

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 21, 2011

SUBJECT: Inclusion of the state's total unfunded liability in the election pamphlet HB 74 (Work Order No. 27-LS0008\T.2)

TO: Representative Wes Keller
Attn: Ernest Prax

FROM: Alpheus Bullard *TLAB*
Legislative Counsel

You have requested an amendment to HB 74 that would require the Department of Revenue (department) to provide an accounting of the state's total "unfunded liability" for inclusion in the election pamphlet prepared by the division of elections. That amendment accompanies this memorandum. I have a few comments.

I'm not sure what the state's unfunded liabilities might be interpreted to include. "Unfunded liability" is usually interpreted to mean a liability that is not covered by an asset of equal or greater value. Such an accounting could include state liabilities beyond those that are contractually obligated, to tortuous liability for environmental damage, etc. I am not entirely certain of how the language added by this amendment might be construed by either the department or a court.

The department may not be the best source for an accounting of the state's unfunded liability. The Department of Administration may be in a better position to calculate the state's liabilities arising out of shortfalls between the assets and liabilities of the state's retirement systems. I would recommend that you consult with department as to whether the preparation of a such a report is within the department's capabilities.

If you have questions, please do not hesitate to contact me.

TLAB:med
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Enclosure