

LEGAL SERVICES

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MEMORANDUM

March 6, 2018

SUBJECT: Limiting LB&A authority to receive AGDC program receipts
(CSHB 286(FIN); Work Order No. 30-GH2564\O.26)

TO: Representative Lance Pruitt
Attn: Dirk Craft

FROM: Megan A. Wallace
Legislative Counsel 

You have asked for an opinion regarding the legality of limiting the authority of the Legislative Budget and Audit Committee (LB&A) to receive program receipts through the above-referenced amendment.

AS 37.07.080(h) does not give LB&A the authority to receive funds. LB&A serves only an advisory function with respect to expenditures involving "additional" program receipts. In recognizing the fact that it is not always possible to predict exactly how much federal funding or program receipts the state will receive, AS 37.07.080(h) authorizes the governor to "increase . . . an appropriation item based on additional federal or other program receipts not specifically appropriated by the full legislature." AS 37.07.080(h) provides in full:

(h) The increase of an appropriation item based on additional federal or other program receipts not specifically appropriated by the full legislature may be expended in accordance with the following procedures:

(1) the governor shall submit a revised program to the Legislative Budget and Audit Committee for review;

(2) 45 days shall elapse before commencement of expenditures under the revised program unless the Legislative Budget and Audit Committee earlier recommends that the state take part in the federally or otherwise funded activity;

(3) should the Legislative Budget and Audit Committee recommend within the 45-day period that the state not initiate the additional activity, the governor shall again review the revised program and if the governor determines to authorize the expenditure, the governor shall provide the Legislative Budget and Audit Committee with a statement of the governor's reasons before commencement of expenditures under the revised program.

This provision applies only to the "increase of an appropriation item"; it does not allow the governor to create a new appropriation. To ensure that unanticipated program receipts, including federal funds, can be used for the purpose for which they are received, the legislature typically includes a rather open-ended provision in the operating budget appropriating these receipts, which are conditioned on compliance with AS 37.07.080(h).¹ Nothing in AS 37.073.080(h) prevents the legislature from restricting the appropriation of additional program receipts. In fact, the legislature can control expenditures by simply making no appropriations of federal or program receipts in a manner that leads to discretionary expenditures. The legislature could also make appropriations of additional receipts only for specific programs it feels comfortable increasing by unknown amounts, or specifically exclude certain programs or receipts from that appropriation - which is what is accomplished in the above-referenced amendment.

Version "O", the current version of the operating budget before the House Finance Committee, would allow an open-ended amount of statutory designated program receipts received by the Alaska Gasline Development Corporation to be deposited in the Alaska liquefied natural gas project fund.² Because this language allows for deposit of any amount received of statutory designated program receipts in fiscal years 2018 and 2019, there would be no need to utilize the LB&A program review process, because all program receipts would automatically be deposited into the fund. However, the above-referenced amendment only appropriates up to \$500,000,000 of statutory designated program receipts received by the Alaska Gasline Development Corporation to the Alaska liquefied natural gas project fund. The language in the above-referenced amendment also limits the appropriation in sec. 18 of additional program receipts, specifically excluding designated program receipts received by the Alaska Gasline Development Corporation. As such, if this amendment were to pass, there would only be an appropriation of up to \$500,000,000 of statutory designated program receipts, and AS 37.07.080(h) could not be utilized to increase that appropriation. Instead, further legislative action would be required to expend an amount above \$500,000,000. There is no legal concern with this approach.

If you have any further questions, please let me know.

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¹ See sec. 18, CSHB 286(FIN), Draft Version "O".

² *Id.* at sec. 19(I).