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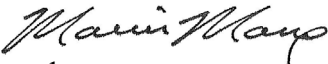
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MEMORANDUM

January 27, 2022

SUBJECT: General obligation bond bill
(HB 285; Work Order No. 32-GH2543\A)

TO: Representative Kelly Merrick
Attn: Tally Teal

FROM: Marie Marx 
Legislative Counsel

You have asked whether there are legal issues with HB 285, the governor's general obligation bond bill. You specifically asked about the single subject rule and whether the types of projects included in HB 285 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 rule 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 Until 2010, the Alaska Supreme Court had never struck

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).

down a bill for failing to conform to the single subject rule. In *Croft v. Parnell*, the Court held that an initiative that provided public campaign funding to candidates for state office, and proposed a three-cent tax on each barrel of oil produced in the state to offset the costs of the proposal, violated the single subject rule.⁹

However, most recently, in *Meyer v. Alaskans for Better Elections*, the Alaska Supreme Court held that an initiative replacing the party primary system with an open, nonpartisan primary, establishing ranked-choice voting in the general election, and mandating new disclosure and disclaimer requirements to existing campaign finance laws did not violate the single subject rule, finding these provisions fall under the subject of "election reform" and share the nexus of election administration.¹⁰ The court stated:

The State argues that the three substantive changes to the election laws "are not actually 'connected' through cross-references or other logical reliance" and that "[n]one depends on the others to function properly." The State's argument focuses primarily on whether voters could vote separately on each substantive legal reform. But neither *Gellert* nor *Croft* requires severing every provision that, in the abstract, could be voted on separately. And we have never required that a proposed law's "subject" be the most minute and discrete possible. We recognized instead in *Gellert* the convenience of classifying related matters under a single bill. In *Short* we further emphasized the need to give "great latitude in enacting comprehensive legislation" and cautioned that "[t]he one-subject provision *should not* be construed so as to unnecessarily restrict the scope and operation of laws, or to *multiply their number excessively*." And in *Croft* we rejected the initiative not simply because its provisions were severable, but because they were distinct subjects and lacked a nexus. Thus, the question is not whether the initiative could be split into separate measures, but rather whether the various provisions "embrace some one general subject."¹¹

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*,¹²

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

⁹ *Croft v. Parnell*, 236 P.3d 369 (Alaska 2010).

¹⁰ *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 498 (Alaska 2020).

¹¹ *Meyer*, 465 P.3d at 498 - 499 (citations omitted).

¹² 522 P.2d 1120 (Alaska 1974).

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.¹³

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.¹⁴

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."¹⁵ 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."¹⁶

¹³ *Id.* at 1123.

¹⁴ *Id.* at 1124.

¹⁵ *Short v. State*, 600 P.2d 20, 24 (Alaska 1979).

¹⁶ *Id.*

HB 285, the governor's general obligation bond bill, includes the following projects: City of Craig - Craig Harbor; City of Craig - Mariculture Infrastructure; Kenai River Bluffs Stabilization; Ketchikan Gateway Borough Ketchikan International Airport Terminal; Knik Arm Port Infrastructure; City of Kodiak - Kodiak Fire Station; City of Nenana - Nenana Fire Hall Replacement; Port of Nome - Deep Draft Port; City of Palmer - Warren "Bud" Woods Palmer Municipal Airport Taxiway; City of Seward - Freight Dock Expansion and Corridor Improvements; Juneau Access; Northern Access Project to University Medical District; and Bartlett and Moore Hall Modernization and Renewal.

The governor appears to identify all the projects listed in HB 285 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."¹⁷ "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. I cannot identify another single subject that would unite all the projects in HB 285 that is likely to withstand a challenge.

Additionally, it does not appear from the information provided in HB 285 and in the governor's "FY2023 GO Bond Project Details" document that the Knik Arm Port Infrastructure project fits the category of "infrastructure." Details of this project in the background documentation state that the project will be managed by "a shared organization or regional authority that will assess and plan for waterfront infrastructure development and operation in Knik Arm and upper Cook Inlet." This organization will then "allocate funding for projects." While the organization may allocate this money for infrastructure projects only, there is no guarantee it will do so, especially as it appears that the organization does not yet exist. I am also unable to confirm from the information provided whether the Kenai River Bluffs Stabilization project fits the category of "infrastructure" as the background documentation does not describe this project. It does appear that the other projects listed in HB 285 fit the category of "infrastructure" based on the information provided in the governor's "FY2023 GO Bond Project Details" document. If these projects do not fall within the single subject of "infrastructure" then the bill violates the single subject requirement.

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.]

¹⁷ *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.¹⁸ The court held that this did not constitute a capital improvement as required by art. IX, sec. 9,¹⁹ 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.²⁰

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,²¹ but that trucks are not capital improvements.²² Under

¹⁸ *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962).

¹⁹ 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.

²⁰ *Hixson*, 373 P.2d at 747.

²¹ 1981 Op. Att'y Gen. (Mar. 16; J-66-300-81).

²² 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

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.²³ 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."

Based on the information provided in the governor's "FY2023 GO Bond Project Details" document, most of the projects contained in HB 285 fit within the scope of "capital improvements" under the constitution. However, some of the projects include repairs, upgrades, and improvements to existing facilities or structures or ordinary maintenance, such as the projects for Ketchikan Gateway Borough Ketchikan International Airport Terminal; Knik Arm Port Infrastructure; City of Palmer - Warren "Bud" Woods Palmer Municipal Airport Taxiway; and Bartlett and Moore Hall Modernization and Renewal. It is unclear if the portions of these projects for repairs, upgrades, improvements, and maintenance would satisfy the permanency requirement the court spoke of in *Hixon*.

3. Project specificity. As discussed above, it appears from the information provided in HB 285 and in the governor's "FY2023 GO Bond Project Details" document that the Knik Arm Port Infrastructure project will be managed by "a shared organization or regional authority," which will then "allocate funding for projects." AS 24.08.037 and AS 15.15.040 require that general obligation bond authorization bills specifically identify the scope of each project, its location, and the amount allocated to the project. AS 24.08.037 provides:

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 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.").

²³ 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.'").

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.

The Knik Arm Port Infrastructure project background documentation lists projects that the organization "may" spend the money on, but there is no guarantee it will do so, especially as it appears that the organization does not yet exist. The background documentation also does not specifically identify the scope of each project and the amount allocated to each. 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. Therefore, instead of allowing a yet-to-be created organization to allocate funding to projects, this section should identify the specific projects that will be funded and specify the scope of each project and the amount allocated to each.

4. Cost of administering the bond sale. HB 285 provides for up to \$1,625,000 from the proceeds of the bond sale to be used to carry out the provisions of HB 285 and to pay expenses incident to the sale and issuance of the bonds authorized in the bill. A standard form of bill for general obligation bond authorizations has been developed by the Legislative Affairs Agency, the attorney general, and bond counsel.²⁴ Section 4 of the standard form bill provides for the appropriation of a sum from the general fund to pay for the cost of administering the bond sale (the general fund is repaid from the proceeds of the sale). The amount of the appropriation is 0.5 percent of the principal amount of the bonds to be issued (.005 X principal amount).²⁵ By my calculation, the amounts for the projects listed in HB 285 total \$323,550,000 and 0.5 percent of this amount is

²⁴ *Manual of Legislative Drafting* (2021) at p. 47.

²⁵ *Id.*

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\$1,617,750. HB 285 appears to have rounded up this number to \$1,625,000. The 0.5 percent standard was established via request by the state bond committee. Therefore, I recommend that you confirm with the state bond committee that no unintended consequences will result from deviating from this standard.

5. Southeast Conference named recipient. Southeast Conference is the named recipient for the City of Craig - Mariculture Infrastructure and Kenai River Bluff Stabilization projects. Section 3 of HB 285 only references AS 37.05.315 (grants to municipalities). I recommend that this section also include a reference to AS 37.05.316 (grants to named recipients) to cover these two projects.

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

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