

LEGAL SERVICES

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

(907) 465-2450
LAA.Legal@akleg.gov
120 4th Street, Room 3


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

MEMORANDUM

February 17, 2026

SUBJECT: AIDEA Accountability Act
(CSHB 124(STA); Work Order No. 34-LS0411\N)

TO: Representative Kevin McCabe
Attn: Angela Stephl

FROM: Ian E. Walsh 
Legislative Counsel

You asked whether CSHB 124(STA) (Work Order No. 34-LS0411\N) raises any legal issues. This bill raises constitutional issues that are discussed below.

Requiring legislative confirmation of members of the Alaska Industrial Development Authority (AIDEA) likely violates the constitutional separation of powers doctrine. Noting that separation of powers is implicit in Alaska's Constitution, the Alaska Supreme Court has explained that "[t]he doctrine prohibits one branch from encroaching upon and exercising the powers of another branch."¹ The court further noted that "the appointment of subordinate executive officers is an executive function."² The Alaska Constitution vests executive authority in the governor, so the governor is ordinarily responsible for executive functions.³ In specific circumstances the constitution permits the executive appointment function to be augmented by the legislature's confirmation power.⁴ Those circumstances are not present here, however, because AIDEA is not a principal department or quasi-judicial or regulatory agency.⁵ Thus, requiring that the legislature confirm the members of AIDEA likely violates the separation of powers doctrine by encroaching on the executive's appointment power.

¹ *Bradner v. Hammond*, 553 P.2d 1, 5-6 & n.8 (Alaska 1976).

² *Id.* at 7.

³ Art. III, secs. 1 and 16, Constitution of the State of Alaska.

⁴ *See* art. III, secs. 25 - 26, Constitution of the State of Alaska, (providing confirmation authority for principal department heads, and boards or commissions at the head of a quasi-judicial or regulatory agency).

⁵ AS 44.88.020 (establishing AIDEA as "a public corporation of the state and a body corporate and politic constituting a political subdivision within the Department of Commerce, Community, and Economic Development, but with separate and independent legal existence").

Granting the presiding officers of the legislature the authority to appoint members of AIDEA likely also violates the separation of powers doctrine. As explained above, the Alaska Constitution vests executive authority in the governor, and appointment of subordinate executive officers is an executive function. By allowing the presiding officers of the legislative branch to appoint public members of AIDEA, the bill likely violates the separation of powers doctrine because the legislature is involving itself in executive functions. It also raises another question: Who has authority to remove the members appointed by the presiding officers? The governor? The presiding officers themselves? The bill does not address this issue, aside from removing language specifying that the members serve "at the pleasure of the governor." It would likely exacerbate the separation of powers concern if the governor lacks the authority to remove public members of AIDEA.

Related to AIDEA's finances, the limit on the value of AIDEA's funds and accounts in bill sec. 8 is somewhat novel. I am aware of only one other statute that imposes a limit on the value of a fund.⁶ Like the limit for AIDEA's funds in sec. 8, this other statute provides that money in excess of the limit lapses.⁷ There are many other statutes governing lapsing money, but those statutes ordinarily simply provide that money lapses at the end of a specific period of time (or does not lapse), without reference to a monetary limit.⁸ I do not know how a court would evaluate the limit in bill sec. 8, especially in the context of AIDEA's unique statutory financial structure, as explained further below.

AIDEA's governing statutes, even as amended by this bill, raise potential constitutional issues with AIDEA's existing financial structure.⁹ First, AS 44.88.190(b) provides that "funds, income, or receipts of [AIDEA] may not be considered or constitute money of the state." The text of this statute suggests that the legislature may have intended to dedicate AIDEA's money to AIDEA outside of the annual appropriations process, because AIDEA's money would not be "money of the state." This raises a potential constitutional issue because state revenue generally may not be earmarked by statute for predetermined

⁶ See AS 14.11.030(b) ("The unobligated and unexpended cash balance of the [regional educational attendance area and small municipal school district school] fund may not exceed \$70,000,000.").

⁷ AS 14.11.030(c) ("Money appropriated to the fund does not lapse except to the extent money in the fund exceeds the maximum fund balance specified in (b) of this section.").

⁸ See, e.g., AS 37.05.315(b) ("An appropriation or allocation for a grant to a municipality lapses if substantial, ongoing work on the project has not begun within five years after the effective date of the appropriation or allocation."); AS 37.25.010(a) ("The unexpended balance of a one-year appropriation authorized in an appropriation bill lapses on June 30 of the fiscal year for which appropriated."); 37.25.020 ("An appropriation made for a capital project is valid for the life of the project, and the unexpended balance shall be carried forward to subsequent fiscal years if substantial, ongoing work on the project has begun within five years after the effective date of the appropriation.").

⁹ This memorandum briefly analyzes these potential issues at a high level, and I would be glad to provide a more detailed analysis upon request.

purposes outside of the annual appropriations process.¹⁰ Instead, state revenue must be appropriated by the legislature each year.¹¹ AIDEA is a public corporation¹² and likely an instrumentality of the state for the purposes of the Alaska Constitution,¹³ so under the dedicated funds clause, it is constitutionally suspect for a statute to dedicate AIDEA's revenue to AIDEA without appropriation.¹⁴ Additionally, the funds established in AIDEA are revolving funds, meaning, along with appropriated money, the funds consist of income generated by AIDEA that has not been appropriated by the legislature.¹⁵ The attorney general has previously recognized that a revolving fund that permits receipts generated by a state entity to go directly into the fund and be used by that entity without appropriation may also violate the constitutional prohibition against dedicated funds.¹⁶ A statute that unconstitutionally dedicates state revenue for a predetermined purpose without appropriation is unenforceable.¹⁷

¹⁰ Art. IX, sec. 7, Constitution of the State of Alaska; *Wielechowski v. State*, 403 P.3d 1141, 1147 (Alaska 2017).

¹¹ Art. IX, sec. 13, Constitution of the State of Alaska ("No money shall be withdrawn from the treasury except in accordance with appropriations made by law."); *State v. Alaska Legislative Council*, 515 P.3d 117, 127 (Alaska 2022) ("[T]he budget clauses [of the Constitution of the State of Alaska] contain an annual appropriation model that promotes comprehensive planning and budgeting flexibility.").

¹² AS 44.88.020 ("[AIDEA] is a public corporation of the state and a body corporate and politic constituting a political subdivision within the Department of Commerce, Community, and Economic Development, but with separate and independent legal existence.").

¹³ *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725, 732-33 (Alaska 2000) (explaining that legislative intent to confer independence to a public corporation relating to matters within the legislature's control does not exempt the corporation "from burdens that originate in the constitution and that apply to it as an instrumentality of the state"); *see also Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast*, 715 P.2d 707, 710 (Alaska 1986) (explaining that AIDEA's predecessor entity was "an instrumentality of the state").

¹⁴ Note that, although AS 44.88.190(b) may be constitutionally suspect, statutes enjoy a presumption of constitutionality. *See Harrod v. State, Dep't of Revenue*, 255 P.3d 991, 1000-01 (Alaska 2011).

¹⁵ *See, e.g.*, AS 44.88.060 (establishing the AIDEA revolving fund).

¹⁶ 1982 Op. Att'y Gen. No. 13 (Nov. 30); *see also Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1175 (Alaska 2009) (noting that "there is a substantial question" about the constitutionality of using "income generated by [an] appropriation" because that unappropriated income "would be dedicated").

¹⁷ *Wielechowski*, 403 P.3d at 1152-53 ("Governor Walker likewise validly exercised his veto authority to reduce an appropriation despite a seemingly mandatory statute.").

Representative Kevin McCabe

February 17, 2026

Page 4

Finally, requiring approval of the Legislative Budget and Audit Committee (LB&A) before AIDEA may expend more than \$100,000,000 on a project could potentially violate the constitutional separation of powers doctrine because it may be seen as requiring legislative approval for executive action. The executive branch has, for many years, taken the position that requiring legislative approval for executive action may be unconstitutional.¹⁸ I am not aware of any approval requirement similar to the LB&A approval requirement in this bill, and the requirement is therefore untested. There are existing requirements that state entities submit information to LB&A,¹⁹ but these requirements do not generally give LB&A a role in approving contracts or individual contractors for the executive branch. This LB&A approval requirement may be more likely to raise constitutional concerns than the other legislative approval requirements because, unlike legislative approval obtained through a bill, approval by LB&A would not be subject to the governor's veto power.²⁰ Note, however, that no controlling authority has reached a definitive conclusion about the constitutionality of legislative approval requirements,²¹ especially in this unique context. It would be much less likely to raise constitutional concerns if this committee substitute instead required AIDEA to submit the name of the proposed contractor to LB&A or otherwise required AIDEA to submit particular information relating to the independent feasibility study to LB&A.

Please let me know if I may be of further assistance.

IEW:mis
26-050.mis

¹⁸ See, e.g., 1995 Inf. Op. Att'y Gen. (Aug. 16; 663-95-0363); 1988 Inf. Op. Att'y Gen. (Aug. 30; 663-88-0308); 1987 Inf. Op. Att'y Gen. (April 1; 663-87-0392).

¹⁹ See, e.g., AS 37.13.120 (requiring the Alaska Permanent Fund Corporation to submit proposed regulations to LB&A for review and comment).

²⁰ 2012 Op. Alaska Att'y Gen. (Dec. 17) (noting that "any duly-enacted law [providing approval] is ultimately subject to the governor's veto power"); see also *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 772 (Alaska 1980) (holding that a statute could not allow the legislature to annul regulations by resolution).

²¹ See 2012 Op. Alaska Att'y Gen. (Dec. 17).