Frequently Asked Questions Regarding
Subject to Appropriation Debt

1. **The constitution says no state debt shall be issued unless "ratified by a majority of the qualified voters." How can the State incur this debt without approval of the voters?**
   The constitutional term "state debt" refers to a form of borrowing that pledges the full faith and credit of the state to repay the borrowed money. Once the voters have approved a form of constitutional debt, typically known as general obligation debt, payments must be made each year regardless of the desire of the legislature. This constitutional debt functionally acts as a transfer of legislative appropriation power to the courts because the courts can order that the debt be paid regardless of the wishes of a future legislature. This is why the framers decided a vote of the people was necessary to issue constitutional debt. If the legislature defaults on a general obligation bond, the courts can literally make the appropriation.

   The debt in HB 311/SB 176 is not constitutional state debt secured by the full faith and credit of the state. Instead, this is a type of debt called, "subject to appropriation debt," which means that the payment on the debt is subject to an annual appropriation decision by the legislature. If the legislature fails to appropriate, the debt is not paid. In other words, the court doesn't have the power to make an appropriation—because it's not constitutional debt. In fact, HB 311/SB 176 includes an express provision stating that the tax credit bonds are not a general obligation of the state and do not constitute a state debt under the Alaska Constitution.

2. **Have we ever issued this "subject to appropriation" debt before?**
   Yes, for almost 70 years the territory and then state has issued subject to appropriation debt. Beginning in 1949 the Territory of Alaska would construct and acquire public buildings for lease to the territorial government with the subject to appropriation lease payments securing bonds. The practice of issuing subject to appropriation debt continued soon after statehood. Over the years, uses of subject to appropriation debt have included lease revenue bonds of municipalities and the Alaska Housing Finance Corporation. At the present time there are a number of states subject to appropriation debt commitments outstanding.

3. **What would happen if we stopped issuing "subject to appropriation" debt?**
   Certain political subdivisions, such as the University, could lose access to the municipal bond market. This may require a cut in spending or an increase in UGF funding by the legislature to make up the difference. Financing essential capital project such as a prison, courthouse, state health lab, or other discreet financing will become less efficient and more expensive.

4. **Have Alaskan courts ever opined on this issue?**
   Yes, the Alaska Supreme Court in *Carr-Gottstein Properties v State* decided that a subject to appropriation debt in the form of a lease-purchase agreement did not fall into the category of debt that is governed by the Alaska Constitution. The Court held it was permissible under the Constitution because a future legislature was not required to appropriate funds and thus it was not a form of constitutional state debt subject to the special requirements for constitutional debt.

5. **Before we issue debt, don't we have to receive an opinion from lawyers who specialize in debt issuance, have we done that?**
   Yes. The state has received opinions that "subject to appropriation" debt is lawful from multiple law firms over the past 40 years.