



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Revenue

TREASURY DIVISION

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March 2, 2018

Senator Cathy Giessel
State Capitol, Room 427
Juneau, Alaska, 99801

Re: SB 176; Alaska Tax Credit Certificate Bond Corporation

Dear Senator Giessel,

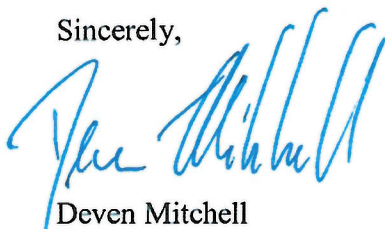
This letter is in response to an issue raised by Senator Wielechowski at the Senate Resources hearing on February 21, 2018. Senator Wielechowski suggested that the proposed tax credit bonds might be considered state debt not permitted under art. IX, section 8 of the Alaska Constitution without approval of the voters. This is not the case. As set forth below, the proposed legislation would authorize the issuance of subject to appropriation bonds which is a form of financing that has been utilized in the past by the state and has not been considered to be unconstitutional state debt.

Article IX, section 8 of the Alaska Constitution describes a category of debt usually referred to as "general obligation" bonds that are issued by the state, backed by the full faith and taxing authority of the state, approved by the voters, and generally limited to capital improvements and housing projects for veterans. The proposed tax credit bonds in SB 176 are not general obligation bonds under art. IX, section 8. In fact, the bill expressly provides at page 2, lines 20-21 that the bonds "do not constitute a general obligation of the state and are not state debt within the meaning of art. IX, section 8, Constitution of the State of Alaska." Instead, the tax credit bonds would be subject to appropriation debt which means that the legislature is not legally committed to make annual debt payments. Subject to appropriation debt has been issued by state entities in the past and has not been considered by the Alaska Supreme Court to be unconstitutional debt. For example, the Alaska Supreme Court in *Carr-Gottstein Properties v. State* decided that a lease-purchase agreement did not involve the issuance of unconstitutional debt because any financial obligation of the state was subject-to-appropriation. 899 P.2d 136, 142-44 (Alaska 1995).

In reliance on the Alaska Supreme Court's precedents such as *Carr-Gottstein*, the State has issued Certificates of Participation to fund buildings, utilized public corporations to issue lease revenue bonds to fund buildings, and the legislature has authorized public corporations to issue revenue bonds and authorized the issuance of pension obligation bonds. All of these financing mechanisms do not bind appropriation power but instead are subject to appropriation financing arrangements. Similarly, all of these arrangements do not involve any revenue pledge other than the State's subject to appropriation commitment.

In sum, tax credit bonds are a form of subject to appropriation debt that is permitted under Alaska law. The proposed financing in SB 176 will provide the basis for a successful issuance of securities as there are no constitutional infirmities with the bill.

Sincerely,



Deven Mitchell
State Debt Manager
Department of Revenue



Bill Milks
Assistant Attorney General
Department of Law