

# LEGAL SERVICES

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## MEMORANDUM

March 25, 2019

**SUBJECT:** State Bond Debt Reimbursement (SB 64;  
Work Order No. 31-GS1091\A.1)

**TO:** Senator Mia Costello  
Attn: Tom Wright

**FROM:** Meera Caouette *NBC*  
Legislative Counsel

You have asked for an explanation of Work Order No. 31-GS1091\A.1, which is an amendment you requested to SB 64, version A. As you are aware, SB 64 repeals state reimbursement for costs of school construction bond debt, including the authorizations for bonds previously issued. The current statutory scheme authorizes reimbursement for debt incurred prior to January 1, 2015, and places a moratorium on bond debt reimbursement that ends on July 1, 2020. Thus, the bond debt currently authorized for reimbursement under the existing program was incurred prior to January 1, 2015. You requested an amendment that would prevent the bill from affecting the state's share of bond debt that is outstanding, and would instead limit the repeal of the bond reimbursement program to bonds issued on or after January 1, 2015.

To capture your intent, the amendment repeals provisions—and removes references to those provisions—that would authorize bond debt reimbursement for debt incurred on or after January 1, 2015, while leaving in place the provisions that authorize reimbursement for debt incurred prior to January 1, 2015.<sup>1</sup> Thus, the bill, as amended, would repeal the bond debt reimbursement program but leave intact the statutory authorization for the outstanding bond debt approved for reimbursement.

Note that version A of the bill, which seeks to repeal provisions that authorize the reimbursement of outstanding bond debt, presents a potential constitutional issue. To the extent that repealing the statutory authority for bond debt reimbursement repeals the statutory authority for reimbursement of outstanding bond debt that the state has already approved, it could interfere with existing contracts.<sup>2</sup> Assessing whether eliminating bond

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<sup>1</sup> The amendment also makes necessary conforming changes to the bill.

<sup>2</sup> Article 1, sec. 15, Constitution of the State of Alaska provides:

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debt reimbursement violates the constitution requires a fact-intensive analysis. However, reimbursement is generally subject to legislative appropriations, and debt service can be reduced if legislative appropriations are not sufficient to cover the costs of all approved debt service.<sup>3</sup>

As I discussed with Mr. Wright during our telephone conversation on March 21, 2019, the intent behind your proposed amendment likely cannot be achieved by adding only uncodified transition and applicability provisions to the bill. Such provisions may be forgotten over time, would lead to difficulty in finding relevant but repealed law, and extend beyond "temporary law" since the repayment terms for the bonds most recently issued under the program will not end for several more years.<sup>4</sup> Your intent is therefore best accomplished by leaving in place the statutory provisions related to outstanding bond debt, which is the approach used in the amendment and has been the approach since the program was established in the 1970s, when an authorization was discontinued or amended. The remaining authorizations are limited to the approval dates specified, all of which are in the past.

If I may be of further assistance, please advise.

MBC:boo  
19-145.boo

Attachment

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SECTION 15. Prohibited State Action. No bill of attainder or ex post facto law shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

<sup>3</sup> AS 14.11.100(c).

<sup>4</sup> The oldest bonds authorized under AS 14.11.100(a) may have been paid and may be available for repeal. You may want to verify which bonds are still outstanding.