

April 9, 2013

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

Re: HCCS CSSB 18(FIN) am H -- Fiscal Year
2014 Capital Budget
Our file: JU2013200237

Dear Governor Parnell:

At the request of your legislative director, we have reviewed HCS CSSB 18(FIN) am H, amending, and repealing appropriations, including capital appropriations, supplemental appropriations, reappropriations, and other appropriations; making appropriations to capitalize funds. The bill is commonly referred to as the fiscal year 2014 capital budget.

Following is our legal review of the fiscal year 2014 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 in this bill.

A. Legislative Intent and Contingency Language.

Unlike prior years, the bill contains very limited expressions of legislative intent and several of contingencies: Section 1, p. 12, lines 22 - 25; sec. 1, p. 22, lines 21-28, sec. 54, p. 153, line 27 through p. 154, line 20. Nonetheless, we will reiterate our position on legislative intent language and contingencies. 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 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 court has 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 Alaska Supreme 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 would 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. Interpreting the language in sec. 1, p. 12, lines 22 - 25, to mandate certain actions by the Department of Transportation and Public Facilities would run afoul of the *Hammond* test, for the following reasons: it would require the department to administer the grant in a certain way, it would amend the statutes and regulations regarding how the department

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

coordinates with the Municipality of Anchorage on road construction projects, and it goes beyond the minimum language necessary to explain how the money is to be spent.

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, Alaska Constitution. *Id.* at 377.

In subsecs. 33(c) and (d) of the bill the legislature would reappropriate as a municipal grant for road maintenance the unobligated balance of two prior appropriations for road improvement projects in the Fairbanks North Star Borough but limits the reimbursable administrative costs under these grants to no more than six percent. We believe this administrative cost limitation is unenforceable because it violates at least two of the Hammond factors: (1) the qualifying language is an attempt to administer the program of expenditure; and (2) the qualifying language is essentially an amendment to existing law and must be contained in a substantive law bill. If the Fairbanks North Star Borough agrees to comply with this restriction as a matter of comity, the administrative cost limitation can be voluntarily incorporated into the grant agreement executed under AS 37.05.315.

B. Grants to Tribal Entities.

Several sections of the bill would make appropriations and grants to federally recognized tribes, village councils, and tribal entities, such as tribal agencies, organizations, or tribal nonprofit corporations under state law.²

² For example, sec. 1 of the bill would make appropriations for renewable energy project grants (AS 42.45.045) to Mentasta Traditional Council, sec. 1, p. 5, lines 12 - 16; Pedro Bay Village Council, sec. 1, p. 5, lines 29 - 33; Native Village of Kwinhagak, sec. 1, p. 6, lines 6 - 9; Atmautluak Traditional Council, sec. 1, p. 6, lines 24 - 27. Also, sec. 26(a) of the bill would make appropriations for grants for rural power system upgrades to Village of Atmautluak, sec. 26, p. 126, lines 18 - 23. In order to receive renewable energy grants, the village or tribal entities must be eligible recipients.

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 tribal entities, 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 of Alaska enters a contract or commercial transaction with a tribe or tribal entity, the contract or grant language should specify State of Alaska court jurisdiction or the State of Alaska 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.

Finally, some caution should be exercised about the specific entity to which the appropriation or grant money should be distributed. Care should be taken to make the appropriation or grant to the entity (e.g., tribe or tribal council) which under the tribe's law has the authority to bind the tribe and waive the tribe's sovereign immunity.⁵ The agency should consult with the Department of Law in facilitating these grants or appropriations.

C. Grants to Religious Entities.

The bill contains at least two appropriations to a named recipient that is a religious or religious-affiliated entity: Faith Bible Fellowship of Big Lake. Section 1, p. 47, lines 16 - 23. These 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.

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.

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 A tribal council is the "elected lawmaking bod[y] of tribal governments." 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).

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).

This religious-affiliated entity provides 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. The appropriations specify that they are to be used for a food bank and an emergency shelter generator. We 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.

D. Operating Appropriations in Capital Budget Bill.

Section 7 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." (Art. II, sec. 13). It does not make a distinction between appropriations for capital and operating expenses.

E. Negative Appropriations.

Another legal question presented by the bill is the inclusion of negative appropriations.⁶ The negative appropriations in the bill are found in sec. 7 of the bill, which make appropriations to various departments for operating expenses. Therefore, it seems that these negative appropriations have the effect of reducing the amount appropriated in the operating budget bill.

We have previously advised that because AS 37.07.080(e) authorizes the transfer of money between allocations, so long as the unallocated reduction is for a specific amount, there is no constitutional problem with inclusion of such negative appropriations in a budget bill. See 1993 Inf. Op. Att'y Gen. (June 17; 883-93-0073); 1992 Inf. Op. Att'y Gen. (June 30; 883-92-0141). We see no need to modify that advice here.

II. Sectional Analysis.

A. Sections 1 - 3 of the bill.

Section 1 of the bill, pages 2 - 98, 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 the section take effect on July 1, 2013

⁶ For example, sec. 7, p. 109, line 10 through p. 114, line 13.

under sec. 58 of the bill, and, except as otherwise noted, lapse under AS 37.25.020.⁷ Section 2 of the bill, pages 99 - 102, sets out the funding by agency for the appropriations made in sec. 1 of the bill. Section 3 of the bill, pages 103 - 104, sets out the statewide funding for the appropriations made in sec. 1 of the bill.

B. Sections 4 - 6 of the bill.

Section 4 of the bill, pages 105 - 106, would make appropriations for supplemental capital projects and grants. Section 5 of the bill, page 107, 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.

C. Sections 7 - 9 of the bill.

Section 7 of the bill, pages 109 - 114, contains appropriation items for operating expenditures from the general fund or other funds as set out in sec. 8 of the bill. 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. Several of these appropriations are negative appropriations. As discussed above, the appropriations made in sec. 7 of the bill take effect on April 14, 2013 under sec. 55 of the bill.

Section 8 of the bill, pages 115 - 116, sets out the funding by agency for the appropriations made in sec. 7 of the bill.

Section 9 of the bill, page 117, sets out the statewide funding for the appropriations made in sec. 7 of the bill.

D. Sections 10 - 32 of the bill.

Sections 10 - 32 of the bill, pages 119 - 131, would make or amend various appropriations, as described below. Except as otherwise noted, the appropriations take effect on July 1, 2013 under sec. 55 of the bill.

Section 10 of the bill, page 119, would appropriate \$300,000 to the Department of Administration for operating costs related to labor contract negotiations and arbitration support. As stated above, although this is an operating cost, not a capital item, it is permissible.

⁷ 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."

Section 11(a) of the bill, page 119, would amend sec. 10, ch. 29, SLA 2008, page 67, lines 3 - 6, to reappropriate Department of Fish and Game funds for wildlife conservation. Section 11(b) of the bill would amend sec. 1, ch. 17, SLA 2012, page 117, lines 14 - 15 to increase an appropriation to Department of Fish and Game for wild/hatchery salmon management tools.

Section 12(a) of the bill, page 119, would appropriate money to the Department of Law for the payment of judgments and settlements against the state for the fiscal year ending June 30, 2013. Section 12(b) of the bill would appropriate the amount necessary, after the application of the amount appropriated in sec. 12(a) of the bill, for the purpose of paying judgments against the state on or before June 30, 2013 for the fiscal year ending June 30, 2013. Section 12(c) of the bill would reappropriate the unexpended and unobligated balance, not to exceed \$2,000,000, of the appropriation made in sec. 30(a), ch. 5, FSSLA 2011, as amended by sec. 24(a), ch. 17, SLA 2012, to the Department of Law, civil division, oil, gas and mining section, for outside counsel and experts for the fiscal year ending June 30, 2014. Section 12(c) has an effective date of June 30, 2013.

Section 13(a) of the bill, page 120, would amend sec. 22(c), ch. 14, SLA 2009, as amended by sec. 11(c), ch. 1, FSSLA 2011; and sec. 12, ch. 5, SLA 2012, to change the lapse date of that appropriation from June 30, 2013 to June 30, 2015. Section 13(b) of the bill would appropriate to the Department of Natural Resources the amount necessary to pay for fire suppression activities, estimated to be \$5,300,000, for the fiscal year ending June 30, 2013.

Section 14(a) of the bill, page 120, would reappropriate to Department of Revenue the unexpended and unobligated balances of several prior appropriations, estimated to be \$9,764,000 for the San Roberto and Mountain View development project. Section 14(b) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation, estimated to be \$1,878,294, to Department of Revenue for oil and gas fiscal systems analysis and work related to the commercialization of oil and gas resources. Section 14(b) has an effective date of June 30, 2013.

Section 15(a) of the bill, page 120, would appropriate \$750,000 to Department of Transportation and Public Facilities (DOTPF) for cost associated with Ruth Burnett Sport Fish Hatchery litigation for fiscal years ending in June 30, 2013, and June 30, 2014. Section 15(b) of the bill would appropriate the unexpended and unobligated balance on June 30, 2012 of the general fund program receipts collected by DOTPF for sale or lease of excess rights of way to DOTPF for federal highway program costs. Section 15(c) of the bill, page 121, would reappropriate to DOTPF for improvements at the Ambler Airport the unexpended and unobligated balance, not to exceed \$15,000,000 of a prior appropriation. Section 15(d) of the bill would reappropriate the unexpended and unobligated federal receipt balance, not to exceed \$5,000,000 of a prior appropriation to DOTPF for Kotzebue airport and runway safety area improvements. Section 15(e) of the bill would reappropriates the unexpended and unobligated federal receipt balance, not to exceed \$40,000,000, of a prior appropriation to DOTPF for Anchorage Metropolitan Area Transportation Solutions, Dowling Road West extension and reconstruction. Section 15(f) of the bill states that if the amount available for appropriation in

secs. 15(c) - (e) of the bill is less than \$60,000,000, those appropriations shall be reduced in proportion to the amount of the shortfall.

Section 16(a) of the bill, page 122, would reappropriate to the Office of the Governor, redistricting board, the unexpended and unobligated balance, estimated to be \$250,000, of a prior appropriation, for legal and other cost relating to redistricting matters for fiscal years ending June 30, 2014, and June 30, 2015. Section 16(b) of the bill would reappropriate the unexpended and unobligated general fund balance of a prior appropriation, not to exceed \$500,000, to the Office of the Governor, elections, for redistricting costs for fiscal years ending June 30, 2014, and June 30, 2015. Section 16(c) of the bill would appropriate \$1,750,000 to the Office of the Governor, redistricting board, for legal and other costs relating to redistricting for fiscal years ending June 30, 2013, June 30, 2014, and June 30, 2015. Section 16(d) of the bill would reappropriate the unexpended and unobligated balances of several prior appropriations, estimated to be \$738,000 and \$75,000, to the Office of the Governor for facilities repairs and maintenance, security, and computer systems improvements.

Section 17(a) of the bill, page 122, would appropriate the proceeds from the sale of the Diplomacy Building by the University of Alaska to University Alaska for purchase and improvements of the Bragaw Office Complex in Anchorage. Section 17(b) of the bill would appropriate the proceeds of revenue bonds issued by the University of Alaska for the purchase of and improvement of the Bragaw Office Complex to the University of Alaska for that purpose. Section 54(c) of the bill would make the appropriation in sec. 17(b) contingent on the issuance by the University of Alaska of revenue bonds for the purchase and improvement of the Bragaw Office Complex in Anchorage before June 30, 2014.

Section 18(a) of the bill, page 123, would amend sec. 23(i), ch. 15, SLA 2012, to provide an appropriation to the state bond committee for payment of debt service and trustee fees on outstanding international airport revenue bonds. Section 18(b) of the bill would amend sec. 23(k), ch. 15, SLA 2012, to provide for an appropriation to Department of Education and Early Development for state aid for costs of school construction under AS 14.11.100 for the fiscal year ending June 30, 2013.

Section 19 of the bill, page 123, would ratify the expenditures in the amount of \$2,927,446.05 made by Department of Natural Resources for fire suppression for the fiscal year ending June 20, 2012.

Section 20(a) of the bill, page 123, states that federal receipts, designated program receipts, information services fund program receipts, receipts of the University of Alaska, receipts of commercial fisheries test fishing operations, corporate receipts of the Alaska Housing Finance Corporation, corporate receipts of the Alaska Aerospace Corporation, Exxon Valdez oil spill trust receipts, and receipts of the Alaska Fire Standards Council that exceed the amounts appropriated in the bill are appropriated conditioned on compliance with the program review provisions of AS 37.07.080(h). Section 20(b) of the bill states that if federal or other program receipts as defined in AS 37.05.146 and AS 44.21.045(b) exceed the estimates appropriated by the bill, the appropriation from state funds may be reduced by the excess if this is consistent with

the applicable federal statute. Section 20(c) of the bill states that if federal or other program receipts as defined in AS 37.05.146 and AS 44.21.045(b) fall short of the estimates appropriated by the bill, the affected appropriation is reduced by the amount of the shortfall.

Section 21 of the bill, page 124, entitled "Fund Capitalization," would make various appropriations. Section 21(a) of the bill would appropriate \$25,000,000 from the general fund to the Alaska Gasline Inducement Act reimbursement fund. Section 21(b) of the bill would appropriate \$2,000,000 from the general fund to the emergency energy technology fund (AS 42.45.375). Section 21(c) appropriates \$3,400,000 from the general fund to the disaster relief fund (AS 26.23.300(a)). Section 21(d) of the bill would appropriate \$10,000,000 from the general fund to the Knik Arm Crossing fund (AS 19.75.345). Section 54(a) of the bill would make sec. 21(d) contingent upon the passage by the Twenty-Eighth Alaska State Legislature in the First Regular Session and enactment into law of a bill creating the Knik Arm Crossing Fund. Section 21(e) of the bill states that the unexpended and unobligated balances, estimated to be \$25,004,947 of prior appropriations to Department of Revenue, Alaska Housing Finance Corporation, and Alaska Gasline Development Corporation are reappropriated to the in-state natural gas pipeline fund. Section 21(f) of the bill would appropriate \$25,000,000 from the Alaska Housing Capital Corporation account to the in-state natural gas pipeline fund. Section 54(f) of the bill would make the appropriations in secs. 21(e) and (f) contingent on passage by the Twenty-Eighth Alaska State Legislature in the First Regular Session and enactment into law of a bill creating the in-state natural gas pipeline fund.

Section 22 of the bill, page 124, is entitled "Fund Transfers." Section 22(a) of the bill would appropriate \$25,000,000 from the general fund to the renewable energy grant fund. Section 22(b) of the bill would appropriate \$35,200,000 from the general fund to the regional educational attendance area school fund. Section 22(c) of the bill would appropriate to the fish and game fund an amount equal to the revenue collected from (1) range fees collected by Department of Fish and Game at shooting ranges, (2) receipts from the sale of waterfowl conservation stamp limited edition prints, and (3) fees collected for sanctuary access permits. Section 22(d) of the bill would appropriate \$618,300 from the general fund to the regional educational attendance area and small municipal school district school fund. Section 54(b) of the bill would make sec. 22(d) contingent on passage by the Twenty-Eighth Alaska State Legislature in the First Regular Session and enactment into law of a bill changing the name of the regional educational attendance area school fund to the regional educational attendance area and small municipal school district school fund.

Section 23 of the bill, page 125, states that the amounts to be received in settlement of insurance claims for losses and the amounts to be received as recovery for losses are appropriated from the general fund to the state insurance catastrophe reserve account or the appropriate state agency to mitigate loss.

Section 24 of the bill, page 125, would appropriate the amount received by the National Petroleum Reserve - Alaska special revenue fund, estimated to be \$3,876,868 to the Department of Commerce, Community, and Economic Development for capital grants under the National Petroleum Reserve - Alaska impact grant program to various municipalities for various projects.

Section 25 of the bill, page 126, would appropriate \$35,000,000 from the proceeds of the sale of certificates of participation to the Department of Administration for the Alaska Native Tribal Health Consortium to design and construct a residential housing facility for the Alaska Native Medical Center. Section 54(e) of the bill would make the appropriation made in sec. 25 contingent on passage by the Twenty-Eighth Alaska State Legislature in the First Regular Session and enactment into law of a bill authorizing the issuance of certificates of participation for the Alaska Native Tribal Health Consortium to design and construction a residential housing facility to serve the Anchorage campus of the Alaska Native Medical Center.

Section 26(a) of the bill, page 126, would reappropriate the unexpended and unobligated balance, not to exceed \$1,750,000 of a prior appropriation as a grant to the Village of Atmautluak for upgrades to rural power system. Section 26(b) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation, not to exceed \$57,500,000, to the Alaska Industrial Development and Export Authority, to advance the use of North Slope natural gas for a liquefied natural gas production and distribution system. Section 54(d) of the bill would make the appropriation made in sec. 26(b) contingent on passage by the Twenty-Eighth Alaska State Legislature in the First Regular Session and enactment into law of a bill authorizing the Alaska Industrial Development and Export Authority to provide financing and issue bonds for a liquefied natural gas production and distribution system. Section 26(c) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation, estimated to be \$500,000 to Alaska Industrial Development and Export Authority for a gas-to-liquids feasibility study. Section 26(d) of the bill would appropriate \$19,100,000 from receipts of the Alaska Housing Capital Corporation to the Alaska Railroad Corporation for the positive train control project.

Section 27(a) of the bill, page 127, would reappropriate the unexpended and unobligated balances of several prior appropriations, estimated to total \$15,653,451, to Department of Education and Early Development for payment as a grant to Lower Kuskokwim School District for major maintenance at Tununak K-12 School. Section 27(b) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation, estimated to be \$1,923,207, to Department of Education and Early Development for construction of an aquatic center at Mt. Edgecumbe High School. Section 27(c) of the bill would appropriate \$21,000,000 from the general fund to the Department of Education and Early Development to be distributed as capital grants to school districts according to average daily membership for student safety and security enhancement. For school districts with an average daily membership of 4,500 or less, the grant may be used for student safety and security enhancement and for fixed costs and energy relief.

Section 28(a) of the bill, page 127, would reappropriate the unexpended and unobligated balances, of several prior appropriations, estimated to be \$359,541, to Department of Environmental Conservation for project administration grants to municipalities. Section 28(b) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation, estimated to be \$900,000, to Department of Environmental Conservation for the Kodiak ultraviolet secondary water treatment facility and for upgrading the pump house at Monashka Bay.

Section 29 of the bill, page 129, would reappropriate the unexpended and unobligated balance of a prior appropriation, estimated to be \$2,000,000, to Department of Fish and Game for a licensing system.

Section 30 of the bill, page 129, would reappropriate the unexpended and unobligated balance of a prior appropriation, estimated to be \$300,000, to Department of Natural Resources, division of agriculture, for seed promoting potato exports.

Section 31 of the bill, page 129, would reappropriate the unexpended and unobligated balances of several prior appropriations, estimated to total \$339,000, to the Department of Public Safety for repair and renovation of the Bethel Public Safety hangar.

Section 32(a) of the bill, page 130, would reappropriate the unexpended and unobligated balances of several prior appropriations, estimated to total \$4,641,368, to Department of Transportation and Public Facilities (DOTPF) for construction of sand storage buildings in the central region. Section 32(b) of the bill would reappropriate the unexpended and unobligated balances of several prior appropriations, estimated to total \$5,397,059 to DOTPF for the Juneau access project. Section 32(c) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation, not to exceed \$1,700,000, to DOTPF for replacement of the Kotzebue Swan Lake harbor moorage. Section 32(d) of the bill would reappropriate the unexpended and unobligated balance, after the reappropriation of sec. 32(c) of the bill, to DOTPF for design and site acquisition of maintenance and operations stations in Haines, Palmer, Delta, and Northway. Section 32(e) of the bill would reappropriate the unexpended and unobligated balance of a prior appropriation, not to exceed \$400,000, to DOTPF for design and site acquisition of maintenance and operations stations in Haines, Palmer, Delta, and Northway. Section 32(f) of the bill would reappropriate the remainder of the prior appropriation in 32(e) of the bill to DOTPF to construct a road to Tanana.

E. Sections 33 - 46 of the bill.

Sections 33 - 46 of the bill would make reappropriations or amend various appropriations related to projects in various House Districts. The reappropriations generally authorize the unexpended and unobligated balance of prior appropriations to be used for new projects or grants to named recipients. The amendments generally expand the scope of the purposes for which expenditure is authorized. The projects or related provisions by subsection include:

Section 33(a) of the bill, page 131, to Arctic Winter Games Host Society for hosting the Arctic Winter Games;

Section 33(b) of the bill, pages 131 - 132, to City of Fairbanks for construction of additions to public works facility for disaster recovery and warm storage, and for construction of an addition to the police station;

Section 33(c) of the bill, page 132, to Fairbanks North Star Borough for road maintenance;

Section 33(d) of the bill, page 132, to Fairbanks North Star Borough for road maintenance in the Borda Road Service Area;

Section 33(e) of the bill, page 132, to the Fairbanks North Star Borough School District for conversion of the school heating system to a natural gas heating system;

Section 33(f) of the bill, page 132, to Pleasant Valley Community Association for phase II and phase III construction on the Pleasant Valley Community Center;

Section 33(g) of the bill, page 132, to Fairbanks North Star Borough School District for classroom upgrades at Weller Elementary School;

Section 33(h) of the bill, page 133, to Fairbanks North Star Borough School District for classroom upgrades at Two Rivers School;

Section 33(i) of the bill, page 133, states that if the amount available for appropriations in (e) - (h) of this section is less than \$550,000, the appropriations shall be reduced in proportion to the shortfall;

Section 33(j) of the bill, page 133, to Alaska Peace Officers Association, Inc., Farthest North Chapter, for construction and remodel of the existing building;

Section 33(k) of the bill, page 133, to Fairbanks North Star Borough for upgrades to the fire alarm system in the Pioneer Park building;

Section 34(a) of the bill, pages 133 - 134, to Fairbanks North Star Borough for safety upgrades to the parking lot at Weller Elementary School;

Section 34(b) of the bill, page 134, to Fairbanks 2014 Arctic Winter Games Host Society for the 2014 Arctic Winter Games;

Section 34(c) of the bill, page 134, to Fairbanks North Star Borough for replacement of Ryan Middle School;

Section 34(d) of the bill, page 134, to Matanuska-Susitna Borough for the Matanuska-Susitna School District to expand the Air Force JROTC program;

Section 34(e) of the bill, page 134, states that if the amount available for reappropriation in (a) - (d) of the section is less than \$3,308,891, the appropriations shall be reduced in proportion to the shortfall;

Section 35 of the bill, page 134, to the City of Valdez for improvements to the boat harbor;

Section 36(a) of the bill, pages 134 - 135, would amend a prior appropriation to allow funds to be used for the Palmer Senior Citizens Center and other infrastructure projects for senior services;

Section 36(b) of the bill, page 135, to Alaska State Fair, Inc., for roof replacement;

Section 36(c) of the bill, page 135, to the City of Wasilla for extension of South Mack Drive;

Section 37(a) of the bill, page 135, to Bean's Cafe, Inc., for children's lunchbox prepared meals program at Boys and Girls Club Northeast Community Center;

Section 37(b) of the bill, page 135, to the Municipality of Anchorage for pedestrian safety improvements on Zarvis Place;

Section 37(c) of the bill, pages 135 - 136, to the Federation of Community Councils, Inc., for the Mountain View Community Council for the Mountain View cleanup;

Section 37(d) of the bill, page 136, to the Anchorage School District for the purchase of equipment for Baxter Elementary School;

Section 37(e) of the bill, page 136, would amend a prior appropriation to Anchorage School District to include Stadium Amenities;

Section 37(f) of the bill, page 136, would amend a prior appropriation to Anchorage School District to include Stadium Amenities;

Section 37(g) of the bill, page 136, to Anchorage Soil and Water Conservation District for recreational upgrades to Abbott Loop Community Park;

Section 37(h) of the bill, pages 136 - 137, to Anchorage Soil and Water Conservation District for rehabilitation of Meadow Park;

Section 37(i) of the bill, page 137, to Municipality of Anchorage for Fire Station Number 14 building renovation and equipment purchase and installation;

Section 37(j) of the bill, page 137, to Municipality of Anchorage for drainage improvements on Furrow Creek at Clipper Ship Court and Mariner Drive;

Section 37(k) of the bill, page 137, to Municipality of Anchorage for drainage improvements on Jewel Lake Road;

Section 37(l) of the bill, page 137, to Cougar Gridiron Booster Club for field improvements and lighting at Service High School;

Section 37(m) of the bill, pages 137 - 138, to Anchorage School District for improvements to the hockey rink at O'Malley Elementary School;

Section 37(n) of the bill, page 138, to Anchorage School District for improvements to the Service High School pool;

Section 37(o) of the bill, page 138, to Alaska Search and Rescue Association for Alaska Incident Management Team response kit creation and implementation;

Section 37(p) of the bill, page 138, to Municipality of Anchorage for purchase of equipment for Service High School rifle team;

Section 37(q) of the bill, page 38, states that if the amount available for appropriation for (l) - (p) of the bill is less than \$1,125,000, the appropriations shall be reduced in proportion to the shortfall;

Section 37(r) of the bill, page 138, to Municipality of Anchorage for improvements and safety upgrades at intersection on Goldenview Drive from Rabbit Creek to Romania Drive;

Section 37(s) of the bill, page 139, to Alaska Brain Injury Network, Inc., for research and information analysis;

Section 37(t) of the bill, page 139, to Municipality of Anchorage for safety upgrades and field repair at Papago Park;

Section 37(u) of the bill, page 139, to Angelus Memorial Park Cemetery, Inc., for connecting to city water and sewer, to replace and pave roadways, for landscaping, and to purchase entry flag poles;

Section 37(v) of the bill, page 139, to Fraternal Order of Alaska State Troopers, Inc., to organize, research, and display artifacts;

Section 37(w) of the bill, page 139, to Alaska Library Network for the Alaska history global web project;

Section 37(x) of the bill, page 140, to Alaska Legislative Council for the Alaska Arctic Policy Commission;

Section 37(y) of the bill, page 140, states that if the amount available for reappropriation under (s) - (x) of this section is less than \$1,050,000, the appropriations shall be reduced in proportion to the shortfall;

Section 37(z) of the bill, page 140, would amend a prior appropriation to allow funds to be used for Mears Middle School school store renovation and office improvements;

Section 37(aa) of the bill, page 140, would amend a prior appropriation to allow funds to be used for Mears Middle School renovation and office improvements;

Section 37(bb) of the bill, page 140, to Urban Works, Inc., for purchase of housing for the job development program;

Section 38(a) of the bill, page 141, to Kenai Peninsula Borough for new construction at the Diamond Ridge fire station;

Section 38(b) of the bill, page 141, to Kenai Peninsula Borough for replacement of pool tile flooring;

Section 38(c) of the bill, page 141, to Kenai Peninsula Borough for planning and research for Nikiski area environmental investigation;

Section 38(d) of the bill, page 141, to Kenai Peninsula Borough for maintenance and repairs on Jacob's Ladder access trail;

Section 38(e) of the bill, page 141, to Ionia, Inc. for new construction at the Ionia Barn;

Section 38(f) of the bill, pages 141 - 142, to the Boys and Girls Club of the Kenai Peninsula, Soldotna teen club program and technology center for acquisition and program costs;

Section 38(g) of the bill, page 142, to the Sterling Community Club for new construction at the Sterling Community Center;

Section 38(h) of the bill, page 142, to Boys and Girls Club of the Kenai Peninsula for technology equipment for Seward clubhouse;

Section 38(i) of the bill, page 142, to North Peninsula Community Council, Inc., for Nikiski beautification;

Section 38(j) of the bill, page 142, to Hope, Inc., for new construction and community signs;

Section 38(k) of the bill, pages 142 - 143, to Moose Pass Sportsmen's Club for remodel, reconstruction, upgrades, and renovation of the community hall;

Section 38(l) of the bill, page 143, to the Snowshoe Gun Club, Inc., for facilities construction and shooting range expansion;

Section 38(m) of the bill, page 143, states that if the amount available for appropriation under (b) - (l) of the section is less than \$1,600,000, the appropriations shall be reduced in proportion to the shortfall;

Section 39(a) of the bill, page 143, to City of Soldotna for construction of a water tank and associated costs;

Section 39(b) of the bill, page 143, would amend a prior appropriation for Redoubt Avenue to allow for other street improvement projects;

Section 39(c) of the bill, page 143, to the City of Homer for the port and harbor building and Skyline Fire Station;

Section 40(a) of the bill, pages 143 - 144, would amend a prior appropriation to allow a grant to UAS to be used for dormitory project;

Section 40(b) of the bill, page 144, would amend a prior appropriation to allow a grant to UAS to be used for dormitory project;

Section 40(c) of the bill, page 144, to Petersburg Borough for a new police station and jail facility;

Section 40(d) of the bill, page 144, to City and Borough of Juneau for Juneau School District to purchase curricular materials;

Section 40(e) of the bill, page 144, would amend a prior appropriation to allow the appropriation to be used for Petersburg elderly housing facility;

Section 40(f) of the bill, page 144, would amend a prior appropriation to allow the appropriation to be used for Tenakee Springs community facilities;

Section 41(a) of the bill, pages 144 - 145, to City of Ketchikan for the Whitman Lake hydroelectric project;

Section 41(b) of the bill, page 145, to Southeast Island School District for construction of teacher housing in Coffman Cove;

Section 41(c) of the bill, page 145, to Chilkat Indian Village for renovation and repair of the Chilkat Indian Village office;

Section 41(d) of the bill, page 145, to the City of Kake for purchase of a garbage truck;

Section 41(e) of the bill, page 145, to the Department of Education and Early Development to replace the flag pole at Mt. Edgecumbe High School;

Section 41(f) of the bill, page 146, to City of Craig for repairs and upgrades to the aquatic center;

Section 41(g) of the bill, page 146, to City of Klawock for purchase of public works equipment;

Section 41(h) of the bill, page 146, to SouthEast Alaska Regional Health Consortium for construction of the Hoonah Health Center;

Section 41(i) of the bill, page 146, to the Department of Education and Early Development for construction of an aquatic center at Mt. Edgecumbe High School;

Section 41(j) of the bill, page 147, to the Department of Commerce, Community, and Economic Development for heating plant, boilers, and utilidor piping at Mt. Edgecumbe High School;

Section 42 of the bill, Page 147, to Native Village of Chenega for rehabilitation of electrical system and to purchase equipment;

Section 43(a) of the bill, page 147, to Newtok Traditional Council for equipment maintenance and operation;

Section 43(b) of the bill, page 147, to City of Holy Cross for foundation repairs and roof replacement;

Section 43(c) of the bill, page 147, to Kokhanok Village Council for purchase of utility equipment;

Section 44(a) of the bill, pages 147 - 148, to City of Akutan for harbor road project, airport access project, harbor facility development improvements;

Section 44(b) of the bill, page 148, to Aleutians East borough for completion of King Cove to Cold Bay access project, including potential litigation support;

Section 44(c) of the bill, page 148, to City of Port Heiden for power distribution system upgrades;

Section 45 of the bill, page 148, would amend a prior appropriation to Manley Hot Springs to allow the appropriation to be used for land acquisition and purchase of burn barrels;

Section 46(a) of the bill, page 148, to City of Diomedes for construction and remodel of a clinic;

Section 46(b) of the bill, pages 148 - 149, to City of Unalakleet for purchase of equipment to sweep and maintain roads;

Section 46(c) of the bill, page 149, to City of Fort Yukon for purchase of fire-fighting vehicles and equipment;

Section 46(d) of the bill, page 149, to City of Galena for remodeling of Galena Interior Learning Academy headquarters building;

Section 46(e) of the bill, page 149, to Allakaket Traditional Council for construction of a health clinic.

Section 46(f) of the bill, page 149, to Norton Sound Health Corporation for repair, renovation, planning, design, and construction of community clinics;

Section 46(g) of the bill, page 150, to City of Galena for replacement of the roof of the Galena City School District student residential hall;

Section 46(h) of the bill, page 150, to Yukon-Koyukuk School District for restoration of restrooms at Ella B. Verneti School;

Section 46(i) of the bill, pages 150 - 151, to City of Galena for replacement of the roof of the Galena City School District student residential hall;

Section 46(j) of the bill, page 151, states that if the amount available for appropriations in (h) and (i) of this section is less than \$263,314, those appropriations shall be reduced proportionately to the shortfall.

F. Sections 47 - 58 of the bill.

Section 47 of the bill, page 151, would appropriate \$250,000 from the general fund to the Legislative Council for travel costs and materials for the Task Force on Sustainable Education. Section 54(g) of the bill would make this appropriation contingent on passage by the House of Representative in the First Regular Session of a resolution creating the Taskforce on Sustainable Education.

Section 48 of the bill, pages 151 - 153, would reappropriate various legislative appropriations. Section 48(a) of the bill would reappropriate funds to the Legislative Council for seismic retrofit and exterior restoration of the capitol. Section 48(b) of the bill would reappropriate unexpended and unobligated balances of various appropriations for costs associated with planning and hosting the Council of State Governments and Council of State

Governments West 2014 conferences. Section 48(c) of the bill would reappropriate to the legislative council for the 2014 National Conference of State Legislatures executive committee summer meeting, the unexpended and unobligated balances of various prior appropriations. Section 48(d) of the bill would reappropriate the unexpended and unobligated balances of various prior appropriations to the Legislative Council for renovation, repair, technology improvements, and other necessary projects related to legislative buildings and facilities.

Section 49(a) of the bill, page 153, states that if the unrestricted revenue available for appropriations is insufficient to cover the general fund appropriations, the amount necessary to balance revenue and general fund appropriations or to prevent a cash deficiency is appropriated from the budget reserve fund to the general fund. Section 49(b) of the bill states that the unexpended and unobligated balance, after the appropriation made in sec. 12(c) of the bill is reappropriated to the budget reserve fund.

Section 50 of the bill, page 153 would extend the lapse of the 2012 appropriation to Alaska Arctic Policy Commission, Alaska Legislature, Legislative Council, councils and subcommittees, to June 30, 2014.

Section 51 of the bill, page 153, would repeal sec. 23(h)(12), ch. 15, SLA 2012.

Section 52(a) of the bill, page 153, would provide that certain appropriations made in the bill lapse according to AS 37.25.020. Section 52(b) of the bill would provide that the appropriations made in secs. 21, 22, 23(l) and 49(b) of the bill are for fund capitalization and do not lapse.

Section 53 of the bill, page 153, would make secs. 15(b) and 19 of the bill retroactive to June 30, 2012.

Section 54 of the bill, pages 153 - 154, would provide for contingencies for several of the appropriations made in the bill. Contingencies are discussed above.

Section 55 of the bill, page 154, would provide for an effective date of April 14, 2013 for certain sections of the bill.

Section 56 of the bill, page 154, would provide for an effective date of June 30, 2013 for certain sections of the bill.

Section 57 of the bill, page 154, would provide that sec. 53 takes effect immediately.

Section 58 of the bill, page 154, would provide that all other sections take effect July 1, 2013.

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 would 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 would assist as needed regarding the numerous retroactive provisions, effective dates, and lapse dates that would have to be carefully regarded by the agencies in implementing this legislation.

Sincerely,

Michael C. Geraghty
Attorney General

MCG:DEB:pav