

LEGAL SERVICES

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MEMORANDUM

February 4, 2010

SUBJECT: State debt instruments (Work Order No. 26-LS1425)

TO: Senator Bert Stedman
Co-Chair of the Senate Finance Committee
Attn: Darwin Peterson

FROM: Tamara Brandt Cook
Director 

You have asked me to find and provide you with a copy of statutes that authorize a state entity to issue certificates of participation or bonds, other than general obligation bonds that are subject to voter approval. You are also interested in provisions of temporary law authorizing the acquisition of those types of state debt. As a preliminary matter, note that state debt is addressed in art. IX of the state constitution:

SECTION 8. State Debt. 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. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.

SECTION 10. Interim Borrowing. The State and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year, but all debt so contracted shall be paid before the end of the next fiscal year.

SECTION. 11. Exceptions. The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation. The restrictions do not apply to indebtedness to be paid from special assessments on the benefited property, nor do they apply to refunding indebtedness of the State or its political subdivisions.

It is under section 8 that general obligation bonds of the state are issued. These are only for capital improvements or veterans housing loans and must be approved by the voters. The state pledges its "full faith and credit" or revenue raising power to the repayment of general obligation bonds. Under section 10 the state may acquire short-term debt by issuing revenue anticipation notes. Section 11 grants the state and its public corporations the power to issue revenue bonds. These are secured only by the revenue of the enterprise funded by the bonds or by the revenue of the corporation. The section also allows debts to be paid from special assessments on property benefited and debts to refund other indebtedness. Lastly, the court has upheld state debt acquired through the issuance of certificates of participation in lease-financing arrangements where the security is limited to the leased property and the lease-purchase agreement contains a nonappropriation clause--the state is not obligated to make the lease payments if no money is appropriated for the purpose. The court has concluded that these arrangements do not create long-term obligations that bind future generations or legislatures because the legislature is free to decide not to make appropriations for lease payments and let the state default. (Carr-Gottstein Properties v. State, 899 P.2d 546 (Alaska 1995))

This is what I have found in response to your request (*emphasis added*):

CERTIFICATES OF PARTICIPATION

(I) Sec. 29.47.480. Accrued actuarial liabilities of retirement systems. (a) A municipality, or two or more municipalities jointly, may enter into a lease or other contractual agreement with a trustee, or the Alaska Municipal Bond Bank Authority or a subsidiary of the authority, a subsidiary of the Alaska Housing Finance Corporation, the state bond committee, or the Alaska Pension Obligation Bond Corporation in connection with the *issuance of obligations by a state entity* to prepay all or a portion of each participating municipality's share of the accrued actuarial liabilities of retirement systems. Obligations issued for purposes described in this subsection must be secured and payable as provided in the agreement or under an authorizing ordinance. The agreement or ordinance may provide for reserves and for protective covenants.

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(d) For purposes of this section, "obligations" means bonds, notes, commercial paper, *certificates of participation*, or other contractual obligations.

(II) Sec. 36.30.085. Lease-purchase agreements. (a) To perform its duties and statutory functions, the department, the Board of Regents of the University of Alaska, the legislative council, or the supreme court *may enter into lease-purchase agreements* for real property. The department, the Board of Regents, the legislative council, or the supreme court may enter into a lease-purchase agreement only if the department, the Board of Regents, the legislative council, or the supreme court is the lessee under the agreement.

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(c) A lease-purchase agreement

(1) may not provide for a period of occupancy under the full term of the lease-purchase agreement that is greater than 40 years;

(2) must provide that lease payments made by the department, the Board of Regents, the legislative council, or the supreme court *are subject to annual appropriation.*

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(e) The department, the Board of Regents, the legislative council, or the supreme court may not enter into a lease-purchase agreement to acquire or improve real property unless the agreement *has been approved by the legislature by law.*

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(g) In this section,

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(2) "lease-purchase agreement" *includes a lease-financing agreement.*

Sec. 36.30.990. Definitions. In this chapter, unless the context in which a term is used clearly requires a different meaning or a different definition is prescribed for a particular provision,

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(14) "lease-financing agreement" means a lease-purchase agreement that secures or is related to financing instruments of the lessor, including revenue bonds or certificates of participation;

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(III) Sec. 44.85.080. Powers of bond bank authority. The bond bank authority may

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(20) by regulation, create a new entity or new entities for the purpose of issuing negotiable or nonnegotiable revenue bonds, notes, or *certificates of participation* to finance a self-insurance program for municipalities or municipal joint insurance arrangements organized under AS 21.76 or to provide assistance to governmental employers under AS 44.85.085(a); the powers, duties, and membership of the new entity or entities shall be limited to the powers, duties, and membership of the authority and stated in the regulation; the new entity or entities shall each be a public corporation and an instrumentality of the state with the same legal existence and continuing succession as the bond bank authority; and

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BONDS

(I) The Alaska Aerospace Development Corporation

Sec. 14.40.891. Issuance of bonds, notes, and refunding bonds. (a) Except as provided in (b) of this section, *the corporation may issue bonds* in its discretion for any of its corporate purposes and may issue refunding bonds for the purpose of paying or retiring bonds previously issued by it.

(b) The corporation may not, without prior legislative approval, issue bonds, other than refunding bonds,

(1) in a total amount in excess of \$1,000,000 each calendar year; or

(2) if the annual debt service on all outstanding bonds issued and proposed to be issued exceeds \$1,000,000 in a fiscal year.

(II) The Alaska Student Loan Corporation

Sec. 14.42.220. Bonds of the corporation. (a) The corporation may borrow money and *may issue bonds*, on which the principal and interest are payable from its income and receipts or other assets or a designated part or parts of them. The corporation may use the proceeds of its bonds for any purposes that the corporation considers appropriate, including providing money to

- (1) make or purchase education loans;
- (2) finance programs identified in AS 14.42.210;
- (3) finance projects of the state as those projects may be identified by law; and
- (4) pay for any other purpose or program of the corporation that is authorized in AS 14.42.100 - 14.42.310.

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(g) The corporation may not issue bonds to finance projects under (a)(3) of this section in an aggregate amount that exceeds \$280,000,000.

(III) Alaska Medical Facility Authority

Sec. 18.26.080. Bonds of the authority; court jurisdiction. (a) The authority may borrow money and *may issue bonds* for it, payable from the revenue derived by it from its interest in any one or more medical facilities or from its income and receipts or other assets generally, or a designated part of them. The issuance of revenue bonds is governed by the provisions of this chapter and is not subject to the prior approval of the voters of the state. Revenue bonds, whether coupon or fully registered, are negotiable instruments for all purposes of the Uniform Commercial Code.

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Sec. 18.26.260. Issuance and guarantee of Alaska Medical Facility Authority bonds.

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(b) If the commissioner of revenue and the board jointly determine that a medical facility is unable to use traditional private or public financial institutions to refinance mortgage loans and that it is in the public interest to make refinancing available,

(1) the authority may provide financial assistance and purchase mortgage loans made to the medical facility and *may issue bonds or bond anticipation notes* under this chapter to provide money for the purchase of the mortgage loans or to provide the financial assistance; and

(2) the commissioner of revenue may disburse to the medical facilities special bond guarantee account money appropriated to the commissioner for the account which the commissioner determines to be necessary to guarantee bonds or bond anticipation notes issued under (1) of this subsection.

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(IV) Alaska Housing Finance Corporation

Sec. 18.55.140. Issuance of bonds, notes, and refunding bonds. The corporation *may issue bonds* and notes from time to time in its discretion for a purpose authorized by this

chapter and *may issue refunding bonds* for the purpose of paying or retiring bonds previously issued under this chapter.

Sec. 18.56.110. Bonds and notes. (a) The corporation, by resolution, *may issue bonds and bond anticipation notes* in order to provide funds to carry out and effectuate its purposes.

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Sec. 18.56.790. Bonds for senior housing. (a) Under the procedures of this chapter, the corporation *may issue bonds* in a total amount not exceeding \$30,000,000 to fund senior housing loans made under AS 18.56.700 - 18.56.799.

(e) In this section, "bond" has the meaning given in AS 18.56.390.

(V) Knik Arm Bridge and Toll Authority

Sec. 19.75.211. Bonds of the authority. (a) Notwithstanding any other provision of law, the authority may borrow money and *issue and refund bonds* on which the principal and interest are paid out of and secured by the gross revenue derived by the authority from the ownership, use, and operation of its toll facilities, including money derived from the fees, rents, tolls, rates, charges, and other revenue of the authority under this chapter and any other revenue or money that the legislature may appropriate, except a state tax or license. Before issuing bonds for the Knik Arm bridge, the authority shall submit to the state bond committee a description of the bond issue and a preliminary prospectus, offering circular, or official statement relating to the bond issue. Bonds may not be issued unless the state bond committee finds, based upon the information submitted by the authority under this section and other information that is reasonably available to the committee, that the Knik Arm bridge revenue and other revenue available to the authority can be reasonably expected to be adequate for payment of the principal of and interest on the bonds to be issued and that issuance of the bonds by the authority would not be expected to adversely affect the ability of the state or its political subdivisions to market bonds.

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(c) The authority may issue bonds in an aggregate amount not to exceed \$500,000,000, plus the cost of issuance.

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(VI) Adak Reuse Authority

Sec. 30.17.210. Bonds of the authority. (a) Subject to the provisions of AS 30.17.200, the authority may borrow money and may issue revenue bonds, including bonds on which the principal and interest are payable

(1) exclusively from the income and receipts or other money derived from the project financed with the proceeds of the bonds;

(2) exclusively from the income and receipts or other money derived from designated projects whether or not they are financed in whole or in part with the proceeds of the bonds; or

(3) from the income and receipts or assets generally, or a designated part or parts of them, of the authority or of any other person.

(b) Bonds issued under this chapter shall be authorized by resolution of the authority, and shall be dated and shall mature as the resolution may provide, except that a bond may not mature more than 40 years from the date of its issuance. The bonds shall bear interest at the rate or rates, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption that the resolution or a subsequent resolution may provide.

(c) Bonds issued under this chapter, regardless of form or character, shall be negotiable instruments for the purposes of the Uniform Commercial Code.

(d) Bonds issued under this chapter may be sold at public or private sale in the manner, for the price or prices, and at the time or times that the authority may determine.

(e) The superior court shall have jurisdiction to hear and determine suits, actions, or proceedings relating to the authority, including suits, actions, or proceedings brought to foreclose or otherwise enforce a mortgage, pledge, assignment, or security interest or brought by or for the benefit or security of a holder of its bonds or by a trustee for or other representative of the holders.

(f) Before issuing bonds for a project under this chapter, the authority shall submit to the state bond committee a description of the bond issue and an independent economic feasibility analysis of the project and expected revenue. This information may be contained in a preliminary prospectus, offering circular, or official statement relating to the bond issue. Bonds may not be issued under this chapter unless the state bond committee finds, based upon the information submitted by the authority under this subsection and other information that is reasonably available to the committee, that the project revenue can be reasonably expected to be adequate for payment of the principal and interest on the bonds to be issued if the bonds are to be secured by project revenue alone, and in any event that issuance of the bonds by the authority would not be expected to adversely affect the ability of the state or its political subdivisions to market bonds.

(VII) Clean Water Bonds, International Revenue Airport Bonds, Toll Facilities Revenue Bonds, Sport Fishing Facility Revenue Bonds, Pension Obligation Bonds

See AS 37.15.010 - AS 37.16.900.

(VIII) Alaska Railroad Corporation

Sec. 42.40.285. Legislative approval required. Unless the legislature approves the action by law, the corporation may not

- (1) exchange, donate, sell, or otherwise convey its entire interest in land;
- (2) issue bonds;
- (3) extend railroad lines; this paragraph does not apply to a spur, industrial, team, switching, or side track;
- (4) lease land for a period in excess of 55 years unless the corporation reserves the right to terminate the lease if the land is needed for railroad purposes;
- (5) apply for or accept a grant of federal land within a municipality; before approving an action under this paragraph, the legislature must determine that the federal land is required for essential railroad purposes; this paragraph does not apply to the application for or acceptance of a grant of federal land associated with

(A) the Anchorage-Wasilla line change project on Elmendorf Air Force Base and Fort Richardson;

(B) the Fairbanks intermodal rail yard expansion project;

(C) a conveyance of rail properties of the Alaska Railroad under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI, P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has the meaning given in 45 U.S.C. 1202(10).

Sec. 42.40.570. Kenai gasification project. (a) The corporation may participate in a project consisting of the acquisition, construction, improvement, maintenance, equipping, and operation of real and personal property, including facilities and equipment for the transportation of coal from Healy to the northern Kenai Peninsula, and facilities and equipment for coal gasification and electrical power generation adjacent to the Agrium fertilizer plants in the northern Kenai Peninsula.

(b) The corporation may participate in a project consisting of the acquisition, construction, improvement, maintenance, equipping, and operation of real and personal property, including facilities and equipment, for the transportation of coal by rail from Healy to Port MacKenzie and thereafter by barge to the northern Kenai Peninsula.

(c) The corporation may finance all or a portion of the projects described in (a) and (b) of this section through the issuance of its bonds.

Sec. 42.40.600. General provisions. (a) Upon receiving legislative approval under AS 42.40.285 the corporation may issue bonds by resolution to provide money to carry out its purposes.

(b) Bonds may be issued in one or more series and shall, as provided by the resolution of the board,

(1) be dated;

(2) bear fixed or variable interest at a specified rate or rates per year or within a maximum rate;

(3) be in a specified denomination;

(4) be in a coupon or registered form;

(5) carry conversion or registration provisions;

(6) have a specified rank or priority;

(7) be executed in the specified manner and form;

(8) be payable as specified from the sources, in the medium of payment, and place or places inside or outside the state;

(9) be subject to authentication by a trustee or fiscal agent; and

(10) be subject to terms of redemption with or without premium.

(c) Bonds may be sold in the manner, on the terms, and at the price the board determines. Notes shall mature at the time or times determined by the board. Except for bond anticipation notes, notes, or other obligations, bonds shall mature at the time, not exceeding 50 years from their date, determined by the board.

(IX) Alaska Energy Authority

Sec. 44.83.100. Bonds of the authority. (a) The authority may borrow money and *may issue bonds*, including but not limited to bonds on which the principal and interest are payable (1) exclusively from the income and receipts or other money derived from the

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project financed with the proceeds of the bonds; (2) exclusively from the income and receipts or other money derived from designated projects whether or not they are financed in whole or in part with the proceeds of the bonds; (3) from its income and receipts or other assets generally, or a designated part or parts of them; or (4) from one or more revenue-producing contracts including a contract providing for the security of the bonds made by the authority with any person. The authority may issue bonds to pay, fund, or refund the principal of, or interest or redemption premiums on, bonds issued by it, whether or not the bonds or interest to be funded or refunded have become due.

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(X) Alaska Industrial Development and Export Authority

Sec. 44.88.090. Bonds of the authority. (a) The authority may borrow money and *may issue bonds*, including but not limited to bonds on which the principal and interest are payable

(1) exclusively from the income and receipts or other money derived from the project or development project financed with the proceeds of the bonds or derived from the exporter or exporting transaction financed, guaranteed, or insured with the proceeds of the bonds;

(2) exclusively from the income and receipts or other money derived from designated projects or development projects or other sources whether or not they are financed, insured, or guaranteed in whole or in part with the proceeds of the bonds; or

(3) from its income and receipts or other assets generally, or a designated part or parts of them.

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Sec. 44.88.095. Bonding limitations. (a) The authority may not issue bonds in a 12-month period in an amount that exceeds \$400,000,000.

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TEMPORARY LAW RELATED TO BONDS

Enclosed are copies of temporary law related to bonds. I have searched only back as far as the Eighteenth Legislature.

TBC:ljw:med

10-058.ljw

Enclosures