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

M E M O R A N D U M April 24, 2024

SUBJECT: Concerns with HB 368
(CSHB 368(ENE); Work Order No. 33-LS1170\Y)

TO: Representative Neal Foster
Co-Chair of the House Finance Committee
Attn: Brodie Anderson

FROM: Ian E. Walsh
Legislative Counsel

You asked whether our office has any concerns with HB 368. At the outset, it is important to note that our office is required to provide neutral and nonpartisan services, and we do not make policy decisions or provide policy advice.[1] This memorandum is thus limited to identifying any legal concerns with HB 368; it does not provide advice about policy decisions made in the bill or the consequences those decisions may have.

HB 368 enacts (1) a clean energy standard for load-serving entities that are subject to the standards of an electric reliability organization; and (2) a clean energy transferable tax credit for production of energy that meets the qualifications in HB 368. Any load-serving entity, independent power producer, or school district may obtain the clean energy transferable tax credits for producing qualified energy, even if the entity, producer, or district is not subject to the clean energy standard, and a load-serving entity subject to the clean energy standard is not required to comply with the standard to obtain credits. The Railbelt Reliability Council is the only electric reliability organization that has been formed thus far, so right now, only load-serving entities in the Railbelt would be subject to the clean energy standard.

Local and special legislation.
HB 368 may raise a concern under the state constitutional prohibition against local and special legislation. Article II, sec. 19 of the Constitution of the State of Alaska prohibits the legislature enacting local or special legislation, providing, in part:

> The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination.

[1] AS 24.20.050; *Manual of Legislative Drafting*, at 4 (explaining that our office "is neutral with regard to the policies involved in legislative work requests").

The test employed by the Alaska Supreme Court to determine whether an act is "local" or "special" is whether it is "reasonably related to a matter of common interest to the whole state."[2] If the legislature has enacted a special or local act, the courts will determine whether a "general act can be made applicable."[3] If a court determines that the legislation is not "of statewide application," it will evaluate whether the legislation has a fair and substantial relationship to legitimate purposes.[4] To satisfy the "fair and substantial relationship" standard, the classification established by the legislation must be tailored to the purpose of the legislation.

Some of the provisions in HB 368 focus on the Railbelt and the service area of the Copper Valley Electric Association, so it may be considered not of statewide application. This constitutional issue can be addressed by removing these provisions or providing evidence in the legislative record to justify the focus on these local issues in this instance. Evidence demonstrating that a more general act cannot be made applicable under the circumstances will help ensure HB 368 can survive the potential for judicial scrutiny under art. II, sec. 19 of the Constitution of the State of Alaska.

If I may be of further assistance, please advise.

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[2] *Abrams v. State*, 534 P.2d 91, 94 (Alaska 1975).

[3] *Id.*

[4] *State v. Lewis*, 559 P.2d 630, 643 (Alaska 1977).