

May 21, 2014

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

Re: HCS CSSB 119(FIN) am H - Fiscal Year
2015 Capital Budget
Our file: JU2014200391

Dear Governor Parnell:

At the request of your legislative director, we have reviewed HCS CSSB 119(FIN) am H, making and amending appropriations, including capital appropriations, supplemental appropriations, reappropriations, and other appropriations; making appropriations to capitalize funds; and making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund.

Following is our legal review of the fiscal year 2015 capital budget.

I. General Comments.

We have reviewed all appropriations set out in this bill and have several comments on general legal issues affecting the bill overall. Unless specifically noted, we found no legal issues with the appropriations in this bill.

A. Legislative Intent and Contingency Language.

The fiscal year 2015 capital budget bill contains several expressions of legislative intent and several of contingencies: Section 1, p. 3, lines 24 - 25; sec. 1, p. 34, lines 25 - 31; sec. 1, p. 78, lines 22 - 25, sec. 45, p. 137, lines 27 - 30, among others. We believe that most expressions of legislative intent are not binding on the executive branch because such expressions 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 language added to an appropriations bill violates the confinement clause. Under this test, 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. Memorandum of Decision at 44 - 45, No. 1JU-80-1163 (Alaska Super., May 25, 1983). The Alaska Supreme Court adopted Judge Carpeneti's test on a "nonexclusive" basis in *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001) (*Knowles II*).¹ There have been no Alaska appellate opinions applying the *Hammond* criteria since *Knowles II*.

Judge Carpeneti observed that the five-factor 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." *Hammond*, No. 1JU-80-1163 at 44 - 45. This individualized analytical process makes it difficult to predict the outcome of a potential confinement clause dispute. Judge Carpeneti determined that most, but not all, of the intent language at issue in *Hammond* was invalid under the confinement clause. *Id.* at 46-58. In *Knowles II*, the Alaska Supreme Court found certain contingency language invalid but upheld other contingency language (e.g., *id.* at 381 - 82).

Analysis by the Alaska Supreme Court in *Knowles II* suggests how the *Hammond* test would be applied to confinement clause issues. The basic purpose of the confinement clause is to prevent the legislature from enacting substantive policy in the context of making an appropriation. "An appropriation for a statutory program may not include provisions changing the requirements of that program, even temporarily for the purposes of that appropriation." *Id.* at 377 - 78. The "minimum necessary" language test limits language to that necessary to explain the "legislature's purpose"; i.e., to explain how, when, or on what the money is authorized to be spent. *Id.* "This factor limits the legislature's ability to include in an appropriation bill legislation cloaked as a "description." *Id.* Similarly under the "germaneness" test, courts generally will uphold conditions expressed as purposes for the appropriation. *Id.* at 379. Thus, courts will generally uphold appropriation language identifying the facilities, employee positions, buildings, or types of buildings on which the money could be spent. And, courts would uphold contingencies on appropriations that relate to the receipt or nonreceipt of specific funds, or relate to the occurrence or nonoccurrence of something that would make the expenditure desirable. However, contingencies that relate to things other than the need for or use of the money or the need for the activity may be found insufficiently "connected" to the appropriation. *Id.*

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, we

¹ The court described that it approaches confinement clause disputes with an assumption that an act of the legislature is constitutional.

recommend further consultation with this office so that we may advise as to the extent such 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 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 Id. at 377.

B. Grants to Tribal Entities.

Several sections of the bill would make appropriations and grants to federally recognized tribes, village councils, and tribal entities, such as tribal agencies, organizations, or tribal nonprofit corporations under state law.²

While theoretical limitations exist on the legislature's ability to appropriate money to tribes,³ as a general rule nothing prevents properly implemented appropriations to tribal entities, federally recognized tribes, or village councils. Our general comment regarding such grants is to remind state agencies that they must obtain a waiver of sovereign immunity from the tribal entity on a form that has been approved by this office before grant money can be dispersed to the entity. To the extent that the State of Alaska enters a contract or commercial transaction with a tribe or tribal entity, the contract or grant language should specify State of Alaska court jurisdiction or the State of Alaska might otherwise submit itself to tribal jurisdiction.⁴ The grantee must, as with all grantees that receive public funds, agree that the expenditure of the grant money will serve a public purpose.

Finally, some caution should be exercised about the specific entity to which the appropriation or grant money should be distributed. Care should be taken to make the appropriation or grant to the entity (e.g., tribe or tribal council) which under the tribe's law has

² For example, sec. 1 of the bill would make appropriations to Anvik Traditional Council - Biomass Community Facilities Heating Project, p. 33, lines 32 - 33; Association of Village Council Presidents - Yukon -Kuskokwim Energy/Freight Corridor Planning & Design (HD 37), p. 34, lines 10 - 13; Ekwok Village Council - Landfill Access Road Project (HD 36), p. 38, lines 5 - 6; Federation of Community Councils -Nunaka Valley and Northeast Community Patrols (HD 40), p. 39, lines 19 - 21.

³ See, e.g., 1981 Inf. Op. Att'y Gen. 543, 544-545, 1981 WL 38636 (noting potential equal protection, public purpose, and local government constitutional issues associated with state revenue sharing with councils). The expenditure of state funds will sometimes be contingent on agreement by a tribe to anti-discrimination clauses and to waivers of sovereign immunity.

⁴ See, e.g., *Montana v. United States*, 450 U.S. 544, 565 (1981) (person who enters a consensual relationship with a tribe through commercial dealings or contracts may be subject to tribal jurisdiction).

the authority to bind the tribe and waive the tribe's sovereign immunity.⁵ The agency should consult with the Department of Law in facilitating these grants or appropriations.

C. Operating Appropriations in Capital Budget Bill.

There are several appropriations for operating expenses in this bill. For example, section 13(a) of the bill, p. 101, makes an appropriation to the Department of Commerce, Community, and Economic Development, Alaska Gasline Development Corporation, for operating costs related to participation in an Alaska liquefied natural gas project; while section 13(b) of the bill makes an appropriation to the Department of Commerce, Community, and Economic Development, Alaska Energy Authority, to plan and make recommendations for infrastructure needs related to delivery of affordable energy to areas of the state not in proximity to a North Slope natural gas pipeline. Other operating expenses appear in sec. 7, p. 91 - 93 and in sec. 10, p. 97 - 98.

Although this bill is purported to be the capital budget, not the operating budget, there does not appear to be a legal problem with including operating expenditures. The confinement clause of the Alaska Constitution demands that "[b]ills for appropriations shall be confined to appropriations." (Art. II, sec. 13). It does not make a distinction between appropriations for capital and operating expenses. The appropriations for operating expenditures generally list the fiscal years for which the appropriation is intended. Although there may be political and practical consequences to the use of the capital budget to make operating appropriations, we do not see a legal issue.

D. Negative Appropriations.

Another legal question presented by the bill is the inclusion of negative appropriations, which make appropriations to various departments for operating expenses.⁶ These negative appropriations have the effect of reducing the amounts appropriated in the operating budget bill.

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). We see no need to modify that advice here.

E. Commercial Passenger Vessel Tax.

⁵ A tribal council is the "elected lawmaking bod[y] of tribal governments." Cohen's Handbook of Federal Indian Law sec. 4.04[3][c], at 260 (Nell Jessup Newton ed., 2004 ed.). Note that the council or council members may also be able to assert sovereign immunity. *Id.* at 636 (immunity protects tribal officials acting within the scope of their authority).

⁶ For example, sec. 7, p. 91, lines 18 and 28; sec 7, p. 92, lines 5 - 23.

The funding source for several appropriations to the Department of Commerce, Community, and Economic Development is from the commercial vessel passenger tax account (AS 43.52.230).⁷ This account is made up of tax proceeds collected from passengers who travel in Alaska on a large commercial passenger vessel (250 berths or more) for more than 72 hours on the state's marine water. Based upon our review of the constitutional and statutory restrictions on the use of these funds, we believe that the appropriations are within the statutorily authorized appropriation purposes as they appear to support projects to improve port and harbor infrastructure, provide services to commercial passenger vessels and their passengers, or to improve safety and efficiency of the interstate and foreign commerce activities in which the vessel and their passengers are engaged.

II. Sectional Analysis.

A. Sections 1 - 3 of the bill.

Section 1, p. 2 - 80, would make appropriations for capital projects and grants from the general fund or other funds. Except as otherwise noted, these appropriations lapse under AS 37.25.020. The appropriations made by sec. 1 take effect on July 1, 2014, under sec. 55 of the bill. Section 2, p. 81 - 84, sets out the funding by agency for the appropriations made in sec. 1. Section 3, p. 85 - 86, sets out the statewide funding for the appropriations made in sec. 1.

Section 1 includes an appropriation under the heading "Alaska Energy Authority - Round VII Renewable Energy Project Grants (AS 42.45.045)" for the "Allison Creek Hydroelectric Project Consultation (HD 6)." See p. 5, lines 11 - 12 of the bill. The word "consultation" was mistakenly included and the word "construction" should have been used instead. The legislative history shows that on February 12, 2014, the Alaska Energy Authority (AEA) gave a presentation to the Senate Finance Committee regarding the renewable energy grant fund under AS 42.45.045 and the projects the AEA recommended the legislature fund through that program. "Allison Creek Hydroelectric Project *Construction*" was included on AEA's list of recommended projects.⁸ The next version of the bill⁹ included an appropriation for the "Allison Creek Hydroelectric Project" but used the term "consultation" instead of "construction." This was clearly a typographical error given the legislative history and the fact that AS 42.45.045(e)

⁷ Sec. 3, p. 85, line 29, and sec. 1, p. 11, line 19, Juneau - Last Chance Basin Well Field Upgrades; sec. 1, p. 11, line 21, Juneau - Salmon Creek Water Treatment Facility Secondary Disinfection; sec. 1, p. 17, line 4, Sitka - Commercial Passenger Visitor Facilities Improvements; sec. 1, p. 17, line 6, Skagway - Float Extension to Serve Cruise Passenger Vessels; and sec. 1, p. 43, line 8, Marine Exchange of Alaska - Alaska Vessel Tracking System Upgrades and Expansion.

⁸ See "Renewable Energy Fund Round VII – Statewide Recommendations and Funding for Heat and Standard Applications," February 12, 2012, page 1, line 16 (http://www.legis.state.ak.us/basis/get_documents.asp?session=28&docid=16350).

⁹ See CSSB 119(FIN), 4/9/14 (<http://www.legis.state.ak.us/PDF/28/Bills/SB0119B.PDF>).

specifically allows a grant for "construction" but does not mention granting money to pay for "consultation." Consistent with our prior advice in a similar situation, since the legislative history shows that the grant was meant for "construction" and not "consultation," the language of the bill should be interpreted to provide a grant for the project as presented in AEA's recommendations—namely, for construction of the Allison Creek Hydroelectric Project.¹⁰

B. Sections 4 - 6 of the bill.

Section 4, p. 87 - 88, would make appropriations for supplemental capital projects and grants from the general fund or other funds for the purposes expressed in this section. These appropriations lapse under AS 37.25.030. Section 5, p. 89, sets out the funding by agency for the appropriations made in sec. 4. Section 6, p. 90, sets out the statewide funding for the appropriations made in sec. 4. Under sec. 53 of the bill, p. 139, the appropriations made by sec. 4 would take effect on April 20, 2014.

C. Sections 7 - 9 of the bill.

Section 7, p. 91 - 93, contains appropriation items for operating expenditures from the general fund or other funds as set out in sec. 8. 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. Several of these appropriations are negative appropriations. Under sec. 53 of the bill, the appropriations made by sec. 7 would take effect on April 20, 2014.

Section 8, p. 94 - 95, sets out the funding by agency for the appropriations made in sec. 7.

Section 9, p. 96, sets out the statewide funding for the appropriations made in sec. 7.

D. Sections 10 - 12 of the bill.

Section 10, p. 97, would make appropriations to several departments for operating expenses associated with HB 278, for the fiscal year beginning July 1, 2014. Section 11, p. 99, sets out the funding by agency for the appropriations made in sec. 10. Section 12, p. 100, sets out the statewide funding for the appropriations made in sec. 10. Under sec. 52(g) of the bill, p. 139, the appropriations made in secs. 10 - 12 are contingent on passage by the Twenty-Eighth Alaska State Legislature and enactment into law of a version of House Bill No. 278.

E. Sections 13 - 35 of the bill.

Sections 13 - 35 of the bill, p. 101 - 119, would make or amend various appropriations, as described below. Except as otherwise noted, the appropriations would take effect on July 1, 2014, under sec. 55 of the bill.

¹⁰ 1983 Op. Alaska Att'y Gen. (November 14) 1983 WL 42652 (Alaska A.G.), reviewing CCSHB 105, ch. 107, SLA 1983.

Section 13(a), p. 101, would appropriate \$406,700 from the Alaska liquefied gas project fund to the Alaska Gasline Development Corporation for operating costs for fiscal year ending June 30, 2014. As stated above, although this is an operating cost, not a capital item, it is permissible. Under sec. 52 of the bill, this section is contingent on the passage by the Twenty-Eighth Alaska State Legislature and enactment into law of a bill creating the Alaska liquefied natural gas project fund. Section 13(b) would appropriate \$2,025,000 from the general fund to the Alaska Energy Authority for affordable energy planning for areas of the state that do not have access to a North Slope natural gas pipeline, for the fiscal years ending June 30, 2014, 2015, 2016, and 2017. Under sec. 52(b) of the bill, sec. 13(b) is contingent on passage by the Twenty-Eighth Alaska State Legislature and enactment into law of a bill requiring the Alaska Energy Authority to plan and make recommendations to the legislature on infrastructure needed to deliver affordable energy to areas in the state that do not have direct access to a North Slope natural gas pipeline.

Section 14(a), p. 103, would reappropriate the unexpended and unobligated balances of 16 different prior appropriations (estimated to total \$3,358,421) to the Department of Environmental Conservation for village water infrastructure projects, technical assistance, and first time service projects. Section 14(b) would amend sec. 1, ch. 17, SLA 2012, to expand the scope of work allowed under a previous appropriation to Haines. Section 14(c) would reappropriate the unexpended and unobligated balance of a prior grant to Dillingham (estimated to be \$3,090,000) to the Department of Environmental Conservation for payment as a grant to Dillingham for wastewater system improvements and operating costs.

Section 15, p. 103, would reappropriate to the Department of Health and Social Services the unexpended and unobligated balance (estimated to be \$81,232) of a prior appropriation for eligibility information system replacement.

Section 16(a), p. 104, would reappropriate to the Department of Labor and Workforce Development the unexpended and unobligated balance in excess of \$100,000 of a prior appropriation for operating costs for the fiscal years ending June 30, 2014, 2015, and 2016. Section 16(b) would appropriate \$13,700 for the workers' safety and compensation administration account (AS 23.05.067) to the Department of Labor and Workforce Development to facilitate development of conversion factors associated with a new workers' compensation medical fee schedule. Under sec. 52(c) of the bill, sec. 16(b) is contingent on passage by the Twenty-Eighth Alaska State Legislature an enactment into law of a bill requiring the development of requisite conversion factors associated with a new workers' compensation medical fee schedule.

Section 17(a), p. 104, would appropriate \$3,090,400 to the Department of Law for the payment of judgments and settlements against the state for the fiscal year ending June 30, 2014. Section 17(b) would appropriate the amount necessary, after the application of the amount appropriated in sec. 17(a), for the purpose of paying judgments against the state on or before June 30, 2014, for the fiscal year ending June 30, 2014. Section 17(c) would amend a prior reappropriation to allow Department of Law to use the funds for the state's share of interim

remedial actions to protect the health, safety, and welfare of the people of North Pole area for the fiscal years ending June 30, 2014, 2015, 2016, and 2017. Under sec. 52(d) of the bill, sec. 17(c) is contingent on the execution of an agreement to share the cost of interim remedial actions to protect the health, safety, and welfare of the people in North Pole by the state, Flint Hills Resources Alaska, LLC, and Williams Alaska Petroleum, Inc.

Section 18(a), p. 105, would reappropriate to the Department of Military and Veterans' Affairs the unexpended and unobligated balance (estimated to be \$350,000) of a prior appropriation for Alcantra facilities project. Section 18(b) would reappropriate to the Department of Military and Veterans' Affairs the unexpended and unobligated balance (estimated to be \$195,000) of a prior appropriation covered storage for the 168th Wing at Eielson Air Force Base. Section 18(c) would appropriate \$111,328 from the general fund to the Department of Military and Veterans' Affairs for paying settlement costs of the fiscal year ending June 30, 2014.

Section 19(a), p. 105, would appropriate from the general fund to Department of Natural Resources the amount necessary to pay for fire suppression activities, estimated to be \$5,000,000, for the fiscal year ending June 30, 2014. Section 19(b) would appropriate \$4,600,000 from the receipts collected under AS 38.35.150 to the Department of Natural Resources for the Robert B. Atwood Building office renovations.

Section 20, p. 105, would appropriate \$175,000 from the general fund to the Department of Public Safety for on-site enforcement an inspection of new gear types and reporting requirements for Eastside set nets in the Upper Cook Inlet and for enforcement activities related to stocks of anadromous fish that return to the Kenai and Kasilof Rivers, for the fiscal years ending June 30, 2104, and June 30, 2015.

Section 21(a), p. 105, would appropriate \$164,617 from the general fund to the Department of Transportation and Public Facilities for design, engineering, and costs associated with the Old Quinhagak Airport litigation for the fiscal year ending June 30, 2014. Section 21(b) would reappropriate the unexpended and unobligated balance (estimated to be \$2,500,000) of a prior appropriation to the Department of Transportation and Public Facilities to the Alaska marine highway system fund for covering the costs of lost revenue associated with the cancelled service and repairs of the Tustemena. Section 21(c) would reappropriate, after the appropriation made in sec. 18(b), the unexpended and unobligated balance (estimated to be 5,000,000) of the prior appropriation to the Department of Transportation and Public Facilities, to the Alaska Marine highway system vessel replacement fund. Section 21(d) would appropriate \$117,984 from the general fund to the Department of Transportation and Public Facilities paying settlement costs for the fiscal year ending June 30, 2014. Section 21(e) would reappropriate to the Department of Transportation and Public Facilities the unexpended and unobligated balance (estimated to be \$7,500,000) of a prior appropriation for a new public ferry terminal and dock in Chignik. Section 21(f) would reappropriate the unexpended and unobligated balance, not to exceed \$5,000,000, of a prior appropriation to the Department of Transportation and Public Facilities for the Alaska international airport system: contingency fund.

Section 22, p. 106, would amend a prior appropriation to increase the amount of that appropriation allocated to the University of Alaska.

Section 23(a), p. 107, would amend a prior appropriation to change certain amounts appropriated to the state bond committee. Section 23(b) would repeal and reenact section 25(i), ch. 14, SLA 2013. The new version appropriates funds to the state bond committee amounts necessary to pay for debt service on international airports revenue bonds from various sources, including collection of Federal Aviation Administration approved passenger facility charges; the United States Treasury as a result of the American Recovery and Reinvestment Act of 2009; the International Airports Revenue Fund (AS 37.15.430(a)); and the International Airports Construction Fund (AS 37.15.420(a)).

Section 24, p. 110, is entitled Fund Capitalization and would make various appropriations. Section 24(a) would appropriate \$32,456,864 from the general fund to the disaster relief fund (AS 26.23.300(a)). Section 24(b) would appropriate from the general fund to the disaster relief fund the amount necessary, after application of the amount appropriated in sec. 24(a), to pay for disaster activities for the fiscal year ending June 30, 2014. Section 24(c) would appropriate \$69,834,500 from the general fund to the Alaska liquefied natural gas project fund (AS 31.25.110). Under sec. 52(a) of the bill, sec. 24(c) is contingent on the passage by the Twenty-Eighth Alaska State Legislature and enactment into law of a bill creating the Alaska liquefied natural gas project fund.

Section 25, p. 111, is entitled Fund Transfers. Section 25(a) would appropriate to the Alaska capital income fund (AS 37.05.065) \$15,000,000 of the receipts collected under AS 43.35.210 (Tax on Gambling Activities) and deposited in the large passenger vessel gaming and gambling tax account (AS 43.35.220). Section 25(b) would appropriate \$37,467,500 from the Alaska Housing Capital Corporation to the Alaska capital income fund.

Section 26, p. 111, is entitled Ratifications of Certain Expenditures. This section ratifies certain departmental expenditures to reverse the negative account balances in the Alaska State Accounting System. The appropriations from which the expenditures were actually paid are amended by increasing those appropriations for the fiscal year ending June 30, 2014.

Section 27, p. 112, is entitled Federal and other Program Receipts. Section 27(a) states that federal receipts, designated program receipts, information services fund program receipts, Exxon Valdez oil spill trust receipts, receipts of the Alaska Housing Finance Corporation, receipts of the Alaska marine highway system fund, receipts of the University of Alaska, receipts of commercial fisheries test fishing operations, and the receipts of the Alaska Aerospace Corporation that are received during the fiscal year ending June 30, 2015, and that exceed the amounts appropriated in the bill are appropriated conditioned on compliance with the program review provisions of AS 37.07.080(h). Section 27(b) states that if federal or other program receipts as defined in AS 37.05.146 and AS 44.21.045(b) exceed the estimates appropriated by the bill, the appropriation from state funds may be reduced by the excess if this is consistent with the applicable federal statute. Section 27(c) states that if federal or other program receipts as

defined in AS 37.05.146 and AS 44.21.045(b) fall short of the estimates appropriated by the bill, the affected appropriation is reduced by the amount of the shortfall.

Section 28, p. 112, is entitled Insurance Claims and states that the amounts to be received in settlement of insurance claims for losses and the amounts to be received as recovery for losses are appropriated from the general fund to the state insurance catastrophe reserve account or the appropriate state agency to mitigate loss.

Section 29, p. 112, would appropriate the amount received by the National Petroleum Reserve - Alaska special revenue fund, estimated to be \$4,005,621, to the Department of Commerce, Community, and Economic Development for capital grants under the National Petroleum Reserve - Alaska impact grant program to various municipalities for various projects.

Section 30, p. 113, would amend sec. 37(x), ch. 16, SLA 2013, to extend through June 30, 2015, an appropriation to the Alaska Legislature, Legislative Council, for the Alaska Arctic Policy commission for contract services, supplies and personnel.

Section 31, p. 113, would make two appropriations to the Department of Commerce, Community, and Economic Development (DCCED). Section 31(a) appropriates \$4,450,000 from the in-state natural gas pipeline fund (AS 31.25.100) to DCCED for operating costs for the fiscal year ending June 30, 2015. As stated above, using the capital budget bill to appropriate operating costs does not present a legal problem. Section 31(b) appropriates \$250,000 from the general fund to DCCED for the personal and contractual services associated with determining whether the Railbelt area is the best option for effective and efficient electrical transmission, for the fiscal year June 30, 2015.

Section 32, p. 114, would make appropriations to the Department of Education and Early Development (DEED). Section 32(a) would appropriate \$460,000 from the Alaska higher education investment fund to the DEED, Alaska Commission on Postsecondary Education, to replace the current grant and financial aid management system. Under sec. 52(e) of the bill, sec. 32(a) is contingent upon passage by the Twenty-Eighty Alaska State Legislature an enactment into law of a bill authorizing payment of administration costs of the Alaska education grant program from the Alaska higher education investment fund. Section 32(b) would appropriate \$42,953,500 from the general fund to DEED to be distributed as state aid to districts according to average daily membership for the fiscal year ending June 30, 2015. Section 32(c) would appropriate \$32,243,700 to DEED to be distributed as state aid to districts according to average daily membership for the fiscal year ending June 30, 2016. Section 32(d) would appropriate \$19,904,200 to the DEED to be distributed as state aid to districts according to average daily membership for the fiscal year ending June 30, 2017. Section 32(e) expresses the legislative intent that the appropriations in secs. 32(b) - (d) allow "the Alaska public school system to maintain operations at a level sufficient to educate children and provide time for all stakeholders to work with the legislature to identify innovative approaches and possible consolidation of service that will, over time, lower costs while maintaining a quality education system." The legislature also expresses its intent that the increased funding "serve as a bridge to developing a plan and identifying solutions implementing the innovative approaches and consolidation of

services identified by the public school system in an effort to recalibrate individual district budget spending levels of fiscal year 2014."

Section 33, p. 115, would reappropriate to Department of Environmental Conservation the unexpended and unobligated general fund balances (estimated to be \$2,74,080) of a prior appropriation for payment as a grant under AS 46.03.030 to the City of Dillingham for water system improvements.

Section 34, p. 115, makes various appropriations to the Department of Health and Social Services (DHSS). Section 34(a) reappropriates the unexpended and unobligated balance, not to exceed \$462,900 of the estimated balance \$2,000,000 of a prior appropriation to DHSS office of children's services for safety enhancements. Section 34(b) states the unexpended and unobligated balance, not to exceed \$500,000 of the same prior appropriation is reappropriated to DHSS for an emergency medical services match for the code blue project. Section 34(c) reappropriates the unexpended and unobligated balance of the same prior appropriation, not to exceed \$80,325 to DHSS for projects, deferred maintenance and renovation at facilities other than the Alaska Pioneers' Homes. Section 34(d) reappropriates the unexpended and unobligated balance of the same prior appropriation, not to exceed \$81,060 to DHSS for emergency projects at the Alaska Pioneers' Homes. Section 34(e) reappropriates the unexpended and unobligated balance, after the appropriations made in sec. 34(a) - (d), not to exceed \$850,000 to the Department of Commerce, Community, and Economic Development as a grant to the municipality of Anchorage for the Alaska domestic violence and sexual assault intervention program. Section 34(f) would appropriate \$500,000 from the general fund to DHSS for the Play Every Day campaign for the fiscal year ending June 30, 2015.

Section 35, p. 116, makes various reappropriations to the Department of Transportation and Public Facilities (DOTPF). Section 35(a) would reappropriate the unexpended and unobligated balance of a prior appropriation (estimated to be \$18,600) to DOTPF for the Fritz Creek - Greer Road upgrade. Section 35(b) would reappropriate the unexpended and unobligated balances of prior appropriations (estimated to total \$996,046) to DOTPF, City and Borough of Sitka, for replacement of the Thomsen Harbor transient float. Section 35(c) would reappropriate the unexpended and unobligated balance of several prior appropriations (estimated to total \$3,811,200) to DOTPF for several different projects. Section 35(d) states that if the amount available for appropriation under sec. 35(c)(1) - (5) is less than \$3,811,200, then the reappropriations will be reduced in proportion to the shortfall. Section 35(e) would reappropriate the unexpended and unobligated balance of a prior appropriation (estimated to be \$600,006) to DOTPF for rural airport safety improvements. Section 35(f) would reappropriate the unexpended and unobligated balance of a prior appropriation (estimated to be \$250,000) to DOTPF for the purchase of equipment for the statewide anti-icing program. Section 35(g) would reappropriate the unexpended and unobligated balances of several prior appropriations (estimated to total \$1,438,893) to DOTPF for Deadhorse airport rescue and firefighting activities and expansion of the snow removal equipment building. Section 35(h) would reappropriate the unexpended and unobligated balances of several prior appropriations (estimated to total \$802,710) to DOTPF for project acceleration activities.

F. Section 36 - 45 of the bill.

Sections 36 - 45 would make reappropriations or amend various appropriations related to projects in various House Districts around the state. The reappropriations generally authorize the unexpended and unobligated balances of prior appropriations to be used for new projects or grants to named recipients. Amendments generally expand the scope of the purposes for which a prior expenditure was authorized. The projects or related provisions include:

Section 36(a), p. 119, to the City of North Pole to prepare a comprehensive strategic community plan, for the fiscal years ending June 30, 2015, and June 30, 2016. Section 36(b) to the City of Valdez for construction of the city dock information and interpretive center. Section 36(c) to the City of Valdez for dock improvements. Section 36(d) to the Fairbanks Pipeline Training Center Trust for purchase of equipment, construction of a student camp, building facility and welding center. Section 36(e) to the Matanuska-Susitna Borough to design an extension of and upgrade to Soapstone Road. Section 36(f) to the Matanuska-Susitna Borough for the Sutton Volunteer Fire Department for building maintenance and repair and a water pump system. Section 36(g) to the Fairbanks North Star Borough for the enhanced home heating appliance exchange program.

Section 37, p. 120, would amend a prior appropriation for the Matanuska-Susitna Borough Warm Storage Fire Station to delete language so that the appropriation is not contingent on Warm Storage Fire Station providing a \$150,000 match from sources other than the state.

Section 38(a), p. 121, to the City of Wasilla for youth court operations for the fiscal year ending June 30, 2015. Section 38(b) to City of Wasilla for upgrades to the dispatch system for Wasilla Police Department. Section 38(c) to the City of Wasilla for construction of wells and a pump house. Section 38(d) to the City of Wasilla for purchase of a weed harvester and other equipment to improve water quality in Lake Lucille. Section 38(e) would appropriate from the general fund the amount of fees collected for issuance of National Rifle Association license plates, minus the cost of issuing the plates, to Department of Commerce, Community, and Economic Development for payment as a grant to Alaska SCTP for the purchase of ammunition and targets for scholastic youth shooting programs.

Section 39(a), p. 122, to the Matanuska-Susitna Borough for purchase of a new wildland fire response vehicle. Section 39(b) to the Municipality of Anchorage for critical road improvements, safety upgrades, and drainage upgrades in House Districts 13 and 14. Section 39(c) to Anchorage Park Foundation for safety upgrades at David Green Park. Section 39(d) to Anchorage School District to purchase books for several different schools. Section 39(e) provides that if the amount available for appropriation in sec. 39(d) is less than \$12,716, the amount to each school shall be reduced pro rata. Section 39(f) to South Anchorage High School for replacement of computers and classroom equipment. Section 39(g) to Klatt Elementary to purchase desks and chairs. Section 39(h) to the Anchorage Park Foundation for safety upgrades at Pioneer Park. Section 39(i) to the Municipality of Anchorage for upgrades to 120th Avenue. Section 39(j) to pave Potter Marsh south parking lot. Section 39(k) to the Municipality of Anchorage for a drainage and flood study in the Prospect Heights subdivision area. This section

also contains a caveat that the Municipality of Anchorage may not use more than five percent of the appropriation for administrative costs. Please see our comments above regarding legislative intent language. Section 39(l) to the Municipality of Anchorage for improvements and safety upgrades to Golden View Drive. This section also contains a caveat that not more than five percent of the appropriation may be used for administrative costs. Please see our comments above regarding legislative intent language. Section 39(m) to the Municipality of Anchorage for safety upgrades to Golden View Drive. This section also contains a caveat that the Municipality of Anchorage may not use more than five percent of the appropriation for administrative costs. Please see our comments above regarding legislative intent language. Section 39(n) amends a prior appropriation for Wendler Middle School Electric Sign to allow the appropriation to be used for gym sound system replacement as well. Section 39(o) to Eagle River Lions Club for construction, repair, and maintenance of building and facilities and purchase of equipment. Section 39(p) to the Municipality of Anchorage for capital upgrades, repairs, and renovation to Sullivan Arena. Section 39(q) to the Municipality of Anchorage for capital upgrades, repairs, and renovation to Ben Boeke Ice Arena. Section 39(r) to the Municipality of Anchorage for capital upgrades, repairs and renovations at Dempsey Ice Arena. Section 39(s) to the Municipality of Anchorage for capital upgrades, repairs and renovations at the Harry J. McDonald Memorial Center. Section 39(t) to the Municipality of Anchorage for capital upgrades, repairs, and renovations to facility systems and infrastructure at the Anchorage Museum. Section 39(u) to the Municipality of Anchorage for capital upgrades, repairs, and renovations at the William A. Egan Civic and Convention Center. Section 39(v) to the Municipality of Anchorage for capital upgrades, repairs, and renovations at the Alaska Center for the Performing Arts. Section 39(w) to the Municipality of Anchorage for residential pavement rehabilitation, traffic calming, and pedestrian safety upgrades in House District 19. Section 39(x) states that if the amount available for appropriation under sec. 36(p) - (w) is less than the \$36,993,000, the appropriations shall be reduced proportionally.

Section 40(a), p. 127, to the North Peninsula Community Council for the purchase of Chevron property to be used as a beach access park. Section 40(b) to the City of Kenai for the river bluff erosion project. Section 40(c) to Soldotna Little League for installing batting cages, restructuring fields, repairing fencing, and general field maintenance. Section 40(d) to Kenai Peninsula Borough for new construction at the Diamond Ridge fire station. Section 40(e) to Soldotna Area Senior Citizens, Inc. for upgrading and replacing lighting. Section 40(f) to the City of Soldotna for citywide sidewalk, street, and utility improvements. Section 40(g) to the City of Soldotna for citywide sidewalk, street, and utility improvements. Section 40(h) for Fritz Creek - Greer Road upgrade. Section 40(i) states that if the amounts available for reappropriation under sec. 40(g) and (h) is less than \$259,670 the reappropriations shall be reduced in proportion to the shortfall. Section 40(j) amends a prior appropriation to the Sterling Community Club to allow the club to use the funds for reimbursement of prior costs.

Section 41(a), p. 129, to the Front Street Health Center, Inc. for equipment acquisition. Section 41(b) to the SouthEast Alaska Regional Health Consortium for expansion of the Southeast pediatric dental clinic. Section 41(c) to Juneau Youth Services, Inc. for major maintenance of existing facilities. Section 41(d) for the Point Bridget State Park land exchange.

Section 41(e) to the City and Borough of Juneau for construction of a joint city, state and, federal parking facility in the Willoughby district.

Section 42(a), p. 130, to the City of Ketchikan the waterfront promenade – Thomas Basin seawall repairs project. Section 42(b) amends a prior appropriation to Wrangell to allow funds to be used for paving. Section 42(c) to the City of Pelican for replacement of fuel dock pilings. Section 42(d) to the City of Kake to upgrade community building lighting. Section 42(e) to the City of Kake for purchase of a garbage truck.

Section 43(a), p. 131, to Nanwalek IRA council for purchase of heavy equipment. Section 43(b) to the Bristol Bay Heritage Land Trust for purchasing a conservation easement or for acquiring Native allotments in the Nushagak River watershed. Section 43(c) to the City of Whittier for construction of a public safety complex. Section 43(d) to the City of Dillingham for repairs to the library and museum building. Section 43(e) to Nuvista Light and Electric Cooperative for completion of a regional energy plan and for planning, design, permitting, construction of a wind project and cluster intertie. Section 43(f) to the Dillingham City School District for the Bristol Bay radio translator project. Section 43(g) to the City of Newhalen for installation of an electric boiler. Section 43(h) to the Yupiit School District for purchase of classroom computers. Section 43(i) to the City of Akiak for assessment of the Akiak Old City tank farm power plant cleanup. Section 43(j) to the City of Dillingham for the purchase of a backhoe, flatbed truck, and lowboy trailer. Section 43(k) to the Iditarod Area School District for replacement of the Holy Cross fuel system. Section 43(l) to the Iditarod Area School District for treatment of contaminated soil in Holy Cross. Section 43(m) to Igiugig for construction of an emergency response fuel building. Section 43(n) to Port Alsworth for construction of a boat launch. Section 43(o) to Safe and Fear-Free Environment for shelter repairs and renovation. Section 43(p) to the Bristol Bay Borough for construction of career and technical education program housing and the training facility renovation project. Section 43(q) states that if the amount available for appropriation for sec. 43(f) - (p) is less than \$790,748 the appropriations shall be reduced in proportion to the shortfall. Section 43(r) to the City of Kodiak for E911 equipment replacement.

Section 44(a), p. 134, amends a prior appropriation to allow the Lake and Peninsula Borough to use the money to purchase equipment. Section 44(b) to Aleutian Peninsula Broadcasting, Inc. for installation of a microphone system in the Sand Point city chambers and installation of a new translator in cold Bay. Section 44(c) to City of St. Mary's for replacement of the main sewer line.

Section 45(a), p. 135, to Northwest Arctic Borough for repair, maintenance, and remodel of the Deering Community Library. Section 45(b) to Northwest Arctic Borough for Kobuk community repairs and maintenance. Section 45(c) to the Mentasta Traditional Council for renovation of the Mentasta community hall. Section 45(d) to the King Island Native Community for expansion of the King Island Native Community building. Section 45(e) to the Maniilaq Association for equipment purchase and renovations to the child advocacy center. Section 45(f) to the Gwichyaa Zhee Gwich'in Tribal Council for construction and renovation of a multi-purpose community services center.

G. Section 46 and 47 of the bill.

Section 46, p. 136, reappropriates \$2,000,000 to the Office of the Governor for costs associated with the capital remodel project, information technology, and security improvements.

Section 47, p. 136, reappropriates the unexpended and unobligated balance balances of several appropriations to the Legislative Council for seismic retrofit and exterior restoration project for the capitol.

H. Section 48 of the bill.

Section 48, p. 137, is entitled Retirement System Funding; Constitutional Budget Reserve Fund. Section 48(a) would appropriate \$1,000,000,000 from the budget reserve fund to the Department of Administration for deposit in the defined benefit plan account in the public employees' retirement system as an additional state contribution for the fiscal year ending June 30, 2015. Section 48(b) would appropriate \$2,000,000,000 from the budget reserve fund to the Department of Administration for deposit into the defined benefit plan account in the teachers' retirement system as an additional state contribution for the fiscal year ending June 30, 2015. Section 48(c) states that the appropriations made in sec. 48(a) - (b) are made under art. IX, sec. 17(c), of the Alaska Constitution.¹¹ Section 48(d) states that it is the intent of the legislature that the Alaska Retirement Management Board and the Department of Administration direct the plans' actuary to eliminate the two-year rate-setting lag in the public employees' retirement system and the teachers' retirement system actuarial values. Section 48(e) states that is the intent of the legislature that the Alaska Retirement Management Board and Department of Administration direct the plans' actuary to eliminate the asset value smoothing from the public employees' retirement system and the teachers' retirement system actuarial values. We do not think the intent language in sec. 48(d) or (e) is enforceable under the bill. Our initial impression is that this particular intent language does not meet the *Hammond* test, but the affected agencies may comply as a matter of comity. However, considering the amount of money involved in this appropriation, and the fact that the affirmative vote of three quarters of the legislature is required for this appropriation, if the executive branch agencies are considering not complying with the language, we request that the Department of Law be consulted for a detailed and thorough analysis. Under sec. 52(f) of the bill, the appropriations in sec. 48 are contingent on passage by the Twenty-Eighth Alaska State Legislature and enactment into law of a version of House Bill No. 385.

I. Section 49 of the bill.

Section 49, p. 138, would reappropriate \$125,000 to the University of Alaska for design and construction of the Fairbanks campus combined heat and power plant.

¹¹ Article IX, sec. 17(c) of the Alaska Constitution States: "An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature."

J. Sections 50 - 55 of the bill.

Section 50, p. 138, would extend the lapse time for a prior appropriation to the Alaska Arctic Policy Commission until June 30, 2015.

Section 51, p. 138, would set the lapse time for various provisions in the bill.

Section 52, p. 138, would establish contingencies for several of the appropriations made in the bill.

Section 53, p. 139, would set an effective date of April 20, 2014, for certain sections of the bill.

Section 54, p. 139, would set an effective date of June 30, 2014, for certain sections of the bill.

Section 55, p. 139, would set an effective date of July 1, 2014, for all other provisions of the bill.

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

/ s /
Michael C. Geraghty
Attorney General

MCG/TAD/lkr