



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Law

CIVIL DIVISION

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April 2, 2020

The Honorable Mike Dunleavy
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811

Re: HB 205: Fiscal Year 2021 Operating
Budget (CCS SSHB 205)
Our file: 2020200308

Dear Governor Dunleavy:

At the request of your legislative director, we have reviewed HB 205, making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; making capital appropriations, supplemental appropriations, and reappropriations; and making appropriations under art. IX, sec. 17(c) of the Alaska Constitution. This bill largely comprises the fiscal year 2021 operating and capital budgets, beginning on July 1, 2020, and ending on June 30, 2021. 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, a department-wide or agency-wide unallocated reduction is likely permissible so long as the unallocated reduction is for a specific amount.¹ A branch-wide unallocated reduction

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

would require further legal review, but there are no branch-wide unallocated reductions in this bill.

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 has 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. APPROPRIATIONS TO ADDRESS COVID-19

Several sections of the bill relate to appropriations of federal and state funds to address the COVID-19 emergency. Section 29(e) provides specific federal receipt authority for the Department of Labor and Workforce Development to utilize federal money for unemployment compensation for fiscal years 2020 and 2021. Section 37(a) appropriates any excess federal receipts received in fiscal year 2021 conditioned on compliance with AS 37.07.080(h), which requires the governor to submit a revised program to the Legislative Budget and Audit Committee for review. There are also appropriations of \$85,000,000 in state funds to address the COVID-19 emergency in this bill. Specifically, sec. 22(g) appropriates \$5,000,000 to the Alaska Housing Finance Corporation for homelessness grants in light of the COVID-19 emergency, sec. 28(b) appropriates \$75,000,000 to the Department of Health and Social Services for COVID-19 response, and sec. 38(y) appropriates \$5,000,000 to the disaster relief fund (AS 26.33.300(a)).

We also note that other bills passed by the legislature include appropriations that can be utilized to address the COVID-19 emergency. The operating budget for fiscal year 2020 (Ch. 1, FSSLA 2019; HB 39, sec. 32(a)) includes the same general federal receipt authority as provided in this bill at sec. 37(a). Additionally, federal receipt authority to respond to the COVID-19 emergency was also provided in HB 206 which was recently enacted into law. Section 8(a) of HB 206 appropriates to the Department of Health and Social Services federal receipts received during fiscal year 2020 to respond to and mitigate the risks of the COVID-19 outbreak during fiscal years 2020 and 2021. Section 8(b) of HB 206 also appropriates an additional amount not to exceed \$4,091,000 from the general fund to the Department of Health and Social Services, division of public health, emergency programs, for the same purpose. That additional sum was appropriated if the amount necessary to respond to a COVID-19 outbreak exceeded the amount appropriated in subsection (a). Finally, HB 234 recently passed by the legislature includes in sec. 10 of that bill an appropriation not to exceed \$15,000,000 from the general fund to the Department of Health and Social Services, division of public health, for costs related to responding to and mitigating the risk of a COVID-19 outbreak in the state.

IV. 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.

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

Section 1 of the bill includes a statement of legislative intent that, by October 1, 2020, the department submit a report to the co-chairs of the finance committees describing the amount that each community that participates in the National Flood Insurance Program paid into the program in 2019, the amount that has been paid out of the program for claims in 2019, and the average premium for a home in a special flood hazard area in Alaska. Additionally, the legislature intends that the report include for 2019 the number of individual properties in a special flood hazard area in each community in Alaska. As noted above, we have advised that reporting requirements 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 an expression of legislative intent that the department prioritize employee recruitment in order to reduce overtime costs. Additionally, the legislature expressed its intent that the department centralize the recruitment and retention office and that it have a minimum of three support staff employees. Further, the legislature intends that the department submit a report to the co-chairs of the finance committees and to the Legislative Finance Division a report that describes the results of the recruitment and retention efforts. As set out above, statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity. Similarly, reporting requirements that are not set out in statute may be complied with as a matter of comity.

D. Department of Education and Early Development.

The legislature included two expressions of legislative intent regarding the appropriation for state libraries, archives, and museums. The legislature expressed its intent that the department evaluate cost-efficiency measures that preserve access to the Alaska Online with Libraries (OWL) program. The legislature also expressed its intent in relation to the OWL program that the department consult with users to evaluate implications of eliminating the video conference services and to ensure that if the OWL program is eliminated that alternative equipment or technology be provided. The legislature also intends that the department submit a report to the co-chairs of the finance committees on these issues as well as the Legislative Finance Division by January 1, 2021. As set out above, statements of legislative intent are generally not enforceable but the department may comply as a matter of comity. Reporting requirements are normally

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

set out in statute, but if such reporting requirements are not set out in statute the department may wish to comply as a matter of comity.

E. Department of Environmental Conservation.

The legislature included an expression of legislative intent that the department rename the dairy program to dairy safety, continue to inspect and test Alaska dairies as well as implement a fee schedule to help for those functions, and expressed its intent that the department manage the environmental compliance of commercial passenger vehicles in Alaska waters. As set out above, statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity.

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.

G. Office of the Governor.

The legislature included expressions of legislative intent regarding the office of management and budget (“OMB”). Specifically, the legislature expressed its intent that OMB evaluate whether the intent of ch. 21, SSSLA 2018 is being met regarding the use of the restorative justice account funds and that OMB produce a report summarizing the use and balance of those funds across departments and make recommendations. Additionally, the legislature expressed its intent that OMB exclude the legislature from billing for budget analyst time. As set out above, statements of legislative intent and requests for submission of reports that are not set out in statute are generally not enforceable, but the executive branch may comply as a matter of comity.

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 OMB will work closely with the commissioner should circumstances arise that would require the commissioner to consider the transfer of funding.

The legislature expressed its intent that the department submit a report of transfers between appropriations that occurred during fiscal year 2020 to the Legislative Finance Division by September 30, 2021. Additionally, the legislature expressed its intent that the department submit the Medicaid unrestricted general fund obligation report to the co-

chairs of the finance committees and the Legislative Finance Division by January 1, 2021, and update the report as requested by the legislature. As noted above, statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity. Similarly, reporting requirements are normally set out in statute but if such requirements are not in statute, the department may wish to comply as a matter of comity.

Finally, in the Medicaid services appropriation the legislature provides that money may not be expended for an abortion that is not a mandatory service required under AS 47.07.030(a), and that the money appropriated may be expended only for mandatory services under Title XIX of the Social Security Act and for optional services provided by the state under the state medical assistance plan approved by the United States Department of Health and Human Services. As we have opined previously, this language is intended to prevent expenditures from these appropriations for therapeutic or medically necessary abortions; however, the department is under a superior court order to operate its Medicaid program in a constitutional manner by providing payment for therapeutic or medically necessary abortions. That superior court order has been upheld by the Alaska Supreme Court which specifically rejected an argument that the separation of powers doctrine precluded the superior court from ordering the state to pay.⁷ Thus, the department is faced with a ruling from the state's highest court that the limit on payment for abortion services results in the operation of the Medicaid program in an unconstitutional manner, while the department is ostensibly without the money available to pay for services to operate the program legally.⁸

Over ten years ago, the plaintiffs in the Planned Parenthood case asked the superior court to clarify how similar budget restrictions impacted its judgment. Three days after the Alaska Supreme Court affirmed the judgment, the superior court issued an opinion ordering the department not to comply with the restrictions. Therefore, to date, the department has obeyed the superior court's order to continue to pay for these medically necessary abortions until such time as a court reverses the order that is now in effect.

⁷ *State, Dept. of Health & Social Services v. Planned Parenthood of Alaska*, 28 P.3d 904 (Alaska 2001).

⁸ The obligation of the State to pay for abortion services under the Medicaid program was reaffirmed in *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984 (2019). In that case, the Alaska Supreme Court struck down a statute and a regulation that attempted to define what a medically necessary abortion was. The Court concluded that the statute and regulation both violated the Equal Protection Clause of the Alaska Constitution.

I. Department of Labor and Workforce Development.

The legislature expressed its intent in relation to the wage and hour administration Fairbanks office that the department maintain fiscal year 2019 levels to sustain or expand investigative capacity in that office. As noted previously, statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity.

J. Department of Law.

The legislature included two expressions of legislative intent. The legislature expressed its intent that the criminal division provide a recruitment and retention plan to the Legislative Finance Division by January 1, 2021, that sets out a plan to reverse the trend of high turnover of prosecutors and support staff. Additionally, the legislature expressed its intent regarding the civil division that when managing caseloads and making budget reductions that the department use its employees, rather than outside counsel contracts, whenever possible except that the department should not make reductions to such contracts if a contract is a possible revenue generator.

We also note regarding the Department of Law that the appropriation structure is unusual in that it identifies appropriations for the “Civil Division Except Contracts Relating to Interpretation of *Janus v. AFSCME*” and for “Legal Contracts Relating to Interpretation of *Janus v. AFSCME* Decision.” The Department of Law has historically been comprised of a civil division and a criminal division and not organizationally separated by particular legal matters. An effort to restrict the spending authority of the Department of Law in such a manner raises issues under the confinement clause of the Alaska Constitution which as set forth above has been interpreted to prohibit an appropriations bill from administering a program of expenditures. The Department of Law carries out the state’s legal business and the Alaska Supreme Court has held that in carrying out those functions the Attorney General has the powers and duties ascribed to that position under the common law which includes the authority to bring actions that the Attorney General considers to be in the public interest. *See, Public Defender Agency v. Superior Court*, 534 P.2d 947 (Alaska 1975). Accordingly, language in an appropriations bill that attempts to restrict the Attorney General from entering into contracts regarding particular legal matters, which could range from outside counsel to needed experts for a case, raises significant legal issues and could impede the Attorney General’s ability to fulfill his statutory duties as head legal advisor and litigator for the state. Further, an additional problem with an appropriation structure of this nature is that under Article III, sec. 16, of the Alaska Constitution the governor may initiate court action to enforce “any constitutional or legislative mandate.” The *Janus v. AFSCME* decision concerned core First Amendment issues and subsequent litigation in relation to that case involves the application of the First Amendment. Thus, the appropriation structure for the civil

division raises additional significant legal questions in relation to the governor's authority under Article III, sec. 16.

K. Department of Military and Veterans' Affairs.

The legislature included an expression of legislative intent that the department submit a report to the Legislative Finance Division by January 1, 2021 regarding the transfer of the Alaska Land Mobile Radio (ALMR) and the State of Alaska Telecommunications System (SATS) into the department. The report should include a review of administrative and operational challenges relating to the transfer, the impact of the transfer on the department's ability to carry out its mission, and the department's long term plan for ALMR and SATS. As noted above, departments may comply with expressions of legislative intent and requests for filing of 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 work to implement the recommendations of the 2019-2020 village public safety officer (VPSO) program working group and report to the Legislative Finance Division by January 1, 2021 the efforts taken by the department to meet those recommendations; (2) the department prioritize the deployment of law enforcement to non-urban areas that do not have organized governments and prioritize adding a second trooper to one-trooper posts; (3) the department not move funds outside of the personal service line of any allocation within the state troopers appropriation; (4) the department seek to fill vacant trooper positions, reduce overtime and submit a report to the Legislative Finance Division by January 1, 2021 with monthly information regarding hiring, attrition, and overtime costs by category and describe contributing factors; and (5) the department not implement a new Anchorage Emergency Communications Center without legislative approval. As set out above, expressions of legislative intent and requests for making recommendations to or filing reports with the legislature are not generally enforceable, but the department may comply as a matter of comity.

N. Department of Revenue.

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

O. Department of Transportation and Public Facilities.

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

P. University of Alaska.

The legislature included three statements of legislative intent regarding the appropriations to the University. The legislature expressed its intent that the University update its 2011 report entitled “Small Scale Modular Nuclear Power: an option for Alaska.” Additionally, the legislature expressed its intent that the University with the smaller unrestricted general fund reduction, limit the transfer of money from rural campuses through reimbursable service agreements while maintaining services to those campuses. Finally, the legislature expressed its intent that the University not charge more than 17.5 percent for indirect costs in funding agreements between the University and the Future Farmers of America. 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.⁹

Q. Alaska Court System.

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

R. Alaska Legislature.

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

⁹ Art. VII, secs. 2-3.

V. FUNDING FOR NEW LEGISLATION

Section 2 of the bill makes appropriations to agencies to support new legislation enacted in fiscal year 2021. Several bills are listed with specific appropriations. If the bills do not become law or are not incorporated in another piece of legislation, the appropriations for that particular bill will be eliminated.

VI. FUNDING SOURCES

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.

VII. SECTIONS 5-10

Section 5 includes appropriations for capital projects and grants from the general fund and other funds and sets forth that these appropriations lapse under AS 37.25.020 unless otherwise indicated. Sections 6 and 7 set out the funding sources and statewide funding for the appropriations in sec. 5.

Section 8 provides additional appropriations for capital projects and grants from the general fund and other funds and sets forth that these appropriations lapse under AS 37.25.020 unless otherwise indicated. Sections 9 and 10 set out the funding sources and statewide funding for the appropriations in sec. 8.

VIII. SECTIONS 11-51

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

Section 11(a) reappropriates an estimated \$417,889 to the Department of Commerce, Community, and Economic Development for payment as a grant under AS 37.05.316 to the Willow Library Association to replace and expand the Willow Public Library and provide maintenance upgrades to the community center. Section 11(b) appropriates \$750,000 to the Alcohol and Marijuana Control Office for a licensing and enforcement solutions project.

Section 12(a) reappropriates an estimated \$17,445,010 to the Department of Transportation and Public Facilities for federal-aid highway state matching funds. Additionally, sec. 12(b) reappropriates an estimated \$214,051 to the department for federal-aid highway state matching funds. Section 12(c) provides that if the

appropriations in (a) and (b) of sec. 12 and the appropriations in sec. 5 are less than \$65,000,000 the amount necessary to appropriate \$65,000,000 for federal-aid highway state match, estimated to be \$0, is appropriated from the general fund. Section 12(d) appropriates \$1,946,600 to the department for federal-aid aviation state match from the Alaska capstone avionics revolving loan fund (AS 44.33.655). Section 12(e) appropriates \$1,400,000 from motor fuel tax receipts (AS 43.40.010) to the department for harbor facility grant projects under AS 29.60.800-29.60.830.

Section 13 reappropriates an estimated \$1,094,286 to the Department of Commerce, Community, and Economic Development for payment as a grant under AS 37.05.316 to the Anchorage School District to repair facilities damaged during the November 2018 earthquake.

Section 14 reappropriates an estimated \$395,507 to the Department of Commerce, Community, and Economic Development for payment as a grant under AS 37.05.315 to the City and Borough of Sitka for repair and refurbishment of the Green Lake hydroelectric plant.

Section 15(a) amends the appropriation to the Office of the Governor in sec. 24(a), ch. 3, FSSLA 2019 to include capital costs related to state government efficiency efforts. Section 15(b) reappropriates approximately \$1,500,000 to the Office of the Governor for capital costs related to state government efficiency efforts.

Section 16 appropriates to the Alaska Legislature, Legislative Council, council and subcommittees the proceeds from the sale of a vacant lot in Anchorage for the purpose of video infrastructure at the capitol for Alaska Legislature TV/Gavel Alaska project and the repair and renovation of technology improvements and other necessary projects related to the legislative buildings and facilities. Section 17 reappropriates for the same purposes the unexpended and unobligated general fund balances of certain appropriations previously made to the Alaska Legislature.

Section 18(a)-(c) makes fund source changes for the state federal-aid highway match in sec. 2, ch.1, SSSLA 2019, page 8, line 27, that reduces the appropriation from the Constitutional Budget Reserve Fund and substitutes Alaska Housing Finance Corporation dividend fund as a partial funding source.

Section 19 appropriates the amount received by the National Petroleum Reserve – Alaska special revenue fund (AS 37.05.530(a)) under 42 U.S.C. 6506a(l) or former 42 U.S.C. 6508 by August 31, 2020, estimated to be \$11,300,000 to the Department of Commerce, Community, and Economic Development for capital project grants under the National Petroleum Reserve – Alaska impact grant program.

Section 20 provides that the money appropriated in the bill includes any amounts necessary to pay the personal services costs because of job reclassifications.

Section 21 appropriates to the Alaska Aerospace Corporation all federal and other corporate receipts received during fiscal year 2021 in excess of the amounts appropriated to the Alaska Aerospace Corporation in sec. 1 of the bill.

Section 22 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 Alaska 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 22(g) appropriates \$5,000,000 to the Alaska Housing Finance Corporation for homelessness grants in light of the COVID-19 emergency.

Section 23 includes appropriations related to the Alaska permanent fund. Section 23(a) provides for an appropriation to the principal of the permanent fund of an amount estimated to be \$276,300,000 in satisfaction of the constitutional deposit requirement in art. IX, sec. 15. Section 23(b) provides for an additional deposit under AS 37.13.010(a)(2), estimated to be \$67,900,000, from the general fund to the permanent fund principal. Section 23(c) provides for an appropriation estimated to be \$3,091,492,927 from the earnings reserve account to the general fund for fiscal year 2021. This is the percentage of market value appropriation referred to in AS 37.13.140(b).

Section 23(d) provides for an appropriation of \$680,000,000 to the dividend fund (AS 43.23.045(a)) for the payment of permanent fund dividends and administrative costs for fiscal year 2021. The fund sources for this appropriation to the dividend fund are \$360,000,000 from the general fund and \$320,000,000 from the constitutional budget reserve fund (art. IX, sec. 17 of the Alaska Constitution). Section 23(e) provides for an appropriation, estimated to be \$30,000,000, to the Alaska capital income fund (AS 37.05.565) from the sources set out in AS 37.13.145(d). Section 23(f) provides for an appropriation estimated to be \$1,055,600,00 to the permanent fund principal from the earnings reserve account (AS 37.13.145) to offset the effect of inflation on the principal of the fund after the appropriations made in (c) and (d) of this section.

Section 24(a) and (b) appropriate from the state insurance catastrophe reserve account and the working reserve account to the Department of Administration amounts necessary to fund the uses set out in AS 37.05.289(a) and 37.05.510(a) for fiscal year 2021. Section 24(c) appropriates the amount necessary to retain an unobligated balance of \$5,000,000 in the working reserve account from the unencumbered balance of any

appropriation that finances employee salaries and benefits determined to be available for lapse at the end of fiscal year 2021. Section 24(d) appropriates the amount necessary to retain an unobligated balance of \$10,000,000 in the group health and life benefits fund (AS 39.30.095), after the appropriations in (b) and (c), from any appropriation that is determined to lapse at the end of the 2021 fiscal year. Section 24(e) 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 24(f) appropriates the amount necessary to cover actuarial costs associated with bills introduced by the legislature from the general fund to the department for fiscal year 2021.

Section 25 makes appropriations related to the Department of Commerce, Community, and Economic Development. Section 25(a) appropriates federal money provided to the state as national forest income that would lapse into the general fund at the end of fiscal year 2021 to political subdivisions where national forest land is located in accordance with the formula provided under AS 41.15.180(c) and (d). Section 25(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 25(c) appropriates 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 25(d) makes an appropriation estimated to be \$29,855,000 from the power cost equalization endowment fund (AS 42.45.070(a)) for the power cost equalization program for fiscal year 2021. Section 25(e) amends the appropriation in sec. 21(f), ch. 1, FSSLA 2019 to provide that the amount estimated to be \$29,700,000 not to exceed the amount determined under AS 42.45.080(c)(1) is appropriated from the power cost equalization endowment fund (AS 42.45.070(a)) for the power cost equalization program for fiscal year 2020. Section 25(f) 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 2021-2023. Section 25(g) makes an appropriation of \$360,346 from the civil legal services fund (AS 37.05.590) to the department for a grant under AS 37.05.016 for fiscal year 2021 to the Alaska Legal Services Corporation. Section 25(h) appropriates the amount received in a settlement of a bond claim, estimated to be \$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 for fiscal year 2021.

Section 26(a) appropriates an amount equal to 50 percent of donations received under AS 43.23.230(b) for fiscal year 2021, estimated to be \$488,200 to the Department of Education and Early Development to be distributed as grants to schools for fiscal year 2021 according to the average daily membership for each school district under AS 14.17.410(b)(1)(A)-(D). Section 26(b) appropriates to the Department of Education

and Early Development, Education Support and Administrative Services, Student and School Achievement, any excess amount of federal funds received by the department from the United States Department of Education for grants to educational entities and nonprofit and nongovernmental organizations that exceeds the amount appropriated in section 1 of the bill. Section 26(c) appropriates from the general fund to the Department of Education and Early Development, Mt. Edgecumbe boarding school, the proceeds from the sale of state land in Sitka for maintenance and operations for fiscal year 2021. Section 26(d) appropriates \$30,000,000 from the general fund to the department to be distributed as grants to school districts based on the average daily membership for each district under AS 14.17.410(b)(1)(A)-(D) and the schedule of state aid distribution under AS 14.17.610.

Section 27 appropriates the remaining balance of the Alaska sport fishing enterprise account (AS 16.05.130(e)) in the fish and game fund (AS 16.05.100), not to exceed \$500,000 and following the appropriation made in sec. 38(r) of the bill, to the Department of Fish and Game for sport fish operations.

Section 28(a) appropriates federal receipts received during fiscal year 2021 for Medicaid services to the Department of Health and Social Services, Medicaid services, for fiscal year 2021. Section 28(b) appropriates \$75,000,000 from the constitutional budget reserve fund (art. IX, Sec. 17 of the Alaska Constitution) to the department for response to the coronavirus disease (COVID-19) public health emergency for fiscal years 2020 and 2021.

Section 29(a)-(c) of the bill appropriates 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 2021 if the amounts appropriated in sec. 1 of the bill are not sufficient. Section 29(d) appropriates surplus contributions received by the Alaska Vocational Technical Center (AVTEC) in fiscal year 2021 to AVTEC.

Additionally, as noted above, there is an appropriation of federal funds for unemployment compensation to address the economic impacts of the COVID-19 emergency. Specifically, Section 29(e) appropriates federal receipts for unemployment insurance benefits payments received during fiscal years 2020 and 2021 to the Department of Labor and Workforce Development for unemployment insurance payments and associated administrative costs for fiscal years 2020 and 2021. Section 29(f) also appropriates federal receipts received during fiscal years 2020 and 2021 for employment and training services to the department for employment and training purposes and associated administrative costs for fiscal years 2020 and 2021.

Section 30(a) appropriates 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 30(b) appropriates the amount collected for the issuance of special request license plates commemorating Alaska veterans, estimated to be \$7,800, from the general fund to the department for maintenance and construction of veterans' memorials for fiscal year 2021.

Section 31(a), (b), and (d) of the bill make various appropriations to the Department of Natural Resources related to the operation of an oil production platform in Cook Inlet, mine reclamation, and fire suppression. Section 31(c) of the bill appropriates 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 32 appropriates \$7,200 to the Department of Revenue from the dividend fund to the department's taxation and treasury and permanent fund divisions for programming to extend the filing period for the permanent fund dividend for fiscal year 2020.

Section 33 appropriates proceeds from the sale of marine highway system assets during fiscal years 2020-2023 to the marine highway system vessel replacement fund (AS 37.05.550).

Section 34 appropriates \$1,847,000 from the general fund to the Office of the Governor, division of elections, for costs of conducting the statewide primary and general elections for fiscal years 2021 and 2022.

Section 35 appropriates retained fees and bankcard service fees.

Section 36(a)-(l) of the bill appropriates amounts necessary for debt service, including arbitrage rebate payments, on a range of notes, certificates of participation, and bonds. Section 36(m) of the bill appropriates \$100,154,145, for state aid for costs of school construction under AS 14.11.100 from the following sources: (1) \$15,820,400 from the School Fund (AS 43.50.140); and (2) \$84,333,745 from the general fund. 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 1955.¹⁰ Because the School Fund existed when the Alaska Constitution was ratified on April 24,

¹⁰ See, sec. 16, ch. 187, SLA 1955.

1956, the School Fund does not violate the dedicated fund clause (art. IX, sec. 7, Constitution of the State of Alaska).

Section 37(a)-(c) appropriates 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 received during fiscal year 2021 that exceed the amounts appropriated in sec. 1 of this bill conditioned on compliance with AS 37.07.080(h). Section 37(d) provides that the amount of designated program receipts under AS 37.05.146(b)(3) in this bill includes the unexpended and unobligated balance on June 30, 2020 of designated program receipts collected under AS 37.05.146(b)(3).

Section 38(a)-(f) provides for capitalization of various funds from receipts received during fiscal year 2020, including the Alaska children's trust grant account, derelict vessel prevention program fund, the disaster relief fund, the dividend raffle fund, and from the general fund to the Alaska municipal bond bank authority reserve fund. Section 38(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 38(h) appropriates the amount necessary, for fiscal year 2021, to fund the amount of state aid calculated under the public school funding formula (AS 14.17.410(b)), estimated to be \$1,213,278,400, to the public education fund (AS 14.17.300) from the following sources: (1) \$29,774,153 from the public school trust fund (AS 37.14.110(a)); and (2) the remaining amount, estimated to be \$1,183,504,247, from the general fund. Section 38(i) appropriates the amount necessary for pupil transportation under AS 14.09.010, estimated to be \$76,997,682 from the general fund to the public education fund (AS 14.17.300). Section 38(j) appropriates \$36,739,000 from the general fund to the regional educational attendance area and small municipal school district fund (AS 14.11.030(a)).

Section 38(k) appropriates from the general fund the amount necessary to pay medical insurance premiums for eligible surviving dependents under AS 39.60.040 and the costs of the Department of Public Safety related to administering the peace officer and firefighter survivors' fund (AS 39.60.010), estimated to be \$30,000, to the peace officer and firefighter survivors' fund (AS 39.60.010) for fiscal year 2021.

Sections 38(l) and (m) make appropriations to the Alaska clean water fund (AS 46.03.032(a)) including federal receipts and the amount necessary to match federal receipts, estimated to be \$2,000,000, from Alaska clean water fund revenue bond receipts.

Sections 38(n) and (o) include appropriations to the Alaska drinking water fund (AS 46.03.036(a)) including federal receipts and the amount necessary to match federal receipts from Alaska drinking water fund revenue bond receipts.

Section 38(p) appropriates the program receipts under AS 18.67.162, estimated to be \$70,000, including donations and recoveries from the crime victim compensation fund (AS 18.67.162) to the crime victim compensation fund (AS 18.67.162). Section 38(q) appropriates \$1,448,500 from the portion of the dividend fund that would have been paid to persons ineligible to receive a dividend because of a conviction or incarceration under AS 43.23.005(d) to the crime victim compensation fund (AS 18.67.162) for the purposes of that fund.

Section 38(r) appropriates the amount necessary for debt service, interest, and trustee fees on outstanding sport fish hatchery revenue bonds, estimated to be \$4,068,194 from the sport fishing enterprise account (AS 16.05.130(e)) to the fish and game revenue bond redemption fund (AS 37.15.770) for that purpose. Section 37(s) makes an appropriation after the appropriations in (r) of this section and in sec. 27 of this bill of the remaining balance of the sport fishing enterprise account (AS 16.05.130(e)), estimated to be \$2,067,600 to the fish and game revenue bond redemption fund (AS 37.15.770) for early redemption of sport fish hatchery revenue bonds. Section 38(t) provides that if the amount appropriated in (s) of this section to the fish and game revenue bond redemption fund is less than the amount to pay debt service, interest, and trustee fees on outstanding bonds for fiscal year 2021, federal receipts up to \$102,000 or the deficiency balance whichever is less, estimated to be \$0, are appropriated to the fish and game revenue bond redemption fund for the payment of debt service, interest, and trustee fees on sport fish hatchery revenue bonds.

Section 38(u) appropriates an amount equal to the interest earned on the amount in the election fund required for the federal Help America Vote Act, estimated to be \$35,000, to the election fund for use under 52 U.S.C. 21004(b)(2).

Section 38(v) appropriates the statutory designated program receipts received by the Alaska Gasline Development Corporation for fiscal year 2021, up to \$20,000,000, to the liquefied natural gas project fund (AS 31.25.110).

Section 38(w) appropriates vaccine assessment program receipts collected under AS 18.09.220, estimated to be \$11,800,000, to the vaccine assessment account (AS 18.09.230).

Section 38(x) appropriates \$100,000 from the general fund program receipts collected by the Department of Administration, division of motor vehicles, to the

abandoned motor vehicle fund (AS 28.11.110) for the removal of abandoned vehicles from highways and public property.

Section 38(y) appropriates \$5,000,000 from the constitutional budget reserve fund (art. IX, sec. 17 of the Alaska Constitution) to the disaster relief fund (AS 26.23.300(a)). This appropriation would take effect immediately under AS 01.10.070(c) according to sec. 49 of the bill.

Section 39 makes fund transfers. Section 39(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, Alaska Constitution), the public school trust fund (AS 37.14.110(a)), and the power cost equalization endowment fund (AS 42.45.070(a)) according to AS 37.05.530(g)(1)-(3). Section 39(b) appropriates the loan origination fees collected by the Alaska Commission on Postsecondary Education in fiscal year 2021 for the purposes specified in AS 14.43.120(u). Section 39(c) appropriates an amount equal to 10 percent of the filing fees received by the Alaska Court System, estimated to be \$349,966, from the general fund to the civil legal services fund. Section 39(d) and (e) make appropriations to the oil and hazardous substance release prevention account and the oil and hazardous substance release response account in the oil and hazardous substance release prevention and response fund.

Section 39(f) appropriates the unexpended and unobligated balance on June 30, 2020, estimated to be \$978,000, of the clean water administrative income account (AS 46.03.034(a)(2)) to the clean water administrative operating account (AS 46.03.034(a)(1)) in the clean water administrative fund (AS 46.03.034). Section 39(g) appropriates the unexpended and unobligated balance on June 30, 2020, estimated to be \$710,000, of the drinking water administrative income account (AS 46.03.038) to the drinking water administrative operating account (AS 46.03.038(a)(1)) in the drinking water administrative fund (AS 46.03.038).

Section 39(h) appropriates to the special aviation fuel tax account (AS 43.40.010(e)) an amount equal to interest earned on the amounts in the special aviation fuel tax account (AS 43.40.010(e)).

Section 39(i) appropriates to the fish and game fund (AS 16.05.100) an amount, estimated to be \$1,032,500, equal to the revenue received during fiscal year 2021 from range fees, receipts from waterfowl conservation stamp prints, statutory access permits under AS 16.05.050(a)(15) and fees collected under a cooperative agreement under AS 16.05.050(a)(6) from boating and angling access sites.

Section 39(j) appropriates to the mine reclamation trust fund operating account (AS 37.14.800(a)) an amount, estimated to be \$30,000, from the mine reclamation trust

fund income account (AS 37.14.800(a)) for the purposes specified in AS 37.14.820. Section 39(k) appropriates to the education endowment fund (AS 43.23.220) 25 percent of the donations received under AS 43.23.230(b), estimated to be \$244,100. Section 39(l) appropriates to the marine highway system fund \$4,457,500 with \$2,843,600 from the capstone avionics revolving loan fund (AS 44.33.655) and \$1,613,900 from the investment loss trust fund (AS 37.14.300(a)).

Section 39(m) appropriates to the marine highway system fund (AS 19.65.060) the sum of \$14,475,000 declared available by the board of directors of the Alaska Industrial Development and Export Authority for appropriation under AS 44.88.080 as the dividend for fiscal year 2021 from the unrestricted balance in the revolving fund (AS 44.88.060) and the sustainable energy transmission and supply development fund (AS 44.88.660).

Section 39(n) appropriates to the sport fishing enterprise account (AS 16.05.130(e)) the unobligated balance after discharge of all bond obligations in the fish and game revenue bond redemption fund (AS 37.15.770).

Section 40 appropriates \$2,500,000 to the Legislative Council from the general fund for Redistricting Board operations in fiscal years 2021 and 2022.

Section 41 appropriates funds to state retirement systems. Specifically, sec. 41(a) appropriates \$203,585,000 for fiscal year 2021 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. The funding sources for this deposit are \$152,688,750 from the general fund; and \$50,896,250 from the constitutional budget reserve fund (art. IX, sec. 17 of the Alaska Constitution). Section. 41(b) appropriates \$131,976,000 for fiscal year 2021 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. The funding sources for this deposit are \$101,232,000 from the general fund; and \$33,744,000 from the constitutional budget reserve fund (art. IX, sec. 17 of the Alaska Constitution).

Section 41(c) appropriates \$5,145,000 from the general fund to the Department of Administration for deposit in the defined benefit plan account in the judicial retirement system for fiscal year 2021. Section 41(d) appropriates \$1,861,360 from the general fund to the Department of Administration to pay benefits to eligible members and survivors of eligible members under the elected public officer's retirement system. Section 41(e) 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 42 provides that appropriations 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 42(a) provides that the appropriations to fund employee salary and benefits including any adjustments are included in the appropriations to agencies in sec. 1 of the bill. Section 42(a) further provides that the appropriations in sec. 1 of the bill include amounts to implement monetary terms for fiscal year 2021 for ongoing collective bargaining agreements for the following collective bargaining units: general government unit, Teachers Education Association of Mt. Edgecumbe representing the Mt. Edgecumbe high school teachers; confidential employees unit; public safety employees unit; labor, trades, and crafts bargaining unit; the supervisory bargaining unit; correctional officers bargaining unit; and the Alaska Vocational Technical Center bargaining unit.

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 fiscal year 2021 for university employees who are not members of bargaining units and to implement the monetary terms of employees covered by collective bargaining agreements for the following bargaining units: Adjuncts and professors, United Academic—American Association of University Professors, American Federation of Teachers; Alaska Higher Education Crafts and Trades Employees, Local 6070; and Fairbanks Firefighters Union, IAFF Local 1324. Section 42(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 42(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 43(a)-(g) 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 appropriations from the budget reserve fund (art. IX, sec. 17) as follows: (a) to subfunds and accounts from which funds were transferred pursuant to art. IX, sec. 17(d) repayment provision – this is commonly known as the reverse sweep

appropriation; (b) an appropriation to the general fund if after other fiscal year 2020 appropriations made in specific appropriations bills listed, including appropriations in this bill, there is insufficient unrestricted revenue to cover the general fund appropriations; (c) an appropriation if the unrestricted revenue for fiscal year 2021 is insufficient to cover general fund appropriations made in specific appropriations bills listed and in this bill there is insufficient unrestricted revenue to cover the general fund appropriations; and (d) the unrestricted revenue earned on general fund balances for fiscal year 2021 is appropriated to the constitutional budget reserve fund to compensate the fund for any lost earnings as a result of the use of the fund's balance to permit expenditures in anticipation of receipt of unrestricted general fund revenues.

The appropriations from the constitutional budget reserve fund in sec. 45 (a)-(c) were made under art. IX, sec. 17(c) and required a three-fourths vote of each house. That vote was obtained and thus the appropriations are effective.

Section 46(a) provides that certain appropriations in the bill are for capitalization of funds and do not lapse. Section 46(b) provides that certain appropriations are for capital projects and lapse under AS 37.25.020.

Section 47 provides for retroactive effect to June 30, 2020, of appropriations made in sec. 1 of the Act that appropriate either the unexpended and unobligated balance of specific fiscal year 2020 program receipts or the unexpended and unobligated balance on June 30, 2020, of a specified account solely for the purpose of carrying forward a prior fiscal year balance.

Section 48 is a contingency provision. Section 48(a) provides that appropriations in sec. 11(b) are contingent on passage and enactment into law of SB 52 or a similar bill. Section 48(b) provides that appropriations in sec. 12(e) are contingent on passage and enactment into law of SB 115 or a similar bill.

Sections 48(c), (d), and (e) provide that the appropriations in secs. 22(g), 28(b), 32, and 38(y) are contingent on passage of a version of SB 242 or SB 241 or a similar bill. SB 241 was passed by the legislature and it is similar in material aspects to SB 242 and thus these contingencies have been met so long as SB 241 becomes law.

Sections 48(f) provides that certain appropriations from the budget reserve fund are contingent on passage and enactment into law of the appropriation in sec. 45(a) which is the repayment or "reverse sweep" appropriation. Section 48(g) provided for a contingency if appropriations from the budget reserve fund did not receive an affirmative vote of three-fourths of the members of each house – the appropriations did receive the required vote and thus the sec. 48(g) contingency is not effective.

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Sections 49-51 set out the effective dates of the various sections of the bill.

IX. CONCLUSION

Although we have identified no other constitutional or legal issues in the bill outside of what is included in this letter, 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,

KEVIN G. CLARKSON
ATTORNEY GENERAL

By:

William E. Milks
Senior Assistant Attorney General

KGC/WEM/lmd/arw/rjc