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MEMORANDUM

February 11, 2026

SUBJECT: Governor's Omnibus Tax Bill Clean-up
(CSSB 227(RES); Work Order No. 34-GS2496N)

TO: Senator Cathy Giessel
Chair of the Senate Resources Committee
Attn: Paige Brown

FROM: Emily Nauman
Director 

Attached is a clean-up of SB 227, the governor's omnibus tax bill. The clean-up makes minimal changes to conform SB 227 to the Alaska Statutes; the changes are not intended to affect the meaning of the bill. Please consider the following notes, comments, and legal issues related to the bill. As our office continues to review the bill, we may find additional legal or drafting issues. This is common, especially in lengthy bills not drafted by our office, like this one. I will do my best to keep your office apprised if any other major legal or constitutional issues are identified.

Constitutional Issues

Single Subject. In addition to several other tax modifications, sec. 31 of SB 227 establishes an infrastructure maintenance surcharge on oil. It also creates a "pipeline corridor maintenance fund" and directs that proceeds of the surcharge be deposited into the fund and appropriated for maintenance and operation of the costs incurred by the state along the pipeline corridor. I cannot identify a single subject that would capture pipeline maintenance and all the other sections of the bill, which appear to broadly fall under the single subject of "taxes." The bill therefore raises a single-subject issue.¹

¹ Under art. II, sec. 13, of the Constitution of the State of Alaska, "[e]very bill shall be confined to one subject." The Alaska Supreme Court has interpreted the single subject rule to require that all matters in an act "fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject. *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982) (quoting *Gellert v. State*, 522 P.2d 1120, 1123 (Alaska 1974)). Historically, the Alaska Supreme Court has interpreted Alaska's single subject rule to permit very broad subject matter in one bill without violating the single subject requirement. For example, the Court has upheld as constitutionally valid bills with single subjects relating to such broad themes as "development of water resources," *Gellert*, 522 P.2d at 1123; "taxation," *N. Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 545

In *Croft v. Parnell*, the Alaska Supreme Court considered a ballot initiative that proposed a new oil production tax and included a "soft dedication" of that tax to fund "clean elections."² That scheme directly implicated "one of the main purposes of the single-subject rule—the prevention of log-rolling"³ By combining one topic (oil production taxes) with an unrelated topic (publicly funded elections), the initiative unconstitutionally "deprive[d] the voters of an opportunity to send a clear message on each subject encompassed by" the initiative.⁴

Section 31 of SB 227 sets up a similar scheme to that analyzed in *Croft*: a "soft dedication" of funds for a purpose (pipeline maintenance) unrelated to the broad subject of the remainder of the bill (taxes). Unlike the facts in *Croft*, the dedication of revenues is directly related to the subject of one of the taxes amended by the bill. While I cannot be certain how a court would rule, I cannot identify a single subject that would unite all the subjects of this bill.⁵ As you are no doubt aware, failure to comply with the single subject requirement could jeopardize the entire underlying bill if the bill were challenged.

Conditional Effect. Section 35 of SB 227 makes the bill contingent on the enactment into law of HB 275 (appropriation limit), HB 274 (sunset reviews of state agencies) and HJR 30 (permanent fund restructure). SB 227 relates to taxes. I am unsure whether the conditional effect in the bill would survive a legal challenge.

Making one act contingent on another, unrelated act, raises a question under the single subject requirement discussed in the first section of this memorandum. Specifically, when a bill contains a conditional effect section that provides that the bill takes effect on the passage of another bill, are both the bills together required to satisfy the single subject requirement?

(Alaska 1978); "land," *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 415 (Alaska 1982); "intoxicating liquor," *Van Brunt v. State*, 646 P.2d 872, 874-875 (Alaska App. 1982); and "criminal law," *Galbraith v. State*, 693 P.2d 880, 885-886 (Alaska App. 1985).

² 236 P.3d 369 (Alaska 2010).

³ *Id.* at 374.

⁴ *Id.* Despite the fact that *Croft* concerned a ballot initiative, I believe that a court would apply the same analysis to a bill enacted by the legislature.

⁵ Courts will "'resolve doubts in favor of validity,' and strike down challenged proposals only when the violation is 'substantial and plain.'" *Id.* at 373 (quoting *Gellert v. State*, 522 P.2d 1120, 1122 (Alaska 1974)).

The Alaska Supreme Court has not yet considered whether the single subject rule should be applied to separate bills that take effect only on the condition of the passage of another legislative act or acts. However, other state supreme courts have found that there is no constitutional impediment to conditioning the effect and enactment of one provision or act on the passage and enactment of another separate act by the legislature if both acts address a broad comprehensive legislative program and there is a direct and relative interdependence between the acts then becoming law.⁶

Taken together, taxes, an appropriation limit, the sunset reviews of state agencies, and permanent fund restructuring do not appear to be related subjects under the single subject rule. It could be argued, however, that the passage of the four bills is part of a comprehensive fiscal program. Because the issue has not been tested in a court in this state, it is difficult to be sure whether the conditional effect requirement in SB 227 would violate the single subject rule.

Drafting Questions and Comments

Municipal Taxes. Under the bill, the state assumes responsibility for collecting the municipal sales taxes. The intent of the bill appears to be to harmonize the state and municipal tax codes for ease of administration. However, the bill could be revised to better elucidate how the state and municipal tax codes will work together. For instance, the bill removes discretionary language currently found in statute that "exemptions may be granted by ordinance,"⁷ but does not replace that language with a prohibition on local exemptions. Should it? Relatedly, should the bill address AS 29.45.670, which requires voters to approve a new municipal sales tax or the increase of an existing tax rate, given that removal of exemptions may result in a higher tax rate?

Corporate Tax Rate. SB 227 effectuates the repeal of the corporate income tax by setting the rate in sec. 43.20.011(e) to zero. Should the bill instead repeal the corporate income tax statutes (AS 43.20) entirely? What about the Multistate Tax Compact (AS 43.19), which would no longer be required to apportion income for purpose of the tax? At a minimum, should the requirement that corporations file a return under AS 43.20.030 be suspended? Are you aware of any gas storage facilities or liquefied natural gas storage

⁶ See *Wirtz v. Quinn*, 953 N.E.2d 899, 913-14 (Ill. 2011); *Gaulden v. Kirk*, 47 So.2d 567, 575 (Fla. 1950). But note in *Missouri Roundtable for Life, Inc., v. State*, 396 S.W.3d 348 (Mo. 2013), the Missouri Supreme Court found that where a legislative act is conditioned on passage of another piece of legislation with a completely different subject, the conditional effect would violate the single subject rule of the Missouri Constitution ("The single subject rule would become meaningless if the legislature were able to condition the effectiveness of one bill upon passage of another bill covering a different subject matter. It would create the kind of logrolling the single subject rule is intended to prevent by allowing legislators to tack unpopular subjects on to bills to obtain a majority vote.").

⁷ AS 29.45.650.

facilities that have qualified for a credit under AS 43.20.046 or 43.20.047?⁸ Both credits are refundable. Should that remain true if the tax rate is zero?

AS 43.20.053 establishes a similar refundable credit for an "in-state oil refinery whose primary function is the manufacturing and sale of refined petroleum products," but eligible expenditures must have occurred before January 1, 2020.⁹

Sales Tax Rate. SB 227 also effectuates the repeal of the sales tax in the same way, setting the sales tax rate at "zero" in sec. 22 of the bill. Should the bill instead repeal the sales tax statutes enacted by the bill? Sections of the sales tax law direct the state to collect sales tax on behalf of local governments, should this continue if the state is no longer collecting a sales tax? Section 43.44.200 requires sellers to get a seller's permit. Should that requirement be suspended if there is no sales tax? The same question applies to the exemption certificate under sec. 43.44.210 in the bill. Or perhaps this section could be made permissive, rather than mandatory by changing the "shall" in the first sentence to a "may." Should the requirement that returns be filed be suspended? Should security and bonding requirements be suspended (sec. 43.44.340)? Should the department still be able to contract for field offices under sec. 43.44.420?

Collect v. Remit. Section 14 of the bill amends the definition of "taxpayer" in AS 43.05 to include a person required to "collect" a tax. AS 43.05, the general administration section of the tax laws, applies to all taxes collected by the department, and includes provisions like requiring returns, penalties, falsifying evidence, remedies, appeals, collections, interest, hearings, and judicial reviews. It seems counterintuitive to define a "taxpayer" as a person who "collects" taxes. I assume the intent of the change in sec. 14 is to expand AS 43.05 to include people who collect the tax on behalf of the state. Would "remit" instead be a better word here? Should the word "collect" be reserved for the action of the state collecting taxes? I would also advise reviewing each section in AS 43.05 that uses "taxpayer" to be sure referencing a person remitting tax makes sense.

Remit v. Pay. In many places, the draft uses the word "pay" to describe the action of a seller who collected tax money and sent that money to the department. "Remit" is also used in a few places to describe that action. Should the word "remit" instead be used throughout?

⁸ AS 43.20.046 establishes a credit for a gas storage facility that "commences commercial operation after December 31, 2010, and before January 1, 2016." AS 43.20.047 establishes a credit for a liquefied natural gas storage facility that "commences commercial operation before January 1, 2020." If you are aware that no person is using these credits, perhaps the credits should be repealed?

⁹ Perhaps this credit can be repealed?

Goods v. Personal Property. The bill uses the phrases "goods" and "personal property" to describe taxable items, seemingly interchangeably. "Personal property" is defined in the bill. Should references to "goods" be changed throughout to "personal property"?

Remote Seller Nexus. In *South Dakota v. Wayfair, Inc.*, the United States Supreme Court, overruling prior case law, held that physical presence in the state is not required for a seller to establish a substantial nexus to the taxing state.¹⁰ In other words, a state government can require a seller without a physical nexus to the state to collect sales tax on behalf of that state, so long as that seller has a sufficient nexus to that state. In *Wayfair*, the Court upheld the South Dakota law that required the collection and remittance of sales tax from an out-of-state seller if the seller met one of two annual threshold requirements: delivering more than \$100,000 of goods or services into the state or engaging in 200 or more separate transactions for the delivery of goods or services into the state.¹¹ The attached bill uses the first of the those two tests (\$100,000), would you like to add the second (200 transactions) to the bill? In addition, should the language of the bill, currently, "*received more than \$100,000 in gross revenues from the sale of goods and services delivered in the state*" be changed to more closely match the South Dakota law upheld, "*gross revenue from [goods or services] delivered into South Dakota exceeds*" \$100,000?

Seller's Permit. Should the bill require an out-of-state marketplace facilitator to obtain a seller's permit, since that person will be collecting taxes on behalf of the state?

Sales Tax Definitions. Several of the sales tax definitions included substantive requirements, which were moved into the body of the bill. In addition, many of the definitions included both "means" and "includes," which can cause confusion over the scope of the definition and does not conform to our drafting conventions, as explained in the *Manual of Legislative Drafting*.¹² These definitions have therefore been revised. Please also closely review the definitions of "personal property" and "services."

Under the bill, "personal property" includes "electricity, water, gas, steam, Internet services, electronic or digital goods, and prewritten computer software." Should these instead be in the definition of "services"? Related to "Internet services," note that the definition of "services" already includes "telecommunications services." Are Internet

¹⁰ 585 U.S. 162, 188 (2018).

¹¹ *Id.* at 188.

¹² "A definition may be all-inclusive. . . in which the word 'means' equates the terms on either side. The word 'includes' may be used in a definition, *but only as an alternative* to the word 'means.' It is used when the bill drafter intends to show that a meaning that might otherwise be in doubt is intended, in addition to the clear meaning of the word." *Manual of Legislative Drafting* (2025) at p. 53 (emphasis added).

Senator Cathy Giessel

February 11, 2026

Page 6

services different from telecommunications services? Or is an Internet service both personal property and a service?

The definition of "services" also contains "personal property that will become component or part of a construction project." Should this instead be part of the definition of "personal property"? Both "personal property" and "services" are taxed at the same rate, so there is no change to the tax structure by moving items between the definitions.

Effective Dates. Although not a legal issue, note that if the sections of SB 227 concerning sales tax and the infrastructure maintenance surcharge on oil take effect, they take effect "12 months after enactment" of the bill. For ease of transition, new taxes are generally given a specific effective date, usually the start of a new year or month. The 12-month post-enactment effective date will likely lead to the implementation of those new taxes on a day that is not the first of a month or new year.

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Attachment