bill would reappropriate the unexpended and unobligated balance of the appropriation made in sec. 7, ch. 43, SLA 2010, page 26, lines 20 - 22 to the Department of Fish and Game for analyzing system requirements. Section 22(c) of the bill would appropriate the amount equal to the sale proceeds from a research vessel owned by the Department of Fish and Game to the Department of Fish and Game for repair, maintenance, or replacement of

vessels or equipment. Section 22(a) of the bill would become effective on June 30, 2012 under sec. 51 of the bill. The remainder of the section becomes effective on July 1, 2012 under sec. 53 of the bill. Section 22(c) of the bill would lapse under AS 37.25.020 under sec. 47(a) of the bill. We find no legal issues with this appropriation.

Section 23, page 178, of the bill would appropriate an amount equal to 50 percent of the revenue collected during the fiscal year ending June 30, 2011, from the alcoholic beverage tax (AS 43.60.010), not to exceed \$19,300,400, from the general fund to the Department of Health and Social Services for behavioral health grants under AS 47.37.030, for the fiscal years ending June 30, 2013, June 30, 2014, and June 30, 2015. This is a large multi-year operating item to address a major health and social services issue in this state. We find no legal issues with this appropriation.

Section 24(a), page 178, of the bill would appropriate funds to the Department of Law to fund the BP corrosion case. Section 24(b) of the bill would appropriate funds to the Department of Law to fund the payment of judgments and settlements. Section 24(a) of the bill would take effect on June 30, 2012 under sec. 51 of the bill. We find no legal issues with this appropriation.

Section 25, page 178, of the bill would broaden the scope of a prior appropriation so that it can be used for repair, renovation, and reuse of the existing crime lab building. This section would take effect on June 30, 2012, under sec. 51 of the bill. We find no legal issues with this appropriation.

Section 26(a), page 178, of the bill would appropriate to the Department of Revenue the amount necessary for the expenses related to the issuance of general obligation bonds for transportation projects from the 2012 state transportation project fund. Section 26(b) of the bill would amend a prior appropriation to extend that appropriation through fiscal year 2013. Section 26(b) of the bill would take effect on June 30, 2012, under section 51 of the bill. We find no legal issues with this appropriation.

Section 27(a), page 179, of the bill would reappropriate the unexpended and unobligated balance of the prior appropriation made for the 88th avenue upgrade, to the 88th avenue upgrade. Section 27(b) of the bill, page 179, would reappropriate the unexpended and unobligated balance of a prior appropriation to the Department of Transportation and Public Facilities for a sand storage building in Girdwood. Section 27(c) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation to Department of Transportation and Public Facilities for replacement of the Seward Highway maintenance station. Section 27(d) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation to the Department of Transportation and Public Facilities for deferred maintenance of state harbors in Port Alexander and Elfin Cove. Section 27(e) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation to the Department of Transportation and Public Facilities for traffic signal modifications at the intersection of the Parks Highway and Pittman Road. The appropriations made in sec. 27 of the bill would lapse under AS 37.25.020 under sec. 47(a) of the bill. The appropriations made in this section would take effect on June 30, 2012, under sec. 51 of the bill. We find no legal issues with this appropriation.

Section 28(a), pages 179 - 180, of the bill would appropriate funds to the office of the governor, redistricting board. Section 28(b) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation to the office of the governor, elections, for implementation of the Alaska redistricting proclamation. Section 28(c) of the bill would make an appropriation to the office of the governor for the purpose of influencing the outcome of a ballot initiative election. We find this language meets the statutory requirement to comply with AS 15.13.145. Section 28(d) of the bill states that the purpose of sec. 27(c) of the bill is to satisfy the requirements of AS 15.13.145(b). Section 28(e) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation to the office of the governor for building improvements and repairs. Section 28(a) of the bill would take effect on April 15, 2012. Sections 28(b) and 28(e) take effect on June 30, 2012. Section 28(e) of the bill would lapse under AS 37.25.020, under sec. 47(a) of the bill. We find no other legal issues with these appropriations.

Section 29, page 181, of the bill would amend a prior appropriation to broaden its scope to include UAA health lab. We find no legal issues with this appropriation.

F. Sections 30 - 42

Sections 30 - 42 of the bill would make reappropriations or amend various appropriations related to projects in various House Districts. The reappropriations generally would authorize the unexpended and unobligated balance of prior appropriations to be used for new projects or grants to named recipients. The amendments generally would expand the scope of the purposes for which expenditure is authorized. The projects or related provisions by subsection include:

Section 30. City and Borough of Juneau for the North Douglas Highway extension;

Section 31(a). Kuskokwim Public Broadcasting Corporation for maintenance of the station power plant;

Section 31(b). Arctic Village for a new landfill and equipment;

Section 31(c). The Allakaket Traditional Council for clinic renovation;

Section 32(a). Fairbanks North Star Borough, North Star Volunteer Fire Department for purchase of protective equipment;

Section 32(b). World I.C.E. Association, Inc. for ice park property purchase repayment;

Section 32(c). Alaska Railroad Corporation for Tanana River bridge access for military training;

Section 32(d). Fairbanks North Star Borough for Weller Elementary School safety improvements;

Section 33. Rural Deltana Volunteer Fire Department for Big D Station and Clearwater Station;

Section 34(a). Matanuska-Susitna Borough for Knik River Road reconstruction;

Section 34(b). Knights Football Booster Club for Colony High School field turf installation;

Section 34(c). Matanuska-Susitna Borough for Burma Road upgrade;

- Section 34(d). Alaska State Fair for Alaska Native Culture and Arts Day, 2012;
- Section 34(e). City of Wasilla for wastewater utility improvements;
- Section 34(f). Matanuska-Susitna Borough for South Big Lake Road realignment;
- Section 35(a). Anchorage for Bartlett High School Locker Upgrades;
- Section 35(b). Anchorage Creekside Park Elementary School purchase and repair of playground equipment;
- Section 36(a). Anchorage for roads and drainage rehabilitation in Abbott Loop and Taku Campbell areas;
- Section 36(b). Federation of Community Councils for equipment and fuel for the Mountain View Community Patrol;
- Section 36(c). Anchorage for improvements in the area of Latouche and Annapolis Drive;
- Section 37(a). Cook Inlet Aquaculture Association for project management support;
- Section 37(b). Kenai Peninsula Economic Development District for Cook Inlet facility assessment and recommendations;
- Section 37(c). City of Seldovia for manufacturing plant construction;
- Section 37(d). Kenai Peninsula Borough, North Peninsula Recreation Service Area, for replacement of the Community Recreation Center roof and exterior;
- Section 37(e). Alaska SeaLife Center for major maintenance and repairs;
- Section 37(f). Challenger Learning Center of Alaska for facility planning;
- Section 37(g). Kenai Peninsula Borough for Nikiski High School purchase of printer and cutter with software;
- Section 37(h). Kasilof Cohoe Cemetery Association for maintenance and repairs;
- Section 37(i). Kenai Peninsula Fair Association for maintenance and upgrades;
- Section 37(j). Kenai Peninsula Borough for Central Peninsula General Hospital radiation oncology center;
- Section 38. City of Ouzinkie for replacement of bridge and access road upgrades;
- Section 39(a). Bristol Bay Borough for equipment purchase;
- Section 39(b). City of Akutan for Akutan Harbor Facility Development Improvements;
- Section 39(c). Aleutian Peninsula Broadcasting for replacement of King Cove radio tower;
- Section 40(a). Newtok Traditional Council for community survey and subdivision design;
- Section 40(b). Association of Village Council Presidents for demonstration project on wood as heating source;
- Section 41(a). Wales, for purchase, repair, maintenance, and parts;
- Section 41(b). Pitka's Point Traditional Council for tribal office weatherization;
- Section 41(c). Saint Mary's School District for facilities renovation;
- Section 42. City of Kaktovik for local government operations and equipment purchase.

Sections 30 - 42 of the bill have various effective dates. Sections and subsections making reappropriations take effect June 30, 2012, under sec. 51 of the bill (subsecs. 30 - 32, 34(a), 34(c), 34(d), 34(e), 34(f), and 35 - 42 of the bill). Section 34(b) of the bill would take effect on April 15, 2012. Under sec. 52 of the bill, sec. 33 of the bill would take effect immediately. The remaining sections and subsections would take effect on July 1, 2012, under sec. 53 of the bill.

Sections 30 - 42 of the bill have various lapse dates. Under sec. 47(a) of the bill the following sections lapse under AS 37.25.020: secs. 31(b), 31(c), 32(b), 32(c), 34(b), 36(b), 37(e), 37(f), 37(h), 37(i), 40(a), 41(b), and 41(c) of the bill.

Section 33 of the bill is made retroactive to July 1, 2011 by sec. 48 of the bill.

We find no legal issues with these appropriations.

G. Section 43 - 46

Section 43, page 190, of the bill would reappropriate the unexpended and unobligated balances of two appropriations made in 2010 and 2011 to the Alaska Community Foundation for the Friends of the Alaska Children's Trust for the prevention of child abuse and neglect. The first appropriation was made in sec. 27, ch. 43, SLA 2010 as an operating item in the amount of \$3,000,000.00 for the fiscal year ending June 30, 2011. The second appropriation was made in sec. 16, ch. 5, FSSLA 2011 as an operating item in the amount of \$7,800,000 for the fiscal years ending June 30, 2012, June 30, 2013, and June 30, 2014. The goal of the reappropriation in this bill is to allow disbursement of the money as a grant so that the grantee can administer the money over a longer period of time, rather than having to seek reappropriations of the money every few years as an operating item. Since the purpose of the reappropriation is for long-term projects for the prevention of child abuse and neglect, the longer term commitment of funding is appropriate and can be managed through the grant agreement. We see no significant legal issues with this reappropriation.

Section 44(a) of the bill would amend a prior reappropriation to the Office of the Speaker of the House of Representatives to extend it to fiscal years ending June 30, 2012, and June 30, 2013. Section 44(b) of the bill would reappropriate unexpended and unobligated funds to the Office of the Speaker of the House for the National Speaker's Convention to be held in Anchorage. Section 44(c) of the bill would reappropriate unexpended and unobligated funds to the Legislative Council for repair and improvement of legislative buildings and facilities. Section 44(d) of the bill would amend a prior reappropriation to the Municipality of Anchorage to extend the appropriation to include fiscal year ending June 30, 2013.

Section 45(a) of the bill would appropriate general funds to the Alaska Municipal Bond Bank Authority for defeasance of the Inter-Island Ferry Authority's loan obligations.

Section 45(b) of the bill would appropriate funds to the Alaska Municipal Bond Bank to provide forgiveness on loans made to the fund under AS 44.85.270(i).

Section 46 of the bill would appropriate the unexpended and unobligated balance of the operating general fund at the close of business on June 30, 2012 to the budget reserve fund.

We find no legal issues with these appropriations.

H. Sections 47 - 53

Sections 47 - 53, page 192, of the bill would provide for lapses and effective dates, and contingencies.

Section 47 of the bill identifies sections and subsections that capitalize funds and do not lapse, those that have specific lapse dates, and those that are for capital projects or grants and lapse under AS 37.25.020.

Section 48 of the bill would make sec. 33 of the bill (appropriations to House District 12) retroactive to July 1, 2011.

Section 49 of the bill would establish a contingency for subsec. 26(a) of the bill.

Section 50 of the bill identifies sections which would take effect April 15, 2012.

Section 51 of the bill identifies sections which would take effect June 30, 2012.

Section 52 of the bill identifies sections which would take effect immediately.

Section 53 of the bill would make sections take effect July 1, 2012, if not identified in secs. 50 - 52 of the bill.

III. Conclusion

As we have stated in the past, please be advised 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 sure that appropriations are implemented consistent with enabling statutes and valid legislative intent. Additionally, we will assist as needed regarding the numerous retroactive provisions, effective dates, and lapse dates that will have to be carefully regarded by the agencies in implementing this legislation.

Sincerely,

Michael C. Geraghty
Attorney General