

June 13, 2016

The Honorable Bill Walker  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811

Re: HB 256: CCS HB 256:  
Fiscal Year 2017 Operating Budget  
Our file: JU2016200470

Dear Governor Walker:

At the request of your legislative director, we have reviewed CCS HB 256, making appropriations for the operating and loan program expenses of state government and for certain programs, capitalizing funds, and amending appropriations. This bill is otherwise known as the fiscal year 2017 operating budget, beginning on July 1, 2016, and ending on June 30, 2017. 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, so long as the unallocated reduction is for a specific amount, there is no constitutional concern with inclusion of the negative appropriations in a budget bill.<sup>1</sup>

**II. General intent language.**

As in prior years, the bill contains numerous expressions of legislative intent accompanying certain appropriation items. We believe that most expressions of

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<sup>1</sup> See 1993 Inf. Op. Att'y Gen. (June 17; 883-93-0073); 1992 Inf. Op. Att'y Gen. (June 30; 883-92-0141).

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."<sup>2</sup> 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.<sup>3</sup>

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 ruled that expressions of intent do not constitute "items" subject to your veto power.<sup>4</sup>

### **III. Department of administration.**

Section 1 of the bill includes several expressions of legislative intent regarding the department. First, the legislature expresses its intent that the department review the Juneau central mail program to find efficiencies, evaluate the cost effectiveness of centralization, and explore possible efficiencies in mail service in other areas of the state. Second, the legislature expresses its intent that the department work with its partners to identify a more efficient and reliable system to Alaska Land Mobile Radio (ALMR) for emergency communications, develop and deliver a plan to the legislature by December 31, 2016, consider commercial systems and technologies in developing a plan, and include in the governor's amended budget the funding that would be associated with developing a new system. Third, the legislature expresses its intent that the Division of Motor Vehicles attempt to streamline its processes and outsource functions where practical to reduce costs or increase revenues through improvements in efficiency. As set out above, we do not believe the statements of legislative intent are enforceable, but the department may comply as a matter of comity.

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<sup>2</sup> Art. II, sec. 13.

<sup>3</sup> Memorandum of Decision at 44 - 45, No. 1JU-80-1163 (Alaska Super., May 25, 1983). The Alaska Supreme Court subsequently adopted the *Hammond factors* on a "non-exclusive" basis. *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001).

<sup>4</sup> *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371-375 (Alaska 2001).

#### **IV. Department of Commerce, Community, and Economic Development.**

Section 1 of the bill includes several expressions of legislative intent regarding the appropriations to the department. In the appropriation for corporations, business, and professional licensing, the legislature expresses its intent that the department set occupational license fees at a rate sufficient to cover the cost of the occupation being regulated, as required under AS 08.01.065(c), and annually provide the legislature with a report for each licensing board covering, for the past six years, license fees and other revenue received, expenditures made by line item, number of licensees balance carried forward, and potential license fee changes based on statistical analysis. We have previously advised that reporting requirements such as these are normally set out in statute.<sup>5</sup> 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.

Additionally, an expression of legislative intent is included in the appropriation for tourism marketing and development. The legislature expresses its intent that the Alaska Tourism Marketing Board develop a plan to phase out reliance on unrestricted general fund revenues, develop a self-sustaining program funded by industry for the fiscal year 2018 budget, and submit the plan to the House and Senate Finance Committees by November 1, 2016. Further, the legislature expresses its intent that the Alcohol and Marijuana Control Office establish marijuana application and licensing fees at a level to cover the cost of regulation and to recover prior year appropriations from the general fund that were made to establish the program

The legislature also expresses its intent that the department, the Alaska Energy Authority, and the Alaska Industrial Development Export Authority develop a plan to phase out use of general funds for the Energy Authority by fiscal year 2019, explore consolidation with the Alaska Industrial Development Export Authority, and made a report to the legislature by January 1, 2017.

Finally, the legislature included two expressions of legislative intent regarding the Alaska Seafood Marketing Institute (ASMI). First, the legislature states that ASMI should develop a plan to phase out the use of general funds for seafood marketing by fiscal year 2019 and consider utilization of industry contributions. Second, the legislature expresses its intent that all ASMI positions be located in Alaska by fiscal year 2019.

Once again, we do not believe these statements of legislative intent are enforceable, but the department may comply as a matter of comity. And to the extent that a reporting requirement is included in an appropriation to the department that is not otherwise set out in statute, the department is not required to prepare a report, but it may comply as a matter of comity.

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<sup>5</sup> 2007 Op. Att'y Gen. 2 (June 6; 883-07-0070).

## **V. Department of Corrections.**

The legislature included four expressions of legislative intent in the appropriation of funds to the department. The legislature expresses its intent that the department work with the Department of Health and Social Services to enroll Medicaid offenders prior to release; prioritize the classification of prisoners and use community residential centers when appropriate; report recidivism reduction results to the co-chairs of the finance committees on a quarterly basis; and through transitioning risk assessed offenders to community residential centers obtain a savings in the cost of institutional operations and report on the cost savings to the legislature by January 31, 2017. As set out above, the statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity. And unless a reporting requirement is set out in statute, the department is not required to comply, but it may as a matter of comity.

## **VI. Department of Education and Early Development.**

Section 1 includes three expressions of legislative intent. First, the legislature expresses its intent that the department locate a source of funding for the Mount Edgecumbe High School other than the general fund. Second, the legislature expresses its intent that the Alaska Commission on Postsecondary Education review the services it offers and by January 21, 2017, make recommendations to the legislature for statute changes to reduce services. Third, the legislature expresses its intent that the Commission develop a plan to privately service the Alaska Student Loan Corporation's remaining loan portfolio and submit a report to the finance committees by January 17, 2017. 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.

Additionally, sec. 1 includes language stating that a school district may not receive state education aid if the district: (1) has a policy that prohibits a branch of the military, the reserve officers' training corps, the CIA, or the FBI from contacting students on campus if the district permits other job recruiters, colleges, or vocational schools on campus to contact students; (2) does not permit the Boy Scouts of America to use school facilities for meetings or contact with students if it permits other non-school groups to use school facilities; or (3) maintains a policy of refusing to permit an in-school reserve officers or junior reserve officers' training program. This type of language has been included in some previous budget bills and we have stated that we believe it probably violates the confinement clause.<sup>6</sup>

In *Alaska Legislative Council v. Knowles*, the legislature sought to make certain appropriations to the Alaska Seafood Marketing Institute contingent on ASMI not having any employees located outside the state with a salary over a certain level. The Alaska

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<sup>6</sup> See 2009 Op. Att'y Gen. 4 (May 8; JU2009200407); 2008 Op. Att'y Gen. 3 (May 9; 883-08-0074).

Supreme Court held that the conditional language violated four of the five Hammond factors because the language (1) went beyond the minimum necessary language because it did not describe how the appropriated money was to be spent, (2) sought to administer the agency's program, (3) was not germane to the appropriations, and (4) was substantive in nature.<sup>7</sup>

For similar reasons, we think the recruiter, Boy Scout, and ROTC contingency language violates the confinement clause. It is not the minimum necessary language because it does not describe how the appropriation is to be spent. It seeks to administer the agency's program by requiring that certain policies be adopted or not adopted. The contingency language is not germane to the K - 12 state education program. And by imposing certain military recruiter, Boy Scout, and ROTC policies on school districts, this language resembles substantive law. Although in limited circumstances courts have upheld language conditioning an appropriation,<sup>8</sup> there needs to be a substantial nexus between the condition and the appropriation which is reflected in the "germaneness" requirement. Here there is little nexus between military recruiter, Boy Scout, and ROTC access policies and the education foundation formula. Accordingly, we believe this language is unenforceable as part of the operating budget. The legislature may seek to pass a substantive bill that requires schools to provide the access.

## **VII. Department of Environmental Conservation.**

The legislature included one expression of legislative intent in the appropriations to the department. The legislature expresses its intent that the department improve efficiencies in permitting and that before permit fees are increased that the department consider the economic impact of any the increases on users. As set out above, the department may comply as a matter of comity.

## **VIII. Department of Fish and Game.**

The legislature included many expressions of legislative intent regarding the operations of the department including the following: (1) when delivering educational materials or making presentations to the public that are funded by departmental or Pittman-Robertson funds the department should include information on the history and workings of the North American Model for Wildlife Conservation and notice that anglers and hunters pay for conservation and were the founders of the modern conservation movement; (2) the division of commercial fisheries should consider reduction of stock management last when allocating unallocated general fund reductions; (3) the department should focus its research and management of fishery systems on stocks of concern in order to manage sustained yield; (4) the department should not reduce personnel or

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<sup>7</sup> *Knowles*, 21 P.3d at 380-81.

<sup>8</sup> *Id.* at 379.

appropriations to any program or project that is directly linked to stocks of concern; (5) the department should submit an annual report of the revenues subject to AS 16.05.130; (6) the department should establish certain baselines regarding smolt outmigration at specified locations; (7) department comments, reports, and science data submitted on proposals by the boards of fish or game should be filed with the respective board and be available for public review at least 60 days before a board meeting; (8) the department should work with the Department of Natural Resources, local governments, and various organizations and tribal governments to identify matching projects in order to ensure that no Pittman-Robertson monies are returned to the federal government unspent; (9) the department should work with nondepartmental entities to increase orphaned moose calf survival rates through expedited rescue, rehabilitation, and reintroduction efforts, and that no state funds should be used to compensate nondepartmental entities engaged in these efforts; (10) the department should evaluate and report findings to the finance committee co-chairs regarding the use of unmanned aircraft for aerial survey work and compare the safety and cost-savings of those activities in comparison to the use of manned aircraft; (11) the department should evaluate using mail-in, electronic or telephonic harvest reports for subsistence areas in order to reduce costs for subsistence research and report the findings to the finance committee; (12) the department should gather information from game management unit 13 tier I moose and caribou permit holders who reside in nonsubsistence areas in order to assess the efforts by these permit holders to observe traditional and customary use patterns established by the board of game for community hunts in that management unit. As set out above, the statements of legislative intent are generally not enforceable, but the department may comply as a matter of comity. And unless a reporting requirement is set out in statute, the department is not required to comply, but it may as a matter of comity.

Additionally, the legislature included a statement of intent regarding its placement of the allocation for the Commercial Fisheries Entry Commission (CFEC) under the commercial fisheries appropriation. This statement provides that the placement of this allocation does not affect or diminish the budgetary or operational autonomy or authority possessed by the CFEC, and it does not provide the commissioner of fish and game any budgetary or operational control over the CFEC. As set out above, a statement of intent in an appropriations bill cannot change existing law. On this point, the powers and duties of the CFEC are set out in statute. AS 16.43.100.

## **IX. Office of the Governor.**

The legislature included a statement of intent that the duties performed by the deleted information officers be absorbed within the Office of the Governor, and in regard to the appropriation to the office of management and budget (OMB) the legislature expresses its intent that OMB work with executive branch agencies to reduce hollow receipt authority in preparing the fiscal year 2018 budget. As noted above, the executive branch may comply with expressions of legislative intent as a matter of comity.

## **X. Department of Health and Social Services.**

Section 1 provides that the commissioner may transfer up to \$25,000,000 of unrestricted general funds between all department appropriations except for Medicaid services appropriations. Because this delegation of authority raises constitutional and budget tracking concerns, the Department of Law and the office of management and budget will work closely with the commissioner should circumstances arise that would require the commissioner to consider the transfer of funding.

The appropriations to the department for Medicaid services include two provisions which require review. First, the legislature included the following intent language regarding abortion funding:

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

Section 1, p. 24, lines 25 - 30. 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 them. That superior court order has been upheld by the Alaska Supreme Court, which specifically rejected an argument that the separation-of-powers doctrine precluded the superior court from ordering the state to pay.<sup>9</sup>

In these circumstances, 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. A veto of this provision is not available as described in our analysis of *Alaska Legislative Council v. Knowles*.<sup>10</sup> 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 and we must advise the department

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<sup>9</sup> *State, Dept. of Health & Social Services v. Planned Parenthood of Alaska*, 28 P.3d 904 (Alaska 2001).

<sup>10</sup> 21 P.3d 367 (Alaska 2001).

to continue to obey the superior court's order and pay for these medically necessary abortions, until the time as a court reverses the order that is now in effect.

Second, the legislature included a provision providing that no money appropriated within the Medicaid services appropriation may be spent to pay increases to providers that result from an annual inflation adjustment required by regulation to an existing Medicaid payment rate. Page 24, line 31, through page 25, line 8. Current department regulations require the department to make an annual inflationary adjustment to the rates paid to enrolled Medicaid providers. In addition, under AS 47.07.036, the department is required to take certain cost containment actions when there are budget shortfalls or pressure. That statute requires that before the department can look at reducing optional categories of series or eligible consumers, it must address rates paid to providers. In fiscal year 2016, the department implemented emergency regulations to suspend the automatic inflationary increase to providers and to implement the authority authorized by AS 47.07.036 to avoid reduction in services or persons how are eligible for Medicaid. This language encourages the department to take similar action in fiscal 2017.

Finally, the legislature included several other expressions of legislative intent regarding the appropriations to the department including: (1) that the Alaska pioneer homes attempt savings by privatization of janitorial and food services in all pioneer homes as was undertaken by the Juneau Pioneer Home; (2) the division of juvenile justice should work with Nome and with public health and tribal organizations to transition the Nome Youth Facility from state to local ownership and to deliver a report to the legislature about a plan for using the facility to meet regional needs for youth correctional, health, and rehabilitative services; (3) the department should expedite and implement its proposal to convert the Ketchikan Youth Facility to an adolescent substance abuse and behavioral health treatment center and report its progress on this activity to the legislature by January 30, 2017; (4) the division of public assistance should use state funding for the AHFC homeless assistance program and the power cost equalization program for the maintenance of effort requirement for the Alaska temporary assistance program; (5) when possible public health nursing and public health laboratories should charge for services provided; and (6) the department should make changes to regulations to reduce costs and minimize fraud, waste, and abuse associated with the personal care assistant program. We do not think these statements of legislative intent are enforceable under the *Hammond* factors described above, but the department may comply as a matter of comity.

## **XI. Department of Labor and Workforce Development.**

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.

Section 1 also includes a statement of intent that the department implement a plan to annually supplant \$600,000 of general funds with private or federal funds until, after four years, the construction academy training program requires no general funds. We do not believe the statements of legislative intent are enforceable, but the department may attempt to comply as a matter of comity to the extent the plan is feasible.

## **XII. Department of Law.**

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

## **XIII. Department of Military and Veterans' Affairs.**

The legislature included an expression of legislative intent that the state explore alternatives for the Alaska Aerospace Corporation (AAC) while retaining ownership of the corporation's capital assets including real property and equipment, and that if the organizational structure of AAC is changed the state's investments and interests in existing contracts, proprietary information and intellectual property should be protected. As noted above, the executive branch may comply with expressions of legislative intent as a matter of comity.

## **XIV. Department of Natural Resources.**

Several expressions of legislative intent were included in the appropriations to the department including: (1) that the department only purchase vehicles if it is essential; (2) the department should improve efficiencies in permitting and consider economic impacts of increased permit fees before imposing them; (3) the division of mining, land, and water should accelerate its review and acquisition of remaining statehood land entitlement so that the state receives lands with the highest economic and revenue-generating potential; (4) the division of agriculture's plant material center should evaluate its programs to decide if the private sector or nonprofits could perform any of the functions or whether changes such as increased fees are available to enable additional cost-recovery; (5) the department should work with the department of fish and game to identify projects and nonfederal matching funds for Pittman-Robertson monies and that if all Pittman-Robertson monies are not expended through department partnerships that the department of fish and game partner with municipalities and nonprofit sporting organizations to identify projects and nonprofit sector marching funds in order to expend remaining Pittman-Robertson funds and ensure that the funds are not returned to the federal government unspent; (6) the division of parks and outdoor recreations should

reduce dependence on general funds by increasing park fees and the number of facilities where fees are charged and pursue statutory changes needed to sell park merchandise.

We do not think these statements of legislative intent are enforceable under the *Hammond* standards, but the department may comply as a matter of comity.

#### **XV. Department of Public Safety.**

In the appropriations to the department, the legislature expresses its intent that the village public safety officer (VPSO) program grantees be allowed to charge their federally approved indirect cost to their VPSO grant so long as the statewide average does not exceed 30 percent. Additionally, the legislature directed the department to continue working with grantees on reducing the overall indirect cost percentage and to provide a report to the legislature by February 1, 2017. As set out above, the expressions of legislative intent are not enforceable, but the department may comply as a matter of comity. Similarly, the department is not required to comply with a reporting requirement that is not set out in statute, but it may as a matter of comity.

#### **XVI. 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 from 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, an expression of legislative intent is included which provides that the department should consult with the Alaska Permanent Fund Corporation and submit a report to the finance committees by October 15, 2016, regarding whether management responsibility over assets currently managed by the Alaska Retirement Management Board or funds managed by the commissioner of revenue including the constitutional budget reserve fund should be transferred to the Alaska Permanent Fund Corporation. As set out above, expressions of legislative intent and reporting requirement that are not set out in statute are not enforceable, but the department may comply as a matter of comity. Under existing law, the commissioner has the discretion to transfer management responsibility over all or a portion of the constitutional budget reserve fund.<sup>11</sup>

#### **XVII. Department of Transportation and Public Facilities.**

The legislature included several expressions of legislative intent including: (1) that the department contract with local governments and private entities if the state will save money and resources for road maintenance including street sweeping, snow removal, pot-

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<sup>11</sup> AS 37.10.430(a).

hole repair, minor signage, marker maintenance, other minor road maintenance, and traffic signal management, and prepare a report to the legislature by January 30, 2017, on cost savings and the interest in participation from at least six local governments regarding privatizing road maintenance; (2) that the department seek cost savings and efficiencies in the operation of the rural airport system with the objective of reducing general fund appropriations for these services of five percent; (3) that the northern region reopen and staff the Northway, Chitina, and Central maintenance stations; and (4) the state should bring marine highway union employees in line with other state employees regarding the payment of a geographic differential rather than maintain the cost-of-living differential system (COLD).

As set out above, expressions of legislative intent are not enforceable, but the department can comply as a matter of comity. Additionally, to the extent that reporting requirements are not otherwise set out in statute, the department may wish to comply as a matter of comity, but is not required to do so. *See* 2007 Op. Att'y Gen. 2 (June 6; 883-07-0070). Finally, in regard to compensation paid to marine highway union employees it is noted that compensation is a subject of bargaining between the state and marine highway unions under the Public Employment Relations Act.<sup>12</sup>

Additionally, the legislature provided that the appropriation to the marine highway system included a one-time appropriation of \$2,000,000 from the marine highway system fund for operations based on the published schedule for the 2017 fiscal year and that the legislature intends that the ferry schedule for the 2018 fiscal year be developed based on that understanding. We believe this language strays into the administration of the department's program. But, the department may comply as a matter of comity.

Additionally, as we have noted in previous years, there is a special lapse provision in the department's appropriation for highways, aviation, and facilities that makes these appropriations available for expenditure until they lapse into the general fund on August 31, 2017.

## **XVIII. University of Alaska.**

The legislature included numerous statements of legislative intent in the appropriations to the University of Alaska, including that the Board of Regents present to the legislature a specific plan for consolidation with timelines. As set out above, expressions of legislative intent are generally not enforceable when included with appropriations to executive branch departments, and reporting requirements that are not otherwise set out in statute also are not enforceable.<sup>13</sup> Because of the University of

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<sup>12</sup> AS 23.40.070-23.40.260.

<sup>13</sup> *See* 2007 Op. Att'y Gen. 2 (June 6; 883-07-0070).

Alaska's unique position in the Alaska Constitution, efforts by the legislature to manage its internal operations through statements of intent in appropriations 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.<sup>14</sup>

### **XIX. Alaska Court System.**

The appropriations to the Alaska Court System do not include any intent language and there are no apparent legal concerns with the section.

### **XX. Alaska Legislature**

The legislature included one statement of intent in the appropriations to the legislature, which was that its employees take five furlough days during fiscal year 2017.

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

Section 2 of the bill provides contingent appropriations for several pieces of new legislation. Except for the appropriation to the oil and gas tax credit fund discussed below, these are appropriations for fiscal year 2017. If particular legislation identified in this section fails to pass, or if its substance is not incorporated in some other measure, or it is vetoed by the governor, the appropriation for that legislation lapses. This section includes a \$430,000,000 supplemental appropriation for fiscal year 2016 to the oil and gas tax credit fund, AS 43.55.028, contingent upon the enactment into law of HB 247, a tax credit reform bill. Additional other substantial appropriations that are contingent upon proposed legislation becoming law include HB 274, reinsurance program, and other identified legislation. We see no legal concerns with these appropriations as the contingencies placed on the appropriations appear to be legally valid.

Section 3 of the bill sets out the funding by agency for the appropriations made in secs. 1 and 2 of the bill. Section 4 of the bill sets out the statewide funding for the appropriations made in sec. 1 and sec. 2 of the bill.

### **XXII. Legislative Intent Section.**

Section 5 sets out a series of statements regarding the legislature's intent concerning the appropriations in this bill. Section 5(a) states that the amounts appropriated in the operating budget are the full amounts to be appropriated for the identified purpose. Section 5(b) states that state agencies and instrumentalities should pursue discussions and negotiations with the University of Alaska regarding whether the

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<sup>14</sup> Art. VII, secs. 2-3.

University can provide research, consultation, performance of studies, needs assessments, or analysis before seeking to contract for the services from other parties. The legislature further expresses its intent that state agencies and instrumentalities should use the University for the services unless it would be contrary to the best interests of the state or contrary to law. Section 5(c) states that the executive branch should continue to enforce the governor's January 5, 2016, restriction on nonessential travel for fiscal year 2017. Subsection 5(d) states that each department head should prepare a report to the legislature identifying services that can be privatized including procurement, client services, human resource management, and auditing of certain files and deliver the report to the senate secretary and the chief clerk of the house of representatives by January 17, 2017. Section 5(e) of the bill states that the governor should develop a plan to "colocate" four public corporations: Alaska Aerospace Corporation, Alaska Energy Authority, Alaska Housing Finance Corporation, and the Alaska Industrial Development Authority and present the plan to the co-chairs of the house and senate finance committees by October 31, 2016.

We do not think these statements of legislative intent are enforceable under the *Hammond* factors discussed above, but the executive branch may comply as a matter of comity. Additionally, as set out above regarding other provisions in this bill which express legislative intent that the executive branch submit reports, we believe that unless reporting requirements are set out in statute, any requirement to submit reports is not enforceable, but the executive branch may comply as a matter of comity.

Section 5(f) expresses the legislature's intent that the Department of Revenue transfer the management and investment authority of the constitutional budget reserve fund (CBR) to the Alaska Permanent Fund Corporation under AS 37.10.430(a). As discussed above, in sec. 1 of the bill the legislature included a statement of intent that a report be submitted to it regarding "whether" management responsibility for the CBR should be transferred to the Alaska Permanent Fund Corporation. In this section of the bill, the legislature expresses its intent that the transfer of responsibility should occur. As noted previously, the Department of Revenue has the discretion under existing law<sup>15</sup> to transfer the management and investment of the CBR to the Permanent Fund Corporation, but that is a decision to be made by the Department of Revenue and it cannot be mandated by an appropriation bill.

Section 5(g) expresses the legislature's intent regarding regulations, first by expressing intent that executive branch agencies continue to comply with Administrative Order No. 266 (establishing Regulatory Efficiency Guidelines). Among other directives, that administrative order directs executive branch agencies to make an annual report to the governor and the office of management and budget summarizing results of the agencies' review of regulatory actions, and making recommendations for actions,

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<sup>15</sup> AS 37.10.430(a).

including actions to result in potential savings. Section (5)(g)(2) of the bill requests that those agencies report information to the co-chairs of the house and senate finance committees "as reported to the governor and the office of management and budget." Because we read sec. (5)(g)(2) simply to request that agencies provide the co-chairs the same report that the agencies provide you and the office of management and budget, we do not expect a fiscal impact from complying with the request. You may wish to comply as a matter of comity.

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

Section 7 of the bill states the intent of the legislature concerning agency transfers to and from personal services line items. The intent is that agencies restrict the transfers and that the office of management and budget submit a report to the house and senate finance committees on January 15, 2017, describing and justifying all the transfers during the first half of the fiscal year and again submit a report on October 1, 2017, describing and justifying all the transfers during the fiscal year. This section is nonbinding in its entirety under *Alaska Legislative Council v. Knowles*.<sup>16</sup> You need not comply with these requirements, but you may comply out of comity.

Section 8 of the bill would appropriate to the Alaska Aerospace Corporation all federal and other corporate receipts received during the fiscal year ending June 30, 2017, in excess of the amounts appropriated to the Alaska Aerospace Corporation in sec. 1 of the bill. We do not see any legal concerns with this appropriation.

Section 9 of the bill would make various appropriations to the Alaska Housing Finance Corporation from the adjusted net income from the preceding fiscal year, for various purposes including debt service and deposit to the Alaska capital income fund (AS 37.05.565), 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. We have not identified any legal issues that cause concern.

Section 10 of the bill would appropriate from the earnings reserve account (AS 37.13.145(a)) to the dividend fund (AS 43.23.045(a)) an amount estimated to be \$1,362,000,000, which is calculated based on the amount of transfer to the dividend fund that would be permitted on June 30, 2016, under AS 37.13.145(b). The transfer to the dividend fund is for the purpose of paying dividends and for administrative and associated costs. The legislature has estimated the amount, but it is dependent on investment returns and thus is fairly speculative. The section also would appropriate oil and gas revenue to the principal of the permanent fund as required by the constitution and

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<sup>16</sup> 21 P.3d 367 (Alaska 2001).

statute. Additionally, the section provides for an appropriation to the Alaska capital income fund (AS 37.05.565) under AS 37.13.145(d). We see no legal concerns with these appropriations

Section 11 of the bill would appropriate to the Alaska capital income fund (AS 37.05.565) amounts not otherwise appropriated from the estimated \$6,328,000 dividend to be declared by the Alaska Industrial Development and Export Authority. We see no legal concerns with this appropriation.

Section 12(a) and (b) of the bill would appropriate from the state insurance catastrophe reserve account and the working reserve account to the Department of Administration amounts necessary to fund the uses set out in AS 37.05.289(a) and AS 37.05.510(a). Section 12(c) would appropriate 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 2017 fiscal year. Section 12(d) would appropriate the amount received in a settlement of a bond claim, approximately \$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. Section 12(e) amends section 10(b), ch.38, SLA 2015, to appropriate \$2,250,000 from the general fund to the Department of Administration for payment of a single audit for the Department of Health and Social Services for fiscal years ending June 30, 2015, 2016, 2017, and 2018. We see no legal concerns with these appropriations.

Section 13 of the bill would make appropriations related to the Department of Commerce, Community, and Economic Development. Section 13(a) appropriates national forest income that will lapse at the end of fiscal year 2017 to political subdivisions where national forest land is located in accordance with the formula provided under AS 41.15.180(c) and (d). Section 13(b) appropriates from federal receipts for national forest receipt payments, if the amount appropriated for this purpose in section 1 of the bill is insufficient. Sections 13(c) would appropriate from federal receipts for federal revenue sharing programs, if the amount appropriated for this purpose in sec. 1 of the bill is insufficient. Section 13(d) makes an appropriation related to the salmon enhancement tax to qualified regional associations. Section 13(e) makes an appropriation related to the seafood development tax to the qualified regional seafood development associations, but in this year's appropriation the legislature specifically identifies six purposes for which these appropriated funds can be used. Section 13(f) appropriates \$40,355,000 from the power cost equalization endowment fund (AS 42.45.070(a)) for the power cost equalization program for fiscal year 2017. Section 13(g) reappropriates certain funds from prior year appropriations to the Department of Commerce, Community, and Economic Development to pay a grant under AS 37.05.315 to the Municipality of Anchorage for the Alaska domestic violence and sexual assault program for domestic violence and sexual assault offender compliance checks and intervention for

fiscal years 2017, 2018, and 2019. We see no legal concerns with the various appropriations in this section of the bill.

Section 14 of the bill would appropriate to the Department of Education and Early Development \$116,482 to pay a grant under AS 37.05.316 to the Matanuska-Susitna Borough School District for the transportation of students to the Alaska Middle College School. The Alaska Middle College School is a collaboration between the Matanuska-Susitna Borough School District and the University of Alaska Anchorage (UAA) which permits high school juniors and seniors to earn college credit on a college campus. The school is located on the Chugiak-Eagle River Campus of UAA. We see no legal problems with this appropriation.

Section 15(a) appropriates an amount equal to the dive fishery management assessments collected in fiscal year 2016 to the Department of Fish and Game for payment to qualified regional dive fishery development associations in the area where the assessments were collected. Section 15(b) appropriates the remaining balance of the sport fishing enterprise account (AS 16.05.130(e)) in the fish and game fund, but not to exceed \$500,000 and following the appropriation made in sec. 26(n) of the bill, to the Department of Fish and Game for sport fish operations. We see no legal problems with these appropriations.

Section 16 provides that if the appropriations in sec. 1 of the bill are not sufficient to pay benefits under AS 47.45.302(b)(1) and (2) then the additional amount necessary to pay these benefits is appropriated to the Department of Health and Social Services, public assistance, senior benefits payment program. We see no legal problems with this appropriation.

Section 17(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 2017 if the amounts appropriated in sec. 1 of the bill are not sufficient. Section 17(d) would appropriate surplus contributions received by the Alaska Vocational Technical Center (AVTEC) to AVTEC. We see no legal concerns with these appropriations.

Section 18 of the bill 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 the provided in AS 37.14.730(b). We see no legal problems with this appropriation.

Section 19(a), (b), and (d) of the bill would make various appropriations to the Department of Natural Resources for purposes of fire suppression, mine reclamation, and operation of an oil production platform in Cook Inlet, pending reclamation. Section 19(c) of the bill would appropriate the amount received in a settlement of a bond claim,



approximately \$50,000, to the Department of Natural Resources to reclaim state, federal, or private land affected by a use covered by the bond. Section 19(e) would appropriate from the general fund up to \$1,125,000 to the Department of Natural Resources for fire suppression if any portion of the federal receipts appropriated in section 19(d) of the bill are not received. We see no legal concerns with these appropriations.

Section 20(a) of the bill would make an appropriation to the Department of Revenue that is a state match for federal receipts received for child support enforcement efforts. We see no legal concerns with this appropriation.

Section 20(b) would appropriate from the dividend fund (AS 43.23.045(a)) to the Department of Revenue monies to perform third-party eligibility analytics. The subsection also includes language expressing the legislature's intent that this appropriation result in sufficient savings to surpass the amount expended on these services, that the fee not exceed 20 percent of anticipated savings, and that the permanent fund division contract with a third-party provider for these services. As set out above, statements of legislative intent are generally enforceable under the *Hammond* standards, but the department may comply as a matter of comity.

Section 21 of the bill would appropriate to the University of Alaska the amount of fees collected in fiscal year 2016 for the issuance of special request university license plates, less the cost of issuing the license plates. We see no legal concerns with this appropriation.

Section 22(a) - (c) of the bill would appropriate certain amounts to the Office of the Governor, division of elections, from the general fund and the election fund required by the federal Help America Vote Act for costs of conducting the statewide primary and general elections for fiscal years 2016, 2017, and 2018. We see no legal concerns with these appropriations.

Section 23 of the bill would appropriate retained fees and bankcard service fees. We see no legal concerns with this appropriation.

Section 24(a) through (j) and section 24(l) of the bill would appropriate amounts necessary for debt service, including arbitrage rebate payments, on a range of notes, certificates of participation, and bonds. We see no legal concerns with these appropriations.

Section 24(k) of the bill would appropriate from the general fund the amount necessary for state aid for costs of school construction under AS 14.11.100, estimated to be \$121,996,375, after an appropriation of \$18,300,000 from the School Fund (AS 43.50.140). 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.<sup>17</sup> Because the School Fund existed when the Alaska Constitution was ratified on April 24, 1956, the School Fund does not violate the dedicated fund clause (art. IX, sec. 7, of the Alaska Constitution). We see no legal concerns with these appropriations.

Section 25(a), (b), and (c) of the bill address and appropriate certain federal receipts, designated program receipts, information services fund program receipts, Exxon Valdez oil spill trust receipts, Alaska House Finance Corporation receipts, Alaska marine highway receipts, University of Alaska receipts, and commercial fisheries test fishing operations receipts. We see no legal concerns with these appropriations.

Section 26 of the bill provides for capitalization of various funds, including the Alaska children's trust grant account, the disaster relief fund, the group health and life benefits fund, Alaska municipal bond bank authority reserve fund, the public education fund, the Alaska clean water fund, the Alaska drinking water fund, Alaska fish and game bond redemption fund, the crime victim compensation fund, the election fund, and the emerging energy technology fund. We see no legal concerns with these appropriations.

We note that section 26 includes an appropriation, estimated to be \$30,000,000, from the general fund to the oil and gas tax credit fund (AS 43.55.028).<sup>18</sup> This appropriation is based on the statutory guidelines in AS 43.55.028(b) and (c) for appropriations to the oil and gas tax credit fund and is a fiscal year 2017 appropriation. As set out above, a fiscal year 2016 appropriation of \$430,000,000 is made to this fund in sec. 2 contingent on enactment into law of HB 247. We also note that sec. 26 includes an appropriation from the general fund to the public education fund (AS 14.17.300) of the total amount necessary to fund the public school funding formula under AS 14.17.410(b), estimated to be \$1,163,984,500.<sup>19</sup>

Section 27(a) of the bill appropriates to the Alaska permanent fund (art. IX, sec. 15, of the Alaska Constitution) and to the public school trust fund (AS 37.14.110(a)) according to AS 37.05.530(g)(1) - (3), amounts not appropriated for grants from the National Petroleum Reserve - Alaska special revenue fund (AS 37.05.530). The appropriation to the public school trust fund is required to help satisfy the state's obligation to compensate the public school trust for trust lands re-designated as general grant lands in 1978.<sup>20</sup> We see no legal concerns with the appropriation.

Section 27(b) appropriates the loan origination fees collected by the Alaska Commission on Postsecondary Education. Section 27(c) appropriates \$80,000,000 from the general fund to the Alaska higher education investment fund (AS 37.14.750). Section

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<sup>17</sup> See sec. 16, ch. 187, SLA 1955.

<sup>18</sup> Section 26(e).

<sup>19</sup> Section 26(h).

<sup>20</sup> ch. 182, SLA 1978.

27(d) makes appropriations to the oil and hazardous substance release prevention account, and section 27(e) makes appropriations to the oil and hazardous substance release response account. We see no legal concerns with these appropriations.

Section 27(f) makes appropriations to the regional educational attendance area and small municipal school district school fund. Section 27(g) appropriates vaccine assessment program receipts collected under AS 18.09.220, estimated to be \$31,200,000 to the vaccine assessment account (AS 18.09.230). Section 27(h) would appropriate the balance of the Alaska clean water administrative income account (AS 46.03.034(a)(2)) on June 30, 2016, estimated to be \$516,000, to the Alaska clean water administrative operating account (AS 46.03.034(a)(1)). Section 27(i) would appropriate the balance of the Alaska drinking water administrative income account (AS 46.03.038(a)(2)) on June 30, 2016, estimated to be \$594,000, to the Alaska drinking water administrative operating account (AS 46.03.038(a)(1)). Section 27(j) would appropriate an amount equal to the interest earned on amounts in the aviation fuel tax account (AS 43.40.010(e)) to the aviation fuel tax account. We see no legal concerns with these appropriations.

Section 27(k) appropriates the following fees, estimated to total \$888,000, to the fish and game fund (AS 16.05.100): (1) fees collected from state operated shooting ranges; (2) receipts from the sale of waterfowl conservation stamp prints; (3) fees collected from state sanctuary access permits; and (4) fees collected from state operated boating and angling access sites. We see no legal concerns with the appropriation.

Section 27(l) appropriates the balance of the mine reclamation trust fund income account (AS 37.14.800(a)) and money deposited in that account during the 2017 fiscal year, estimated to be \$50,000, to the mine reclamation trust fund operating account (AS 37.14.800(c)). There are no legal concerns with this appropriation.

Section 28 appropriates funds to state retirement systems. Specifically, sec. 28(a) appropriates \$34,718,076 from the general fund and \$64,448,500 from the Alaska higher education investment fund (AS 37.14.750) 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. Section 28(b) appropriates \$91,322,959 from the general fund and \$25,377,000 from the Alaska higher education investment fund (AS 37.14.750) 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 27(c) appropriates \$797,500 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 28(d) appropriates \$69,405 from the general fund to the Department of Military and Veterans' Affairs as an additional state contribution for the purpose of funding past service liability for the Alaska National Guard and Alaska Naval Militia retirement system under AS 26.05.226. Section 28(e) appropriates \$1,881,400 from the general fund to the Department of Administration for the payment of benefits to eligible members and

survivors of eligible members earned under the elected public officers' retirement system. Section 28(f) appropriates \$43,700 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 28(g) appropriates \$5,412,366 from the general fund to the Department of Administration for deposit in the defined benefit plan account in the judicial retirement system.

Section 29(a) appropriates funds for salary and benefit adjustments for public officials, officers, and employees in the executive branch, court system, the legislature, and for legislators. Section 29(a) also appropriates funds to implement state collective bargaining agreements covering 10 collective bargaining units. Section 29(b) provides that the appropriations made to the University of Alaska in sec. 1 of the bill include amounts for salary and benefit adjustments for the fiscal year for university employees who are not members of bargaining units and to implement the monetary terms of employees covered by collective bargaining agreements for employees in the following bargaining units: University of Alaska Federation of Teachers; United Academics - American Association of University Professors, American Federation of Teachers; United Academics - Adjuncts; and Alaska Higher Education Crafts and Trades Employees, Local 6070.

Section 29(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 29(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.

We see no legal concerns with the appropriations in section 29 and note that the contingency language in subsections (c) and (d) are proper conditions on the appropriations.

Section 30(a) - (d) of the bill would appropriate the proceeds of certain taxes and fees for refund to local governments. We see no legal concerns with these appropriations.

Section 31 provides for several supplemental and miscellaneous appropriations. Section 31(a), (b), and (c) appropriates funds to the Department of Administration for public communications services, public broadcasting commission, and radio and television public broadcasting for fiscal years 2016 and 2017. Section 31(d) appropriates \$10,000,000 to the University of Alaska for operating expenses for fiscal years 2016 and 2017. Section 31(e) appropriates \$340,000 to the Department of Public Safety for batterer intervention and victim services for fiscal years 2016 and 2017. We see no legal concerns with these appropriations.

Section 32 includes several miscellaneous appropriations to the Departments of Education and Early Development, Health and Social Services, and Public Safety as well as to the Alaska Public Offices Commission for programs and operating expenses of these departments and state agencies. We see no legal concerns with these appropriations.

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

Section 34 provides for an appropriation from the statutory budget reserve fund (AS 37.05.540(a)) for fiscal year 2016 if the unrestricted state revenue for that fiscal year is insufficient to cover general fund appropriations for that year after appropriations from the constitutional budget reserve fund authorized under secs. 12(b) and (c), ch. 1, SSLA, 2015. We see no legal concerns with the appropriation.

Section 35 provides for three appropriations from the constitutional budget reserve fund (CBR) which is established in art. IX, sec. 17. Section 35(a) provides that deposits in the CBR for fiscal year 2016 that were made from subfunds and accounts by operation of art. IX, sec. 17(d) of the Alaska Constitution to repay prior appropriations from the CBR are appropriated from the CBR back to the subfunds and accounts from which they were transferred. Section 35(b) provides for appropriations from the CBR to the general fund for fiscal year 2017 if the unrestricted state revenue available for appropriation is insufficient to cover the general fund appropriations for fiscal year 2017 that are made in this bill and that are made in the capital budget bill, SB 138, and the mental health budget bill, HB 257. Section 35(c) provides that if the appropriation in section 35(b) is insufficient to cover the general fund appropriations in fiscal year 2017, the amount necessary to balance revenue and general fund appropriations, not to exceed \$100,000,000, is appropriated to the general fund from the CBR. Section 35(d) provides that the appropriations under subsections (a), (b), and (c) were made under art. IX, sec. 17(c) of the Alaska Constitution. These appropriations received the required three-fourths vote of the membership of each house and thus are valid under this constitutional provision. Accordingly, we see no legal concerns with the CBR appropriations.

Section 36 provides that sec. 11(a) and (b), ch.23, SLA 2015, are repealed. These repealed appropriations were appropriations from the permanent fund earnings reserve account (AS 37.13.145(b)) to the dividend fund (AS 43.23.045(a)) and to the principal of the permanent fund. As set out above, the appropriations from the earnings reserve account to the dividend fund are now provided in section 10 of this bill. We see no legal concerns with the repeal of appropriations provided for in sec. 36.

Section 37 provides that certain appropriations in the bill are for capitalization of funds and do not lapse.

Section 38 provides for retroactive effect to April 17, 2016, or June 30, 2016, for certain appropriations in the bill.

Sections 39 - 41 set out the effective dates of the various sections of the bill.

**XXIII. 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,

CRAIG W. RICHARDS  
ATTORNEY GENERAL

By:

William E. Milks  
Assistant Attorney General

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