

May 20, 2014

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

Re: CCS HB 266 – Fiscal Year 2015 Operating
Budget
Our file: JU2014200333

Dear Governor Parnell:

At the request of your legislative director, we have reviewed CCS HB 266, making appropriations for the operating and loan program expenses of state government and for certain programs, capitalizing funds, and making reappropriations.

The bill is otherwise known as the fiscal year 2015 operating budget, beginning on July 1, 2014, and ending on June 30, 2015. 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 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." Section 1, p. 2, lines 4 - 6. We identified at least 13 unallocated reductions in the 2015 operating budget, which is quite an increase from the past few years. That said, 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 concern 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).

II. General Intent Language.

As in prior years, the bill has numerous expressions of legislative intent accompanying certain appropriation items. 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 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 Alaska Supreme 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 Alaska Supreme 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 this budget bill violate the confinement clause. Nevertheless, we cannot rule out the possibility that some uses of intent language could be found by a court to be enforceable.

In the past, we have advised that expressions of intent may generally be ignored or followed as a matter of comity. We continue to offer this advice; however, in the event your office or a recipient agency is disinclined to follow intent language as a matter of comity, and we have not specifically addressed such language herein, we recommend further consultation with this office so that we may advise as to the extent 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, Alaska Constitution. *Id.* at 377. The Alaska Supreme 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).

III. Department of Administration.

In sec. 1 of the bill, appropriation for centralized administrative services, the legislature provides two separate expressions of legislative intent. First, the legislature expresses its intent that the Department of Administration coordinate with Alaska's congressional delegation, the Mental Health Trust Authority, the Department of Commerce, Community, and Economic Development, the Department of Education and Early Development, and various other stakeholders to (1) determine the broadband capacity in rural Alaska; (2) identify potential broadband cost sharing opportunities that could be implemented; and (3) provide a report and recommendations to the legislature's finance committees by January 15, 2015. Section 1, p. 2, line 21, through p. 3, line 4. Second, the legislature expresses its intent that enterprise technology services prepare and provide to the legislature's finance committees by January 15, 2015, a five-year statewide plan to implement information technology systems in a cost efficient manner. Section 1, p. 3, lines 5 - 11. We have previously advised that reporting requirements such as these 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 Department of Administration may wish to comply as a matter of comity.

IV. Department of Commerce, Community, and Economic Development.

In sec. 1 of the bill, appropriation for corporations, business, and professional licensing, the legislature expresses its intent that the Department of Commerce, Community, and Economic Development (1) set occupational license fees at a rate sufficient to cover the cost of the occupation being regulated as required under AS 08.01.065(c); and (2) annually provide the legislature with a report for each licensing board covering, for the past six years, license fees and other revenue received, expenditures made by line item, number of licensees balance carried forward, and potential license fee changes based on statistical analysis. Section 1, p. 6, lines 19 - 28. We have previously advised that reporting requirements such as these 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 Department of Commerce, Community, and Economic Development may wish to comply as a matter of comity.

V. Department of Corrections.

In sec. 1 of the bill, appropriating funds to the Department of Corrections, the legislature did not include any intent language and there are no apparent legal concerns with the section.

Section 1, p. 8, line 29, through p. 11, line 4.

VI. Department of Education and Early Development.

As it did the last five years, the legislature has stated that a school district may not receive state education aid if it has a policy barring United States Reserve Officers' Training Corps (ROTC), Central Intelligence Agency, or Federal Bureau of Investigations, military recruiters, the Boy Scouts of America (Boy Scouts), or in-school ROTC programs or Junior ROTC programs from its schools. Section 1, p. 11, lines 8 - 16. As we have previously stated, we believe 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 in that the language (1) went beyond the minimum necessary language because it did not describe how the appropriated money was to be spent; (2) sought to administer the agency's program; (3) was not germane to the appropriations; and (4) was substantive in nature. *Knowles II*, 21 P.3d at 380-81.

For similar reasons, we think the recruiter, Boy Scout, and ROTC contingency language violates the confinement clause. It is not the minimum necessary language because it does not describe how the appropriation is to be spent. It seeks to administer the agency's program by requiring that certain policies to be adopted or not adopted. The contingency language is not germane to the K-12 state education program. And, by imposing certain military recruiter, Boy Scout, and ROTC 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, Boy Scout, and ROTC access policies and the education 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 such access.

Also, in sec. 1 of the bill, appropriation for teaching and learning support, the legislature expresses its intent that the Department of Education and Early Development, in cooperation with the University of Alaska, develop a plan which should be reported to the legislature to make the Alaska Learning Network self-supporting. Section 1, p. 12, lines 3 - 9. We have previously advised that reporting requirements such as these 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 Department of Education and Early Development may wish to comply as a matter of comity.

VII. Department of Environmental Conservation.

In sec. 1 of the bill, the legislature expresses its intent that the Department of Environmental Conservation track and report to the legislature by January 1, 2015, the amount of funds collected for each fee type collected by the department. Section 1, p. 13, lines 18 - 20. Assuming the Department of Environmental Conservation already tracks this information, it may wish to comply as a matter of comity.

VIII. Department of Fish and Game.

In sec. 1 of the bill, the legislature expresses its intent that the Department of Fish and Game make fishery management activities in state waters its top priority and provide a fishery management activity prioritization report to the legislature's finance committees by October 31, 2014. Section 1, p. 15, lines 7 - 10. Also in sec. 1 of the bill, the appropriation for administration and support, the legislature expresses its intent that the division of subsistence complete a household survey to determine the amounts necessary for subsistence in nonsubsistence areas of the state. Section 1, p. 16, lines 15 - 17. Unless these reporting and survey requirements are set out in statute, 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.

IX. Department of Health and Social Services.

The legislature has provided the commissioner of the Department of Health and Social Services with the authority to transfer up to \$50,000,000 between appropriations to the Department of Health and Social Services and report on any such transfers to the legislature's finance committees and to legislative finance division. Section 1, p. 17, lines 4 - 10. This is the second year in a row the legislature has authorized the transfer of funds between appropriation items. Because this delegation of authority raises constitutional and budget tracking concerns, the Department of Law and the Office of Management and Budget will work closely with the commissioner of health and social services should circumstances arise that would give rise to the need to transfer funding between appropriation items.

Although not connected to any particular appropriation, the legislature expresses its intent that the Department of Health and Social Services find cost-saving efficiencies and use the savings to implement the department's priorities, which may include priorities in the 2012 Office of Children's Services Workload Study. Section 1, p. 17, lines 11 - 13.

In sec. 1 of the bill, under the appropriation for the Alaska Pioneer Homes, the legislature expresses its intent that the Department of Health and Social Services submit a report to the legislature by January 22, 2015, that outlines statutory and regulatory changes needed to ensure maximum Medicaid funding for this program. Section 1, p. 17, lines 15 - 17. We do not think this intent language is enforceable under the *Hammond* standard, but the Department of Health and Social Services may comply as a matter of comity.

In sec. 1 of the bill, under the appropriation for public health, the legislature expresses its intent that the Department of Health and Social Services administer the Health Care Professions

Loan Repayment and Incentive Program with additional emphasis on providing direct patient care to rural Alaska, including adjustments to the match requirement for nonprofit employers that demonstrate an inability to contribute at the rate established in regulation. Section 1, p. 20, lines 20 - 30. This intent language attempts to administer the expenditure of funds and is not enforceable under the *Hammond* standard, but the Department of Health and Social Services may comply as a matter of comity. Please note, however, that compliance with this intent language would trigger the need to amend an existing regulation, 7 AAC 24.060.

Finally, under the appropriation for Medicaid services, the legislature included the following intent 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. 22, lines 27 - 32. As we have opined previously, this language is intended to prevent expenditures from these appropriations for therapeutic or medically necessary abortions. However, the Department of Health and Social Services 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, the Department of Health and Social Services 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 the Department of Health and Social Services 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*.

Ten years ago, the plaintiffs in the Planned Parenthood case asked the superior court to clarify how similar budget restrictions impacted its judgment. Three days after the Alaska Supreme Court affirmed the judgment, the superior court issued an opinion ordering the Department of Health and Social Services not to comply with the restrictions. Therefore, to date, the Department of Health and Social Services has obeyed the superior court's order and we must advise the Department of Health and Social Services to continue to obey the superior court's order; 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.

X. Department of Labor and Workforce Development.

A number of Department of Labor and Workforce Development programs receive federal funds. The bill continues the practice of including any federal receipts from prior fiscal years that have not been spent or obligated in the amounts allocated for management services (sec. 1, p. 23, lines 21 – 24, of the bill) and vocational rehabilitation administration (sec. 1, p. 25, lines 18 – 21, of the bill). We see no legal concerns with these appropriations.

The bill also would include an appropriation of certain federal unemployment insurance modernization funds received in 2010 as a result of the state's compliance with certain conditions. Section 1, p. 24, lines 20 - 21. The federal funds may be appropriated by the legislature for the Department of Labor and Workforce Development to deliver employment services. We see no legal concerns with the appropriation.

A number of Department of Labor and Workforce Development programs receive nonpublic funds, either for services provided or as contributions from taxpayers. The bill would continue the practice of including any amounts received in prior fiscal years that have not been spent or obligated in the amounts allocated for Alaska Safety Advisory Council, which receives fees from persons attending the governor's safety conference, as provided in AS 18.60.840 (sec. 1, p. 24, lines 14 - 16, of the bill) and for the Alaska Vocational Technical Center, which receives fees for services or contributions by individual or certain organizational taxpayers (sec. 1, p. 25, lines 30 - 33, of the bill).

XI. Department of Law.

In sec. 1 of the bill, appropriations to the Department of Law, the legislature did not include any intent language and there are no apparent legal concerns with the section. Section 1, p. 26, line 11, through p. 27, line 25.

XII. Department of Military and Veterans' Affairs.

In sec. 1 of the bill, appropriating funds to the Department of Military and Veterans' Affairs, the legislature did not include any intent language and there are no apparent legal concerns with the section. Section 1, p. 27, line 29, through p. 28, line 27.

XIII. Department of Natural Resources.

In sec. 1 of the bill, appropriating funds to the Department of Natural Resources, the legislature did not include any intent language and there are no apparent legal concerns with the section. Section 1, p. 28, line 31, through p. 30, line 27.

XIV. Department of Public Safety.

In sec. 1 of the bill, appropriation for the Alaska State Troopers contains language stating that it is the intent of the legislature that money received under this appropriation not be used to assist federal employees enforce the Marine Mammal Protection Act as it relates to sea otters in Southeast Alaska. Section 1, p. 31, lines 10 - 12. While this language strays into the

administration of the Department of Public Safety's program, if this legislative guidance is consistent with the Department of Public Safety's current priorities, the Department of Public Safety may comply as a matter of comity.

Under the appropriation for village public safety officer (VPSO) program, the legislature expresses its intent that the Department of Public Safety work with VPSO program grantees to identify goals for strengthening the VPSO program, including improvements to recruitment and retention and submit a report to the legislature by January 15, 2015. Section 1, p. 32, lines 3 - 9. This language clearly strays into the administration of the Department of Public Safety's program. But, the department may comply as a matter of comity.

XV. Department of Revenue.

In sec. 1 of the bill, appropriation for Alaska Mental Health Trust Authority, the legislature expresses its intent that the Alaska Mental Health Trust assess and report to the legislature by January 15, 2015, whether and what type of expanded broadband capacity would result in long-term general fund savings and improved access to health care. Section 1, p. 34, lines 11- 20. This language clearly strays into the administration of the Alaska Mental Health Trust Authority's program. But, the Alaska Mental Health Trust may want to comply as a matter of comity.

XVI. Department of Transportation and Public Facilities.

In sec. 1 of the bill, appropriation for the marine highway system, the legislature expressed its intent that the Department of Transportation and Public Facilities (1) eliminate the practice of issuing free annual passes to state employees and retirees of the marine highway system; (2) examine and report back to the legislature whether it is prudent to operate a ferry between Ketchikan and Metlakatla; and (3) complete a review and report back to the legislature with a new tariff and fee schedule for passengers, vehicles, and cabin reservations on Alaska's ferries. Section 1, p. 39, lines 10 - 19. We believe this language strays into the administration of the department's program. But, the department may comply as a matter of comity. Additionally, 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, 2015." Section 1, p. 38, lines 3 - 4. This special lapse provision makes the appropriations available for expenditure until they lapse into the general fund on August 31, 2015. We have not identified any other issues with the portion of sec. 1 appropriating funds to the Department of Transportation and Public Facilities.

XVII. University of Alaska.

Under the appropriation to the University of Alaska (University) there are five expressions of legislative intent: (1) that the University maintain the Anchorage Office of Research and Graduate Studies and the Fairbanks Office of Intellectual Property and Commercialization; (2) that the University begin collecting data on graduates so that a performance matrix can be established for each degree program; (3) that the University carefully

review programs and conduct and certain activities aimed at reducing costs; (4) that the University submit a fiscal year 2016 budget in which requests for unrestricted general funds not exceed the amount of additional University receipts requested for that year; and (5) that the University 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. 39, line 31, through p. 40, line 21. The first three expressions of legislative intent are probably not enforceable but the University may comply as a matter of comity. The final two expressions of legislative intent, while not enforceable, should be considered as an indication the legislature is expecting this agency's budget to be at or near the amount of receipts brought in by the agency.

XVIII. Office of the Governor.

In sec. 1 of the bill, appropriation for executive operations, the legislature expresses its intent that the governor's office deliver a report to the legislature by February 17, 2015, describing the results of the domestic violence and sexual assault initiative, including performance measures developed with a numerator and denominator format. Section 1, p. 42, lines 4 - 7. Unless these reporting requirements are set out in statute, we do not think that this intent language is enforceable under the *Hammond* standard, but the governor's office may comply as a matter of comity.

XIX. Alaska Court System.

In sec. 1 of the bill, appropriation for the judicial council, the legislature expresses its intent that the legislative committees assist the Alaska Judicial Council in hosting public activities related to selection and retention of judicial officials. Although unprecedented, this does not appear to raise any legal concerns. Section 1, p. 42, line 31, through p. 43, line 5.

XX. Legislature.

In sec. 1 of the bill, appropriations to the Alaska Legislature, the legislature does not appear to raise any legal concerns. Section 1, p. 43, lines 10 - 27.

XXI. New Legislation and Funding Source.

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. Section 3 of the bill sets out the funding by agency for the appropriations made in secs. 1 and 2 of the bill. Section 4 of the bill sets out the statewide funding for the appropriations made in sec. 1 and sec. 2 of the bill.

XXII. 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 sets out general legislative intent that state agencies involved in the criminal justice process should strive to improve the criminal justice process for crime victims.

Section 7 of the bill sets out legislative intent that the Department of Corrections, Department of Health and Social Services, Department of Labor and Workforce Development, Alaska Mental Trust Authority, Alaska Housing Finance Corporation, and the Alaska Court System collaborate to identify inmates being released from correctional institutions and develop a plan to provide needed services to such inmates, including substance abuse, mental health, employment, or housing services with the goal of reducing recidivism rates. The legislature also expresses its intent that these agencies jointly prepare and submit a report to the legislature by February 2, 2015, on the implementation and results of this plan. Unless these reporting and survey requirements are set out in statute, we do not think that this intent language is enforceable under the *Hammond* standard, but the identified departments may comply as a matter of comity.

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

Section 9 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, 2015, describing and justifying all such transfers during the first half of the fiscal year and again submit a report on October 1, 2015, describing and justifying all such transfers during the second half of the fiscal year. This section is nonbinding in its entirety under *Knowles II*, 21 P.3d at 379-80. You need not comply with these requirements, but you may comply out of comity.

Section 10 of the bill would appropriate to the Alaska Aerospace Corporation all federal and other corporate receipts received during the fiscal year June 30, 2015, in excess of the amounts appropriated to the Alaska Aerospace Corporation in sec. 1 of the bill.

Section 11 of the bill would make appropriations to the Alaska Housing Finance Corporation from the adjusted net income from the preceding fiscal year, for various purposes including debt service and deposit to the Alaska capital income fund. We have not identified any legal issues that cause concern.

Section 12 of the bill would appropriate 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 these estimates are dependent on investment returns and inflation that have yet to occur; these estimates are fairly speculative. The section also would appropriate oil and gas revenue to the principal of the permanent fund as required by the constitution and statute.

Section 13 of the bill would appropriate to the Alaska capital income fund (AS 37.05.565) amounts not otherwise appropriated from the \$10,665,000 dividend declared by

the Alaska Industrial Development and Export Authority. We see no legal concerns with this appropriation.

Section 14(a) and (b) of the bill would appropriate from the state insurance catastrophe reserve account and the working reserve account to the Department of Administration amounts necessary to fund the uses set out in AS 37.05.289(a) and AS 37.05.510(a). Section 14(c) of the bill would appropriate the amount received in a settlement of a bond claim, approximately \$50,000, to the Alaska Oil and Gas Conservation Commission to reclaim state, federal, or private land affected by a use covered by the bond. We see no legal concerns with these appropriations.

Section 15 of the bill would make appropriations related to the Department of Commerce, Community, and Economic Development. Section 15(a) would appropriate national forest income that will lapse at the end of fiscal year 2015 to political subdivisions where national forest land is located in accordance with the formula provided under AS 41.15.180(c) and (d). Section 15(b) would appropriate from federal receipts for national forest receipt payments, if the amount appropriated for this purpose in sec. 1 of the bill is insufficient. Sections 15(c) would appropriate from federal receipts for federal revenue sharing programs, if the amount appropriated for this purpose in sec. 1 of the bill is insufficient. Section 15(d) makes the usual appropriation related to the salmon enhancement tax to qualified regional associations. Section 15(e) makes the usual appropriation related to the seafood development tax to the qualified regional seafood development associations, but in this year's appropriation the legislature specifically identifies six purposes these appropriated funds can be used for. Section 15(f) of the bill would provide an appropriation to the Alaska Energy Authority from the power cost equalization endowment fund for the power cost equalization allocation. Section 15(g) would provide a general fund appropriation to the Alaska Energy Authority if the amount available for appropriation from the endowment fund is insufficient to fully fund the power cost equalization allocation. Section 15(h) and (i) would provide for appropriations to the Alaska Seafood Marketing Institute. We see no legal concerns with the various appropriations in sec. 15 of the bill.

Section 16 of the bill would provide a general fund appropriation to the Department of Corrections for the Anchorage Correctional Complex if the federal receipts appropriated in sec. 1 are insufficient for payments of costs associated with housing federal prisoners at this facility for fiscal year 2015.

Section 17(a) of the bill would appropriate an amount equal to the dive fishery management assessments collected in fiscal year 2014 to the Department of Fish and Game for payment to qualified regional dive fishery development associations in the area where the assessments were collected. Section 17(b) of the bill appropriates the remaining balance of the sport fishing enterprise account in the fish and game fund, but not to exceed \$500,000 and following the appropriation made in sec. 27(j) of the bill, to the Department of Fish and Game for sport fish operations.

Section 18(a) - (c) of the bill would appropriate amounts necessary to make all benefit payments from the fishermen's fund (AS 23.35.060), the second injury fund (AS 23.30.040(a)),

and the workers' compensation benefits guaranty fund (AS 23.30.082) in fiscal year 2015 not covered by amounts appropriated in sec. 1 of the bill. Section 18(d) of the bill would appropriate surplus contributions received by the Alaska Vocational Technical Center (AVTEC) to AVTEC. We see no legal concerns with these appropriations.

Section 19 of the bill would appropriate amounts related to the Alaska veterans' memorial endowment fund (AS 37.14.700).

Sections 20(a), (b), and (d) of the bill would make 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. Section 20(c) of the bill would appropriate the amount received in a settlement of a bond claim, approximately \$50,000, to the Department of Natural Resources to reclaim state, federal, or private land affected by a use covered by the bond. Section 20(e) of the bill would appropriate from the general fund to the Department of Natural Resources for fire suppression if any portion of the federal receipts appropriated in sec. 20(d) of the bill are not received. We see no legal concerns with these appropriations.

Section 21 of the bill would make an appropriation to the Department of Revenue that is a state match for federal receipts received for child support enforcement efforts. We see no legal concerns with this appropriation.

Section 22(a) of the bill would appropriate to the University of Alaska the amounts of fees collected in fiscal year 2014 for the issuance of special request university license plates, less the cost of issuing the license plates. Section 22(b) of the bill would appropriate \$12,500,000 from the general fund to the University of Alaska, Fairbanks campus, for heating costs contingent upon the Fairbanks campus coal-fired plant using diesel as its primary fuel source for at least 60-consecutive days. We see no legal concern with the requirement that a specific fuel source be used as condition of receiving an appropriation to help defray heating costs.

Sections 23(a) - (e) of the bill would appropriate certain amounts from the general fund to the Office of the Governor for distribution to agencies for relief from high energy costs. The amounts of the appropriations are tied to the price of oil and decrease as the price of oil declines. This section also sets out a methodology for allocating the appropriation among agencies. We see no legal concerns with the appropriation.

Section 24 of the bill would appropriate retained fees and bankcard service fees. We see no legal concerns with this appropriation.

Section 25 of the bill would appropriate amounts necessary for debt service, including arbitrage rebate payments, on a range of notes, certificates of participation, and bonds. Section 25(k) of the bill would appropriate \$126,642,396 for school construction under AS 14.11.100. In this appropriation, \$19,300,000 of the amounts appropriated is appropriated from the School Fund (AS 43.50.140). The School Fund is a dedicated fund into which cigarette taxes, fees, and penalties are deposited. Amounts deposited into the School Fund may only be

used to rehabilitate, construct, or repair the state's school facilities, or to pay certain insurance costs related to the state's school facilities. The School Fund was established in 1955. See sec. 16, ch. 187, SLA 1955. Because the School Fund existed when the Alaska Constitution was ratified on April 24, 1956, the School Fund does not violate the dedicated fund clause (art. IX, sec. 7, of the Alaska Constitution). Section 25 of the bill also would authorize a short term general fund appropriation to cover general obligation bond project costs subject to repayment when bond proceeds are received by the state. We see no legal concerns with these appropriations.

Section 26 of the bill would appropriate certain federal receipts, designated program receipts, information services fund program receipts, Exxon Valdez oil spill trust receipts, Alaska House Finance Corporation receipts, Alaska marine highway receipts, University of Alaska receipts, commercial fisheries test fishing operations receipts, and receipts of the Alaska Aerospace Corporation. We see no legal concerns with these appropriations.

Section 27 of the bill would provide for capitalization of various funds, including the Alaska children's trust grant account, the community revenue sharing fund, the disaster relief fund, the oil and gas tax credit fund, Alaska municipal bond bank authority reserve fund,, the Alaska clean water fund, the Alaska drinking water fund, Alaska fish and game bond redemption fund, the crime victim compensation fund, the election fund, and the trauma care fund. We see no legal concerns with these appropriations.

Section 28(a) of the bill would appropriate to the Alaska permanent fund (art. IX, sec. 15, of the Alaska Constitution) and to the public school trust fund (AS 37.14.110(a)) 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 re-designated as general grant lands in 1978 (ch. 182, SLA 1978). Matters related to compensating the public school trust for trust lands are currently pending in litigation captioned *Citizens Alliance Protecting School Lands v. State*, 1 JU-13-00582 Civil. We see no legal concerns with the appropriation.

Section 28(b) of the bill would appropriate the loan origination fees collected by the Alaska Commission on Postsecondary Education. We see no legal concerns with this appropriation.

Section 28(c) of the bill would make an appropriation to the public education fund. We see no legal concerns with the appropriation.

Section 28(d) of the bill would appropriate to the oil and hazardous substance release prevention account and sec. 28(e) of the bill would appropriate to the oil and hazardous substance release response account. We see no legal concerns with these appropriations.

Section 28(f) of the bill would appropriate the interest earned on funds in the Alaska marine highway system fund to the fund. We see no legal concerns with the appropriation.

Section 28(g) of the bill would appropriate \$20,000,000 from the general fund to the renewable energy grant fund. We see no legal concerns with the appropriation

Section 28(h) and (i) of the bill would make appropriations to the regional educational attendance area and small municipal school district school fund. We see no legal concerns with the appropriation.

Section 28(j) of the bill would appropriate the balance of the Alaska clean water administrative income account (AS 46.03.034(a)(2)) on June 30, 2014, estimated to be \$6,700,000, to the Alaska clean water administrative operating account (AS 46.03.034(a)(1)). There are no legal concerns with the provision.

Section 28(k) of the bill would appropriate the balance of the Alaska drinking water administrative income account (AS 46.03.038(a)(2)) on June 30, 2014, estimated to be \$3,600,000, to the Alaska drinking water administrative operating account (AS 46.03.038(a)(1)). There are no legal concerns with the provision.

Section 28(l) of the bill would appropriate the following fees, estimated to total \$888,000, to the fish and game fund (AS 16.05.100): (1) fees collected from state operated shooting ranges; (2) receipts from the sale of waterfowl conservation stamp prints; (3) fees collected from state sanctuary access permits; and (4) fees collected from state operated boating and angling access sites. We see no legal concerns with the appropriation.

Section 28(m) 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, 2015, are appropriated to the mine reclamation trust fund operating account. There are no legal concerns with the provision.

Section 29 of the bill would make an appropriation of \$5,241,619 to the Department of Administration for the purpose of funding the judicial retirement system under AS 22.25.046. This year the retirement system funding appropriations for the public employees' retirement system and the teachers' retirement system were included in the capital budget (SB 119). We see no legal concerns with this appropriation.

Section 30(a) of the bill would provide for the appropriation of funds covering salary costs and benefit adjustments for public officials, officers, and employees in the executive branch, court system, the legislature, and for legislators. Section 30(a) of the bill also would appropriate funds to implement state collective bargaining agreements covering eight collective bargaining units. Section 30(b) would provide that the appropriations made to the University of Alaska in sec. 1 of the bill include amounts for salary and benefit adjustments for the fiscal year for university employees who are not members of bargaining units and to implement the monetary terms of employees covered by collective bargaining agreements for employees in the following bargaining units: University of Alaska Federation of Teachers; Fairbanks Firefighters Association, IAFF Local 1324; United Academics - American Association of University

Professors, American Federation of Teachers; United Academics - Adjuncts - American Association of University Professors, American Federation of Teachers; and Alaska Higher Education Crafts and Trades Employees, Local 6070.

Section 30(c) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in sec. 30(a) of the bill would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit. The contingent language is a proper condition on the appropriation.

Section 30(d) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in sec. 30(b) of the bill would suffer 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. The contingent language is a proper condition on the appropriation.

Section 31(a) and (b) of the bill would appropriate the proceeds of certain taxes and fees for refund to local governments.

Section 32 of the bill would provide that the unexpended and unobligated balances on June 30, 2014, of the previously appropriated federal funding available under the American Recovery and Reinvestment Act of 2009 is re-appropriated to various departments. We see no legal concerns with the appropriation.

Section 33 of the bill would reduce the appropriation to each department under the bill to reverse negative account balances in amounts of \$1,000 or less. We see no legal concerns with the appropriation.

Section 34 would provide a funding backstop, including a cash deficiency, from the statutory budget reserve (AS 37.05.540(a)) if general fund revenue is insufficient to fund the fiscal year 2015 general fund appropriations.

Section 35 of the bill would provide that certain appropriations in the bill are for capitalization of funds and do not lapse.

Section 36 of the bill would allow for retroactive effect to June 30, 2014, for certain appropriations made in sec. 1 and sec. 15(h)(1) of the bill.

Section 37 of the bill would provide that the appropriation in sec. 22(b) of the bill is contingent upon the occurrence of events specified in that section.

Sections 38, 39, and 40 of the bill set out the effective dates of the various sections of the bill.

XXIII. Conclusion.

Although we have identified no other constitutional or legal issues in the 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 the bill, as well as related legislation, to make certain that appropriations are implemented in a manner that is consistent with enabling statutes and valid legislative intent.

Sincerely,

/ s /
Michael C. Geraghty
Attorney General

MCG:CCP:lkr