



THE STATE
of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

Department of Law

CIVIL DIVISION

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June 26, 2019

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

Re: HB 39 – Fiscal Year 2020 Operating
Budget (CCS SSHB 39)
Our file: 2019200497

Dear Governor Dunleavy:

At the request of your legislative director, we have reviewed CCS SSHB 39, making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; amending appropriations; making supplemental appropriations; and making appropriations. This bill is known as the fiscal year 2020 operating budget, beginning on July 1, 2019, and ending on June 30, 2020. We review the highlights of the bill below.

I. Introduction.

The bill sets out the following introductory language in sec. 1 of the bill: “[a] department-wide, agency-wide, or branch-wide unallocated reduction set out in this section may be allocated among the appropriations made in this section to that department, agency, or branch.” Section 1, p. 2, lines 4 - 6. We have previously advised that because AS 37.07.080(e) authorizes the transfer of money between allocations, a department-wide or agency-wide unallocated reduction is likely permissible so long as the unallocated reduction is for a specific amount.¹ A branch-wide unallocated reduction would require further legal review, but there are no branch-wide unallocated reductions in this bill.

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

II. Legislative intent and contingency language.

As in prior years, the bill contains numerous expressions of legislative intent accompanying certain appropriation items and also includes some contingency provisions. We believe that most expressions of legislative intent are not binding on the executive branch because the expressions violate the confinement clause of the Alaska Constitution which states that “[b]ills for appropriations shall be confined to appropriations.”² The Alaska courts have used a five factor test to determine whether language added to an appropriations bill violates the confinement clause. Under this test (the *Hammond factors*), the qualifying language must (1) not administer the program of expenditures; (2) not enact law or amend existing law; (3) be the minimum necessary to explain the legislature’s intent regarding how the money appropriated is to be spent; (4) be germane, that is, appropriate, to an appropriations bill; and (5) not extend beyond the life of the appropriation.³

In the past, we have advised that expressions of intent may generally be ignored or followed as a matter of comity. We continue to offer this advice; however, in the event your office or a recipient agency is disinclined to follow intent language, we recommend further consultation with this office so that we may advise as to the extent the language may be enforceable under the *Hammond factors*. Finally, as we advised in our reviews of intent language in previous appropriations bills, an expression of legislative intent may not be vetoed by the governor as a line item veto separate from the appropriation itself. On this point, the Alaska Supreme Court has ruled that expressions of intent do not constitute “items” subject to your veto power.⁴

The Alaska Supreme Court has also found that contingency language should be subject to the same analysis as legislative intent language.⁵ We discuss each contingency in our review of an appropriation subject to a contingency.

² Art. II, sec. 13.

³ *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001).

⁴ *Knowles*, 21 P.3d at 371-375.

⁵ *Knowles*, 21 P.3d at 378-384.

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

a. Department of Administration.

Section 1 of the bill includes an expression of legislative intent that the department prepare a report setting forth a multi-year plan for past and future savings resulting from consolidation of shared services and information services. We have also previously advised that reporting requirements such as these are normally set out in statute.⁶ To the extent that this reporting requirement is not otherwise set out in statute, the department may wish to comply as a matter of comity.

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

Section 1 of the bill includes three related expressions of legislative intent that, by October 1, 2019, the department submit a report to the co-chairs of the Finance Committees and Legislative Finance Division describing the amount that each community that participates in the National Flood Insurance Program has paid into the program since 1980, including the amount that has been paid out of the program for claims, and the average premium for a home in a special flood hazard area; identifying the top five states that have received more in funds paid out than premiums paid into the National Flood Insurance Program since 1980, including the amount paid into the program, the amount of claims paid out of the program, and the average premium for a home in a special flood hazard area; and the number of properties in each community in the state that have been added to a special flood hazard area through mapping efforts by the Federal Emergency Management Agency since 1950. As noted above, we have advised that reporting requirements are normally set out in statute.⁷ To the extent that this reporting requirement is not otherwise set out in statute, the department may wish to comply as a matter of comity.

c. Department of Corrections.

The legislature included expressions of legislative intent in the appropriation of funds to the department. The legislature expresses its intent that the department transition one hundred inmates into Community Residential Centers and one hundred eligible inmates onto Electronic Monitoring by June 30, 2020, and provide a progress report to the legislature on January 15, 2020. The legislature also expresses its intent that the department notify the Finance Committee co-chairs at least 60 days before closing a

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

⁷ 2007 Op. Att'y Gen. 2 (June 6; 883-07-0070).

facility and include a detailed analysis of the impact of closing the facility and a plan for the closure. As set out above, statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity. Similarly, if a reporting requirement is not otherwise set out in statute, the department may wish to comply as a matter of comity.

d. Department of Education and Early Development.

The legislature included one expression of legislative intent that the department work with Head Start providers to establish an equitable and geographically weighted formula for disbursement of state funded grants to allow for the most students served with a comprehensive early child education by January 21, 2020. As set out above, statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity.

e. Department of Environmental Conservation.

The legislature included one expression of legislative intent that the department continue to inspect and test Alaska dairies as well as implement a fee schedule to help for those functions. As set out above, statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity.

f. Department of Fish and Game.

The legislature did not include any intent language and there are no apparent legal concerns with the provisions in sec. 1 addressing the department.

g. Office of the Governor.

The legislature included one expression of legislative intent regarding the Office of Management and Budget (“OMB”) expressing the legislature’s intent that OMB submit decrements with the fiscal year 2021 budget that reflect cost-savings and efficiencies related to the work and operations of administrative operations managers and division operations managers for all departments and agencies including up to the elimination of all positions identified. As noted above, statements of legislative intent are generally not enforceable but may be complied with as a matter of comity.

h. Department of Health and Social Services.

Section 1 provides that the commissioner of health and social services may transfer up to \$15,000,000 between all department appropriations except that no transfer may be made from the Medicaid Services appropriation. Because this delegation of

authority raises constitutional and budget tracking concerns, the Department of Law and OMB will work closely with the commissioner should circumstances arise that would require the commissioner to consider the transfer of funding.

The legislature also included numerous expressions of legislative intent regarding appropriations to the department including: (1) that long-term care facilities be exempt from Medicaid provider rate reductions; (2) that critical access hospitals and hospitals with dual federal designation of sole community hospital and rural referral center be exempt from the five percent Medicaid reduction proposed by the department; (3) that the department work with the statewide professional hospital association to develop strategies for implementing hospital diagnosis related groups, acuity based skilled nursing facility rates, rate reductions, and timely filing provisions to avoid unintended consequences; and (4) that the department continue to provide adult preventative dental Medicaid services. Additionally, the legislature intends that the department submit quarterly progress reports on cost containment to the co-chairs of the Finance Committees and the Legislative Finance Division. As noted above, statements of legislative intent are generally not enforceable but may be complied with as a matter of comity. Additionally, to the extent reporting requirements are not otherwise set out in statute, the department may wish to comply as a matter of comity.

Finally, in the Medicaid Services appropriation the legislature provides that no money may be expended for an abortion that is not a mandatory service required under AS 47.07.030(a), and that the money appropriated may be expended only for mandatory services under Title XIX of the Social Security Act and for optional services provided by the state under the state medical assistance plan approved by the federal Department of Health and Human Services. As we have opined previously, this language is intended to prevent expenditures from these appropriations for therapeutic or medically necessary abortions; however, the department is under a superior court order to operate its Medicaid program in a constitutional manner by providing payment for therapeutic or medically necessary abortions. That superior court order has been upheld by the Alaska Supreme Court which specifically rejected an argument that the separation of powers doctrine precluded the superior court from ordering the state to pay.⁸ Thus, the department is faced with a ruling from the state's highest court that the limit on payment for abortion services results in the operation of the Medicaid program in an unconstitutional manner, while the department is ostensibly without the money available to pay for services to operate the program legally.⁹

⁸ *State, Dept. of Health & Social Services v. Planned Parenthood of Alaska*, 28 P.3d 904 (Alaska 2001).

⁹ The obligation of the State to pay for abortion services under the Medicaid program was reaffirmed in *State v. Planned Parenthood of the Great Northwest*, 436 P.3d

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

i. Department of Labor and Workforce Development.

The legislature did not include any intent language and there are no apparent legal concerns with the section. A number of department programs receive federal funds. The bill continues the practice of including any federal receipts from prior fiscal years that have not been spent or obligated in the amounts allocated for management services and vocational rehabilitation administration. The department also receives nonpublic funds, either for services provided or as contributions from taxpayers. The bill would continue the practice of including any amounts received in prior fiscal years that have not been spent or obligated in the amounts allocated for Alaska Safety Advisory Council and for the Alaska Vocational Technical Center, which receives fees for services or contributions by individual or certain organizational taxpayers. We see no legal concerns with these appropriations.

j. Department of Law.

The legislature included two expressions of legislative intent. The legislature expresses its intent that the department minimize the use of outside counsel and that the criminal division report to the legislature on January 21, 2020, on the status of a recruitment and retention plan to reverse the trend of high turnover of prosecutors and support staff. As set forth above, statements of legislative intent are generally not enforceable but the department may comply as a matter of comity. Additionally, to the extent reporting requirements are not otherwise set out in statute, the department may wish to comply as a matter of comity.

k. Department of Military and Veterans' Affairs.

The legislature included an expression of legislative intent that the department analyze all veteran service officer positions and their effectiveness and by January 15,

984 (2019). In that case, the Alaska Supreme Court struck down a statute and a regulation that attempted to define what a medically necessary abortion was. The Court concluded that the statute and regulation both violated the Equal Protection Clause of the Alaska Constitution.

2020; provide to the legislature a review of such positions, identifying by region, impact, and identification of problem areas; suggestions for improvement; and the amount of funding they bring to the state. The legislature expresses its expectation that the department present a new system of metrics to measure the effectiveness of these positions by June 30, 2020. As noted above, departments may comply with expressions of legislative intent and requests for making recommendations to or filing reports with the legislature as a matter of comity.

l. Department of Natural Resources.

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

m. Department of Public Safety.

The legislature included several expressions of legislative intent in the appropriations to the Department of Public Safety including that (1) the department increase its efforts to combat internet child pornography including placing an emphasis on filling vacant positions to increase the detection and arrest of child pornography traffickers, and submit a report to the legislature by January 15, 2021, identifying progress on protecting Alaskans from child pornography purveyors; (2) the department work to address the high rate of sex crimes in rural Alaska including by making it a priority to hire sex crimes investigators and support staff assigned to rural Alaska; (3) the department disburse funding for the village public safety officer (VPSO) program to grant recipients who are encouraged to use the funding for recruitment and retention of VPSOs including consideration of salary increases for VPSOs, and for other purposes such as operational costs to better utilize filled positions or housing multiple VPSOs in a single community if that is judged to be more beneficial to public safety; additionally, the legislature expresses its intent that the department support VPSO contractors' efforts to provide public safety services to the maximum area surrounding a duty station; and (4) that the department strengthen the liaison between the state and the Civil Air Patrol in relation to the department's mission. As set out above, expressions of legislative intent and requests for making recommendations to or filing reports with the legislature are not generally enforceable, but the department may comply as a matter of comity.

n. Department of Revenue.

The appropriation to the department provides that up to \$500,000 of budget authority may be transferred between several retirement fund codes within certain specified allocations. Specifically, this sum may be transferred between the fund codes for the allocation for the treasury division, the allocation for the Alaska Retirement

Management Board, and the allocation for the Alaska Retirement Management Board custody and management fees. We see no legal issues with this provision.

Additionally, the legislature expresses its intent that fees associated with income-producing investments of the Alaska Permanent Fund be incorporated in the Alaska Permanent Fund Corporation Annual Report and specified the following fees: fees funded by investments, appropriations, and corporate expenses. As set forth above, expressions of legislative intent are generally not enforceable but may be complied with as a matter of comity.

o. Department of Transportation and Public Facilities.

The legislature included several expressions of legislative intent including that (1) the department develop criteria for the placement of snowblowers at rural airports for public safety; (2) the department identify a proportional amount of CMAQ funds according to traffic volume on a section of the Glenn Highway in the Eagle River area relating to traffic congestion that is in alignment with the recommendations concerning traffic control in this location under the Integrated Corridor Management study; (3) the department develop a plan for projects identified in the Glenn Highway Integrated Corridor Management study that includes a priority list and timeline to address traffic congestion and submit a report describing the plan to the legislature on January 1, 2020; and (4) the department examine the costs and benefits and issue a report to the legislature concerning the option of adding a third weekly ferry service from Bellingham during peak season. As set out above, the expressions of legislative intent and requests for reports are generally not enforceable, but the department may comply as a matter of comity.

p. University of Alaska.

The legislature included a statement of legislative intent that the University's Board of Regents consider a plan to transition the University into a single accredited institution with multiple community campuses and provide an update to the legislature on the development of such a plan by December 1, 2019. As set out above, expressions of legislative intent are generally not enforceable when included with appropriations to executive branch departments. Because of the University of Alaska's unique position in the Alaska Constitution, efforts by the legislature to manage its internal operations through statements of intent in appropriation bills may be even more problematic than the expressions of intent directed at executive branch departments. In particular, it is noted that the University of Alaska is established in the Alaska Constitution as the state

university, and under the Alaska Constitution, the Board of Regents is designated as the governing body charged with formulating policy for the University.¹⁰

q. Alaska Court System.

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

r. Alaska Legislature.

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

IV. Funding sources.

Section 2 of the bill sets out the funding by agency for the appropriations made in sec. 1 of the bill. Section 3 of the bill sets out the statewide funding for the appropriations made in sec. 1 of the bill.

Although in most years these sections of an operating budget describing the fund sources for appropriations are unremarkable, that is not the case this year. Section 1 includes some appropriations of the balance on June 30, 2019, of unobligated monies or receipts collected under the authority of various statutes. These monies are often deposited into general fund subaccounts. But article IX, section 17(d), of the Alaska Constitution requires that money in the general fund available for appropriation at the end of a fiscal year be deposited into the constitutional budget reserve fund (“CBRF”) until the CBRF is repaid for prior appropriations from the CBRF. Historically, the legislature has included in an appropriations bill (typically either the operating budget or capital budget bill) an appropriation from the constitutional budget reserve fund (“CBRF”) to reverse the constitutionally required deposit into the CBRF of money in general fund subaccounts that are available for appropriation at the end of the fiscal year. This is commonly known as the “reverse sweep” provision. However, the legislature did not pass a reverse sweep provision in any appropriation bill. Accordingly, the repayment provision of article IX, section 17(d) will be applied.

The Alaska Supreme Court in *Hickel v. Cowper*¹¹ briefly addressed the CBRF repayment provision and stated that it applies to money “available for appropriation” as

¹⁰ Art. VII, secs. 2-3.

¹¹ 874 P.2d 922 (Alaska 1994).

described more fully in that decision and in the general fund.¹² In particular, the Court stated that “monies which already have been validly committed by the legislature to some purpose should not be counted as available” while “monies from which the legislature can make an appropriation and which require a legislative appropriation before they can be expended” should be counted as available for appropriation.¹³ The permanent fund earnings reserve account was identified as a fund outside of the general fund that need not be subject to the CBRF repayment provision.¹⁴ There is no definition of the general fund in the Alaska Constitution. We are available to assist the Office of Management and Budget (“OMB”) in examining particular funds and to advise on the application of the repayment provision. It is likely, based on the required deposit into the CBRF of funds “available for appropriation” in the general fund on June 30, 2019, that certain agencies and departments will not receive all of the revenues anticipated in this bill, and therefore, the agencies will be underfunded for fiscal year 2020.

V. Sections 4 - 5.

Section 4 includes supplemental appropriations for fiscal year 2019. There is one statement of legislative intent in a supplemental appropriation to the Department of Health and Social Services, senior benefits payment program in which the legislature expresses its intent that the appropriation be used only for senior benefit payments that were suspended at the end of fiscal year 2019 because of insufficient funding. As set forth above, statements of legislative intent are generally unenforceable, but the department may comply as a matter of comity.

Section 4 includes one division wide unallocated reduction of \$148,200 for the Department of Revenue, taxation and treasury that is replaced with “Other Funds” in the same amount. As noted above, we have previously advised that because AS 37.07.080(e) authorizes the transfer of money between allocations, so long as the unallocated reduction is for a specific amount, there is not a constitutional concern with inclusion of the negative appropriations in a budget bill.¹⁵ In this case, it appears to be more of a change in fund source than an actual reduction.

¹² *Id.* at n.32.

¹³ *Id.* at 930-31.

¹⁴ *Id.*

¹⁵ *See* 1993 Inf. Op. Att’y Gen. (June 17; 883-93-0073); 1992 Inf. Op. Att’y Gen. (June 30; 883-92-0141).

Sections 5 and 6 set out the funding sources and statewide funding for the fiscal year 2019 appropriations in sec. 4. Because this funding is for fiscal year 2019 appropriations, they do not present the issues identified above regarding certain appropriations for fiscal year 2020 and the constitutional requirement to deposit money into the CBRF which is available for appropriation at the end of the fiscal year.

VI. Sections 7 - 48.

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

Section 7(a) states that the amounts appropriated by secs. 1 - 3 and 16 - 38 of this Act are intended to be the full amounts to be appropriated for the identified purposes for fiscal year 2020. Section 7(b) states that the money appropriated in secs. 1 - 3 and 16 - 38 of this Act include any amounts necessary to pay for job reclassifications. The section is contemplated by AS 39.25.150(2), which provides for legislative approval of the state's pay plan.

Section 7(c) includes a statement of legislative intent that the Department of Education and Early Development immediately distribute an appropriation made in sec. 21(c) of ch.19, SLA 2018. We note that this money has been distributed by the department.

Sections 8 - 15 make supplemental appropriations to several departments. We see no legal concerns with these appropriations but are available for further consultations as necessary.

Section 16 appropriates to the Alaska Aerospace Corporation all federal and other corporate receipts received during the 2020 fiscal year in excess of the amounts appropriated to the Alaska Aerospace Corporation in sec. 1 of the bill.

Section 17 makes various appropriations to the Alaska Housing Finance Corporation from the adjusted net income from the second preceding fiscal year, for various purposes including debt service and deposit to the general fund, and from the corporate receipts received by the corporation for allocation to the housing finance revolving fund (AS 18.56.082), the senior housing revolving fund (AS 18.56.710(a)), and for other housing and loan programs and projects.

Section 18 appropriates to the general fund the amount declared available by the board of directors of the Alaska Industrial Development and Export Authority for appropriation as the dividend for fiscal year 2020.

Section 19 includes appropriations related to the Alaska Permanent Fund. Subsections (a) and (b) are appropriations from the earnings reserve fund to the general fund and then to the principal of the Alaska permanent fund of an amount estimated to be \$99,800,000 which in addition to the appropriation made in sec. 24(a), ch.1, SSSLA 2017 satisfies a statutory provision, AS 37.13.010(a)(2), calling for a deposit of 50% of royalties for certain leases. Subsections (c) and (d) provide for the same series of appropriations from the earnings reserve account to the general fund and then to the principal of the Alaska permanent fund of an amount estimated to be \$80,000,000, which in addition to the appropriation made in sec. 9(a), ch.17, SLA 2018, satisfies a statutory provision, AS 37.13.010(a)(2), calling for a deposit of 50% of royalties for certain leases. The Alaska Constitution requires the deposit of a minimum of 25 percent of certain mineral royalties into the permanent fund. Art. IX, sec. 15.

Section 19(e) provides for an appropriation to the principal of the permanent fund of an amount estimated to be \$329,200,000 in satisfaction of the constitutional deposit requirement in art. IX, sec. 15. Section 19(f) provides for an additional deposit under AS 37.13.010(a)(2), estimated to be \$71,300,000, from the general fund to the permanent fund principal. Section 19(g) provides for an appropriation, estimated to be \$27,000,000, to the Alaska capital income fund (AS 37.05.565) from the sources set out in AS 37.13.145(d).

Section 19(h) provides for an appropriation estimated to be \$2,933,084,121 from the earnings reserve account to the general fund for the fiscal year 2020. This is the percentage of market value appropriation referred to in AS 37.13.140(b).

Section 19(i) appropriates the amount calculated under AS 37.13.145(c), after the appropriation made in (h), estimated to be \$943,000,000 from the earnings reserve account to the principal of the permanent fund to offset the effects of inflation for the fiscal year ending June 30, 2020.

Section 19(j) provides that after the appropriations in (a) - (i), an additional appropriation of the remaining balance of the earnings reserve account, not to exceed \$9,400,000,000 is appropriated from the earnings reserve account to the principal of the permanent fund. The legislature expresses its intent that this additional appropriation be used to satisfy the inflation proofing requirement under AS 37.13.145(c) for the next eight fiscal years and that it not include associated unrealized gains.

Section 20(a) and (b) appropriates from the state insurance catastrophe reserve account and the working reserve account to the Department of Administration amounts necessary to fund the uses set out in AS 37.05.289(a) and 37.05.510(a) for fiscal year 2020. Section 20(c) appropriates the amount necessary to retain an unobligated balance of \$5,000,000 in the working reserve account to that account from the unencumbered

balance of any employee salary and benefit appropriation that is available for lapse at the end of the 2020 fiscal year. Section 20(d) appropriates the amount necessary to retain an unobligated balance of \$10,000,000 in the group health and life benefits fund (AS 39.30.095), after the appropriations in (b) and (c), from any appropriation that is determined to lapse at the end of the 2020 fiscal year. Section 20(e) would appropriate the amount received in a settlement of a bond claim, estimated to be \$150,000, to the Alaska Oil and Gas Conservation Commission to reclaim state, federal, or private land affected by a use covered by the bond for fiscal year 2020. Section 20(f) appropriates an amount not to exceed \$500,000 from the general fund to the department if the amount necessary to cover plan sponsor costs including actuarial costs for retirement system benefit payment calculations exceeds the amount appropriated in sec. 1 after all allowable payments from retirement system fund sources. Finally, Section 20(g) would appropriate the amount necessary to cover actual costs associated with bills introduced by the legislature from the general fund to the department for fiscal year 2020.

Section 21 makes appropriations related to the Department of Commerce, Community, and Economic Development. Section 21(a) appropriates federal money provided to the state as national forest income that would lapse to the general fund at the end of fiscal year 2020 to political subdivisions where national forest land is located in accordance with the formula provided under AS 41.15.180(c) and (d). Section 21(b) appropriates from federal receipts for national forest receipt payments, if the amount appropriated for this purpose in sec. 1 of the bill is insufficient. Sections 21(c) would appropriate from federal receipts for federal revenue sharing programs, if the amount appropriated to make payments in lieu of taxes for cities in the unorganized borough under AS 44.33.020(a)(20) in sec. 1 of the bill is insufficient. Section 21(d) makes an appropriation related to the salmon enhancement tax to qualified regional associations. Section 21(e) makes an appropriation related to the seafood development tax to the qualified regional seafood development associations and identifies six purposes for which these appropriated funds can be used. Section 21(f) makes an appropriation of up to \$32,355,000 from the power cost equalization endowment fund (AS 42.45.070(a)) for the power cost equalization program for fiscal year 2020. Section 21(g) makes an appropriation of federal receipts received for the reinsurance program under AS 21.55 to the division of insurance for the reinsurance program under AS 21.55 for fiscal years 2020 - 2023. Section 21(h) makes an appropriation from the civil legal services fund (AS 37.05.590) to the department for a grant under AS 37.05.016 for fiscal year 2020 to the Alaska Legal Services Corporation. Section 21(i) appropriates federal receipts received for the agricultural trade promotion program of the United States Department of Agriculture during the fiscal year 2020 to the Alaska Seafood Marketing Institute for agricultural trade promotion for fiscal years 2020 - 2022.

Section 22 appropriates an amount equal to 50 percent of donations received under AS 43.23.230(b) for fiscal year 2020 to the Department of Education and Early

Development to be distributed as grants to schools for fiscal year 2020 according to the average daily membership for each school district under AS 14.17.410(b)(1)(A) - (D).

Section 23(a) appropriates from the general fund an amount equal to the dive fishery management assessments collected in fiscal year 2019 and deposited in the general fund to the Department of Fish and Game for payment in fiscal year 2020 to qualified regional dive fishery development associations in the area where the assessments were collected. Section 23(b) appropriates the remaining balance of the Alaska sport fishing enterprise account (AS 16.05.130(e)) in the fish and game fund (AS 16.05.100), not to exceed \$500,000 and following the appropriation made in sec. 33(s) of the bill, to the Department of Fish and Game for sport fish operations.

Section 24 appropriates the amount necessary to purchase vaccines through the statewide immunization program under AS 18.09.200, estimated to be \$12,500,000, not to exceed the balance of the vaccine assessment account (AS 18.09.230) from the vaccine assessment account to the Department of Health and Social Services, public health, epidemiology, for the fiscal year 2020.

Section 25(a) - (c) of the bill would appropriate amounts necessary to make all benefit payments from the workers' compensation benefits guaranty fund (AS 23.30.082), the second injury fund (AS 23.30.040(a)), and the fishermen's fund (AS 23.35.060) in fiscal year 2020 if the amounts appropriated in sec. 1 of the bill are not sufficient. Section 25(d) would appropriate surplus contributions received by the Alaska Vocational Technical Center (AVTEC) in fiscal year 2020 to AVTEC.

Section 26 would appropriate amounts in the Alaska veterans' memorial endowment fund (AS 37.14.700) to the Department of Military and Veterans' Affairs for the appropriate use of these funds as provided in AS 37.14.730(b).

Section 27(a), (b), and (d) of the bill would make various appropriations to the Department of Natural Resources for operation of an oil production platform in Cook Inlet, mine reclamation, and fire suppression. Section 27(c) of the bill would appropriate the amount received in a settlement of a bond claim, estimated to be \$50,000, to the Department of Natural Resources to reclaim state, federal, or private land affected by a use covered by the bond.

Section 28 would appropriate the amount determined to be available in the Alaska Tax Credit Certificate Bond Corporation reserve fund (AS 37.18.040) to the

commissioner of revenue for purchases, refunds, or payment of tax credit certificates under AS 43.55.028.¹⁶

Section 29 appropriates \$1,847,000 from the general fund to the Office of the Governor, division of elections, for costs of conducting the statewide primary and general elections for fiscal years 2020 and 2021.

Section 30 appropriates retained fees and bankcard service fees.

Section 31(a) - (m) and (o) of the bill appropriates amounts necessary for debt service, including arbitrage rebate payments, on a range of notes, certificates of participation, and bonds.

Section 31(n) of the bill would appropriate the amount necessary, estimated to be \$97,820,500, for state aid for costs of school construction under AS 14.11.100 from the following sources: (1) \$16,500,000 from the School Fund (AS 43.50.140); (2) after the School Fund appropriation, the amount necessary estimated to be \$81,320,500, from the general fund. The School Fund is a permissible dedicated fund into which cigarette taxes, fees, and penalties are deposited. Amounts deposited into the School Fund may only be used to rehabilitate, construct, or repair the state's school facilities, or to pay certain insurance costs related to the state's school facilities. The School Fund was established in 1955.¹⁷ Because the School Fund existed when the Alaska Constitution was ratified on April 24, 1956, the School Fund does not violate the dedicated fund clause (art. IX, sec. 7, Constitution of the State of Alaska).

Section 32(a) - (c) appropriates certain federal receipts, designated program receipts, information services fund program receipts, Exxon Valdez oil spill trust receipts, Alaska Housing Finance Corporation receipts, Alaska marine highway receipts, University of Alaska receipts, and commercial fisheries test fishing operations receipts received during fiscal year 2020.

Sections 33(a) - (h) provides for capitalization of various funds from receipts received during fiscal year 2020, including the Alaska children's trust grant account, derelict vessel prevention program fund, the disaster relief fund, the dividend raffle fund,

¹⁶ There is a pending appeal to the Alaska Supreme Court regarding the authority of the Tax Credit Certificate Bond Corporation to issue bonds under legislation passed last year, HB 331. *See Forrer v. State*, S-17377. The superior court upheld the authority of the Bond Corporation to issue bonds under that state law.

¹⁷ *See* sec. 16, ch. 187, SLA 1955.

from the general fund to the Alaska municipal bond bank authority reserve fund and the community assistance fund.

Sections 33(i) and (j) seek to make appropriations from the general fund to the public education fund (AS 14.17.300) for fiscal year 2021 education spending of the amount necessary to fund state aid calculated under the public school funding formula (AS 14.17.410(b)), and the amount necessary to fund pupil transportation under AS 14.09.010. The Attorney General advised in an opinion dated May 8, 2019 that similar appropriations that sought to “forward fund” education through the commitment of future state revenues was unconstitutional under article IX of the Alaska Constitution. The appropriations in sec. 33(i) and (j) suffer from this same legal infirmity and thus would be considered to be invalid appropriations by the Department of Law. We recommend using the line-item veto authority to strike these unlawful appropriations.

Section 33(k) appropriates from the general fund to the regional educational attendance area and small municipal school district school fund. Sections 33(l) - (v) make appropriations to the peace officer and firefighter survivors’ fund, the Alaska clean water fund, the Alaska drinking water fund, the crime victim compensation fund, the Alaska fish and game revenue bond redemption fund, and the election fund.

Section 34(a) appropriates federal funds received under 42 U.S.C. 6506a(l) or former 42 U.S.C. 6508 and not appropriated for grants under AS 37.05.530 to the Alaska permanent fund (art. IX, sec. 15, Constitution of the State of Alaska) and to the public school trust fund (AS 37.14.110(a)), according to AS 37.05.530(g)(1) - (3). The appropriation to the public school trust fund is required to help satisfy the state’s obligation to compensate the public school trust for trust lands re-designated as general grant lands in 1978.¹⁸ Section 34(b) appropriates the loan origination fees collected by the Alaska Commission on Postsecondary Education in fiscal year 2020. Section 34(c) appropriates an amount equal to 10 percent of the filing fees received by the Alaska Court System, estimated to be \$309,000, from the general fund to the civil legal services fund.

Section 34(d) and (e) makes appropriations to the oil and hazardous substance release response account in the oil and hazardous substance release prevention and response fund. Section 34(f) appropriates \$454,000 from the power cost equalization endowment fund (AS 42.45.070(a)) to the renewable energy grant fund (AS 42.45.045). Section 34(g) appropriates vaccine assessment program receipts collected under AS 18.09.220 to the vaccine assessment account (AS 18.09.230). Section 34(h) appropriates the balance of the Alaska clean water administrative income account (AS 46.03.034(a)(2)) on June 30, 2019, estimated to be \$827,630, to the Alaska clean

¹⁸ Ch. 182, SLA 1978.

water administrative operating account (AS 46.03.034(a)(1)). Section 34(i) appropriates the balance of the Alaska drinking water administrative income account (AS 46.03.038(a)(2)) on June 30, 2019, estimated to be \$603,560, to the Alaska drinking water administrative operating account (AS 46.03.038(a)(1)). Section 34(m) appropriates twenty-five percent of the donations received under AS 43.23.230(b) to the education endowment fund (AS 43.23.220).

Section 35 appropriates funds to state retirement systems. Specifically, sec. 35(a) appropriates \$159,055,000 for fiscal year 2020 to the Department of Administration for deposit in the defined benefit plan account of the public employees' retirement system as an additional contribution under AS 39.35.280, and sec. 35(b) appropriates \$141,129,000 for fiscal year 2020 from the general fund to the Department of Administration for deposit in the defined benefit plan account in the teachers' retirement system as an additional contribution under AS 14.25.085. Section 35(c) appropriates \$5,010,000 from the general fund to the Department of Administration for deposit in the defined benefit plan account in the judicial retirement system. Section 35(d) appropriates \$800,686 from the general fund to the Department of Military and Veterans' Affairs for deposit in the Alaska National Guard and Alaska Naval Militia retirement system under AS 26.05.226. Section 35(e) appropriates \$1,881,360 from the general fund to the Department of Administration to pay benefit payments to eligible members and survivors of eligible members under the elected public officer's retirement system. Section 35(f) appropriates the amount necessary, estimated to be \$0, from the general fund to the Department of Administration to pay benefits to eligible members and survivors of eligible members earned under the Unlicensed Vessel Personnel Annuity Retirement Plan.

Section 36 provides that appropriations in sec. 1 of the bill include amounts for state employee salaries and benefits. Employee salary and benefits are established by direct statutory authority such as AS 39.27.011 for certain classified employees, partially exempt employees, and legislative employees; separate statutory authority for certain exempt service employees, Alaska Court System employees, legislators and other public officials; or through collective bargaining agreements authorized under AS 23.40.070 - 23.40.260 and funded by the legislature pursuant to AS 23.40.215. Section 26(a) provides that the appropriations to fund employee salary and benefits including any adjustments are included in the appropriations to agencies in sec. 1. Section 26(a) further provides that the appropriations in sec. 1 include amounts to implement monetary terms for fiscal year 2020 for ongoing collective bargaining agreements for the following collective bargaining units: general government unit, Teachers Education Association of Mt. Edgecumbe representing the Mt. Edgecumbe high school teachers; confidential employees unit; public safety employees unit; labor, trades, and crafts bargaining unit; the supervisory bargaining unit; and the correctional officers bargaining unit.

Section 36(b) provides that the appropriations made to the University of Alaska in sec. 1 of the bill include amounts for salary and benefit adjustments for the fiscal year for university employees who are not members of bargaining units and to implement the monetary terms of employees covered by certain collective bargaining agreements. Section 36(c) provides that the appropriations for employees covered by collective bargaining agreements described in subsection (a) would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit. Section 36(d) provides that the appropriations for employees covered by collective bargaining agreements described in subsection (b) would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit and approved by the Board of Regents of the University of Alaska.

Section 37(a) - (d) appropriates the proceeds of certain taxes and fees for refund to local governments.

Section 38 reduces the appropriation to each department under the bill to reverse negative account balances in amounts of \$1,000 or less.

Section 39 provides that the appropriation in sec. 27(c), ch. 19, SLA 2018, is repealed. This was an appropriation of \$19,500,000 from the general fund to the curriculum improvement and best practices fund (AS 14.07.182).

Section 40 provides for lapse extensions for two appropriations from the 2019 operating budget (ch. 17, SLA 2018): (a) appropriations for HB 214 Bree's Law, dating violence programs, Department of Education and Early Development, education support and administrative services, student and school achievement - \$263,300, lapse June 30, 2020; and (b) appropriations for debt service, oil and gas tax credits financing - \$27,000,000, lapse June 30, 2020.

Section 41 provides that certain appropriations in the bill are for capitalization of funds and do not lapse.

Section 42(a) provides for retroactive effect to June 30, 2019, of appropriations made in sec. 1 of the Act that appropriate either the unexpended and unobligated balance of specific fiscal year 2019 program receipts or the unexpended and unobligated balance on June 30, 2019, of a specified account are retroactive to June 30, 2019 solely for the purpose of carrying forward a prior fiscal year balance. The effective dates for all of these appropriations are July 1, 2019. Section 42(b) and (c) provide additional retroactivity provisions for certain provisions in the bill.

Section 43 is a contingency provision. It provides that if the appropriation made in sec. 29(c), ch. 17, SLA 2018 (fiscal year 2019 operating budget), which is an appropriation from the constitutional budget reserve fund for fiscal year 2019 but sets an overall limitation on fiscal year 2019 appropriations from the CBRF, is insufficient to cover the appropriation of \$20,000,000 from the general fund to the disaster relief fund in sec. 14 of this Act, the appropriation in sec. 14 is reduced by the amount of the shortfall.

Sections 44 - 48 set out the effective dates of the various sections of the bill.

VII. Conclusion.

Although we have identified no other constitutional or legal issues in the bill outside of what is included in this letter, please be advised that it is not always possible to identify or comment on all legal issues in a bill of this complexity. However, we will assist the agencies throughout the year in interpreting and applying the provisions of the bill, as well as related legislation, to make certain that appropriations are implemented in a manner that is consistent with enabling statutes and valid legislative intent.

Sincerely,

KEVIN G. CLARKSON
ATTORNEY GENERAL

By:

William E. Milks
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