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MEMORANDUM

February 2, 2026

SUBJECT: AIDEA appropriations
(HB 124; Work Order No. 34-LS0411\A)

TO: Representative Ky Holland
Attn: Mark Lambert

FROM: Ian E. Walsh 
Legislative Counsel

You asked about appropriations from the Alaska Industrial Development and Export Authority (AIDEA). Your questions, paraphrased for clarity, are answered below.

Can the legislature appropriate money from AIDEA in excess of AIDEA's annual statutory dividend? As you noted in your request, the legislature appropriates an annual dividend required by statute that AIDEA declares available based on its net income.¹ You asked whether the legislature may appropriate more unexpended and unobligated money² from AIDEA than this declared dividend. The short answer is likely yes.

Under the Alaska Constitution's dedicated funds clause, state revenue generally may not be earmarked by statute for predetermined purposes outside of the annual appropriations process.³ Instead, state revenue must be appropriated by the legislature each year.⁴ The Alaska Constitution's drafters "considered 'the dedication of revenues' to be 'a fiscal evil,'" so they drafted the dedicated funds clause "to preserve control of and responsibility

¹ See AS 44.88.088(a); sec. 31, ch. 7, SLA 2024 (appropriating AIDEA dividend).

² Appropriating money that is already obligated would raise other potential legal issues that are beyond the scope of this memorandum. Please let me know if you would like further analysis on this issue.

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

⁴ 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 IX, sec. 13, Constitution of the State of Alaska ("No money shall be withdrawn from the treasury except in accordance with appropriations made by law."); *State v. Alaska Legislative Council*, 515 P.3d 117, 127 (Alaska 2022) ("[T]he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.").

for state spending in the legislature and the governor."⁵ According to the Alaska Supreme Court, the drafters of the Alaska Constitution believed that, with the dedicated funds clause, "the legislature would be required to decide funding priorities annually on the merits of the various proposals presented."⁶ A statute that violates the dedicated funds clause is unconstitutional and unenforceable.⁷

A statute purporting to require the legislature to appropriate Permanent Fund income for dividends based on a specific statutory formula is an example of an unconstitutional dedication of state revenues. In *Wielechowski v. State*, the Alaska Supreme Court held that income from the Permanent Fund cannot be dedicated to a particular purpose by statute.⁸ The court thus held that the statute purporting to require the legislature to appropriate that income to pay dividends based on a specific statutory formula was unconstitutional.⁹ Instead, despite a statute to the contrary, "the Permanent Fund dividend program must compete for annual legislative funding just as other state programs."¹⁰

The statutes that govern AIDEA seem to contemplate a significant amount of financial independence between AIDEA and the state. For instance, under AS 44.88.205(a), AIDEA's operating budget is subject to the AS 37.07 (Executive Budget Act), but otherwise AIDEA is not considered "a state agency as the term is used in AS 37."¹¹ The Executive Budget Act is a statutory procedural framework for the development, review, and execution of the state budget. By enacting AS 44.88.205(a), the legislature modified the scope of this framework as it relates to AIDEA. Regardless of the chosen framework, however, the legislature and AIDEA must comply with the Alaska Constitution. The fact that AIDEA is partially exempt from AS 37 and the Executive Budget Act does not alter the legislature's constitutional power of appropriation.

Additionally, under AS 44.88.190(b), "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

⁵ *Wielechowski*, 403 P.3d at 1147, 1152 (quoting *State v. Alex*, 646 P.2d 203, 209 (Alaska 1982)).

⁶ *Id.* at 1147 (quoting *Sonneman v. Hickel*, 836 P.2d 936, 938 - 39 (Alaska 1992)).

⁷ *Id.* at 1152-53 ("Governor Walker likewise validly exercised his veto authority to reduce an appropriation despite a seemingly mandatory statute.").

⁸ *Id.* at 1147.

⁹ *Id.* at 1148-52.

¹⁰ *Id.* at 1152.

¹¹ AS 44.88.190(a).

annual appropriations process, because AIDEA's money would not be "money of the state." Still, 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 restrict the legislature's power to appropriate from AIDEA.¹⁴ Indeed, a contrary conclusion would undercut the ability of future legislatures to "decide funding priorities annually on the merits of the various proposals presented," as the drafters of the Alaska Constitution intended,¹⁵ and contravene the purpose of the dedicated funds clause "to preserve control of and responsibility for state spending in the legislature and the governor."¹⁶ To the extent AIDEA's governing statutes are in tension with the Alaska Constitution, the constitution prevails.¹⁷

Opinions from both the attorney general and the Alaska Supreme Court align with the conclusion that the legislature has the constitutional power to appropriate money from AIDEA. In a 1985 opinion, the attorney general concluded that the legislature has the power to appropriate unobligated money from the Alaska Housing Finance Corporation (AHFC), a public corporation that, like AIDEA, has a legal existence separate from and independent of the state.¹⁸ One reason for the attorney general's conclusion was that "an

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 *Wielechowski*, 403 P.3d at 1147 (quoting *Sonneman v. Hickel*, 836 P.2d 936, 938-39 (Alaska 1992)).

¹⁶ *Id.* (quoting *State v. Alex*, 646 P.2d 203, 209 (Alaska 1982)).

¹⁷ *Id.* at 1152 ("Whether any prior legislature or administration treated the dividend program as if it were a dedication has no bearing on our analysis; what matters is what the Alaska Constitution says.").

¹⁸ 1985 Inf. Op. Att'y Gen. (Apr. 24; 366-463-85); *see also* 1988 Inf. Op. Att'y Gen. (July 1; 663-88-0438) ("We have advised that the legislature may appropriate surplus

entity capable of segregating unrestricted state revenue forever . . . would do violence to the dedicated fund prohibition."¹⁹ In *Hickel v. Cowper*, the Alaska Supreme Court cited that attorney general opinion with approval and specifically recognized that "[m]oney appropriated from the AHFC and the AIDEA . . . must be counted as available for appropriation" for purposes of applying art. IX, sec. 17, of the Alaska Constitution, relating to the budget reserve fund.²⁰ This conclusion necessarily presupposes that the legislature has the power to appropriate from public corporations, including AIDEA.

When a court is confronted with a potentially unconstitutional statute, the court will, if possible, adopt an interpretation of the statute that avoids the constitutional issue.²¹ Therefore, if a court identifies a constitutional issue with a statute that restricts the legislature's power to appropriate from AIDEA, and it concludes that the statute is ambiguous, it will interpret the statute to avoid the issue. For example, a court confronted with AS 44.88.190(b) and a potential violation of the dedicated funds clause might hold that the statute could make AIDEA's revenue something other than "money of the state" for some purposes, but not for the purpose of the legislature's appropriation power under the Alaska Constitution.

If AIDEA's governing statutes are interpreted to dedicate state revenue to AIDEA and thereby restrict the legislature's appropriation power, the legislature could likely still appropriate from AIDEA. This scenario is similar in relevant respects to the statute in *Wielechowski* that purported to restrict the legislature from modifying the amount of Permanent Fund income appropriated to pay dividends. As explained above, if AIDEA's governing statutes are interpreted to similarly dedicate state revenue to a particular purpose (in this case, to AIDEA), those statutes would likely be unconstitutional under the dedicated funds clause for the same reasons as the statutes dedicating revenue from the Permanent Fund for dividends were declared unconstitutional in *Wielechowski*.

assets of a public corporation for any public purpose. However, an appropriation directly from the assets [of AHFC] is quite unusual and will undoubtedly cause concern in the financial community.").

¹⁹ 1985 Inf. Op. Att'y Gen. (Apr. 24; 366-463-85).

²⁰ 874 P.2d 922, n.11, n.23 (Alaska 1994); *see also* AS 18.56.020 (establishing AHFC).

²¹ *See Res. Dev. Council for Alaska, Inc. v. Vote Yes for Alaska's Fair Share*, 494 P.3d 541, 548 (Alaska 2021) ("If an ambiguous text is susceptible to more than one reasonable interpretation, of which only one is constitutional, the doctrine of constitutional avoidance directs us to adopt the interpretation that saves the statute." (quoting *State v. Planned Parenthood of the Great Nw.*, 436 P.3d 984, 992 (Alaska 2019))).

Finally, while the Alaska Constitution's confinement clause prohibits the legislature from amending or repealing statutes in an appropriation bill,²² making an appropriation in an appropriation bill notwithstanding a statute that unconstitutionally purports to dedicate a source of state revenue to a particular purpose would not violate the confinement clause. As explained above, when confronted with a statute that unconstitutionally dedicates state revenue to a particular purpose, a court might interpret the statute to avoid the issue. A statute interpreted in that manner would not be amended or repealed by the legislature making an appropriation notwithstanding the statute. Regardless, declining to follow an unconstitutional statute does not amend or repeal that statute and thus would not violate the confinement clause.²³

The legislature has previously appropriated from AIDEA for non-AIDEA purposes. For example, the 31st Legislature appropriated \$2,000,000 "from the receipts of [AIDEA] to the Department of Commerce, Community, and Economic Development for the payment of a grant."²⁴ The Department of Law reviewed the bill and did not identify any legal issues with this appropriation in its bill review letter.²⁵ Although the governor exercised his line-item veto power to strike or reduce many budget items, he did not veto this appropriation from AIDEA's assets, and it was enacted into law. In 2025 the legislature also passed appropriations in the fiscal year 2026 budget that would have appropriated from AIDEA in excess of its annual dividend, but those appropriations were vetoed by the governor and thus were not enacted into law.²⁶

In sum, the legislature likely may appropriate unexpended and unobligated money from AIDEA in excess of the annual dividend declared by AIDEA.

Are there potential constitutional issues with AIDEA spending state revenue that has not been appropriated by the legislature? Yes. Under the dedicated funds clause and the appropriations clause of the Alaska Constitution, there is a strong argument that income generated by AIDEA may not be earmarked by statute to AIDEA outside of the annual legislative appropriations process and instead must be appropriated by the

²² Art. II, sec. 13, Constitution of the State of Alaska; *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377-79 (Alaska 2001).

²³ *Cf. Wielechowski*, 403 P.3d at 1153 ("Governor Walker likewise validly exercised his veto authority to reduce an appropriation despite a seemingly mandatory statute.").

²⁴ Sec. 11(b), ch. 1, SSSLA 2019.

²⁵ If desired, I would be glad to provide a copy of this letter.

²⁶ Sec. 49(b)(1), ch. 10, SLA 2025; sec. 3, page 1, line 26, ch. 12, SLA 2025.

legislature each year.²⁷

In 1982, shortly after the Alaska Supreme Court decided a foundational case interpreting the dedicated funds clause, the attorney general issued an opinion analyzing the clause.²⁸ The attorney general's opinion explained that the clause applies to "the dedication of any source of Public revenue."²⁹ But the opinion also explained that the history of the Alaska Constitution suggests that the drafters intended to allow "certain necessary dedications of money by the legislature after that money is received."³⁰ The attorney general opinion thus concludes that there are a limited number of "implied exceptions to the dedicated funds prohibition," including retirement system contributions, proceeds from the issuance of bonds, and contributions from local government units for state-local cooperative programs.³¹ Importantly, the opinion did not identify an implied exception to the dedicated funds clause for income of public corporations.³²

The 1982 attorney general opinion did conclude that the dedicated funds clause has an implied exemption for money that has already been appropriated by the legislature because money "loses its character as revenues" once appropriated.³³ This reasoning applies to money appropriated to a revolving loan fund, rainy day account, or other fund

²⁷ Art. IX, sec. 7, Constitution of the State of Alaska; 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."). There are three explicit exceptions to the prohibition on dedicated funds: (1) dedications that existed when the Constitution of the State of Alaska was ratified; (2) dedications where dedication of funds is required for participation in a federal program; and (3) the permanent fund under art. IX, sec. 15. *Wielechowski*, 403 P.3d at 1147. None of these exceptions apply here.

²⁸ 1982 Op. Att'y Gen. No. 13 (Nov. 30).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* In 2016 the Alaska Supreme Court held, in the context of education, that statutes requiring "local contributions to longstanding cooperative programs in which the State and local governments share funding responsibility" do not violate the dedicated funds clause. *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 100 - 01 (Alaska 2016).

³² *See* 1982 Op. Att'y Gen. No. 13 (Nov. 30).

³³ *Id.* ("A strong argument can be made that money once appropriated, regardless of the mechanism utilized, loses its character as revenue for the purpose of the dedicated funds prohibition because the purpose of the prohibition, i.e., that the legislature retain control over state revenues, has been satisfied.").

that may be spent without further appropriation.³⁴ Relating to revolving loan funds, the opinion concluded that returning the principal portion of loan payments to those funds to be used for future loans is likely constitutional because principal payments are not new money and thus not state revenue for the purpose of the dedicated funds clause.³⁵ But the opinion also expressed doubt about the constitutionality of automatically placing interest or other revenue earned from revolving loan funds, including investment income and the interest portion of loan payments, back into those funds without further appropriation because that new money is state revenue that has not been appropriated.³⁶

The Alaska Supreme Court has not yet decided whether the Alaska Constitution allows income earned from money in a fund to be automatically placed back into the fund without appropriation, but like the 1982 attorney general opinion, the court has expressed doubt about the constitutionality of this practice. In *Southeast Alaska Conservation Council v. State*, the court stated that "there is a substantial question" about the constitutionality of using "income generated by [an] appropriation" because that unappropriated income "would be dedicated."³⁷ The court explained that it has "not specifically addressed whether income earned by an agency from appropriated funds is covered by the dedicated funds clause," but it characterized the 1982 attorney general opinion as "conclud[ing] that such income likely would be covered" and quoted policy reasons from the attorney general opinion "that would also apply to appropriating money to dedicated funds."³⁸

Based on these constitutional principles, it is likely that a court would find that income generated by AIDEA may not be earmarked for future spending outside of the annual legislative appropriations process and instead must be appropriated by the legislature.

In the operating budget for fiscal year 2026, the legislature addressed this potential issue for that fiscal year by appropriating AIDEA's receipts and income on its assets during the year back to AIDEA for it to use consistent with its governing statutes:

(b) All unrestricted loan interest payments, loan commitment fees, and other unrestricted receipts received by or accrued to the Alaska Industrial Development and Export Authority during the fiscal year ending June 30, 2026, and all income earned on assets of the authority during that period are appropriated to the Alaska Industrial Development and Export

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ 202 P.3d 1162, 1175 (Alaska 2009).

³⁸ *Id.* at 1175 n.71.

Authority to hold as corporate receipts for the purposes described in AS 44.88. The authority shall allocate its corporate receipts between the Alaska Industrial Development and Export Authority revolving fund (AS 44.88.060), the Alaska Industrial Development and Export Authority sustainable energy transmission and supply development fund (AS 44.88.660), and the Arctic infrastructure development fund (AS 44.88.810) under procedures adopted by the board of directors.³⁹

This appropriation does not limit AIDEA's existing statutory authority to expend the appropriated money,⁴⁰ nor does it modify AIDEA's existing statutory authority to transfer money between funds.⁴¹ Although the governor vetoed appropriations from AIDEA in the budget,⁴² he did not veto this appropriation, and it was thus enacted into law.⁴³

What would it take to increase the amount that AIDEA must declare as a dividend?

The legislature could increase the amount that AIDEA must declare as a dividend by amending the statutes that require AIDEA to declare a dividend. Under AS 44.88.088, AIDEA must declare an annual dividend of not "less than 25 percent nor more than 50 percent of the net income"⁴⁴ of its three statutorily-created funds "for the base fiscal

³⁹ Sec. 24(b), ch. 10, SLA 2025.

⁴⁰ See AS 44.88.060 ("Amounts deposited in the revolving fund may be pledged to the payment of bonds of [AIDEA] or expended for the purposes of [AIDEA] under this chapter."); 44.88.670 ("[AIDEA] may use money in the . . . fund (AS 44.88.660) to assist in the construction, improvement, rehabilitation, and expansion of qualified energy development."); 44.88.820 ("[AIDEA] may use money in the . . . fund (AS 44.88.810) for Arctic infrastructure development.").

⁴¹ See AS 44.88.060 ("The [AIDEA] revolving fund consists of . . . money or other assets transferred to the revolving fund by [AIDEA]. . . ."); 44.88.660 ("The development fund consists of . . . money or other assets transferred to the . . . fund by [AIDEA]"); 44.88.810 ("The fund consists of . . . money or other assets transferred to the fund by [AIDEA]").

⁴² See, e.g., sec. 49(b)(1), ch. 10, SLA 2025.

⁴³ Sec. 24(b), ch. 10, SLA 2025.

⁴⁴ See AS 44.88.088(b)(3) (defining "net income" as "the change in net position, or the equivalent term under generally accepted accounting principles, of the [statutorily-created funds] as set out in the audited financial statements of [AIDEA] for the base fiscal year, excluding amounts attributable to intergovernmental transfers, capital contributions, grants, losses on a project or development to the extent financed with state or federal grants or appropriations, mark-to-market fair value based accounting entries, and noncash accounting entries related to retirement obligations").

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year,"⁴⁵ but the dividend may not exceed AIDEA's "unrestricted net income"⁴⁶ for that year. The legislature could pass a bill to amend these statutes if it wants to increase the amount AIDEA must declare as an annual dividend.

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

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⁴⁵ See AS 44.88.088(b)(1) (defining "base fiscal year" as "the fiscal year ending two years before the end of the fiscal year in which the payment is made").

⁴⁶ See AS 44.88.088(b)(4) (defining "unrestricted net income" as "the unrestricted change in net position, or the equivalent term under generally accepted accounting principles, of the [statutorily-created funds] as set out in the audited financial statements of [AIDEA] for the base fiscal year, excluding amounts attributable to intergovernmental transfers, capital contributions, grants, losses on a project or development to the extent financed with state or federal grants or appropriations, mark-to-market fair value based accounting entries, and noncash accounting entries related to retirement obligations").