

May 9, 2013

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

Re: CCS HB 65 -- Fiscal Year 2014 Operating  
Budget  
Our file: JU2013200212

Dear Governor Parnell:

At the request of your legislative office, we have reviewed CCS HB 65, making appropriations for the operating and loan program expenses of state government and for certain programs, capitalizing funds, and making reappropriations.

The bill is otherwise known as the fiscal year 2014 operating budget, beginning on July 1, 2013, and ending on June 30, 2014. We review the highlights of the bill below.

## **I. INTRODUCTION**

This budget, as well as the budgets for the last few years, sets out the following introductory language in sec. 1 of the bill: "[a] department-wide, agency-wide, or branch-wide unallocated reduction set out in this section may be allocated among the appropriations made in this section to that department, agency, or branch." Section 1, p. 2, lines 4 - 6. An unallocated reduction of \$316,500 appears in sec. 1 of the bill to the appropriation made to Department of Fish and Game for administration and support. Section 1, p. 16, line 16. Another unallocated reduction of \$2,000,000 appears in sec. 1 of the bill to the appropriation made to Department of Health and Social Service for behavioral health. Section 1, p. 19, line 18. We have previously advised that because AS 37.07.080(e) authorizes the transfer of money between allocations, so long as the unallocated reduction is for a specific amount, there is no constitutional concerns with inclusion of such negative appropriations in a budget bill. See 1993 Inf. Op. Att'y Gen. (June 17; 883-93-0073); 1992 Inf. Op. Att'y Gen. (June 30; 883-92-0141).

## **II. GENERAL INTENT LANGUAGE**

As in prior years, the bill has numerous expressions of legislative intent accompanying certain appropriation items. And, as we have opined in the past, such expressions of legislative intent in the operating budget may violate the confinement clause of the Alaska Constitution ("[b]ills for appropriations shall be confined to appropriations." art. II, sec. 13). In Alaska State

Legislature v. Hammond, Judge Carpeneti adopted a five-factor test to determine whether such language violates the confinement clause:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is, appropriate, to an appropriations bill.

Memorandum of Decision at 44 - 45, No. 1JU-80-1163 (Alaska Super., May 25, 1983). Judge Carpeneti observed that this test could not "easily or mechanistically be applied" and that every section of challenged intent language "is a new case which must be examined separately." *Id.* at 45. The Alaska Supreme Court subsequently adopted Judge Carpeneti's test on a "non-exclusive" basis in the Knowles II decision. *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001).

The court has had few opportunities to consider whether certain instances of intent language violate the confinement clause. Judge Carpeneti determined that most, but not all, of the intent language at issue in Hammond was invalid under the confinement clause. Hammond, No. 1JU-80-1163 at 46-58. In Knowles II, the Alaska Supreme Court found certain contingency language invalid (21 P.3d at 379-81), and certain descriptive language non-binding (*Id.* at 383), but upheld the following language:

This appropriation is for new CRC beds, not owned or controlled by municipalities, to provide space in institutions for violent felons. All beds will meet department standards for Community Residential Centers. Contracts will be competitively bid.

*Id.* at 381-82. The Alaska Supreme Court found that while portions of this language violated some of the Hammond factors, these violations were offset by the fact that the language did not amend existing law and it did not extend beyond the life of the appropriation. *Id.* Accordingly, we think it is possible to craft intent language that is permissible under the confinement clause. In our experience, however, most uses of intent language in this budget bill violate the confinement clause. Nevertheless, we cannot rule out the possibility that some uses of intent language could be found by a court to be enforceable.

In the past, we have advised that expressions of intent may generally be ignored or followed as a matter of comity. We continue to offer this advice, however, in the event your office or a recipient agency is disinclined to follow intent language as a matter of comity, and we have not specifically addressed such language herein, we recommend further consultation with this office so that we may advise as to the extent the particular language at issue may be enforceable under the Hammond factors.

Finally, as we advised in our reviews of intent language in previous appropriations bills, an expression of legislative intent may no longer be vetoed by the governor as a line item veto separate from the appropriation itself. In *Knowles II*, the Alaska Supreme Court ruled that expressions of intent do not constitute "items" subject to your veto power under art. II, sec. 15, Alaska Constitution. *Id.* at 377. The Alaska Supreme Court removed any ambiguity on this point in a subsequent case also brought by the Legislative Council against Governor Knowles: "We now explicitly adopt *Knowles II*'s exclusively monetary characterization of article II appropriations items and hold that the governor's appropriations veto applies only to monetary appropriations." *Alaska Legislative Council v. Knowles*, 86 P.3d 891, 895 (Alaska 2004).

### **III. DEPARTMENT OF COMMERCE, COMMUNITY, and ECONOMIC DEVELOPMENT**

In the sec. 1 of the bill, appropriation for corporations, business and professional licensing, the legislature expresses its intent that the Department of Commerce, Community, and Economic Development: (1) set occupational license fees at a rate sufficient to cover the cost of the occupation being regulated as required under AS 08.01.065(c); and (2) annually provide the legislature with a report for each licensing board covering, for the past six years, covering license fees and other revenue received, expenditures made by line item, number of licensees, balance carried forward, and potential license fee changes based on statistical analysis. Section 1, p. 6, lines 3 - 12. We have previously advised that reporting requirements such as these are normally set out in statute. 2007 Op. Att'y Gen. 2 (June 6; 883-07-0070). To the extent that this reporting requirement is not otherwise set out in statute, the Department of Commerce, Community, and Economic Development may wish to comply as a matter of comity.

### **IV. DEPARTMENT OF CORRECTIONS**

In the sec. 1 of the bill, appropriation for population management, the legislature expresses its intent that the Department of Corrections provide the legislature with a report by February 1, 2014 regarding plans and a timeline for replacement of the facility in Bethel. Section 1, p. 8, lines 13 - 15. To the extent that this reporting requirement is not otherwise set out in statute, the Department of Corrections may wish to comply as a matter of comity. Also, in the appropriation for population management, the legislature expresses its intent that the Department of Corrections with the Department of Health and Social Services and interested local parties work to explore options for upgrades for the water supply system at the Yukon Kuskokwim Correctional Center. Section 1, p. 9, lines 19 - 22. Regarding the water supply system at this facility, although this intent language is probably not enforceable, the department may wish to comply as a matter of comity.

### **V. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT**

As it did the last four years, the legislature has stated that a school district may not receive state education aid if it has a policy barring United States military, Reserve Officers' Training Corps, Central Intelligence Agency, or Federal Bureau of Investigations, recruiters, the Boy Scouts of America, or in-school Reserve Officers' Training Corps programs or Junior Reserves Officers Training Corps programs from its schools. Section 1, p. 10, lines 21 - 30. As

we have previously stated, we believe this language probably violates the confinement clause. See, 2009 Op. Att'y Gen. 4 (May 8; JU2009200407); 2008 Op. Att'y Gen. 3 (May 9; 883-08-0074).

In Knowles II, the legislature sought to make certain appropriations to the Alaska Seafood Marketing Institute contingent on ASMI not having any employees located outside the state with a salary over a certain level. The Alaska Supreme Court held that such conditional language violated four of the five Hammond factors in that the language (i) went beyond the minimum necessary language because it did not describe how the appropriated money was to be spent, (ii) sought to administer the agency's program, (iii) was not germane to the appropriations, and (iv) was substantive in nature. Knowles II, 21 P.3d at 380-81.

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

We recognize that in some cases, courts have upheld language conditioning an appropriation. Knowles II, 21 P.3d at 379. But there needs to be a substantial nexus between the condition and the appropriation -- this appears to be the purpose of the "germaneness" requirement. Here there is little nexus between a military recruiter, Boy Scout, and ROTC access policies and the education foundation formula.

Accordingly, we believe this language is unenforceable as part of the operating budget. The legislature may seek to pass a substantive bill that requires schools to provide such access.

## **VI. DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In sec. 1 of the bill, the appropriation for spill prevention and response, the legislature expresses its intent that the Department of Environmental Conservation provide recommendations to the legislature by January 21, 2014 identifying ways to finance and manage the oil and hazardous substance release prevention and response fund as a long-term source of funding for spill prevention and response initiatives. Section 1, p. 13, lines 19 - 28. The Department of Environmental Conservation may wish to comply as a matter of comity. Also, under the appropriation for water, the legislature expresses its intent that the Department of Environmental Conservation provide on its website information regarding cruise ship mixing zones. Section 1, p. 14, lines 8 - 10. Again, although not required, the Department of Environmental Conservation may want to comply as a matter of comity.

## **VII. DEPARTMENT OF FISH AND GAME**

In sec. 1 of the bill, the appropriation for commercial fisheries, the legislature expresses its intent that the Department of Fish and Game provide extensive reporting to the finance committees by January 1st of 2014 through 2016. The information requested for inclusion in

these annual reports involves accounting of funds expended, data from various fisheries studies, and efforts taken for habitat restoration. Additionally, the legislature has requested a report on problems, proposed solutions, and funding requirements for managing salmon populations in the Cook Inlet area. Section 1, p. 14, lines 25 - 33, through p. 15, lines 3 - 24. Unless these extensive reporting requirements are set out in statute, we do not think that this intent language is enforceable under the Hammond standard, but the Department of Fish and Game may comply as a matter of comity.

## **VIII. OFFICE OF THE GOVERNOR**

In sec. 1 of the bill, the appropriation for executive operations, the legislature expresses its intent that the Office of the Governor would provide a report to the legislature by February 18, 2014 regarding the results of the domestic violence and sexual assault initiative, including a description of the performance measures used to measure these results. Section 1, p. 17, lines 18 - 21. As discussed above, reporting requirements are normally set out in statute. 2007 Op. Att'y Gen. 2 (June 6; 883-07-0070). To the extent that this reporting requirement is not otherwise set out in statute, the Office of the Governor may wish to comply as a matter of comity.

## **IX. DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

In sec. 1 of the bill, the legislature has provided the commissioner of the Department of Health and Social Services with the authority to transfer up to \$56,000,000 between appropriations to the Department of Health and Social Services and expresses its intent that the Department of Health and Social Services submit a quarterly report on any such transfers to the Legislative Finance Division. Section 1, p. 18, lines 4 - 6 and p. 23, lines 8 - 9. To the best of our knowledge, this is the first time the legislature has authorized the transfer of funds between appropriation items. Because this delegation of authority raises constitutional and budget tracking concerns, the Department of Law and the office of management and budget will work closely with the commissioner of health and social services should circumstances arise that would give rise to the need to transfer funding between appropriation items.

Although not connected to any particular appropriation, the legislature expresses its intent that the Department of Health and Social Services grantees not expend more than 15 percent of a grant award on administrative costs and to provide a report to the legislature by January 21, 2014 identifying which grantees were allowed to charge to the grant award administrative costs in excess of 15 percent and identify the statute or regulation authorizing this level of administrative expense. Section 1, p. 18, lines 7 - 16. To the extent that this administrative expense limitation is not otherwise set out in statute, the Department of Health and Social Services may wish to comply as a matter of comity.

In sec. 1 of the bill, under the appropriation for public assistance, the legislature expresses its intent that the Department of Health and Social Services develop and implement regulations by September 1, 2013 so energy assistance payments are geared to the amount

appropriated annually by the legislature. Section 1, p. 21, lines 8 - 10. We do not believe this intent language is enforceable under the Hammond standard, but the Department of Health and Social Services may comply as a matter of comity.

Finally, under the appropriation for Medicaid services, the legislature included the following intent language regarding abortion funding:

No money appropriated in this appropriation may be expended for an abortion that is not a mandatory service required under AS 47.07.030(a). The money appropriated for Health and Social Services may be expended only for mandatory services required under Title XIX of the Social Security Act and for optional services offered by the state under the state plan for medical assistance that has been approved by the United States Department of Health and Human Services.

Section 1, p. 23, lines 19 - 24. As we have opined previously, this language is intended to prevent expenditures from these appropriations for therapeutic or medically necessary abortions. However, the Department of Health and Social Services is under a superior court order to operate its Medicaid program in a constitutional manner by providing payment for them. That superior court order has been upheld by the Alaska Supreme Court, which specifically rejected an argument that the separation-of-powers doctrine precluded the superior court from ordering the state to pay. *State, Dept. of Health & Social Services v. Planned Parenthood of Alaska*, 28 P.3d 904 (Alaska 2001). Thus, the Department of Health and Social Services is faced with a ruling from the state's highest court that the limit on payment for abortion services results in the operation of the Medicaid program in an unconstitutional manner, while the Department of Health and Social Services is ostensibly without the money available to pay for services to operate the program legally. A veto of this provision is not available under as described in our analysis of Knowles II.

Ten years ago, the plaintiffs in the Planned Parenthood case asked the superior court to clarify how similar budget restrictions impacted its judgment. Three days after the Alaska Supreme Court affirmed the judgment, the superior court issued an opinion ordering the Department of Health and Social Services not to comply with the restrictions. Therefore, to date, the Department of Health and Social Services has obeyed the superior court's order and we must advise the Department of Health and Social Services to continue to obey it; i.e., to continue to pay for these medically necessary abortions, until such time as a court reverses the order that is now in effect.

## **X. DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

A number of Department of Labor and Workforce Development programs receive federal funds. The bill continues the practice of including any federal receipts from prior fiscal years that have not been spent or obligated in the amounts allocated for management services, sec. 1, p. 24, line 14 - 17, and vocational rehabilitation administration, sec. 1, p. 26, lines 8 - 12. We see no legal concerns with these appropriations.

The bill also would include an appropriation of certain federal unemployment insurance modernization funds received in 2010 as a result of the state's compliance with certain conditions. Section 1, p. 25, lines 13 - 14. The federal funds may be appropriated by the legislature for the Department of Labor and Workforce Development to deliver employment services. We see no legal concerns with the appropriation.

A number of Department of Labor and Workforce Development programs receive non-public 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, the Alaska Safety Advisory Council, which receives fees from persons attending the governor's safety conference, as provided in AS 18.60.840, sec. 1, p. 25, lines 7 - 9; and, Alaska Vocational Technical Center, which receives fees for services or contributions by individual or certain organizational taxpayers, sec. 1, p. 26, lines 21 - 25.

#### **XI. DEPARTMENT OF LAW**

In sec. 1 of the bill, appropriations to the Department of Law, the legislature did not include any intent language and there are no apparent legal concerns with these provisions. Section 1, p. 26, line 31 through p. 28, line 12.

#### **XII. DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS**

In sec. 1 of the bill, appropriating funds to the Department of Military and Veterans' Affairs, the legislature did not include any intent language and there are no apparent legal concerns with these provisions. Section 1, p. 28, line 16 through p. 29, line 11.

#### **XIII. DEPARTMENT OF NATURAL RESOURCES**

In sec. 1 of the bill, appropriation for Parks & Outdoor Recreation, the legislature expresses its intent that the Department of Natural Resources work with the Office of the Governor to establish the House of Wickersham as a place of residence for the Lieutenant Governor while still allowing a portion of the facility to remain open for public tours and special events. Section 1, p. 30, line 33 through p. 31, lines 3 - 7. We believe this language strays into the administration of the Department of Natural Resources' program.

#### **XIV. DEPARTMENT OF PUBLIC SAFETY**

In sec. 1 of the bill, appropriation for the Alaska State Troopers contains language stating that it is the intent of the legislature that money received under this appropriation (1) not be used to assist federal employees enforce the Marine Mammal Protection Act as it relates to sea otters in Southeast Alaska; but (2) that funds should be allocated for training and investigation of sex trafficking. Section 1, p. 31, line 31 through p. 32, line 6. While this language strays into the administration of the Department of Public Safety's program, if this legislative guidance is consistent with the Department of Public Safety's current priorities, the Department of Public Safety may comply as a matter of comity.

Under the appropriation for Village Public Safety Officer Program, the legislature expresses its intent that the Department of Public Safety work with Village Public Safety Officer (VPSO) grantees to evaluate how their unmet needs could be funded with available funds, including the use of excess funds from VPSO position vacancies. Section 1, p. 32, lines 26 - 32. This language clearly strays into the administration of the Department of Public Safety's program; however, the department may comply as a matter of comity.

#### **XV. DEPARTMENT OF REVENUE**

In sec. 1 of the bill, appropriations to the Department of Revenue, the legislature did not include any intent language, and there are no apparent legal concerns with these provisions. Section 1, p. 34, line 4 through p. 35, line 19.

#### **XVI. DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

In sec. 1 of the bill, appropriation for highways, aviation, and facilities, the legislature expressed its intent that the Department of Transportation and Public Facilities evaluate and provide a report to the legislature by January 15, 2014 regarding the impacts of instituting landing fees at state owned airports. Section 1, p. 38, lines 14 - 16. We believe this language strays into the administration of the department's program. But if the department thinks this is a prudent option to evaluate, the department may comply as a matter of comity. Additionally, as we have noted in previous years, there is a special lapse provision in the Department of Transportation and Public Facilities budget: "The amounts allocated for highways and aviation shall lapse into the general fund on August 31, 2014." Section 1, p. 38, lines 17 - 18. This special lapse provision makes the appropriations available for expenditure until they lapse into the general fund on August 31, 2014. We have not identified any other issues with the portion of sec. 1 appropriating funds to the Department of Transportation and Public Facilities.

#### **XVII. UNIVERSITY OF ALASKA**

Under the appropriation to the University of Alaska there are three expressions of legislative intent: (1) that the University of Alaska submit a 2015 budget in which requests for unrestricted general funds not exceed the amount of additional University of Alaska receipts requested for that year; (2) that the University of Alaska move toward a long-term goal of requesting unrestricted general funds of 125 percent of actual University receipts for the most recently closed fiscal year; and (3) that the University of Alaska submit a fiscal year 2015 budget that includes debt service allocations. Section 1, p. 40, lines 7 - 15. The first two expressions of legislative intent are probably not enforceable but should be considered by the University of Alaska as an indication the legislature is expecting this agency's budget to be at or near the amount of receipts brought in by the agency. Regarding the third expression of legislative intent, our office has previously advised that although the legislature has a tradition of appropriating assets from a revenue reserve fund to satisfy debt service, such an appropriation is not constitutionally required. 1984 Inf. Op. Att'y Gen. (January 18; 366-335-84). The University of Alaska may comply with this request as a matter of comity.

## **XVIII. ALASKA COURT SYSTEM**

In sec. 1 of the bill, appropriations to the Alaska Court System, the provision does not appear to raise any legal concerns. Section 1, p. 41, line 20 through p. 42, line 6.

## **XIX. LEGISLATURE**

In sec. 1 of the bill, appropriations to the Alaska Legislature, the provision does not appear to raise any legal concerns. Section 1, p. 42, lines 10 - 32.

## **XX. NEW LEGISLATION AND FUNDING SOURCE**

Section 2 of the bill sets out the appropriations for several pieces of new legislation. If a particular piece of legislation should fail to pass, or if its substance is not incorporated in some other measure, or is vetoed by the governor, then the appropriation for that legislation lapses. Section 3 of the bill sets out the funding by agency for the appropriations made in secs. 1 and 2 of the bill. Section 4 of the bill sets out the statewide funding for the appropriations made in secs. 1 and 2 of the bill.

## **XXI. LANGUAGE SECTIONS**

Section 5 of the bill sets out legislative intent that the amounts appropriated in the operating budget are the full amounts to be appropriated for the identified purpose.

Section 6 of the bill states that funds appropriated in the operating budget include any amounts necessary to pay for job reclassifications. The section is contemplated by AS 39.25.150(2), which provides for legislative approval of the state's pay plan.

Section 7 of the bill states the intent of the legislature concerning agency transfers to and from personal services line items. The intent is that agencies restrict such transfers and that the office of management and budget submit a report to the legislature on January 15, 2014 describing and justifying all such transfers during the first half of the fiscal year and again submit a report on October 1, 2014 describing and justifying all such transfers during the second half of the fiscal year. This section is nonbinding in its entirety under Knowles, 21 P.3d at 379-80. You need not comply with these requirements, but you may comply out of comity.

Section 8 of the bill would appropriate to the Alaska Aerospace Corporation all federal and other corporate receipts received during the fiscal year June 30, 2014 in excess of the amounts appropriated to the Alaska Aerospace Corporation in sec. 1 of the bill.

Section 9 of the bill would make appropriations to the Alaska Housing Finance Corporation from the adjusted net income from the preceding fiscal year, for various purposes including debt service and deposit to the Alaska capital income fund. We have not identified any legal issues that cause concern.

Section 10 of the bill would appropriate from the earnings reserve account of the permanent fund the amount necessary to pay for permanent fund dividends and to inflation-proof the permanent fund. The legislature has estimated these amounts, but because these estimates are dependent on investment returns and inflation that have yet to occur, these estimates are fairly speculative. The section also would appropriate oil and gas revenue to the principal of the permanent fund as required by the constitution and statute.

Section 11 of the bill would appropriate to the Alaska capital income fund (AS 37.05.565) amounts not otherwise appropriated from the \$20,745,000 dividend declared by the Alaska Industrial Development and Export Authority. We see no legal concerns with this appropriation.

Section 12 of the bill would appropriate from the state insurance catastrophe reserve account and the working reserve account to the Department of Administration amounts necessary to fund the uses set out in AS 37.05.289(a) and 37.05.510(a). We see no legal concerns with these appropriations.

Section 13 of the bill would make appropriations related to the Department of Commerce, Community, and Economic Development. Section 13(a) of the bill would appropriate national forest income that will lapse at the end of fiscal year 2014 to political subdivisions where national forest land is located in accordance with the formula provided under AS 41.15.180(c) and (d). Section 13(b) of the bill would appropriate from federal receipts for national forest receipt payments, if the amount appropriated for this purpose in sec. 1 of the bill is insufficient. Section 13(c) of the bill would appropriate from federal receipts for federal revenue sharing programs, if the amount appropriated for this purpose in sec. 1 of the bill is insufficient. Sections 13(d) and (e) of the bill would make the usual appropriations related to the salmon enhancement and seafood development taxes to qualified regional associations and qualified regional seafood development associations, respectively. Section 13(f) of the bill would provide an appropriation to the Alaska Energy Authority from the power cost equalization endowment fund for the power cost equalization allocation. Section 13(g) of the bill would provide a general fund appropriation to the Alaska Energy Authority if the amount available for appropriation from the endowment fund is insufficient to fully fund the power cost equalization allocation. Section 13(h) and (i) of the bill would provide for appropriations to the Alaska Seafood Marketing Institute. We see no legal concerns with the various appropriations in sec. 13 of the bill.

Section 14 of the bill would provide a general fund appropriation to the Department of Corrections for the Anchorage Correction Complex if the federal receipts appropriated in sec. 1 are insufficient for payments of costs associated with housing federal prisoners at this facility for fiscal year 2014.

Section 15 of the bill would provide a \$25,000,000 general fund appropriation for public school funding to supplement the amount appropriated as state aid according to the base student allocation formula.

Section 16 of the bill would reappropriate the unobligated balance of a prior year appropriation, estimated to be \$6,000,000, to the Department of Health and Social Services for behavioral health Medicaid services. The prior year appropriation was for grants administered by the same division but under AS 47.37.030. We see no legal concerns with this reappropriation.

Section 17 of the bill would appropriate an amount equal to the dive fishery management assessments collected in fiscal year 2013 to the Department of Fish and Game for payment to qualified regional dive fishery development associations in the area where the assessments were collected.

Sections 18(a) - (c) of the bill would appropriate amounts necessary to make all benefit payments from the fishermen's fund (AS 23.35.060), the second injury fund (AS 23.30.040(a)), and the workers' compensation benefits guaranty fund (AS 23.30.082) in fiscal year 2014 not covered by amounts appropriated in sec. 1 of the bill. Section 18(d) of the bill would appropriate surplus contributions received by the Alaska Vocational Technical Center (AVTEC) to AVTEC. We see no legal concerns with these appropriations.

Section 19(a) of the bill would appropriate amounts related to the Alaska veterans' memorial endowment fund (AS 37.14.700). Section 19(b) of the bill would provide for a \$2,000,000 reduction of the \$10,807,000 appropriation made to the Alaska Aerospace Corporation in sec. 1 of the bill, if the Alaska Aerospace Corporation fails to secure a multi-year commercial launch service contract for the Kodiak Launch Complex by March 1, 2014. Presumably the legislature determined that if this launch service contract is not executed, the workload for the Alaska Aerospace Corporation would be reduced, thereby justifying a reduction in the annual operating budget. Conditioning an appropriation or the reduction of an appropriation on the occurrence or nonoccurrence of event that is germane to the purpose of the appropriation would likely survive constitutional scrutiny under the standards provide by the Alaska Supreme Court in *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001).

Sections 20(a), (b), and (d) of the bill would make various appropriations to the Department of Natural Resources for purposes of fire suppression, mine reclamation, and operation of an oil production platform in Cook Inlet, pending reclamation. Section 20(c) of the bill would appropriate the amount received in a settlement of a bond claim, approximately \$50,000, to the agency secured by the bond to reclaim state, federal, or private land lands affected by a use covered by the bond. Section 20(e) of the bill would appropriate \$600,000 from the general fund to the Department of Natural Resources for continued work on the North Slope gas commercialization project and compliance efforts under Alaska Gasline Inducement Act. Finally, sec. 20(f) of the bill would appropriate up to \$650,000 to the Department of Natural Resources for costs associated with outstanding royalty oil and gas valuation matters. We see no legal concerns with these appropriations.

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

Sections 22(a) - (e) of the bill would appropriate certain amounts from the general fund to the Office of the Governor for distribution to agencies for relief from high energy costs. The amounts of the appropriations are tied to the price of oil and decrease as the price of oil declines. This section also sets out a methodology for allocating the appropriation among agencies. Section 22(f) of the bill would make an appropriation from a variety of fund sources to the Office of the Governor to implement a lump sum payment negotiated between the state and the Alaska State Employees Association on behalf of the general government unit. We see no legal concerns with the appropriation.

Section 23(a) of the bill would appropriate to the University of Alaska the amounts of fees collected in fiscal year 2013 for the issuance of special request university license plates, less the cost of issuing the license plates. Section 23(b) of the bill would appropriate a combination of program receipts and general fund money to the University of Alaska for the Center for Mine Training program at the Juneau Campus. We see no legal concerns with the appropriations in the section.

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

Section 25 of the bill would appropriate amounts necessary for debt service, including arbitrage rebate payments, on a range of notes, certificates of participation, and bonds. Section 25(k) of the bill would appropriate \$128,263,143 for school construction under AS 14.11.100. In this appropriation, \$20,800,000 of the amounts appropriated is appropriated from the School Fund (AS 43.50.140). The School Fund is a dedicated fund into which cigarette taxes, fees, and penalties are deposited. Amounts deposited into the School Fund may only be used to rehabilitate, construct, or repair the state's school facilities, or to pay certain insurance costs related to the state's school facilities. The School Fund was established in 1955. See sec. 16, ch. 187, SLA 1955. Because the School Fund existed when the Alaska Constitution was ratified on April 24, 1956, the School Fund does not violate the dedicated fund clause (Art. IX, sec. 7 of the Alaska Constitution). Section 25 of the bill also would authorize a short term general fund appropriation to cover general obligation bond project costs subject to repayment when bond proceeds are received by the state. We see no legal concerns with these appropriations.

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

Section 27 of the bill would provide for capitalization of various funds, including the Alaska children's trust grant account, the crime victim compensation fund, the disaster relief fund, the community revenue sharing fund, the oil and gas tax credit fund, the trauma care fund, the sustainable energy transmission and supply development fund, the Alaska clean water fund, the Alaska drinking water fund, and the election fund. With the exception of sec. 27(i) of the bill, we see no legal concerns with these appropriations.

Section 27(i) of the bill would appropriate from the general fund \$125,000,000 to the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund (AS 44.88.660). The appropriation to this fund is contingent on approval by the Alaska Energy Authority of a loan from the fund (AS 44.88.660) of not less than \$10,000,000 for the purpose of advancing use of North Slope natural gas in the Fairbanks area. The contingent effect of the appropriation is further identified by sec. 37(b), page 92, lines 14 - 15. The apparent legislature intent is that the appropriation into the fund be contingent on a minimum \$10,000,000 loan from the fund being approved regarding natural gas in the Fairbanks area. A legal concern may arise from the contingent effectiveness of the appropriation unless the Alaska Industrial Development and Export Authority also approves the loan from the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund (AS 44.88.660). The Alaska Energy Authority lacks the ability to approve and provide for a loan from the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund (AS 44.88.660). Approval by the Alaska Industrial Development and Export Authority is required. Without such approval, legal concerns may arise regarding the contingent effectiveness of the appropriation.

Section 28(a) of the bill would appropriate to the Alaska permanent fund (art. IX, sec. 15, Constitution of Alaska) and to the public school trust fund (AS 37.14.110(a)) according to AS 37.05.530(g)(1) - (3), amounts not appropriated for grants from the National Petroleum Reserve -- Alaska special revenue fund (AS 37.05.530). The appropriation to the public school trust fund is required to help satisfy the state's obligation to compensate the public school trust for trust lands re-designated as general grant lands in 1978 (Chapter 182, SLA 1978). We see no legal concerns with the appropriation.

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

Section 28(c) of the bill states that the balance of the mine reclamation trust fund income account, estimated to be \$50,000, and money deposited in that account during the fiscal year ending June 30, 2014 is appropriated to the mine reclamation trust fund operating account. There are no legal concerns with the provision.

Section 28(d) of the bill would appropriate an amount equal to the amount, if any, drawn from the Alaska municipal bond bank authority reserve fund by the Alaska Municipal Bond Bank Authority because of a default by a borrower. We see no legal concerns with the appropriation.

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

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

Section 28(h) of the bill would make an appropriation for reimbursement of the federally allowable portion of the principal balance payment on the sport fishing revenue bonds series 2006. We see no legal concerns with the appropriation.

Section 28(i) of the bill would appropriate fees collected at boating and angling access sites to the fish and game fund. We see no legal concerns with the appropriation.

Section 28(j) of the bill would make an appropriation from the sport fishing enterprise account in the fish and game fund to the Alaska fish and game revenue bond redemption fund. We see no legal concerns with the appropriation.

Section 28(k) of the bill would make an appropriation to the Alaska municipal bond bank authority reserve fund. We see no legal concerns with the appropriation.

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

Section 28(m) of the bill would make an appropriation to the regional educational attendance area school fund. We see no legal concerns with the appropriation.

Section 28(n) of the bill would appropriate the following fees to the fish and game fund (AS 16.05.100) (1) range fees from shooting ranges operated by the Department of Fish and Game; (2) receipts from the sale of waterfowl prints; and (3) sanctuary access permit fees. We see no legal concerns with the appropriation.

Section 28(o) of the bill would appropriate \$10,000,000 from the general fund to the power project fund to fund a loan for the Humpback Creek hydroelectric project. The appropriation is contingent on approval by the Alaska Energy Authority of a loan not to exceed \$9,123,000 from the power project fund (AS 42.45.010) to Cordova Electric Cooperative for the Humpback Creek hydroelectric project. The contingent effect of the appropriation is further identified by sec. 37(c), page 92, lines 16 - 17 of the bill. Under AS 42.45.010(j), the naming of the Humpback Creek hydroelectric project in the appropriation constitutes required legislative approval for the project and amount of the loan. We see no legal concerns with the appropriation.

Section 29 of the bill would make appropriations for retirement system funding. Section 29(a) of the bill would make an appropriation in the amount of \$312,472,952 for the state's additional contribution under AS 39.35.280 to pay public employees' retirement system unfunded liability. Section 29(b) of the bill would appropriate \$316,847,291 for the state's additional contribution under AS 14.25.085 to pay teachers' retirement system unfunded liability. Section 29(c) of the bill would make an appropriation of \$4,460,321 to the Department of Administration for the purpose of funding the judicial retirement system under AS 22.25.046. We see no legal concerns with these appropriations.

Section 30(a) of the bill would provide for the appropriation of funds covering salary costs and benefit adjustments for public officials and employees in the executive branch, court system, the legislature and for legislators. Section 30(a) of the bill also would appropriate funds to implement state collective bargaining agreements covering 11 collective bargaining units. Section 30(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 collective bargaining agreements for employees in the following bargaining units: University of Alaska Federation of Teachers; United Academics - American Association of University Professors, American Federation of Teachers; United Academics - Adjuncts; and Fairbanks Firefighters Association, IAFF Local 1324.

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

Section 30(d) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in subsec. (b) of the bill would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit and approved by the Board of Regents of the University of Alaska. The contingent language is a proper condition on the appropriation.

Section 31(a) and (b) of the bill would appropriate the proceeds of certain taxes and fees for refund to local governments. Section 31(c) of the bill sets out intent language to the effect that these payments to local governments may be assigned to another state agency. The Department of Revenue has encountered instances when a political subdivision has assigned the right to receive such shared taxes to a state agency, usually as a means to pay an existing obligation. The intent language seeks to enact substantive law and should be set out in statute.

Section 32 of the bill would provide that the unexpended and unobligated balances on June 30, 2013 of the previously appropriated federal funding available under the American Recovery and Reinvestment Act of 2009 is re-appropriated to various departments. We see no legal concerns with the appropriation.

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

Section 34 would provide a funding backstop, including a cash deficiency, from the statutory budget reserve (AS 37.05.540(a)) if general fund revenue is insufficient to fund the fiscal year 2014 general fund appropriations.

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

Section 36 of the bill would allow for retroactive effect to June 30, 2013, for certain appropriations made in sec. 1 and sec. 13(h)(1) of the bill.

Section 37 of the bill would provide that appropriations in secs. 19(b), 27(i), and 28(o) of the bill are contingent upon the occurrence of events specified in those sections.

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

## **XXII. 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,

Michael C. Geraghty  
Attorney General

MCG:DEB:pav