

LEGAL SERVICES

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MEMORANDUM

April 2, 2009

SUBJECT: Improper delegation in amendment to CSHB 44(ENE)
(Work Order No. 26-LS0231\E.3)

TO: Representative Mike Chenault
Speaker of the House
Attn: Tom Wright

FROM: Brian J. Kane *BJK*
Legislative Counsel

I have drafted an amendment to CSHB 44(ENE) as you requested, but there is one point I must call to your attention.

The amendment requires that, for bonds to be issued by the Alaska Natural Gas Development Authority, the Legislative Budget and Audit Committee must give written approval. The statutory section regarding bond authorization for the Authority - AS 41.41.320(a) - states that the "authority may not issue bonds in an amount that exceeds the amount of bonds authorized to be issued by the legislature." Hence, the power to authorize the bonds rests with the legislature, and it is likely that anything that overrides this power of the legislature is an improper delegation.

This amendment allows a scenario where the legislature could authorize bonds by passing the Act, but then the committee could choose to withhold approval and the authorization would not occur. Under this scenario, the power to authorize the bonds is essentially being defeated by a smaller number of legislators.

AS 41.41.320(a) requires the authorization to come from the legislature, so allowing the committee to veto that authorization is likely an improper delegation of the legislature's power.

BJK:ljw
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Enclosure