

June 29, 2017

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

Re: CCS HB 57: Fiscal Year 2018
Operating Budget
Our file: JU2017200398

Dear Governor Walker:

At the request of your legislative director, we have reviewed CCS HB 57, making appropriations for the operating and loan program expenses of state government and for certain programs, capitalizing funds; repealing appropriations; making supplemental appropriations and reappropriations; and making appropriations under art. IX, sec. 17(c) of the Alaska Constitution. This bill is known as the fiscal year 2018 operating budget, beginning on July 1, 2017, and ending on June 30, 2018. It also is the supplemental appropriations bill for fiscal year 2017. We review the highlights of the bill below.

I. Introduction.

The bill 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 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 the negative appropriations in a budget bill.¹

II. Legislative intent and contingency language.

As in prior years, the bill contains numerous expressions of legislative intent accompanying certain appropriation items and also includes some contingency provisions. We believe that most expressions of legislative intent are not binding on the executive branch because the expressions violate the confinement clause of the Alaska Constitution, which states that "[b]ills for appropriations shall be confined to

¹ See 1993 Inf. Op. Att'y Gen. (June 17; 883-93-0073); 1992 Inf. Op. Att'y Gen. (June 30; 883-92-0141).

appropriations."² The Alaska courts have used a five-factor test to determine whether language added to an appropriations bill violates the confinement clause. Under this test (the *Hammond* factors), 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.³

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, we recommend further consultation with this office so that we may advise as to the extent the 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 not be vetoed by the governor as a line item veto separate from the appropriation itself. On this point, the Alaska Supreme Court ruled that expressions of intent do not constitute "items" subject to your veto power.⁴

The Alaska Supreme Court also has found that contingency language should be subject to the same analysis as legislative intent language.⁵ We discuss each contingency in our review of an appropriation subject to a contingency.

III. Section 1: appropriations to individual departments, the University of Alaska, the legislature, and the court system.

A. Department of Administration.

The legislature did not include any intent language and there are no apparent legal concerns with the provisions in sec. 1 addressing the Department of Administration.

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

² Art. II, sec. 13.

³ *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001).

⁴ *Knowles*, 21 P.3d at 371-375.

⁵ *Knowles*, 21 P.3d at 378-384.

The bill includes two related expressions of legislative intent regarding the appropriations to the department. The legislature expresses its intent that the department include expanding broadband access across the state as a goal for its economic development strategy and that it provide strategies for promoting broadband infrastructure and financing to the house and senate finance committees and the legislative finance division by December 1, 2017 (p. 4, line 33 - p. 5, line 6). Similarly, in the appropriation for the Regulatory Commission of Alaska ("RCA") the legislature expresses its intent that the RCA provide an analysis of Alaska's current broadband coverage and providers' plans for coverage expansion and a description of the remaining gaps in statewide broadband infrastructure and financing in a report to be provided to the house and senate finance committees and the legislative finance division by December 1, 2017 (p. 7, lines 15 - 19). As set out above, we do not believe the statements of legislative intent are enforceable, but the department may comply as a matter of comity. We also have previously advised that reporting requirements such as these are normally set out in statute.⁶ To the extent that this reporting requirement is not otherwise set out in statute, the department may wish to comply as a matter of comity.

C. Department of Corrections.

The legislature included three expressions of legislative intent in the appropriation of funds to the department. The legislature expresses its intent that the department prioritize (1) funding and implement solutions for the disparity in Alaska Native incarceration rates (p. 8, lines 3 - 5); (2) the use of existing community facilities and resources for the pre-trial services division (p. 8, lines 7 - 8); and (3) expanding the electronic monitoring program in Bethel (p. 9, lines 18 - 19). As set out above, the statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity.

D. Department of Education and Early Development.

Section 1 includes three expressions of legislative intent for the department. First, the legislature expresses its intent that the state board of education report to the legislature findings and recommendations to ensure equity and affordable access to high speed internet, broadband services, and connectivity to school districts and address this subject in the context of the board's best practices initiatives (p. 11, lines 3 - 7). Second, that the board evaluate and make recommendations on strategies to secure access to quality early educational opportunities and that early learning be prioritized by the department and the board as they make long term strategies regarding educational challenges facing the state (p. 11, lines 22 - 26). Third, that a \$4,758,800 fund source change from unrestricted general fund to public school trust fund be reversed in the fiscal year 2019 budget (p. 12, lines 3, 4). As noted above, departments may comply with

⁶ 2007 Op. Att'y Gen. 2 (June 6; 883-07-0070).

expressions of legislative intent and requests for making recommendations to or filing reports with the legislature as a matter of comity.

Additionally, sec. 1 includes language stating that a school district may not receive state education aid if the district (1) has a policy that prohibits a branch of the military, the reserve officers' training corps, the CIA, or the FBI from contacting students on campus if the district permits other job recruiters, colleges, or vocational schools on campus to contact students; (2) does not permit the Boy Scouts of America to use school facilities for meetings or contact with students if it permits other nonschool groups to use school facilities; or (3) maintains a policy of refusing to permit an in-school reserve officers or junior reserve officers' training program (p. 10, lines 18 - 27). This type of language has been included in some previous budget bills and we have stated that we believe it likely violates the confinement clause.⁷

In *Alaska Legislative Council v. Knowles*, 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 the conditional language violated four of the five *Hammond* factors because 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.⁸

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 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. Although, in limited circumstances, courts have upheld language conditioning an appropriation,⁹ there needs to be a substantial nexus between the condition and the appropriation that is reflected in the "germaneness" requirement. Here there is little nexus between 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 imposes these requirements on schools.

⁷ See 2009 Op. Att'y Gen. 4 (May 8; JU2009200407); 2008 Op. Att'y Gen. 3 (May 9; 883-08-0074).

⁸ *Knowles*, 21 P.3d at 380-81.

⁹ *Id.* at 379.

E. Department of Environmental Conservation.

The legislature did not include any intent language and there are no apparent legal concerns with the provisions in sec. 1 addressing the Department of Environmental Conservation.

F. Department of Fish and Game.

The legislature did not include any intent language and there are no apparent legal concerns with the provisions in sec. 1 addressing the Department of Fish and Game.

G. Office of the Governor.

The legislature did not include any intent language and there are no apparent legal concerns with the provisions in sec. 1 addressing the Office of the Governor.

H. Department of Health and Social Services.

Section 1 provides that the commissioner may transfer up to \$25,000,000 between all department appropriations (p. 16, lines 8 - 10). 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 should circumstances arise that would require the commissioner to consider the transfer of funding. Additionally, the legislature included a provision providing that no money appropriated within the Medicaid services appropriation may be spent to pay increases to providers that result from an annual inflation adjustment required by regulation to an existing Medicaid payment rate (p. 21, lines 5 - 10). Current department regulations require the department to make an annual inflationary adjustment to the rates paid to enrolled Medicaid providers. In addition, under AS 47.07.036, the department is required to take certain cost containment actions when there are budget shortfalls or pressure. That statute requires that before the department can look at reducing optional categories of eligible consumers, it must address rates paid to providers. In fiscal year 2016, the department implemented emergency regulations to suspend the automatic inflationary increase to providers and to implement the authority authorized by AS 47.07.036 to avoid reduction in services or persons who are eligible for Medicaid. This language encourages the department to take similar action in fiscal 2018 by expressing the legislature's belief that similar action is required under the statute. However, the restriction is not binding because the statute requires the department to make the assessment as to whether it is necessary.

The legislature also included several expressions of legislative intent regarding appropriations to the department, including (1) the department submit a report of

transfers between appropriations to the legislative finance division (p. 16, lines 11 - 14); (2) that the appropriation made in section 30(b) of the bill (an appropriation of \$1,693,900 from the general fund for the Nome Youth Facility) should remain in the operating budget and not be a one-time increment for fiscal year 2018 (p. 17, lines 30 - 32); (3) that the division of public health develop a three-year plan to contract with community health centers or other health care providers in order to obtain efficiencies while retaining similar levels of service and report this plan to the house and senate finance committees cochairs and the legislative finance division by January 30, 2018 (p. 19, lines 6 - 10); and (4) that the level of funding for day habilitation services at assisted living homes be sufficient to permit a "soft cap" on recipients of up to 12 hours of services each week (p. 21, lines 20 - 22). We do not think these statements of legislative intent are enforceable under the *Hammond* factors described above, but the department may comply as a matter of comity.

I. Department of Labor and Workforce Development.

A number of department 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 and vocational rehabilitation administration. The department also receives 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 and for the Alaska Vocational Technical Center, which receives fees for services or contributions by individual or certain organizational taxpayers. We see no legal concerns with these appropriations.

J. Department of Law.

The legislature did not include any intent language and there are no apparent legal concerns with the section.

K. Department of Military and Veterans' Affairs.

The legislature included an expression of legislative intent that the department draft a report identifying funding options for the Alaska Military Youth Academy to generate revenue, make recommendations regarding tuition and fee structures based on income levels of applicants' households, incorporate those recommendations in the fiscal year 2019 budget for the department, address the impact of the recommendations on federal matching dollars and the unrestricted general fund budget, and submit the report to the house and senate finance committees cochairs and the legislative finance division by December 1, 2017 (p. 25, lines 9 - 16). As noted above, departments may comply with

expressions of legislative intent and requests for making recommendations to or filing reports with the legislature as a matter of comity.

L. Department of Natural Resources.

The legislature did not include any intent language and there are no apparent legal concerns with the section.

M. Department of Public Safety.

In the appropriations to the department, the legislature included several expressions of legislative intent, including that (1) the Alaska Fire Standards Council increase fees to pay for more of its program costs (p. 28, lines 5 - 7); (2) the department prioritize a fully operational village public safety officer (VPSO) program and expand the program to benefit additional rural areas (p. 29, lines 5 - 7); (3) the monies appropriated for the VPSO program be used solely for the purpose of hiring, training, and supporting VPSO officers and that unexpended monies be returned to the general fund (p. 29, lines 8 - 10); (4) the Alaska Police Standards Council (APSC) reduce the subsidy for nonstate entities that send recruits to APSC training programs (p. 29, lines 18 - 19); (5) recidivism reduction funding appropriated in the Council on Domestic Violence and Sexual Assault allocation be used to fund victim services programs (p. 29, lines 26 - 27); (6) the department prepare a report to the house and senate finance committees coauthors and the legislative finance division by November 15, 2017, describing a five-year plan identifying coverage gaps and impediments to success in the department, steps to take to successfully recruit and retain Alaska State Troopers, steps to meet the constitutional intent for public safety through adequate Trooper coverage and how the VPSO program can serve as a training feeder into the Alaska State Troopers in order to support resident hire, training and regional representation (p. 29, line 30 - p. 30, line 6); and (7) the Training Academy increase the collection of fees from nonstate sources (p. 30, lines 10, 11). As set out above, the expressions of legislative intent are not enforceable, but the department may comply as a matter of comity. Similarly, the department is not required to comply with a reporting requirement that is not set out in statute, but it may as a matter of comity.

N. Department of Revenue.

The appropriation to the department provides that up to \$500,000 of budget authority may be transferred between several retirement fund codes from within certain specified allocations. Specifically, this sum may be transferred between the fund codes for the allocation for the treasury division; the allocation for the Alaska Retirement Management Board; and the allocation for the Alaska Retirement Management Board custody and management fees. We see no legal issues with this provision.

O. Department of Transportation and Public Facilities.

The legislature included several expressions of legislative intent, including that (1) the paused "Knik Goose Bay Road Reconstruction: Vince to Settler's Bay" project be resumed utilizing federal funds as available (p. 33, lines 30, 31); (2) the department not expend any funding to study further the privatization or optimization of its planning, design and engineering functions (p. 33, line 33 - p. 34, line 3); and (3) the Alaska Marine Highway System consider revising its discounted tariff program (p. 36, lines 16, 17). As set out above, the expressions of legislative intent are not enforceable, but the department may comply as a matter of comity.

P. University of Alaska.

The legislature included a statement of legislative intent that cuts or reallocations of unrestricted general funds to the University of Alaska branches in Anchorage, Fairbanks, and Juneau not exceed cuts or reallocations of unrestricted general funds to the University statewide administration (p. 36, lines 29 - 32). As set out above, expressions of legislative intent are generally not enforceable when included with appropriations to executive branch departments. Because of the University of Alaska's unique position in the Alaska Constitution, efforts by the legislature to manage its internal operations through statements of intent in appropriations bills may be even more problematic than the expressions of intent directed at executive branch departments. In particular, it is noted that the University of Alaska is established in the Alaska Constitution as the state university, and under the Alaska Constitution the Board of Regents is designated as the governing body charged with formulating policy for the University.¹⁰

Q. Alaska Court System.

The appropriations to the Alaska Court System include a statement of legislative intent that the court system raise the filing fee for superior court monetary damage claims of \$100,000 or more from \$200 to \$500 (p. 38, lines 6, 7). As noted above, expressions of legislative intent are generally not enforceable when included with appropriations to executive branch departments. Given that the court system is a separate branch of government, a statement of legislative intent is likely even more problematic when directed to the court system in an appropriations bill.

R. Alaska Legislature

¹⁰ Art. VII, secs. 2-3.

The legislature included one statement of intent in the appropriations to the legislature, which was that the \$300,000 unrestricted general fund reduction be restored in the fiscal year 2019 budget (p. 38, lines 25, 26).

IV. New legislation and funding source.

Section 2 of the bill provides contingent appropriations for three pieces of new legislation. If particular legislation identified in this section fails to pass, or if its substance is not incorporated in some other measure, or it is vetoed by the governor, the appropriation for that legislation lapses. We see no legal concerns with these appropriations as the contingencies placed on the appropriations appear to be legally valid.

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 secs. 1 and 2 of the bill.

V. Supplemental operating and capital appropriations.

Section 5 of the bill sets out the funding to departments to support supplemental appropriations for fiscal year 2017 operating expenditures. Section 6 sets out the funding by agency for the appropriations made in sec. 5. Section 7 sets out the statewide funding for the appropriations made in sec. 5 of the bill.

Section 8 provides for appropriations to departments for supplemental capital projects and grants. Section 9 sets out the funding by agency for the appropriations made in sec. 8 of the bill. Section 10 sets out the statewide funding for the appropriations made in sec. 8 of the bill.

VI. Sections 11 - 53 of the bill.

The following sections contain specific appropriations for particular purposes. Unless identified, we see no legal concerns with the appropriations.

Section 11(a) states that the amounts appropriated in secs. 1 - 4 and 22 - 44 for the fiscal year 2018 operating budget are the full amounts to be appropriated for the identified purpose. Section 11(b) states that funds appropriated in secs. 1 - 4 and 22 - 44 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 12 amends a prior year appropriation to the Department of Administration for costs related to labor contract negotiations and arbitration support to include fiscal year 2018.

Section 13 makes an appropriation from federal receipts to the Department of Commerce, Community, and Economic Development, division of insurance, for the health insurance enforcement and consumer protection grant for fiscal years 2017, 2018, and 2019.

Section 14 makes an appropriation to the Department of Environmental Conservation from the general fund in order to fulfill a settlement agreement with respect to the piped water system project for the 2017 and 2018 fiscal years.

Section 15 makes supplemental appropriations for fiscal year 2017 to the Department of Health and Social Services for the Medicaid program.

Section 16(a) and (b) make supplemental appropriations to the Department of Law for the purpose of paying judgments and settlements against the state for fiscal year 2017. Section 16(c) amends a prior year appropriations to the Department of Law for outside counsel and experts and for the state's share of interim remedial actions to protect the health, safety, and welfare of residents in the North Pole area for the fiscal years 2018 and 2019.

Section 17 makes an appropriation to the Department of Transportation and Public Facilities for the purposes of fulfilling the terms of a consent agreement and order with the Environmental Protection Agency in relation to the decommissioning and remediation of Class V injection wells.

Section 18(a) and (b) amends prior year appropriations regarding debt obligations. Section 18(c) provides for an appropriation for general obligation bonds for transportation projects from the 2012 state transportation project fund to the state bond committee for the 2017 - 2019 fiscal years. Section 18(d) and (e) authorizes appropriations for fiscal year 2017 from the general fund to the international airports revenue fund if federal receipts are temporarily insufficient to cover airport system project expenditures that are approved for funding with federal receipts, contingent on repayment to the general fund with interest as soon as federal receipts have been received for that purpose, and appropriations from the airports revenue fund back to the general fund to reimburse the general fund.

Section 19 makes an appropriation to the disaster relief fund.

Section 20 amends a prior year appropriation to the oil and hazardous substance release account.

Section 21 makes an appropriation to the Department of Revenue, tax division, for the reprogramming of the tax revenue management system and online revenue portal. Section 21 is contingent on the passage by the Thirtieth Alaska State Legislature of a bill amending the motor fuel tax. *See* sec. 49(f). This appears to be a valid contingency and the contingency has not been met as of the date of this letter as such a bill has not been passed. However, the contingency may be met if the Thirtieth Alaska State Legislature does pass the legislation.

Section 22 appropriates to the Alaska Aerospace Corporation all federal and other corporate receipts received during the 2018 fiscal year in excess of the amounts appropriated to the Alaska Aerospace Corporation in sec. 1 of the bill.

Section 23 makes various appropriations to the Alaska Housing Finance Corporation from the adjusted net income from the second preceding fiscal year, for various purposes including debt service and deposit to the general fund, and from the corporate receipts received by the corporation for allocation to the housing finance revolving fund (AS 18.56.082), the senior housing revolving fund (AS 18.56.710(a)), and for other housing and loan programs and projects. We have not identified any legal issues that cause concern.

Section 24 appropriates from the earnings reserve account (AS 37.13.145(a)) to the dividend fund (AS 43.23.045(a)) an amount, estimated to be \$760,000,000, for the purpose of paying a permanent fund dividend of \$1,100 and for administrative and associated costs for fiscal year 2018. Additionally, the section provides for an appropriation, estimated to be \$26,000,000, to the Alaska capital income fund (AS 37.05.565) from the sources set out in AS 37.13.145(d). The section also provides for an appropriation of oil and gas revenue to the principal of the permanent fund, estimated to be \$244,300,000. Under the Alaska Constitution, a minimum of 25 percent of royalty income must be deposited in the permanent fund. Art. IX, sec. 15. The appropriation refers to AS 37.13.010(a)(1) but does not refer to AS 37.13.010(a)(2). AS 37.13.010(a)(1) describes deposits of 25 percent of royalties and bonuses received by the state being placed in the permanent fund for leases issued on or before December 1, 1979, and bonuses received from leases issued on or before February 15, 1980, while AS 37.13.010(a)(2) refers to a 50 percent deposit of royalties and bonuses received from leases issued after those dates. We note that the estimated sum identified in the appropriation reflects 25 percent of royalties and bonuses received by the state, which is consistent with the constitutional requirement. We also note that a 25 percent deposit is consistent with both the House and Senate versions of SB 26 (the permanent fund bill that currently sits in conference committee) which, if passed by the legislature, would amend AS 37.13.010(a)(1) to provide for one uniform deposit of 25 percent of royalties received from all leases regardless of date. For these reasons, we believe the legislature intended for only the constitutionally required 25 percent of royalties to be deposited in the permanent fund.

Section 25 appropriates to the general fund the amount declared available by the board of directors of the Alaska Industrial Development and Export Authority for appropriation as the dividend for fiscal year 2018.

Section 26(a) and (b) appropriates 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 26(c) appropriates the amount necessary to retain an unobligated balance of \$5,000,000 in the working reserve account to that account from the unencumbered balance of any employee salary and benefit appropriation that is available for lapse at the end of the 2018 fiscal year. Section 26(d) appropriates the amount necessary to retain an unobligated balance of \$10,000,000 in the group health and life fund, after the appropriations in (b) and (c), from any appropriation that is determined to lapse at the end of the 2018 fiscal year. Section 26(e) would appropriate the amount received in a settlement of a bond claim, approximately \$150,000, to the Alaska Oil and Gas Conservation Commission to reclaim state, federal, or private land affected by a use covered by the bond. Finally, Section 26(f) would appropriate the amount necessary to cover actual costs associated with bills introduced by the legislature from the general fund to the department.

Section 27 makes appropriations related to the Department of Commerce, Community, and Economic Development. Section 27(a) appropriates national forest income that will lapse at the end of fiscal year 2018 to political subdivisions where national forest land is located in accordance with the formula provided under AS 41.15.180(c) and (d). Section 27(b) appropriates from federal receipts for national forest receipt payments, if the amount appropriated for this purpose in sec. 1 of the bill is insufficient. Section 27(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 27(d) makes an appropriation related to the salmon enhancement tax to qualified regional associations. Section 27(e) makes an appropriation related to the seafood development tax to the qualified regional seafood development associations and identifies six purposes for which these appropriated funds can be used. Section 27(f) makes an appropriation from the power cost equalization endowment fund (AS 42.45.070(a)) for the power cost equalization program for fiscal year 2018. Section 27(g) makes an appropriation of \$55,000,000 from the comprehensive health insurance fund (AS 21.55.430) to the division of insurance for the calendar year 2017 reinsurance program under AS 21.55 for fiscal years 2017 and 2018. Section 27(h) makes an additional appropriation of \$55,000,000 from the comprehensive health insurance fund (AS 21.55.430) to the division of insurance for the reinsurance program under AS 21.55 for fiscal years 2018 - 2023. Section 27(i) appropriates the amount of federal receipts received for the reinsurance program under AS 21.55 during the 2018 fiscal year to the division of insurance for the reinsurance program for fiscal years 2018 - 2023. Sections 27(h) and (i) are contingent on federal approval of the state's section 1332 innovation

waiver under P.L. 111-148. *See* sec. 49(b). We do not see a legal concern with this contingency.

Section 28(a) appropriates the dividend declared by the Alaska Student Loan Corporation board of directors for fiscal year 2018 to the general fund. Section 28(b) reappropriates the unexpended and unobligated balance of a prior appropriation for a road project to the public education fund (AS 14.17.300). This is a fiscal year 2017 appropriation.

Section 29(a) appropriates an amount equal to the dive fishery management assessments collected in fiscal year 2017 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 29(b) appropriates the remaining balance of the sport fishing enterprise account (AS 16.05.130(e)) in the fish and game fund, but not to exceed \$500,000 and following the appropriation made in sec. 39(q) of the bill, to the Department of Fish and Game for sport fish operations.

Section 30(a) reappropriates the unexpended and unobligated balances, not to exceed \$500,000, of any appropriations to the Department of Health and Social Services that will lapse at the end of fiscal year 2017 to the public assistance field services for fiscal year 2018. Section 30(b) appropriates \$1,693,900 from the general fund for the Nome Youth Facility for fiscal year 2018. Section 30(b) is contingent on the department not deciding by June 1, 2017 to close the facility. *See* sec. 49(c). We do not see a legal concern with this contingency.

Section 31(a) - (c) of the bill would appropriate amounts necessary to make all benefit payments from the workers' compensation benefits guaranty fund (AS 23.30.082), the second injury fund (AS 23.30.040(a)), and the fishermen's fund (AS 23.35.060) in fiscal year 2018 if the amounts appropriated in sec. 1 of the bill are not sufficient. Section 31(d) would appropriate surplus contributions received by the Alaska Vocational Technical Center (AVTEC) to AVTEC.

Section 32 would appropriate amounts in the Alaska veterans' memorial endowment fund (AS 37.14.700) to the Department of Military and Veterans' Affairs for the appropriate use of these funds as the provided in AS 37.14.730(b).

Section 33(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 33(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 33(e) would appropriate from the general fund up to \$1,125,000 to the Department of Natural Resources for fire

suppression if any portion of the federal receipts appropriated in section 33(d) of the bill are not received.

Section 34(a) provides for an appropriation from the general fund to the Department of Transportation and Public Facilities if the balance of the special aviation fuel account (AS 43.40.010(e)) is insufficient to fully fund the appropriations in sec. 1 from that account for the same purposes. Similarly, sec. 34(b) provides for an appropriation from the general fund to the Department of Transportation and Public Facilities if the balance of the transportation maintenance fund (AS 43.40.045) is insufficient to fully fund the appropriations in sec. 1 from that fund for the same purposes. Section 34(b) is contingent on the passage by the legislature during the first regular session and enactment into law on or before July 1, 2017, of a version of HB 60 or similar bill increasing motor fuel and aviation fuel taxes at levels less than those proposed by the governor. *See* section 49(d). This appears to be a valid contingency and the contingency has not been met as of the date of this letter as such a bill has not been passed. Section 34(c) provides that the amounts appropriated in sec. 1 from the transportation maintenance fund, estimated to be \$0, are appropriated for the same purposes from the general fund to the Department of Transportation and Public Facilities. Section 34(c) is contingent on the nonpassage by the Alaska State Legislature during the first regular session and enactment into law on or before July 1, 2017, of a version of HB 60 or similar bill increasing motor fuel and aviation fuel taxes at levels less than those proposed by the governor. *See* sec. 49(e). This appears to be a valid contingency and the contingency likely has been met because as of the date of this letter neither HB 60 or a similar bill has not been passed and enacted into law.

Section 35 appropriates certain amounts to the Office of the Governor, division of elections, from the general fund for costs of conducting the statewide primary and general elections for fiscal years 2018 and 2019.

Section 36 would appropriate retained fees and bankcard service fees.

Section 37(a) through (l) and sec. 37(n) 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 37(m) of the bill would appropriate from the general fund the amount necessary for state aid for costs of school construction under AS 14.11.100, estimated to be \$115,956,587, after an appropriation of \$18,600,000 from the School Fund (AS 43.50.140). The School Fund is a permissible 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 1955.¹¹ Because the School Fund existed when the

¹¹ *See* sec. 16, ch. 187, SLA 1955.

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 38(a), (b), and (c) 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, and commercial fisheries test fishing operations receipts.

Section 39 provides for capitalization of various funds, including the Alaska children's trust grant account, the disaster relief fund, Alaska municipal bond bank authority reserve fund, the oil and gas tax credit fund, the public education fund, the regional educational attendance area and small municipal school district school fund, the peace officer and firefighter survivors' fund, the Alaska clean water fund, the Alaska drinking water fund, Alaska fish and game bond redemption fund, the crime victim compensation fund, and the election fund. The appropriation to the oil and gas tax credit fund includes language expressing the legislature's intent to end the oil and gas tax credit purchase program during fiscal year 2018 and not to purchase transferable tax credit certificates for expenditures incurred on or after January 1, 2018. The appropriation to the peace officer and firefighter survivors' fund in section 39(j) is contingent on the legislature passing and enacting into law of a version of HB 23 or similar legislation. *See* section 49(g). This appears to be a valid contingency and the contingency has been met as HB 23 has been enacted into law.

Section 40(a) appropriates 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)(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 1978.¹² Section 40(b) appropriates the loan origination fees collected by the Alaska Commission on Postsecondary Education. Section 40(c) appropriates \$30,000,000 from the general fund to the Alaska marine highway system fund (AS 19.65.060), and sec. 40(d) appropriates the unexpended and unobligated balance of the community quota entity revolving loan fund to the marine highway system fund. The appropriations in sec. 40(c) and (d) are for fiscal year 2017. We note that the appropriation in sec. 40(c) is subject to a contingency that could reduce the appropriation if the amount appropriated in sec. 35(c), ch. 3, 4SSLA 2016 (\$100,000,000 withdrawal from the budget reserve fund) is insufficient to cover supplemental appropriations from the general fund for fiscal year 2017. Section 40(e) appropriates an amount equal to 50 percent of punitive damages deposited into the general fund, estimated to be \$1,000, to the civil legal services fund.

¹² ch. 182, SLA 1978.

Section 40(f) and (g) makes appropriations to the oil and hazardous substance release prevention account and the oil and hazardous substance release response account. Section 40(h) appropriates vaccine assessment program receipts collected under AS 18.09.220 to the vaccine assessment account (AS 18.09.230). Section 40(i) would appropriate the balance of the Alaska clean water administrative income account (AS 46.03.034(a)(2)) on June 30, 2017, estimated to be \$646,154, to the Alaska clean water administrative operating account (AS 46.03.034(a)(1)). Section 40(j) would appropriate the balance of the Alaska drinking water administrative income account (AS 46.03.038(a)(2)) on June 30, 2017, estimated to be \$582,070, to the Alaska drinking water administrative operating account (AS 46.03.038(a)(1)).

Section 40(k) would appropriate an amount equal to the interest earned on amounts in the aviation fuel tax account (AS 43.40.010(e)) to the aviation fuel tax account. Section 40(l) appropriates the following fees, estimated to total \$960,500, 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. Section 40(m) appropriates the balance of the mine reclamation trust fund income account (AS 37.14.800(a)) and money deposited in that account during the 2018 fiscal year, estimated to be \$50,000, to the mine reclamation trust fund operating account (AS 37.14.800(c)).

Section 41 appropriates funds to state retirement systems. Specifically, sec. 41(a) appropriates \$64,005,100 from the general fund and \$8,565,900 from the Alaska higher education investment fund (AS 37.14.750) to the Department of Administration for deposit in the defined benefit plan account of the public employees' retirement system as an additional contribution under AS 39.35.280. Section 41(b) appropriates \$91,322,900 from the general fund and \$20,434,100 from the Alaska higher education investment fund (AS 37.14.750) to the Department of Administration for deposit in the defined benefit plan account in the teachers' retirement system as an additional contribution under AS 14.25.085. Section 41(c) is a statement of legislative intent that the legislature not include funding from the Alaska higher education investment fund in the fiscal year 2019 budget for state retirement assistance. Section 41(d) appropriates \$835,495 from the general fund to the Department of Military and Veterans' Affairs for deposit in the Alaska National Guard and Alaska Naval Militia retirement system under AS 26.05.226. Section 41(e) appropriates \$71,736 from the general fund to the Department of Military and Veterans' Affairs as an additional state contribution for the purpose of funding past service liability for the Alaska National Guard and Alaska Naval Militia retirement system under AS 26.05.226. Section 41(f) appropriates \$1,881,400 from the general fund to the Department of Administration for the payment of benefits to eligible members and survivors of eligible members earned under the elected public officers' retirement system. Section 41(g) appropriates the amount necessary, estimated to be \$0, from the general

fund to the Department of Administration to pay benefits to eligible members and survivors of eligible members earned under the Unlicensed Vessel Personnel Annuity Retirement Plan. Section 41(h) appropriates \$5,385,000 from the general fund to the Department of Administration for deposit in the defined benefit plan account in the judicial retirement system.

Section 42(a) provides that appropriations in sec. 1 of the bill include amounts for salary and benefit adjustments for public officials, officers, and employees in the executive branch, court system, the legislature, and for legislators and to implement certain state collective bargaining agreements. Section 42(b) provides 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 certain collective bargaining agreements. Section 42(c) provides that the appropriations for employees covered by collective bargaining agreements described in sec. 42(a) would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit. Section 42(d) provides that the appropriations for employees covered by collective bargaining agreements described in sec. 42(b) 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.

We note that four state bargaining units referred to in sec. 42(a) (Inlandboatmen's Union of the Pacific; Marine Engineers Beneficial Association; International Organization of Masters, Mates, and Pilots; and Teachers Education Association of Mt. Edgecumbe) have not entered into a collective bargaining agreement for fiscal year 2018. We understand that the bargaining units may have been included in sec. 42(a) in order to address possible health care cost increases for bargaining units during fiscal year 2018. But, we also note that sec. 1 of the bill does not include funding for any salary adjustments for state bargaining units that had not entered into an agreement covering fiscal year 2018 at the time the bill passed the legislature. Of course, an agreement must be entered into and have known financial terms in order to be the subject of a valid appropriation. *See Alaska Leg. Council v. Knowles*, 86 P.3d 891, 898 (Alaska 2004) ("an act must authorize the expenditure of an ascertainable sum of money in order to qualify as an appropriation."); *Univ. of Alaska Classified Employees Ass'n v. Univ. of Alaska*, 988 P.2d 105, 108 (Alaska 1999) ("the monetary terms [of a collective bargaining agreement] do not become effective unless and until the legislature specifically funds them.") Thus, the state collective bargaining agreements funded under the bill are the agreements that had been entered into at the time the legislature passed the bill.

Section 43(a) - (d) appropriates the proceeds of certain taxes and fees for refund to local governments.

Section 44 reduces the appropriation to each department under the bill to reverse negative account balances in amounts of \$1,000 or less.

Section 45 provides for three appropriations from the constitutional budget reserve fund (CBR) which is established in art. IX, sec. 17. Section 45(a) provides that deposits in the CBR for fiscal year 2017 that were made from subfunds and accounts by operation of art. IX, sec. 17(d) of the Alaska Constitution to repay prior appropriations from the CBR are appropriated from the CBR back to the subfunds and accounts from which they were transferred. Section 45(b) provides for appropriations from the CBR to the general fund for fiscal year 2018 if the unrestricted state revenue available for appropriation is insufficient to cover the general fund appropriations for fiscal year 2018 that are made in this bill and that are made in the mental health budget bill, CCS HB 59, and that are made in SB 23 or a similar bill. Section 45(c) provides that if the appropriation in sec. 45(b) are insufficient to cover the general fund appropriations in fiscal year 2018, the amount necessary to balance revenue and general fund appropriations, not to exceed \$200,000,000, is appropriated to the general fund from the CBR. Section 45(d) provides that the unrestricted interest earned on general fund balances in fiscal year 2017 and 2018 are appropriated to the budget reserve fund in order to compensate the fund for any lost earnings caused by the use of the fund to permit expenditure of operating and capital appropriations in fiscal years 2017 and 2018 in anticipation of receiving unrestricted general fund revenue. Section 45(e) provides that the appropriations under sec. 45 (a), (b), and (c) were made under art. IX, sec. 17(c) of the Alaska Constitution. These appropriations received the required three-fourths vote of the membership of each house and thus are valid under this constitutional provision. Accordingly, we see no legal concerns with the CBR appropriations.

Section 46 repeals the appropriations in sec. 2, ch. 3, 4SSLA 2016.

Section 47(a) provides that certain appropriations in the bill are for capital projects and lapse under AS 37.25.020. Section 47(b) and (c) provide that certain appropriations are for capitalization of funds and do not lapse. Section 47(d) provides that a grant awarded in specified sections of the bill to a named recipient under AS 37.05.316 is for a capital project and does not lapse under AS 37.05.316 unless designated for a specific fiscal year.

Section 48 provides for retroactive effect to June 29, 2017, June 30, 2017, and July 1, 2017 for certain appropriations in the bill.

Section 49(a) and (d) - (g) makes certain appropriations contingent on passage by the legislature of legislation or the failure of the legislature to pass legislation, sec. 49(b) makes a particular appropriation contingent on the state obtaining a waiver from the federal government under P.L. 111-148 (Patient Protection and Affordable Care Act), and sec. 49(c) makes an appropriation contingent on a facility not being closed. The sec.

49(a) contingency would make the appropriation to the technical and vocational educational program (TVEP) contingent on the passage and enactment of a bill extending a program that allocates a portion of employment security contributions collected from employees' wages to specified institutions that offer vocational training. The legislature passed such a bill, SCS HB 141(FIN), during the first regular session on May 10, 2017, and the bill is awaiting transmittal to the governor. HB 141 has an immediate effective date and if it takes effect after June 30, 2017, it is retroactive to June 30, 2017. Thus, as long as HB 141 is enacted into law, the contingency specified in sec. 49(a) of the budget bill will be satisfied. We have addressed the other contingent appropriations above in reference to the particular appropriations at issue.

Sections 50 - 53 set out the effective dates of the various sections of the bill.

VII. 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,

JAHNA LINDEMUTH
ATTORNEY GENERAL

By:

William E. Milks
Assistant Attorney General

JL/WEM/ads