



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

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May 25, 2018

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

Re: HB 286 – Fiscal Year 2019 Operating
Budget (CCS HB 286)
Our file: 2018200460

Dear Governor Walker:

At the request of your legislative director, we have reviewed CCS HB 286, making appropriations for the operating and loan program expenses of state government and for certain programs, capitalizing funds; amending appropriations; making supplemental appropriations; and making appropriations under art. IX, section 17(c) of the Alaska Constitution. This bill is known as the fiscal year 2019 operating budget, beginning on July 1, 2018, and ending on June 30, 2019. 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 not a constitutional concern with inclusion of the negative appropriations in a budget bill.¹

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

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 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 has also 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.

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.

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

a. Department of Administration.

Section 1 of the bill includes an expression of legislative intent regarding the appropriations to the department. Specifically, the bill states that Alaska is facing an increasing crisis regarding the retention and recruitment of Alaska State Troopers and expresses the legislature's intent that the department review and adjust contracts with the State Troopers in order to ensure successful recruitment and retention of Troopers and the public safety of Alaskans. As set out above, we do not believe that statements of legislative intent are generally enforceable, but the department may comply as a matter of comity. We note that the appropriateness of adjusting collective bargaining agreements previously entered into by the state is a matter for the executive branch as it is assigned the responsibility to administer and negotiate collective bargaining agreements. *See* AS 23.40.215 (the department of administration negotiates collective bargaining agreements on behalf of the state and submits the monetary terms of such agreements for legislative funding).

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

Section 1 of the bill includes three related expressions of legislative intent regarding the appropriation of program receipts from the licensing and application fees related to the regulation of marijuana. The legislature expresses its intent that the July 1, 2019 appropriation of unexpended and unobligated program receipts relating to marijuana licensing and application fees be limited to the cost of marijuana regulation for the 2019 fiscal year and that remaining unexpended and unobligated balance of such program receipts on June 30, 2019, lapse into the general fund. This expression of legislative intent concerns how a future legislature might appropriate funds for fiscal year 2020 and thus is not enforceable under art. IX, sec. 13, Constitution of the State of Alaska. The legislature also expresses its intent that licensing and application fees be maintained at a level that allows for \$4,646,100 to lapse into the general fund at which time the fees may be adjusted to cover anticipated annual operating costs for marijuana regulation. The legislature further expresses its intent that by January 1, 2020, the Alcohol and Marijuana Control Office report to the House and Senate Finance Committee co-chairs and the Legislative Finance Division the amount of program receipts from the licensing and application fees related to marijuana regulation that lapsed into the general fund. As set out above, we do not believe the statements of legislative intent are enforceable, but the Alcohol and Marijuana Control Office may comply as a matter of comity. We have also 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.

Similarly, in the appropriation for the Regulatory Commission of Alaska ("RCA") the legislature expresses its intent that the RCA provide a map of broadband coverage in the state using GIS data and technology and that the RCA deliver a report on the mapping efforts and results to the Speaker of the House, the President of the Senate, the co-chairs of the House and Senate Finance Committees and the Legislative Finance Division by January 1, 2019. Additionally, in the appropriation for Community and Regional Affairs the legislature expresses its intent that the department submit a written report to the co-chairs of the House and Senate Finance Committees, and the Legislative Finance Division by October 1, 2018, regarding the National Flood Insurance Program. As noted above, we do not believe the statements of legislative intent or reporting requirements that are not set out in statute are enforceable although the department may 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 take advantage of cost savings through tiered pricing as provided in CRC contracts by maximizing prisoner placement into these facilities while prioritizing public safety; prioritize funding and implement solutions for the disparity in Alaska Native incarceration rates that may include transitional housing and diversion programs; and prioritize expanding the electronic monitoring program in Bethel. 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.

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 Education and Early Development.

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.

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

f. Department of Fish and Game.

The legislature included one expression of legislative intent in the appropriation of funds to the Department of Fish and Game. The legislature expresses its intent that the department explore whether it would be more efficient than current practice to have one point of contact for project review and permitting. As set out above, the statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity.

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 of health and social services may transfer up to \$20,000,000 between all department appropriations except that no transfer may be made from the Medicaid Services appropriation. 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.

The legislature also included numerous expressions of legislative intent regarding appropriations to the department including: (1) the department review fund sources for all allocations and reduce excess receipt authority if the department believes the collection of receipts is not achievable; (2) the department submit a report of transfers between appropriations to the legislative finance division; (3) the operating budgets for fiscal years 2020 and 2021 be prepared to reflect actual or anticipated transfers between appropriations for fiscal year 2019; (4) the department submit a report to the House and Senate Finance Committee co-chairs and to the Legislative Finance Division on November 15, 2019, and November 15, 2020, regarding the use and disbursement of federal disproportionate share hospital (DSH) dollars by community and regional hospitals; the annual amount of DHS funds that the state is not claiming; and future plans for claiming such funds including hospital possibly matching the funds in an effort to improve patient outcomes and outcomes providers and the public; (5) the legislature intends to fully fund the senior benefits payment program upon reauthorization during the 2018 legislative session; (6) that the division of public assistance pursue opportunities to develop a single on-line application for public assistance programs including Medicaid, Adult Public Assistance, and the Supplemental Nutrition and Assistance Program by working with Code for America and that a report on this effort be made to the legislature

on November 15, 2018 and 2019; (7) that the department re-examine models of service delivery to ensure that senior and disabled eligible populations receive appropriate services regardless of location in Alaska and report to the House and Senate Finance Committees and the Legislative Finance Division on the status of the services by February 15, 2019; (8) that the state expeditiously proceed to establish companion services under section 1915(c) of the Social Security Act in order to complement and support services provided by Medicare/Medicaid waiver programs and report to the House and Senate Finance Committees and the legislative finance division on the status of the services by January 31, 2019; (9) that the level of funding for day habilitation services be sufficient to provide up to 624 hours annually per recipient and that the request for additional day habilitation over that number may be approved in order to avoid institutional care or for the safety of Medicaid recipients; (10) that the department work with tribal health organizations for care-coordination agreements with non-tribal providers in order to increase valid referrals for Indian Health Service eligible recipients so as to maximize 100 percent FMAP and that the department outline clearly requirements for 100 percent FMAP services provided to an IHS beneficiary receiving Medicaid benefits in order to reduce general fund spending by approximately \$30 million dollars; (11) that the department work with the Legislative Finance Division to prepare a template for reports to the House and Senate Finance Committee co-chairs and the Legislative Finance Division related to actual Medicaid expenditures and projected expenditures for fiscal year 2019 on January 15, March 15, and June 15, and that the template provide fiscal year 2020 projections; and (12) that the department increase significantly its efforts to reduce the state cost for Medicaid services by managing Medicaid utilization to index with the national average cost per enrollee while taking into consideration a multiplier to the national average to account for reasonably higher cost in Alaska for health care.

As set out above, the statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity. Additionally, to the extent that reporting requirements are not otherwise set out in statute, the department may wish to 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 and the Alaska Aerospace Corporation develop options for the state to realize a return from investment in the corporation and the associated state assets. The department should submit a preliminary summary identifying options and possible statutory revisions to the House and Senate Finance Committees and the Legislative Finance Division by September 30, 2018, and a final summary to the same committees by December 1, 2018. 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.

The legislature included several expressions of legislative intent in the appropriations to the Department of Public Safety including that (1) the department disburse funding for the village public safety officer (VPSO) program to grant recipients who are encouraged to use the funding for recruitment and retention of VPSOs including consideration of salary increases for VPSOs and also to use the funds for other purposes such as operational costs to better utilize filled positions or housing multiple VPSOs in a single community if that is judged to be more beneficial to public safety; (2) that \$500,000 be used for travel to rural communities by VPSOs or Alaska State Troopers; (3) that the department support VPSO contractors' efforts to provide public safety services to the maximum geographic area surrounding the duty station; (4) that the VPSO rural firefighter specialist training remain in Sitka; (5) that the Alaska Wing Civil Air Patrol actively search for non-state funding for its operations; and (6) that the department actively seek to rent space in the Alaska Scientific Crime Detection Laboratory to state agencies, municipalities, and federal agencies. As set out above, the expressions of

legislative intent are not enforceable, but the department may comply 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 two expressions of legislative intent including that (1) the department develop criteria to identify the types of lighting needed to decrease traffic safety concerns and to identify critical locations and work with power utilities to mitigate the cost of operation and installation; (2) the federal Transportation Alternatives Program funding eligible for transfer to other federal aid programs not be transferred from the Alternatives Program unless the state would be in jeopardy of losing funding. 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 three statements of legislative intent: (1) that the University continue the Strategic Pathways goals of taking advantage of each campus' strengths, eliminate under resourced or utilized programs, reduce redundancies, expand student access to programs throughout the system, streamline administrative processes and make maximum utilization of facilities, and establish a stronger, more focused University system; (2) that the University maximize the teaching and research capacity of the University workforce consistent with collective bargaining agreements and enable the University to serve most students at current staffing levels; and (3) that the University maintain and extend its position as the leader in Arctic related research and increase Alaska economic development by providing the state with a skilled workforce as well as increase degree completions.

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 appropriation 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.⁷

q. Executive branch-wide appropriations

Section 1 includes an executive branch wide unallocated reduction of \$2,328,600, with a purpose identified as state-wide efficiency efforts. Section 1, p. 39, lines 9 - 10. As noted above, sec. 1 of the bill also provides that: "[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 discussed in some detail the issue of unallocated reductions that purport to affect more than one appropriation in an operating budget.⁸ We noted that this approach may raise constitutional questions, but did not recommend any vetoes because of these possible questions. We adhere to our prior discussion and advice. We are available to provide further assistance and analysis regarding this provision.

r. Alaska Court System.

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

s. Alaska Legislature

The legislature included one statement of intent in the appropriations to the legislature, which is that Legislative Council adopt a flat per diem rate for the first session of the 31st Alaska Legislature.

IV. New Legislation and funding source.

Section 2 of the bill provides contingent appropriations for several 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.

⁷ Art. VII, secs. 2-3.

⁸ 1999 Inf. Op. Att'y Gen. 167 (June 28; 883-99-0070).

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. Sections 5 - 35.

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

Section 5(a) states that the amounts appropriated by this Act are the full amounts to be appropriated for the identified purposes for fiscal year 2019. Section 5(b) states that the funds appropriated by this Act 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.

Sections 5(c) expresses legislative intent that the Department of Revenue use the constitutional budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska) as authorized by the legislature and necessary for general cash flows in order to permit the Alaska Permanent Fund Corporation to maximize investment returns while also making transfers during the fiscal year from the earnings reserve account to the general fund. This provision recognizes that the bill includes appropriations from the earnings reserve account to the general fund and seeks to accommodate the ability to maximize investment returns for the earnings reserve account while appropriating monies from the fund by utilizing the budget reserve fund for potential cash flow requirements during the fiscal year. Similarly, sec. 5(d) expresses legislative intent that the Department of Revenue and the Alaska Permanent Fund Corporation work together to schedule the timing of payments from the earnings reserve account to the general fund. This provision again recognizes that the bill provides for appropriations from the earnings reserve account to the general fund and provides legislative intent to support an effort by the Department of Revenue and the Alaska Permanent Fund Corporation to work cooperatively to time the movement of money to the general fund in a manner that will maximize to the extent possible investment options for the earnings reserve account.

Section 6 appropriates to the Alaska Aerospace Corporation all federal and other corporate receipts received during the 2019 fiscal year in excess of the amounts appropriated to the Alaska Aerospace Corporation in sec. 1 of the bill.

Section 7 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.

Section 8 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 2019.

Section 9(a) provides for an appropriation to the principal of the permanent fund. This concerns the requirement under the Alaska Constitution that a minimum of 25 percent of certain oil and gas revenue be deposited in the permanent fund. *See* Art. IX, sec. 15, Constitution of the State of Alaska. Although the appropriation refers to AS 37.13.010(a)(1) but not AS 37.13.010(a)(2), the Alaska Constitution establishes a mandatory minimum deposit to the permanent fund principal. Additionally, sec. 9(b) provides for an appropriation, estimated to be \$28,000,000, to the Alaska capital income fund (AS 37.05.565) from the sources set out in AS 37.13.145(d).

Section 9(c) provides for an appropriation equal to 5.25 percent of the average market value of the permanent fund for the first five of the preceding six fiscal years, estimated to be \$2,722,842,518, including the earnings reserve account but excluding the portion of the principal attributed to the settlement of the State v. Amerada Hess case, to the general fund. This appropriation is consistent with the new statutory framework for expenditure of permanent fund income adopted by the legislature through the enactment of CCS SB 26.

Section 9(d) provides for an appropriation necessary for the payment of a permanent fund dividend of \$1,600, which is estimated to be \$1,023,487,200, from the general fund to the dividend fund (AS 43.23.045(a)). Section 9(e) provides for an appropriation, after the appropriations in subsections (c) and (d), from the general fund to the principal of the permanent fund of an amount calculated under AS 37.13.145(c) and estimated to be \$942,000,000 to offset the effect of inflation on the principal of the permanent fund for fiscal year 2019.

Section 10(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 37.05.510(a). Section 10(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 10(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 2019 fiscal year. Section 10(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. Section 10(f) appropriates an amount not to exceed \$500,000 from the general fund to the department if the amount necessary to cover plan sponsor costs including actuarial costs for retirement system benefit payment calculations exceeds the amount appropriated in sec. 1 after all allowable payments from retirement system fund sources. Finally, Section 10(g) would appropriate the amount necessary to cover actual costs associated with bills introduced by the legislature from the general fund to the department.

Section 11 makes appropriations related to the Department of Commerce, Community, and Economic Development. Section 11(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 11(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. Sections 11(c) would appropriate from federal receipts for federal revenue sharing programs, if the amount appropriated to make payments in lieu of taxes for cities in the unorganized borough under AS 44.33.020(a)(20) in sec. 1 of the bill is insufficient. Section 11(d) makes an appropriation related to the salmon enhancement tax to qualified regional associations. Section 11(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 11(f) makes an appropriation of up to \$32,355,000 from the power cost equalization endowment fund (AS 42.45.070(a)) for the power cost equalization program for fiscal year 2019. The appropriated amount may not to exceed the amount determined under AS 42.45.085(a) five percent of the prior three fiscal-year monthly average market value of the fund as determined on July 1, 2018. Section 11(g) makes an appropriation of federal receipts received for the reinsurance program under AS 21.55 to the division of insurance for the reinsurance program under AS 21.55 for fiscal years 2019 - 2023. Section 11(h) makes an appropriation from the civil legal services fund (AS 37.05.590) to the department for a grant under AS 37.05.016 for fiscal year 2019 to the Alaska Legal Services Corporation.

Section 12(a) appropriates an amount equal to the dive fishery management assessments collected in fiscal year 2018 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 12(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. 23(r) of the bill, to the Department of Fish and Game for sport fish operations.

Section 13(a) appropriates \$7,000,000 from the comprehensive health insurance fund (AS 21.55.430) to the Department of Health and Social Services, behavioral health,

for hospital based mental health care for fiscal years 2019 and 2020. Section 13(b) appropriates \$7,000,000 from federal receipts to the Department of Health and Social Services, Medicaid services, health care Medicaid services, for hospital based mental health care for fiscal years 2019 and 2020.

Section 14(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 14(d) would appropriate surplus contributions received by the Alaska Vocational Technical Center (AVTEC) to AVTEC.

Section 15 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 provided in AS 37.14.730(b).

Section 16(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 16(c) of the bill would appropriate the amount received in a settlement of a bond claim, estimated to be \$50,000, to the Department of Natural Resources to reclaim state, federal, or private land affected by a use covered by the bond. Section 16(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 16(d) of the bill are not received.

Section 17 would appropriate bond proceeds from the Alaska Tax Credit Certificate Bond Corporation reserve fund to the commissioner of revenue for purchases of tax credit certificates under AS 43.55.028, as amended in HB 331. The effective date for the appropriation in this section is July 1, 2018. Section 33(b) of the bill provides that the appropriation in this subsection is contingent on enactment of HB 331. The legislature passed HB 331 and thus, upon signing of the legislation by the governor the contingency would be met.

Section 18 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 2019 and 2020.

Section 19 appropriates \$499,500 to the University of Alaska from the Alaska comprehensive health insurance fund (AS 21.55.430) for the purpose of conducting vitamin D research for fiscal years 2019 and 2020.

Section 20 appropriates retained fees and bankcard service fees.

Section 21(a) through (l) and (n) of the bill appropriates amounts necessary for debt service, including arbitrage rebate payments, on a range of notes, certificates of participation, and bonds. Section 21(m) of the bill would appropriate from the general fund the amount necessary, estimated to be \$68,257,300, for state aid for costs of school construction under AS 14.11.100, estimated to be \$108,057,300, after an appropriation of \$18,000,000 from the Alaska comprehensive health insurance fund (AS 21.55.430) and \$21,800,000 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 1955.⁹ 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, Constitution of the State of Alaska).

Section 22(a) amends sec. 38(a), ch. 1, SSSLA 2017 (the 2018 operating budget bill) to provide that designated program receipts received by the Alaska Gasline Development Corporation that exceed the amounts appropriated in the 2018 operating budget are excluded from the list of other federal and designated program receipts that may be appropriated conditioned on compliance with AS 37.07.080(h) even if the amounts exceed the amounts appropriated in the 2018 operating budget. Section 22(b) - (d) appropriates certain federal receipts, designated program receipts, information services fund program receipts, Exxon Valdez oil spill trust receipts, Alaska Housing Finance Corporation receipts, Alaska marine highway receipts, University of Alaska receipts, and commercial fisheries test fishing operations receipts.

Section 23 provides for capitalization of various funds, including the Alaska children's trust grant account, the disaster relief fund, the Alaska municipal bond bank authority reserve fund, the community assistance fund, the regional educational attendance area and small municipal school district school fund, the oil and gas tax credit fund, the peace officer and firefighter survivors' fund, the liquefied natural gas project fund, the derelict vessel prevention program fund, the Alaska clean water fund, the Alaska drinking water fund, the crime victim compensation fund, the Alaska fish and game revenue bond redemption fund, and the election fund. Section 23(g) appropriates \$30,000,000 from the power cost equalization endowment fund (AS 42.45.070(a)) to the community assistance fund (AS 29.60.850).

Section 23(f) relates to appropriations to the oil and gas tax credit fund in AS 43.55.028. The specific amount appropriated would depend on (1) the amount of

⁹ See sec. 16, ch. 187, SLA 1955.

requested purchases from the fund, and (2) whether or not any bonds of the Alaska Tax Credit Certificate Bond Corporation, created in HB 331, are issued and sold during the fiscal year. If bonds are issued and sold then the appropriation to the fund would be the amount necessary to purchase requested tax credit certificates remaining for purchase in the fund after the limitations in AS 43.55.028(e), as amended in HB 331, are applied. HB 331 amended AS 43.55.028(e) to limit the authority of the Department of Revenue when making purchases from the oil and gas tax credit fund so that a company requesting purchase from the fund, instead of from bond proceeds, would not receive a windfall in purchase amount for the year over a company that chose instead to request purchase from bond proceeds. If bonds are not issued and sold this fiscal year then the appropriation would be the amount necessary to purchase requested tax credit certificates. Regardless of the status of bonds, the appropriation would not exceed \$100,000,000. Any amount of this appropriation not spent on purchases would remain in the oil and gas tax credit fund. It would not lapse. The effective date for the appropriation in this subsection is July 1, 2018. Section 33(c) of the bill provides that the appropriation in this subsection is contingent on enactment of HB 331. The legislature passed HB 331 and thus, upon signing of the legislation by the governor, the contingency would be met.

Section 24(a) appropriates federal funds received under 42 U.S.C. 6506a(l) or former 42 U.S.C. 6508 and not appropriated for grants under AS 37.05.530 to the Alaska permanent fund (art. IX, sec. 15, Constitution of the State of Alaska) and to the public school trust fund (AS 37.14.110(a)), according to AS 37.05.530(g)(1) - (3). 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 1978.¹⁰ Section 24(b) appropriates the loan origination fees collected by the Alaska Commission on Postsecondary Education. Section 24(c) appropriates an amount equal to 50 percent of punitive damages deposited into the general fund, estimated to be \$1000, to the civil legal services fund.

Section 24(d) and (e) makes appropriations to the oil and hazardous substance release prevention account and the oil and hazardous substance release response account. Section 24(f) appropriates \$14,000,000 from the power cost equalization endowment fund (AS 42.45.070(a)) to the renewable energy grant fund (AS 42.45.045).¹¹ Section

¹⁰ ch. 182, SLA 1978.

¹¹ We note that the appropriations made in Sections 23(g) and 24(f) would implement AS 42.45.085(d); if earnings from the power cost equalization endowment fund exceed the amount appropriated for the power cost equalization program and for reimbursing costs of administering the fund, then 70 percent of the excess earnings may be appropriated for other purposes. The first \$30,000,000 of excess earnings may be appropriated to a community revenue sharing fund or to a community assistance fund. As

24(g) appropriates vaccine assessment program receipts collected under AS 18.09.220 to the vaccine assessment account (AS 18.09.230). Section 24(h) appropriates the balance of the Alaska clean water administrative income account (AS 46.03.034(a)(2)) on June 30, 2018, estimated to be \$827,630, to the Alaska clean water administrative operating account (AS 46.03.034(a)(1)). Section 24(i) appropriates the balance of the Alaska drinking water administrative income account (AS 46.03.038(a)(2)) on June 30, 2018, estimated to be \$603,560, to the Alaska drinking water administrative operating account (AS 46.03.038(a)(1)).

Section 24(j) would appropriate an amount equal to the interest earned on amounts in the special aviation fuel tax account (AS 43.40.010(e)) to the special aviation fuel tax account. Section 24(k) appropriates the following fees, estimated to total \$1,032,500, 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 24(l) appropriates the balance of the mine reclamation trust fund income account (AS 37.14.800(a)) and money deposited in that account during the 2019 fiscal year, estimated to be \$30,000, to the mine reclamation trust fund operating account (AS 37.14.800(a)).

Section 25 appropriates funds to state retirement systems. Specifically, sec. 25(a) appropriates \$148,000 for fiscal year 2018 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, and sec. 25(b) appropriates \$135,219,000 for fiscal year 2019 from the general fund 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 25(c) appropriates \$128,174,000 from the general fund 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 for fiscal year 2019. Section 25(d) appropriates \$4,909,000 from the general fund to the Department of Administration for deposit in the defined benefit plan account in the judicial retirement system. Section 25(e) appropriates \$851,686 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 25(f) appropriates \$1,806,400 from the general fund to the Department of Administration to pay benefit payments to eligible members and survivors of eligible members under the

set forth above, Section 23(g) of the bill would make a \$30,000,000 appropriation to the community assistance fund. Up to \$25,000,000 of the remaining excess earnings may be appropriated to the renewable energy grant fund or for other energy related purposes. As noted above, Section 24(f) would make an appropriation of \$14,000,000 to the renewable energy grant fund. We see no legal problems with these appropriations.

elected public officer's retirement system. Section 25(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 25(h) expresses the legislature's intent that the Alaska Retirement Management Board consider the funding ratio when recommending an amount for deposit in the Alaska National Guard and Alaska Naval Militia retirement system defined plan account.

Section 26 provides that appropriations in sec. 1 of the bill include amounts for state employee salaries and benefits. Employee salary and benefits are established by direct statutory authority such as AS 39.27.011 for certain classified employees, partially exempt employees, and legislative employees; separate statutory authority for certain exempt service employees, Alaska Court system employees, legislators and other public officials; or through collective bargaining agreements authorized under AS 23.40.070 - 23.40.260 and funded by the legislature pursuant to AS 23.40.215. Section 26(a) provides that the appropriations to fund employee salary and benefits including any adjustments are included in the appropriations to agencies in sec. 1. Section 26(a) further provides that the appropriations in sec. 1 include amounts to implement monetary terms for ongoing collective bargaining agreements for the following collective bargaining units: general government unit, Alaska Vocational Technical Center Teachers Association unit; confidential employees unit; public safety employees unit; labor, trades and crafts bargaining unit; and the supervisory bargaining unit.

Section 26(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 26(c) provides that the appropriations for employees covered by collective bargaining agreements described in subsection (a) would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit. Section 26(d) provides that the appropriations for employees covered by collective bargaining agreements described in subsection (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.

Section 27(a) - (d) appropriates the proceeds of certain taxes and fees for refund to local governments.

Section 28 reduces the appropriation to each department under the bill to reverse negative account balances in amounts of \$1,000 or less.

Section 29 provides for appropriations from the constitutional budget reserve fund (CBR) which is established in art. IX, sec. 17, Constitution of the State of Alaska. Section 29(a) provides that deposits in the CBR for fiscal year 2018 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 29(b) provides for appropriations from the CBR to the general fund for fiscal year 2019, if after the appropriation from the earnings reserve account to general fund under section 9(c), the unrestricted state revenue available for appropriation is insufficient to cover the general fund appropriations for fiscal year 2019 that are made in this bill, the education appropriations bill (HB 287), the mental health budget bill (HB 285), and the capital budget bill (SB 142), or similar appropriation bills.

Section 29(c) provides that if after the appropriation in sec. 29(b), the unrestricted state revenue available for appropriation is insufficient to cover the general fund appropriations that take effect in fiscal year 2019, the amount necessary to balance revenue and general fund appropriations, not to exceed \$100,000,000, is appropriated to the general fund from the CBR.

Section 29(d) provides that the unrestricted interest earned on general fund balances in fiscal year 2019 is 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 year 2019 in anticipation of receiving unrestricted general fund revenue.

Section 29(e) provides that the appropriations under subsections (a) - (d) were made under art. IX, sec. 17(c), Constitution of the State of Alaska. 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 30 provides for a contingent appropriation from the earnings reserve account if the appropriation from the budget reserve fund under section 29(b) failed to receive the required three-fourths vote of each member of the house. But as noted above, the appropriation from the budget reserve fund did receive the required vote and thus no contingent appropriation under sec. 30 would be required and this section is accordingly not operative.

Section 31(a) provides that certain appropriations are for capitalization of funds and do not lapse, and sec. 31(b) provides that certain other appropriations do not lapse.

Section 32 provides for retroactive effect to June 30, 2018, and July 1, 2018, for certain appropriations in the bill.

Section 33(a) – (g) makes certain appropriations contingent on passage by the legislature and enactment into law of certain legislation. Section 33(a) makes the appropriation in sec. 11(h) contingent on passage and enactment into law of a version of HB 106 or a similar bill. The legislature passed such a bill, SCS HB 106(FIN), and the bill is awaiting transmittal to the governor. Section 33(b) and (c) make the appropriation in sec. 17 and 23(f) contingent on the passage and enactment into law of a version of HB 331 or a similar bill. The legislature passed such a bill, CSHB 331(FIN), which is before the governor for consideration. Section 33(d) makes the appropriation in sec. 23(k) contingent on the passage and enactment into law of a version of SB 92 or a similar bill. The legislature passed such a bill, HCS CSSB 92(FIN), and the bill is awaiting transmittal to the governor. Section 33(e) makes the appropriation in sec. 25(a) contingent on the passage and enactment into law of a version of HB 47 or a similar bill. The legislature passed such a bill, HB 47, and the bill is awaiting transmittal to the governor. Sections 33(f) and (g) make the appropriations in sec. 30(a) and (b) contingent on the failure of the appropriations made in sec. 29(b) and (c) to pass upon an affirmative vote of three-fourths of the members of each house of the legislature. As set forth above, the appropriations in sec. 29(b) and 29(c) from the constitutional budget reserve fund to the general fund passed with the required vote and thus the contingent appropriations in sec. 30(a) and (b) are not operative.

Sections 34 - 35 set out the effective dates of the various sections of the bill.

VI. 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:

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JL/SRP/jkc