

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

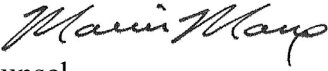
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 5, 2021

SUBJECT: General obligation bond bill
(HB 93; Work Order No. 32-GH1716\A)

TO: Representative Kelly Merrick
Attn: Tally Teal

FROM: Marie Marx 
Legislative Counsel

You have asked whether there are legal issues with HB 93, the governor's general obligation bond bill, and you specifically asked about the single subject rule, and whether the types of projects included in HB 93 are appropriate for bond funding.

1. Single subject. A general obligation bond bill is not exempt from the constitutional provision that limits bills to one subject.¹ The single subject requirement requires that all matters in an act "fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."² Historically, the Alaska Supreme Court has interpreted Alaska's single subject rule to permit very broad subject matter in one bill without violating the single subject requirement. For example, the court has held that bills relating to such broad themes as "development of water resources,"³ "taxation,"⁴ "land,"⁵ "intoxicating liquor,"⁶ and "criminal law"⁷ are acceptable.⁸ However, there was a strong dissent in one

¹ Art. II, sec. 13, Constitution of the State of Alaska provides, in relevant part, "Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws." A general obligation bond bill is not an appropriation bill. *Thomas v. Rosen*, 569 P.2d 793, 797 (Alaska 1977).

² *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982).

³ *Gellert v. State*, 522 P.2d 1120 (Alaska 1974).

⁴ *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 545 (Alaska 1978).

⁵ *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982).

⁶ *Van Brunt v. State*, 646 P.2d 872 (Alaska App. 1982).

⁷ *Galbraith v. State*, 693 P.2d 880 (Alaska App. 1985).

⁸ *Evans v. State*, 56 P.3d 1046, 1070 (Alaska 2002).

case against allowing broad subject matter in a single bill.⁹ And in 2010, for the first time, the Alaska Supreme Court invalidated a piece of proposed legislation for failure to satisfy the single subject requirement.¹⁰

The court has declined to impose a stricter single-subject requirement to bond bills than it applies to other bills and has upheld the combining of projects broadly relating to cooperative "development of water resource" and to "public safety." In *Gellert v. State*,¹¹ the Alaska Supreme Court found a general obligation bond authorization bill that included projects for flood control and small boat harbor projects, all partly federally funded, valid, stating:

We view these various Corps-administered projects as part of a continuing program of federal-state cooperation in water resources development, including but not limited to improvements of navigation, flood control, recreation and watershed protection.¹²

Significantly, in footnote 5 of the opinion, the court specifically declined to decide the question of whether to adopt the minority rule that the subject of a bond authorization act is the issuance of bonds, not the particular public works to which the proceeds are to be applied. However, Justice Fitzgerald in a dissenting opinion stated:

The majority conclude they need not accept the state's argument that Chapter 201, SLA 1972, should be sustained because its subject was simply the issuance of bonds for capital improvements. Indeed, in some jurisdictions the position taken by the state here has been upheld, and it was the position taken by the trial court in this case. But the generally accepted view seems to be that it is the projects to be financed which form the subject matter of the proposition. This seems to me to be the better rule for otherwise the Alaska constitutional limitation restricting legislative enactments to one subject would be rendered inoperative with regard to bond propositions.¹³

⁹ *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173 (Alaska 1985). In his dissent, at page 1182, Justice Moore stated: "This court has mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce."

¹⁰ *Croft v. Parnell*, 236 P.3d 369 (Alaska 2010). The *Croft* ruling and the *Yute Air* dissent may indicate that the Alaska Supreme Court is moving toward a more stringent single subject standard by adding a dimension to the rule expounded in *Harbor v. Deukmejian*, 742 P.2d 1290 (Cal. 1987). *Harbor* interprets California's single subject rule to prohibit excessive generality because it violates the purpose and intent of the single subject rule.

¹¹ 522 P.2d 1120 (Alaska 1974).

¹² *Id.* at 1123.

¹³ *Id.* at 1124.

A few years later, in a challenge to a general obligation bond bill involving correctional facilities and public safety facilities -- facilities to accommodate the state troopers, fish and wildlife protection, a motor vehicles division, a fire prevention division, pre-trial detention facilities, juvenile offender institutions, and new jail facilities -- the court concluded that this bond authorization did not violate the single-subject rule because all the projects related to "public safety."¹⁴ The court rejected an argument that the single-subject rule applies more strictly to general obligation bonds than to other types of bills and found that all that is required is that the "various provisions of a single legislative enactment fairly relate to the same subject or have a natural connection therewith."¹⁵

HB 93, the governor's general obligation bond bill, lists numerous and varied projects such as: Houston Middle School Replacement; Mt. Edgecumbe High School Repairs; Fairbanks Pioneer Home Roof and Flooring Replacement; Alaska Public Safety Communication Services System Upgrades; Alcantra Armory and Arc-Flash Improvements; Arctic Strategic Transportation and Resource Project; Fairbanks to Seward Multi-Use Recreation Trail Construction; Wildland Fire Engine Replacement; Hyder Float Breakwater Replacement; Parks Highway Bridge Replacement; and UAA Building Energy Performance Upgrades.

The governor appears to identify all the projects listed in HB 93 as relating to "infrastructure." *Black's Law Dictionary* defines "infrastructure" as "the underlying framework of a system; esp., public services and facilities (such as highways, schools, bridges, sewers, and water systems) needed to support commerce as well as economic and residential development."¹⁶ "Infrastructure" might work as a single subject, but it is very broad. If challenged, a court may find this is too broad to be permissible, especially because it appears the Alaska Supreme Court may be leaning toward sharpening the single subject requirement. I cannot identify another single subject that would unite all the projects in HB 93 that I believe would be likely to withstand a challenge. I am also unable to confirm from the information provided in HB 93 whether each of the listed projects fits the category of "infrastructure."

2. Maintenance projects. The Alaska Constitution limits the uses that may be made of money through the issuance of general obligation bonds. Article IX, sec. 8, provides in relevant part:

No state debt shall be contracted unless authorized by law for *capital improvements* or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. [Emphasis added.]

¹⁴ *Short v. State*, 600 P.2d 20, 24 (Alaska 1979).

¹⁵ *Id.*

¹⁶ *Black's Law Dictionary* (10th ed. 2014).

In *City of Juneau v. Hixson*, the Alaska Supreme Court considered whether the city could issue municipal general obligation bonds to purchase land to give to the state as a site for a new capitol building.¹⁷ The court held that this did not constitute a capital improvement as required by art. IX, sec. 9,¹⁸ and enjoined the issuance and sale of the bonds. The court stated:

There is nothing in the history of municipal bonding in Alaska, or in the minutes of the Constitutional Convention that causes us to believe that the term 'capital improvements' was intended to denote projects radically different than those for which municipalities had been permitted to incur bonded indebtedness in the past. We believe 'capital' was used in the sense in which it is associated with assets in the form of real or personal property and that it was intended to connote a degree of permanency. We believe that it includes the 'public works of a permanent character' such as 'streets, bridges, wharves and harbor facilities, sewers and sewage-disposal plants, municipal buildings, schools, libraries, gymnasias and athletic fields, fire houses, and public utilities' as mentioned in the original act of Congress. It includes 'off-street parking facilities' and 'public works or facilities of a permanent character' as provided in recent acts of the state legislature. We believe that in selecting the term 'capital improvements' the convention had in mind that it was including all the projects just mentioned which had historically been associated with municipal bonding, but under a better generic term—one which did not require illustration by actually listing the type projects that were considered to be included within its meaning and stating that the list itself was not exclusive as was done in the original act of Congress.¹⁹

Attorney general opinions have also asserted that "durability" helps determine whether a proposed project is a capital improvement under art. IX, sec. 8, and asserted that holding tanks built to last for a long time are capital improvements when integral parts of an overall water and sewage system,²⁰ but that trucks are not capital improvements.²¹ Under

¹⁷ *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962).

¹⁸ Art. IX, sec. 9, Constitution of the State of Alaska, uses similar language to art. IX, sec. 8, and limits bonding by municipalities to those "authorized for capital improvements." The similar language between the two sections means it is likely they would be interpreted in the same way.

¹⁹ *Hixson*, 373 P.2d at 747.

²⁰ 1981 Op. Att'y Gen. (Mar. 16; J-66-300-81).

²¹ 1979 Op. Att'y Gen. (Apr. 17; J-66-594-79) ("It may be that, on a case-by-case basis, some major items of heavy-duty equipment could fall within the meaning of capital improvements . . . But, as a general rule, the purchase of two trucks would not ordinarily be treated as a capital improvement. They simply do not possess a sufficient degree of

this reasoning, equipment or personal property purchase and maintenance may be beyond what is allowed under the constitution.

In 1991, the Attorney General also opined that bonds cannot be issued for repair of an existing facility as opposed to construction of a new one.²² The opinion concluded that the Alaska Supreme Court would find the issuance of general obligation bonds by a municipality for the purpose of ordinary repair of existing facilities or ordinary road maintenance to violate art. IX, sec. 9, of the Alaska Constitution, but it noted that "[t]he question of whether 'extraordinary' repairs or maintenance constitutes a 'capital improvement' is not as readily answered, and the Alaska Supreme Court has not had an opportunity to confront it."

It is not clear whether all of the projects contained in HB 93 fit within the scope of "capital improvements" under the constitution. It is also unclear if all the maintenance projects in HB 93 would satisfy the permanency requirement the court spoke of in *Hixon*. For example, it is not readily apparent how the following projects are capital improvements: Arctic Strategic Transportation and Resource Project Survey, Coastal Hazard Assessment, and Petroleum Geology Fieldwork; Wildland Fire Engine Replacement; and Wildland Firefighting Aircraft Replacement. It is also not readily apparent whether the following projects include major maintenance or just ordinary repair and maintenance: Mt. Edgecumbe High School Repairs; Alaska Public Safety Communication Services System Upgrades; Alcantra Armory and Arc-Flash Improvements; Alaska Wildlife Troopers Marine Enforcement Repair and Replacement; Boating Upgrades, Haul Outs, and Vessel Replacement; UAA Building Energy Performance Upgrades; and UAA Integrated Sciences Building (CPISB) Combined Heat and Power Energy Savings Project.

3. Project specificity. HB 93 also seeks to capitalize the major maintenance grant fund for school major maintenance.²³ AS 24.08.037 and AS 15.15.040 require that general obligation bond authorization bills specifically identify the scope of each project, its

permanency to achieve that status."). A later opinion elaborated that it would be possible for a truck to be included as part of an overall capital improvement. 1981 Op. Att'y Gen. (Apr. 2; J-99-078-81) ("As long as the project definitely qualifies as a capital improvement, it should not matter that some of its smaller, integral parts are—if examined separately from the project—not capital improvements.").

²² See 1991 Inf. Op. Att'y Gen. (July 25; 663-91-0355) (asserting that art. IX, sec. 9, Constitution of the State of Alaska, prohibits the use of municipal bond proceeds for the purpose of repairing existing facilities and maintaining roads as "it is doubtful they constitute 'capital improvements.'").

²³ See AS 14.11.007 ("There is created a major maintenance grant fund as an account in the general fund. The fund shall be used to make grants for the costs of school major maintenance. Legislative appropriations for school major maintenance shall be deposited in the fund.")

location, and the amount allocated to the project. The capitalization to the major maintenance grant fund fails to identify the project for which the funds will be used. AS 24.08.037 provides:

A bill authorizing the issuance of general obligation bonds creating a state debt for capital improvements shall contain a statement of the scope of each project included in the proposed bond issue. The statement shall include a brief description of each capital improvement project, its location, and, in dollars, that portion of the total bond issue to be allocated to the project.

AS 15.15.040(b) similarly provides:

(b) The director shall prepare and issue or make available with each sample ballot for a special election the statement provided for in AS 24.08.037 of the scope of each project included in a proposed general obligation bond issue creating a state debt for capital improvements that is submitted to the electorate for ratification under AS 15.15.030(11). The statement of scope for each project shall be the same statement included in the authorization bill. When a ballot proposition is submitted to the voters at a primary or a special election, a statement the same as that provided for in the election pamphlet under AS 15.58.020(a)(6) shall be made available with each sample ballot.

Without the specificity required by AS 24.08.037 and AS 15.15.040, there is a risk that funds will be used for something that is not a capital improvement, in violation of the Alaska Constitution.²⁴ Therefore, instead of capitalizing the major maintenance grant fund, this section should specify the project(s) for which the funds are intended to be used.

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

MYM:lme

21-112.lme

²⁴ While the major maintenance grant fund is intended be used to make grants for the costs of school major maintenance, the fund remains available for appropriation, and the legislature can appropriate the money in this fund for any public purpose. Therefore, in my opinion, it is still necessary to specify the project for which the funds are intended.