

STATE OF ALASKA

DEPARTMENT OF LAW

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May 3, 2012

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

Re: CCS HB 284 -- making appropriations for the operating and loan program expenses of state government and for certain programs, capitalizing funds, amending appropriations, and making reappropriations (Fiscal Year 2013 Operating Budget)
Our file: JU2012200405

Dear Governor Parnell:

At the request of your legislative office, we have reviewed CCS HB 284 (HB 284), making appropriations for the operating and loan program expenses of state government and for certain programs, capitalizing funds, amending appropriations, and making reappropriations. This bill is otherwise known as the fiscal year 2013 operating budget (beginning on July 1, 2012, and ending on June 30, 2013). 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: "[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 \$1,000,000 appears in sec. 1 to the appropriation made to Department of Corrections for population management. Section 1, p.10, line 6.

II. GENERAL INTENT LANGUAGE

As in prior years, the bill has numerous expressions of legislative intent accompanying certain appropriation items. 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 (now Chief Justice) 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 courts have 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 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 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 the budget 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, of the Alaska Constitution. *Id.* at 377. The court removed any ambiguity on this point in a subsequent case also brought by the Legislative Council against Governor Knowles: "We now explicitly adopt *Knowles II's* exclusively monetary characterization of article II appropriations items and hold that the governor's appropriations veto applies only to monetary appropriations." *Alaska Legislative Council v. Knowles*, 86 P.3d 891, 895 (Alaska 2004).

III. DEPARTMENT OF ADMINISTRATION

In the appropriation for Enterprise Technology Services, the legislature expresses its intent that the Department of Administration work with the applicable federal government agencies to develop and implement a long-term plan to share costs for the Alaska Land Mobile Radio system prior to submitting its fiscal year 2014 budget request to the legislature. Section 1, p. 4, lines 8 - 11. As a matter of comity and to the extent practicable, the Department of Administration may choose to follow this suggestion, but is not required to as a matter of law.

The appropriation to the Alaska Oil and Gas Conservation Commission includes "permit fees under AS 31.05.090." Section 1, p. 5, line 4. However, AS 31.05.090 was amended in 2007 to eliminate all such fees. This is the second year the legislature has appropriated these permit fees despite the elimination of such fees.

IV. DEPARTMENT OF COMMERCE, COMMUNITY, and ECONOMIC DEVELOPMENT

In the appropriation to the division of 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 covering, for the past six years, license revenue received, expenditures made, balances carried forward, and number of licenses issued. We have previously advised that 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 commissioner of commerce, community, and economic development may wish to comply as a matter of comity.

V. DEPARTMENT OF CORRECTIONS

The legislature, although not connected to any particular appropriation, expressed its intent that the Department of Corrections consider the collateral consequences, such as the cost of litigation and inmate safety, when modifying shift staffing policies of the department. These provisions are probably not enforceable, but the Department of Corrections may wish to comply as a matter of comity.

Under the appropriation for population management, as discussed above, the legislature has assigned an unallocated budget reduction of \$1,000,000. 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 problem 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).

VI. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT

As it did the last three years, the legislature has stated that a school district may not receive state education aid if it has a policy barring military, ROTC, CIA and FBI recruiters, the boy scouts, or ROTC programs from its schools. Section 1, p. 10, lines 27 - 33, and p. 11, lines 3 - 5. As we have previously stated, we think this language probably violates the confinement clause. *See* 2009 Op. Att'y Gen. 4 (May 8; JU2009200407); 2008 Op. Att'y Gen. 3 (May 9; 883-08-0074).

In *Knowles II*, the legislature sought to make certain appropriations to the Alaska Seafood Marketing Institute (ASMI) contingent on ASMI not having any employees located outside the state with a salary over a certain level. The Alaska Supreme Court held that such conditional language violated four of the five *Hammond* factors (discussed above) 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 military recruiter language in the Department of Education and Early Development's budget 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. The military recruiter language is not germane to the foundation program appropriation. By imposing certain military recruiter 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 access policy and the 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 recruiter access.

Under the appropriation for education support services, sec. 1, p. 11, lines 14 - 18, the legislature expressed its intent that the state Board of Education provide a report to the legislature by January 31, 2013, including recommendations to improve student performance. We have previously advised that 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 state Board of Education may wish to comply as a matter of comity.

Under the allocation for early learning coordination within the appropriation for teaching and learning support, the legislature expressed its intent that \$250,000 of the funding for this allocation be used for the Parents as Teachers program. Section 1, p. 12, lines 3 - 5. Because the legislature could have appropriated this amount for this express purpose but instead choose to simply express its intent, this intent language is probably not enforceable but the Department of Education and Early Development may wish to comply as a matter of comity.

Under the allocation for Pre-Kindergarten Grants within the appropriation for teaching and learning support, the legislature expressed its intent that this funding be awarded through grants on a competitive basis and that the Department of Education and Early Development work with grantees to ensure that pre-kindergarten programs implement a method to measure its effectiveness. Section 1, p. 12, lines 7 - 11. Because the Department of Education and Early Development already utilizes a competitive grant application process to disburse these funds, the department plans to honor this statement of legislative intent. Regarding the program effectiveness measure, although this intent language is probably not enforceable, the department may wish to comply as a matter of comity.

VII. DEPARTMENT OF FISH AND GAME

Under the appropriation for commercial fisheries, the legislature expresses its intent that the Department of Fish and Game include lingcod surveys when completing demersal shelf rockfish surveys. Section 1, p. 14, lines 30 - 31. 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

Under the appropriation for executive operations, sec. 1, p. 16, lines 25 - 28, the legislature expressed its intent that the Governor's Office provide a report to the legislature by February 18, 2013 regarding the results of the domestic violence and sexual assault initiative, including a description of the performance measures used to measure these results. 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 Governor's Office may wish to comply as a matter of comity.

Under the appropriation for the office of management and budget, sec. 1, p. 17, lines 5 - 9, the legislature expressed its intent that the office of management and budget develop a plan to address the declining balance of the oil and hazardous substance release prevention and response fund. As a matter of comity and to the extent practicable, the office of management and budget may choose to follow this request, but is not required to as a matter of law.

IX. DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Under the appropriation for public health, the legislature included the following intent language regarding abortion funding:

No money appropriated for public health and allocated to women, children, and family health 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. 20, lines 27 - 32. As we have opined previously, this language is intended to prevent expenditures from these appropriations for therapeutic or medically necessary abortions. The Department of Health and Social Services (DHSS), however, 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, DHSS 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 DHSS is ostensibly without the money available to pay for services to operate the program legally. A veto of this provision is not available under the holding in *Knowles II*.

Nine years ago, the plaintiffs in the Planned Parenthood case asked the superior court to clarify how similar budget restrictions impacted its judgment. The superior court, three days after the Supreme Court affirmed the judgment, issued an opinion ordering the DHSS not to comply with the restrictions. To date, therefore, DHSS has obeyed the superior court's order and we must advise DHSS 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 (DOLWD) programs receive federal funds. The operating budget continues the practice of including in the amounts appropriated for certain programs any federal receipts from prior fiscal years that have not been spent or obligated:

- Section 1, p. 23, lines 16 - 19: Management Services
- Section 1, p. 25, lines 10 - 13: Vocational Rehabilitation Administration
- Section 1, p. 25, lines 22 - 24: Americans with Disabilities Act

A number of DOLWD programs receive non-public funds for services provided or as contributions from taxpayers. The operating budget continues the practice of including in the amounts appropriated for certain programs any amounts received in prior fiscal years that have not been spent or obligated:

-- Section 1, p. 24, lines 9 - 11: Alaska Safety Advisory Council, which receives fees from persons attending the governor's safety conference, as provided in AS 18.60.840.

-- Section 1, p. 25, lines 32 - 33, and p. 26, lines 3 - 4: Alaska Vocational Technical Center, which may receive fees for services or contributions by individual or certain organizational taxpayers.

Under the appropriation to the Alaska Vocational Technical Center, sec. 1, p. 25, lines 27 - 30, the legislature expressed its intent that the DOLWD report back to legislature on its efforts to utilize its prior fiscal year funding for a grant writer position to secure additional grant funding to support its mission. As discussed above, reporting requirements are normally set out in statute. To the extent that this reporting requirement is not otherwise set out in statute, the DOLWD may wish to comply as a matter of comity.

XI. DEPARTMENT OF LAW

The portion of sec. 1 of the operating budget appropriating funds to the Department of Law does not contain any intent language, and there are no apparent issues with this section.

XII. DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS

The portion of sec. 1 of the operating budget appropriating funds to the Department of Military and Veterans' Affairs does not contain any intent language, and there are no apparent issues with this section.

XIII. DEPARTMENT OF NATURAL RESOURCES

Under the appropriation for Administration and Support Services, sec. 1, p. 28, lines 31 - 32, and p. 29, lines 8 - 10, the legislature expressed its intent that the Department of Natural Resources provide a report and a plan to the legislature on: (1) efforts to market resource development in Alaska, and (2) efforts to stabilize and use of the Land Disposal Income Fund to enhance land disposal efforts in Alaska. As discussed above, reporting requirements are normally set out in statute. To the extent that this reporting requirement is not otherwise set out in statute, the Department of Natural Resources (DNR) may wish to comply as a matter of comity.

Under the appropriation for land and water resources, sec. 1, p. 30, lines 6 - 9, the legislature expressed its intent that the funding provided for the Guide Concession Area Program be limited to planning and program development and not be used to implement this program until authorized by the legislature. Assuming DNR has statutory authority to implement this

program, an attempt to amend existing law in an appropriation bill would violate the confinement clause, making this condition unenforceable.

XIV. DEPARTMENT OF PUBLIC SAFETY

The appropriation for the Alaska State Troopers contains language stating that it is the intent of the legislature that significant resources be deployed to communities that actively participate in the rural trooper housing program, and that, when able, the troopers provide a state trooper in full dress to attend funerals of deceased peace officers. Section 1, p. 31, lines 19 - 24. We believe this language strays into the administration of the Department of Public Safety's program with respect to how it deploys its personnel. But if such additional coverage is consistent with the department's mission, the department may comply as a matter of comity.

XV. DEPARTMENT OF REVENUE

Under the appropriation to the Alaska Mental Health Trust Authority (Trust Authority) the legislature expressed its intent that the Trust Authority report specified information to the legislature regarding the duration and outcome of new programs that it creates, including whether such programs will require ongoing funding. Section 1, p. 34, lines 29 - 33 and p. 35, lines 3 - 5. As previously discussed, reporting requirements such as these should be provided in substantive law provisions, but the Trust Authority may choose to comply with these requests as a matter of comity.

XVI. DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

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, 2013." Section 1, p. 38, lines 18 - 19. This special lapse provision makes the appropriations available for expenditure until they lapse into the general fund on August 31, 2013. 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

There are two expressions of legislative intent set out at the beginning of the University of Alaska (University) budget that are not connected with any appropriation: That the University submit a fiscal year 2014 budget in which requests for unrestricted general funds do not exceed the amount of additional University receipts requested for that year, and that the University move toward a long-term goal of requesting unrestricted general funds of 125 percent of actual University receipts for the most recently closed fiscal year. Section 1, p. 39, lines 24 - 28. Because this intent language is not connected to a specific appropriation, it is probably not enforceable.

Under the allocation to the Anchorage Campus within the appropriation to the University of Alaska Anchorage, the legislature expressed its intent that \$250,000 of the \$266,219,500

allocated to the Anchorage Campus be used to conduct a study to evaluate Alaska's education system and make recommendations to the legislature aimed at increasing student achievement. Section 1, p. 40, lines 11 - 26. The intent language goes on to specify the evaluation parameters of this study. Although this language appears to be drafted as advisory and not as a condition for expenditure of the funds appropriated, should the University decide to conduct this study or provide the funds through a grant to another agency or entity to conduct this study, as a matter of comity, serious consideration should be given to following the evaluation parameters identified in this appropriation.

XVIII. ALASKA COURT SYSTEM

The portion of sec. 1 of the operating budget appropriating funds to the Alaska Court System does not appear to raise any legal issues.

XIX. LEGISLATURE

The portion of sec. 1 of the operating budget appropriating funds to the legislature does not appear to raise any legal issues.

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. 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. This section is contemplated by AS 39.25.150(2)(C), 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, 2013 describing and justifying all such transfers during the first half of the fiscal year, and again submit a report on October 1, 2013 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.

Section 8 of the bill would appropriate to the Alaska Aerospace Corporation all federal receipts and other corporate receipts in excess of the amounts appropriated in sec. 1 of the bill.

Section 9 of the bill would make appropriations to the Alaska Housing Finance Corporation out of 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 issues that should 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 both of these estimated amounts are dependent on investment returns and inflation that have yet to occur, these estimated amounts are fairly speculative. This section would also appropriate oil and gas revenue to the principal of the permanent fund as required by the Alaska 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 \$20,400,000 dividend declared by the Alaska Industrial Development and Export Authority. We see no legal problems 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 problems 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 2013 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 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 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) of the bill would extend the lapse date by one year on an existing appropriation to the department to address the effects of climate change on the state. Sections 13(i) and (j) of the bill would provide for appropriations to the Alaska Seafood Marketing Institute. We see no legal problems with the various appropriations in sec. 13 of the bill.

Section 14 of the bill would amend an existing appropriation by extending the lapse date by one year on an appropriation to the Department of Education and Early Development for the EduJobs program. We see no legal problems with this appropriation.

Sections 15(a) and (b) of the bill would provide a general fund appropriation to the Department of Health and Social Services for energy assistance if the amount appropriated in sec. 1 of the bill is insufficient to fully fund the Alaska Affordable Heating Program for fiscal year 2013. We see no legal problems with these appropriations.

Section 16(a) - (c) of the bill would appropriate amounts necessary from the fishermen's fund (AS 23.35.060), second injury fund (AS 23.30.040(a)), and workers' compensation benefits guaranty fund (AS 23.30.082) to make all benefit payments related to those funds in fiscal year 2013 not covered by amounts appropriated in sec. 1 of the bill. Section 16(d) of the bill would appropriate surplus contributions received by the Alaska Vocational Technical Center (AVTEC) to AVTEC. We see no legal problems with these appropriations.

Section 17 of the bill would appropriate amounts related to the Alaska veteran's memorial endowment fund (AS 37.14.700). We see no legal problems with this appropriation.

Sections 18(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 18(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. We see no legal problems with these appropriations.

Section 19 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 problems with this appropriation.

Sections 20(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 between agencies. Section 20(f) of the bill would make a general fund appropriation to the office of the governor to implement the Alaska coastal management program if approved by a majority of voters at the next general election. We see no legal problems with this appropriation.

Section 21 of the bill would appropriate to the University of Alaska the amounts of fees collected in fiscal year 2012 for the issuance of special request university license plates, less the cost of issuing the license plates. We see no legal problems with this appropriation.

Section 22 of the bill would appropriate retained fees and bankcard service fees. This provision now explicitly covers contingency fees. We see no legal problem with this appropriation.

Section 23 of the bill would appropriate amounts necessary for debt service on a range of notes, certificates of participation, and bonds. We see no legal problems with these appropriations.

Section 24 of the bill would appropriate certain federal receipts, information services fund program receipts, Exxon Valdez oil spill trust receipts, AHFC receipts, Alaska marine highway receipts, and University of Alaska receipts. We see no legal problems with these appropriations.

Section 25 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 Alaska clean water fund, the Alaska drinking water fund, and the election fund. We see no legal problems with these appropriations.

Section 26(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) according to AS 37.05.530(g)(1) - (3), amounts not appropriated for grants from the National Petroleum Reserve - Alaska special revenue fund (AS 37.05.530). The appropriation to the public school trust fund is required to help satisfy the state's obligation to compensate the public school trust for trust lands re-designated as general grant lands in 1978 (ch. 182, SLA 1978). We see no legal problems with this appropriation.

Section 26(b) of the bill would appropriate the loan origination fees collected by the Alaska Commission on Postsecondary Education. We see no legal problem with this appropriation.

Section 26(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, 2013 is appropriated to the mine reclamation trust fund operating account. There are no legal issues with this provision.

Section 26(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 problem with this appropriation.

Section 26(e) of the bill would make an appropriation to the marine highway system vessel replacement fund. We see no legal problem with this appropriation.

Section 26(f) of the bill would make an appropriation to the public education fund. We see no legal problem with this appropriation.

Section 26(g) and (h) of the bill would make appropriations to the regional educational attendance area school fund. We see no legal problem with this appropriation.

Section 26(i) of the bill would appropriate from the general fund to the bulk fuel revolving loan fund, fees collected by the Alaska Energy Authority during fiscal year 2012 from that fund program. We see no legal problems with this appropriation.

Section 26(j) of the bill would appropriate to the oil and hazardous substance release prevention account. Section 26(k) of the bill would appropriate to the oil and hazardous substance release response account. We see no legal problem with these appropriations.

Section 26(l) 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 problem with this appropriation.

Section 26(m) of the bill would appropriate fees collected at boating and angling access sites to the fish and game fund. We see no legal problem with this appropriation.

Section 26(n) 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 problem with this appropriation.

Section 26(o) of the bill would make an appropriation to the Alaska municipal bond bank authority reserve fund. We see no legal problem with this appropriation.

Section 26(p) of the bill would appropriate the interest earned on funds in the Alaska marine highway system fund to the fund. We see no legal problem with this appropriation.

Section 27 of the bill would make appropriations for retirement system funding. Section 27(a) of the bill would make an appropriation in the amount of \$307,302,392 for the state's additional contribution under AS 39.35.280 to pay public employees' retirement system unfunded liability. Section 27(b) of the bill would appropriate \$302,777,153 for the state's additional contribution under AS 14.25.085 to pay teachers' retirement system unfunded liability. Section 27(c) of the bill would make an appropriation of \$3,785,571 to the Department of Administration for the purpose of funding the judicial retirement system under AS 22.25.046. And, sec. 27(d) of the bill would make a direct appropriation of \$50,000,000 to the judicial retirement trust fund to eliminate the unfunded liability of this retirement program. We see no legal problems with these appropriations.

Section 28(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. This section provides the funding for increases to those salary costs and benefit adjustments. This includes funding for salary increases effective July 1, 2012 for certain employees not covered by collective bargaining agreements under HB 421 passed by the legislature in 2010. AS 39.27.011(f).

Section 28(a) of the bill would also appropriate funds to implement state collective bargaining agreements covering the following bargaining units: Alaska Public Employees

Association, for the confidential unit; Alaska State Employees Association, for the general government unit; Alaska Public Employees Association, for the supervisory unit; Alaska Vocational Technical Center Teachers Association-NEA, for the Alaska Vocational Technical Center unit; International Organization of Masters, Mates, and Pilots, for the masters, mates, and pilots unit; Inlandboatmen's Union of the Pacific, for the unlicensed marine bargaining unit; Marine Engineers Beneficial Association; Public Safety Employees Association, for the regularly commissioned public safety officers unit; Public Employees Local 71, for the Labor, Trades and Crafts unit; and Teachers' Education Association of Mt. Edgecumbe.

Section 28(b) of the bill would provide that the appropriations made to the University of Alaska 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: Alaska Higher Education Crafts and Trades Employees; University of Alaska Federation of Teachers; United Academics; United Academics-Adjuncts; and Fairbanks Firefighters Association, IAFF Local 1324.

Section 28(c) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in subsec. (a) would receive a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit. This contingent language is a proper condition on the appropriation.

Section 28(d) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in subsec. (b) would receive 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. This contingent language is a proper condition on the appropriation.

Section 29 of the bill would appropriate the proceeds of certain taxes and fees for refund to local governments. Section 29(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. This intent language seeks to enact substantive law and should be set out in statute. However, in the past, we have advised that expressions of intent may generally be ignored or followed as a matter of comity.

Section 30 of the bill would provide that the unexpended and unobligated balances on June 30, 2012 of the previously appropriated federal funding available under the American Recovery and Reinvestment Act of 2009 is reappropriated to various departments. We see no legal problem with this appropriation.

Section 31 of the bill would reduce the appropriation to each department to reverse negative account balances in amounts of \$1,000 or less. We see no legal problem with this appropriation.

Sections 32(a) and (b) of the bill would appropriate a total of \$2 billion dollars from the general fund to the statutory budget reserve fund. Section 32(c) of the bill 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 2013 general fund appropriations.

Section 33 of the bill would provide that certain appropriations in the bill are for capitalization of funds and do not lapse.

Section 34 of the bill would allow for retroactive effect to June 30, 2012, for certain appropriations made in secs. 1 and 13(i)(1) of the bill.

Section 35 of the bill would provide that the appropriation in sec. 20(f) of the bill to fund the Alaska costal management program is contingent upon voter approval in the next general election.

Sections 36, 37, and 38 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 this 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 this 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