

LEGAL SERVICES

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MEMORANDUM

April 6, 2009

SUBJECT: Draft CSHB 182(ENE), relating to Railbelt Energy corporation:
drafting considerations in CSHB 182(ENE)
(Work Order No. 26-GH1041R)

TO: Representative Bryce Edgmon
Co-Chair of the House Special Energy Committee
Attn: Adam Berg

FROM: Dennis C. Bailey *DCB*
Legislative Counsel

This memorandum accompanies the draft bill requested. Please note the following:

This draft suffers from insufficient time in which to complete an objective and thorough review.

The proposed bill disclaims the application of the Alaska Nonprofit Act (AS 10.20) under proposed sec. 42.50.010(d), asserts that the corporation will act as a nonprofit under proposed sec 42.50.010(c), and allows subsidiary corporations to be nonprofits under AS 10.20 at proposed sec. 42.50.070(23). Do you want to specify or disclaim what business organization might apply?

Proposed sec. 42.50.020 provides that the corporation has a separate and independent existence from the state and may not be considered the state, a state agency, an administrative unit of the executive branch of state government, a public corporation of the state, a municipal corporation or a political subdivision of the state. I am uncertain how this broad disclaimer would be interpreted or how it may be applied.

Sec. 42.50.030 of the bill omits the second sentence in subsection (c) because it conflicts with the insertion in the amendment.

Adding the phrase to 42.50.020(f) stating that the election is "by ballot" is unnecessary.

In proposed sec. 42.50.030(a), the proposed amendment speaks to "public participation" not "public attendance" which is referred to in the first sentence. Is a difference intended? Also, is the phrase "Except when a voice vote is allowed" necessary? Do you intend that the board must "participate" or be "present"? Since the board may only act when a quorum is present, the last sentence may not be necessary.

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Proposed sec. 42.50.050. Do you intend that adoption of bylaws be permissive rather than mandatory? The second section refers to "other laws that apply to the corporation." It is preferable to refer to actual laws that apply to the corporation rather than a general reference. Other laws that apply would apply -- without saying so.

Proposed AS 42.50.130 asserts that the state pledges to and agrees with any lender to the corporation that the state (1) will not limit or alter the rights and powers given to the corporation to fulfill the terms of a corporation contract, and (2) will not impair the rights and remedies of a lender to the corporation. I am uncertain what issues this provision may raise and have not researched the issue in the time allotted.

Proposed sec. 42.50.150 asserts a tax exemption. I have not researched how this section might be applied, what restrictions may exist concerning the tax exemption, how it may be affected by, or affect other sections of the Alaska Statutes, and whether cross references may be required.

Proposed sec. 42.50.180 allows the Legislative Budget and Audit Committee to perform audits under AS 24.20.271. The subsection then seems to qualify or modify the authority of the legislative auditor by specifying some of the powers of the auditor. AS 24.20.271 already grants the auditor access to documents so restating that authority seems unnecessary. The enforcement authority in the subsection says that the auditor may obtain a court order if documents are not produced. That authority is repetitive of the authority of the LB&A Committee under AS 24.20.201 which grants the committee subpoena power, and the authority to compel production of witnesses and documents. To avoid an ambiguity, I suggest either relying entirely on the auditor's authority in AS 24.20.271 to conduct an audit, or to make clear whether the bill is intended to modify the auditor's authority. The draft uses the former, by removing sentences describing the auditor's authority.

Proposed sec. 42.50.180(a) incorporates the audit methods of AS 24.20.271. AS 24.20.271(2) requires an audit of all custodians of state funds every three years. Proposed sec. 42.50.180(a) requires the audit at the direction of LB&A. These terms seem to conflict. If you mean for the audit to be discretionary, and only at the direction of LB&A, you might consider using AS 24.20.281 which allows for special audits.

Proposed sec. 42.50.180(b) prohibits disclosure of information acquired by the auditor concerning the affairs of a borrower of the corporation or another person. This broad prohibition prohibits any disclosure to anyone. The prohibition conflicts with the AS 24.20.311 which requires audit reports to be filed with the governor, the agency and the legislature.

Proposed sec. 42.50.490(6) refers to the combined territory of each of the utilities. The draft changed "each" to "all," I believe the combined territory of "all" is intended.

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Bill sec. 12 authorizes the Alaska Energy Authority to transfer the Alaska Intertie and the Bradley Lake Hydroelectric Project to the corporation. In the time allotted I have not researched what issues this authorization may raise.

If I may be of further assistance, please advise.

DCB:plm

09-253.plm

Enclosure