

**CS FOR HOUSE BILL NO. 401(STA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 3/12/96

Referred: Resources, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act authorizing the issuance and sale of revenue bonds to fund public  
2 wastewater systems, nonpoint source water pollution control projects, including solid  
3 waste management systems, and estuary conservation and management projects;  
4 authorizing the use of the Alaska clean water fund to pay and secure the bonds  
5 and to pay costs related to issuance and administration of the bonds; authorizing  
6 certain measures to secure payment of the bonds; and amending Rule 3, Alaska  
7 Rules of Civil Procedure."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 \* **Section 1.** POLICY AND PURPOSES. The legislature finds that the expenditures,  
10 transfers, and applications of money, and the use of the public credit through the issuance of  
11 revenue bonds, as authorized by this Act, will serve a public purpose by allowing the  
12 financing of needed public water quality improvements substantially sooner than would  
13 otherwise be possible.

1 \* **Sec. 2.** AS 37.15 is amended by adding new sections to read:

2 ARTICLE 3A. ALASKA CLEAN WATER FUND BONDS.

3 Sec. 37.15.560. BOND AUTHORIZATION. (a) For purposes of providing  
4 part of the money to be used to provide financial assistance to municipalities and other  
5 qualified entities for the purposes stated in AS 46.03.032(d), including the costs of  
6 bond issuance and administration, the issuance and sale of revenue bonds of the state  
7 is authorized subject to (b) of this section. The bonds are to be issued by the state  
8 bond committee, as provided in AS 37.15.560 - 37.15.605, as part of the Alaska clean  
9 water fund revolving loan fund program (AS 46.03.032), a public enterprise of the  
10 state. The net proceeds of the sale of the bonds, remaining after any payment of costs  
11 of issuance and administration, shall be paid into the Alaska clean water fund.  
12 Accrued interest paid on the bonds shall be paid into the Alaska clean water fund for  
13 transfer to the Alaska clean water fund revenue bond redemption fund (AS 37.15.565).

14 (b) The state bond committee may not issue more than \$15,000,000 in revenue  
15 bonds during a fiscal year, excluding refunding bonds. The total amount of revenue  
16 bonds outstanding at any one time may not exceed \$150,000,000, including principal  
17 and interest owed on the bonds.

18 (c) The bonds do not constitute a general obligation of the state. Authorization  
19 by the voters of the state or the legislature is not required.

20 (d) The state bond committee may enter into agreements with other state  
21 agencies as necessary or convenient to implement AS 37.15.560 - 37.15.605.

22 (e) The state bond committee may contract for the services of underwriters,  
23 paying agents, trustees, bond printers, rating agencies, bond insurance, credit  
24 enhancement providers, accountants, financial advisors, and bond counsel, and other  
25 services as are necessary to accomplish the bond issuance and sale.

26 Sec. 37.15.565. BOND REDEMPTION FUND. (a) There is established a  
27 special fund of the state, known as the "Alaska clean water fund revenue bond  
28 redemption fund," which is a trust fund for paying and securing the payment of the  
29 principal of and interest and redemption premium, if any, on the bonds and which shall  
30 be at all times completely segregated and set apart from all other funds of the state.  
31 The committee, on behalf of the state, may obligate and bind the state to set aside and

1 pay into the bond redemption fund, on a monthly or other periodic basis, any part or  
2 parts of, or all of, or a fixed proportion of, or a fixed amount of the money in the  
3 Alaska clean water fund (AS 46.03.032) sufficient to pay the principal of and interest  
4 and redemption premium, if any, on the bonds and, if it considers it necessary, to set  
5 aside and maintain reserves for this purpose. The bond redemption fund shall be  
6 drawn upon only for the purpose of paying the principal of and interest and redemption  
7 premium, if any, on the bonds, together with related trustee fees, if any.

8 (b) Money in the bond redemption fund may be invested in the same manner  
9 and on the same conditions as permitted for investment of money belonging to the  
10 state or held in the treasury under AS 37.10.070; however, the committee may agree  
11 with the bondholders to further limit these investments. Earnings on investments must  
12 be retained in the bond redemption fund.

13 (c) Separate accounts may be created in the bond redemption fund for the  
14 purposes of paying and securing the bonds. The accounts may be combined for  
15 purposes of investment.

16 Sec. 37.15.570. BOND TERMS. (a) The bonds may be issued and sold at  
17 public or negotiated sale in the manner, in the amounts or series, and at the time or  
18 times that the committee determines. The bonds, or each series of them, shall be sold  
19 at the price and upon the terms, conditions, and covenants set by the committee after  
20 considering market conditions. Interest rates may be fixed or variable.

21 (b) The bonds mature at the time or times fixed by the committee. The bonds  
22 may be subject to redemption before their fixed maturities, as determined by the  
23 committee, with or without a premium or premiums. The bonds may be in  
24 denominations determined by the committee; may be issued in fully or partially  
25 registered form; must be payable as to principal and interest at the place or places  
26 determined by the committee; must be signed on behalf of the state in the manner  
27 provided by the committee; must be issued under and subject to the terms, conditions,  
28 covenants, and protective features safeguarding payment of the bonds and relating to  
29 the funding of projects as found necessary by the committee, including covenants  
30 requiring the setting aside and maintenance of certain reserves to secure the payment  
31 of principal and interest, all under regulations and conditions of the committee.

1 (c) The committee may pledge to the payment of the principal of and interest  
2 on bonds issued by the committee part or all of the legally available money or other  
3 assets on hand in the Alaska clean water fund (AS 46.03.032); part or all of the  
4 revenue of the Alaska clean water fund, including federal capitalization grants, the  
5 proceeds of loan repayments, and interest on money in the fund; the proceeds of the  
6 sale of bonds; and money on hand in the bond redemption fund. Revenue of the  
7 Alaska clean water fund, if so pledged, must be paid into the Alaska clean water fund.  
8 The committee may provide for the issuance of additional bonds, secured by a pledge  
9 of money and revenue, ranking junior to, senior to, or on a parity with, outstanding  
10 bonds, upon conditions prescribed in the bond resolution. A pledge of loan  
11 repayments securing bonds may be made applicable to specific loans from the Alaska  
12 clean water fund or, on a pooled basis, to all loan repayments received.

13 (d) If the committee finds it reasonably necessary, the committee may select  
14 a trustee or trustees for the holders of the bonds, or any series of them, for the  
15 safeguarding and disbursement of any of the money in the bond redemption fund  
16 created by AS 37.15.565, or for duties with respect to the enforcement, authentication,  
17 delivery, payment, and registration of the bonds as the committee may determine. The  
18 committee shall fix the rights, duties, powers, and obligations of the trustee or trustees.

19 (e) In its determination of all matters and questions relating to the issuance and  
20 sale of the bonds and the fixing of their maturities, terms, conditions, and covenants  
21 as provided in (a) - (d) of this section, the decisions of the committee shall be those  
22 that are reasonably necessary for the best interests of the state and its inhabitants and  
23 that will accomplish the most advantageous sale of the bonds, with due regard,  
24 however, for the continued funding under AS 46.03.032 of the categories of projects  
25 identified in AS 46.03.032(d). Decisions of the committee, as expressed in a bond  
26 resolution, are final and are conclusively considered to comply with the requirements  
27 of AS 37.15.560 - 37.15.605 and AS 46.03.032.

28 (f) A bond resolution may provide that the bonds issued must contain a recital  
29 that they are issued under AS 37.15.560 - 37.15.605 and AS 46.03.032, and a bond  
30 containing this recital is conclusively considered to be valid and to have been issued  
31 in conformity with AS 37.15.560 - 37.15.605 and AS 46.03.032.

1           Sec. 37.15.573. BOND RESOLUTION. The committee shall authorize the  
2 issuance of bonds by adopting a resolution and shall prepare all other documents and  
3 proceedings necessary for the issuance, sale, and delivery of the bonds or any part or  
4 series of them. The bond resolution must fix the principal amount, denominations,  
5 date, maturities, manner of sale, place or places of payment, rights of redemption, if  
6 any, terms, form, conditions, and covenants of the bonds or each series of them. A  
7 bond resolution may state terms, conditions, amounts, and other limitations on loans  
8 to be made from the Alaska clean water fund (AS 46.03.032) from the relevant bond  
9 proceeds.

10           Sec. 37.15.575. STATE AID INTERCEPT. If a municipality is in default on  
11 the payment of principal or interest on a loan from the Alaska clean water fund  
12 (AS 46.03.032), the committee may provide written notice of default to the state  
13 agency that is the custodian of money that is payable to the municipality. If the  
14 committee determines to provide notice, a separate written notice shall be given in  
15 each instance of default. Notwithstanding any other provision of law, at any time after  
16 receipt of written notice of default, the agency head shall withhold payment of the  
17 money from the municipality. The agency head shall pay over the withheld money to  
18 the committee for deposit in the Alaska clean water fund for the purpose of paying or  
19 securing the principal and interest on the loan.

20           Sec. 37.15.580. PLEDGE OF THE STATE. The state pledges to and agrees  
21 with the holders of bonds issued by the committee under AS 37.15.560 - 37.15.605  
22 and AS 46.03.032 that the state will not limit or alter the rights and powers vested in  
23 the committee by AS 37.15.560 - 37.15.605 and AS 46.03.032 to fulfill the terms of  
24 any contract made by the committee with the holders, or in any way impair the rights  
25 and remedies of the holders until the principal amount of the bonds, together with the  
26 interest on them with interest on unpaid installments of interest, are fully met and  
27 discharged. The committee may include this pledge and agreement of the state in a  
28 contract with the holders.

29           Sec. 37.15.583. ENFORCEMENT BY BOND OWNER. (a) The owner or  
30 owners of not less than 10 percent of the aggregate principal amount of any series or  
31 issue of bonds or the trustee for the owners of the bonds or any series of them may,

1 by appropriate proceedings in state court, require and compel the transfer, setting aside,  
2 and payment of money and the enforcement of all of the terms, conditions, and  
3 covenants as required and provided in AS 37.15.560 - 37.15.605, AS 46.03.032, and  
4 the bond resolution.

5 (b) A proceeding under (a) of this section may be commenced and conducted  
6 only in the Superior Court for the State of Alaska, First Judicial District at Juneau.

7 Sec. 37.15.585. AMOUNTS REQUIRED FOR PAYMENTS. The committee  
8 shall, before June 30 of each year or from time to time within the year, as appropriate,  
9 commencing with the year in which the bonds are issued, certify to the commissioners  
10 of revenue and environmental conservation the amounts required in the current fiscal  
11 year and the next ensuing fiscal year by the bond resolution or resolutions to be paid  
12 out of the Alaska clean water fund into the bond redemption fund and to be paid into  
13 and maintained in any reserve fund or account or other fund or account created by the  
14 bond resolution or resolutions, and shall also certify to the commissioners the last date  
15 or dates upon which payments may be made.

16 Sec. 37.15.587. PURPOSES AND SUFFICIENCY OF REVENUE. The  
17 proceeds of bonds may be used for the purposes described in AS 46.03.032(d). Bonds  
18 may not be issued unless the committee first finds that revenue to be derived from  
19 repayment of loans from the Alaska clean water fund will be sufficient, together with  
20 other available money, to comply with all the covenants of the bond resolutions.

21 Sec. 37.15.590. REFUNDING. (a) The committee may refund the bonds or  
22 any part of them at or before their maturities or redemption dates by the issuance of  
23 refunding revenue bonds of the state if, in the opinion of the committee, refunding is  
24 advantageous to and in the best interests of the state and its inhabitants.

25 (b) The issuance of refunding bonds need not be authorized by the voters of  
26 the state or by an act of the legislature. The committee shall adopt the resolution or  
27 resolutions and prepare all other documents and proceedings necessary for the  
28 issuance, exchange or sale, and delivery of the refunding. All provisions of  
29 AS 37.15.560 - 37.15.605 and AS 46.03.032 applicable to revenue bonds are applicable  
30 to the refunding bonds and to the issuance, sale, or exchange of them, except as  
31 otherwise provided in this section.

1 (c) Refunding bonds may be issued in a principal amount sufficient to provide  
2 money for the advance or current refunding of all bonds to be refunded and interest  
3 on the refunded bonds and, in addition, for the payment of all costs of issuance and  
4 administration of the refunding bonds. These expenses also include the difference in  
5 amount between the par value of the refunding bonds and any amount less than par for  
6 which the refunding bonds are sold; the premium, if any, necessary to be paid in order  
7 to call or retire the outstanding bonds and the interest accruing on them to date of the  
8 call or retirement; and other such costs. The committee is authorized to incur such  
9 expenses.

10 (d) The committee may contract with a refunding trustee to hold the proceeds  
11 of refunding bonds in trust until the proceeds, together with earnings on the proceeds,  
12 are applied to pay the principal of, premium, if any, and interest on the bonds to be  
13 refunded. Until the refunding bond proceeds are applied, the proceeds may be invested  
14 in direct obligations of, or obligations guaranteed by, the United States or an agency  
15 or corporation of the United States whose obligations constitute direct obligations of,  
16 or obligations guaranteed by, the United States.

17 Sec. 37.15.595. BONDS AS LEGAL INVESTMENTS. The bonds are legal  
18 investments for all banks, trust companies, savings banks, savings and loan  
19 associations, and other persons carrying on a banking business, all insurance companies  
20 and other persons carrying on an insurance business, and all executors, administrators,  
21 trustees, and other fiduciaries. The bonds may be accepted as security for deposits of  
22 all money of the state and its political subdivisions.

23 Sec. 37.15.600. STATUTORY CONSTRUCTION. AS 37.15.560 - 37.15.605  
24 shall be liberally construed in order to carry out the purposes for which they were  
25 enacted.

26 Sec. 37.15.603. REGULATIONS. The committee may adopt regulations  
27 necessary to implement the provisions of AS 37.15.560 - 37.15.605.

28 Sec. 37.15.605. DEFINITIONS. In AS 37.15.560 - 37.15.605,

29 (1) "bond redemption fund" means the Alaska clean water fund revenue  
30 bond redemption fund established in AS 37.15.565;

31 (2) "bond resolution" means the resolution or resolutions adopted by

1 the committee under AS 37.15.573 authorizing the issuance of bonds;

2 (3) "bonds" means the Alaska clean water fund revenue bonds  
3 authorized in AS 37.15.560 - 37.15.605;

4 (4) "commissioner of revenue" means the principal executive officer  
5 of the Department of Revenue as provided in AS 44.25.010, or a successor;

6 (5) "commissioner of environmental conservation" means the principal  
7 executive officer of the Department of Environmental Conservation as provided in  
8 AS 44.46.010, or a successor;

9 (6) "committee" means the state bond committee created in  
10 AS 37.15.110 or any other committee, body, department, or officer of the state that  
11 succeeds to the rights, powers, duties, and obligations of the state bond committee by  
12 lawful act of the legislature;

13 (7) "costs of issuance and administration" means all costs associated  
14 with issuance and administration of Alaska clean water fund revenue bonds and  
15 refunding bonds, including costs of bond printing, official statements, financial  
16 advisors, travel costs, rating agencies, bond insurance, letters and lines of credit for  
17 credit enhancement, underwriters, legal services, paying agents, bond registrars, bond  
18 and escrow trustees, arbitrage rebate, and all other costs, including administrative costs,  
19 both direct and indirect.

20 \* **Sec. 3.** AS 46.03.032(a) is amended to read:

21 (a) There is established as a separate fund the Alaska clean water fund, which  
22 is distinct from any other money or fund in the treasury, and which consists of money  
23 appropriated by the legislature to meet federal matching requirements, federal  
24 capitalization grants, loan repayments, interest received from loan repayments, [AND]  
25 interest received from investment of money in the Alaska clean water fund, **and the**  
26 **proceeds and accrued interest received from the sale of revenue bonds issued**  
27 **under AS 37.15.560 - 37.15.605 and secured by the Alaska clean water fund.**  
28 **Separate accounts may be created in the Alaska clean water fund. The accounts**  
29 **may be combined for purposes of investment.**

30 \* **Sec. 4.** AS 46.03.032(b) is amended to read:

31 (b) **The provisions of this section shall be liberally construed in order to**

1 carry out the purposes for which they were enacted. The department shall  
2 administer the Alaska clean water fund consistent with the requirements of this  
3 section and AS 37.15.560 - 37.15.605.

4 \* **Sec. 5.** AS 46.03.032(c) is amended to read:

5 (c) The department may accept and make use of all capitalization grants  
6 provided by the federal government under 33 U.S.C. 1251 - 1387 (the federal Clean  
7 Water Act), as amended [BY P.L. 100-4].

8 \* **Sec. 6.** AS 46.03.032(d) is repealed and reenacted to read:

9 (d) Except as otherwise limited by federal law, the Alaska clean water fund  
10 may be used

11 (1) for the following categories of projects:

12 (A) planning, designing, building, constructing, and  
13 rehabilitating a public wastewater collection, treatment, or discharge system;

14 (B) implementing a management program for controlling water  
15 pollution from nonpoint sources under 33 U.S.C. 1329, including planning,  
16 designing, building, constructing, and rehabilitating a solid waste management  
17 system; and

18 (C) developing and implementing an estuary conservation and  
19 management program under 33 U.S.C. 1330;

20 (2) to provide the following types of financial assistance for the  
21 categories of projects listed in (1) of this subsection:

22 (A) making loans to municipalities and other qualified entities;

23 (B) buying or refinancing the debt obligations of a municipality  
24 or other qualified entity;

25 (C) providing collateral security for or purchasing insurance for  
26 a municipal or state agency debt obligation; and

27 (3) to pay and secure the payment of the principal of and interest on  
28 revenue bonds issued by the state and to pay the costs of issuance and administration  
29 of the bonds, so long as the proceeds of the bond sale are deposited in the Alaska  
30 clean water fund.

31 \* **Sec. 7.** AS 46.03.032(f) is repealed and reenacted to read:

1 (f) The department  
2 (1) may spend money from the Alaska clean water fund to pay the  
3 costs of  
4 (A) administering the fund; and  
5 (B) the department in conducting activities under this section  
6 and AS 37.15.560 - 37.15.605, including the costs of issuance and  
7 administration as defined in AS 37.15.605;  
8 (2) shall spend money from the Alaska clean water fund to pay  
9 (A) into the bond redemption fund (AS 37.15.565), and into any  
10 other bond redemption fund or account created by a relevant bond resolution,  
11 the amount certified by the state bond committee under AS 37.15.585; and  
12 (B) the costs of the state bond committee in conducting activities  
13 under this section and AS 37.15.560 - 37.15.605, including the costs of  
14 issuance and administration as defined in AS 37.15.605.

15 \* **Sec. 8.** AS 46.03.032(g) is amended to read:

16 (g) A municipality **or other qualified entity** wishing to borrow money from  
17 the Alaska clean water fund shall demonstrate to the satisfaction of the department that  
18 **it** [THE MUNICIPALITY]

19 (1) has sufficient legal authority to incur the debt for which it is  
20 applying; and

21 (2) will establish and maintain a dedicated source of revenue or other  
22 acceptable revenue source for repayment of the loan **and sufficient reserves for the**  
23 **loan as may be necessary.**

24 \* **Sec. 9.** AS 46.03.032(j) is amended to read:

25 (j) **Except as necessary to comply with the covenants of a bond resolution**  
26 **under AS 37.15.573, a** [A] loan made by the department shall be made according to  
27 the standards, criteria, and procedures established by regulations under this section.

28 **A loan made from the Alaska clean water fund may be subject to the state aid**  
29 **intercept provisions of AS 37.15.575. Except as necessary to comply with the**  
30 **covenants of a bond resolution under AS 37.15.573, in** [IN] making a loan from the  
31 Alaska clean water fund for a solid waste management **system** [FACILITY], the

1 department shall give priority to a project that will alleviate severe health or  
2 environmental concerns in the community or region proposing the system  
3 [FACILITY]. In addition, the department may consider

4 (1) the extent of local or regional support for the proposed system  
5 [FACILITY]; and

6 (2) the extent to which the applicant can demonstrate that the full range  
7 of solid waste management options has been reasonably considered and that the  
8 proposed system [FACILITY] is consistent with the promotion of the solid and  
9 hazardous waste management practices established in AS 46.06.021 [IN THE  
10 FOLLOWING ORDER OF PRIORITY:

11 (A) WASTE SOURCE REDUCTION;

12 (B) RECYCLING OF WASTE;

13 (C) WASTE TREATMENT; AND

14 (D) WASTE DISPOSAL].

15 \* **Sec. 10.** AS 46.03.032(k) is amended to read:

16 (k) The department shall prepare reports required by the federal government  
17 in conjunction with federal capitalization grant award conditions. **The department**  
18 **shall also prepare reports and notices, including notices of default, required by**  
19 **the state bond committee in conjunction with bonds issued under AS 37.15.560 -**  
20 **37.15.605.** The department shall also prepare a biennial report on the Alaska clean  
21 water fund and notify the legislature that it is available on or before the first day of  
22 each first regular session of the legislature.

23 \* **Sec. 11.** AS 46.03.032(o) is amended to read:

24 (o) In this section,

25 (1) **"other qualified entity" means an intermunicipal or interstate**  
26 **agency as those terms are used in 33 U.S.C. 1383, and may include an authority,**  
27 **corporation, instrumentality, enterprise, or other entity formed through an**  
28 **agreement between a municipality and one or more other governmental entities**  
29 **under AS 29.35.010(13) or under art. X, sec. 13, Constitution of the State of**  
30 **Alaska, or between a municipality and a regional housing authority under**  
31 **AS 18.55.996(b);**

32 (2) "solid waste management system [FACILITY]" includes capital

1 improvements and equipment used for the purpose of solid and hazardous waste source  
2 reduction, recycling, treatment, or disposal.

3 \* **Sec. 12.** AS 46.03.032 is amended by adding a new subsection to read:

4 (p) Regulations adopted by the department under this section that would affect  
5 issuance or repayment of revenue bonds under AS 37.15.560 - 37.15.605 may not be  
6 inconsistent with those statutes or with regulations adopted by the state bond  
7 committee under those statutes. To the extent that regulations adopted by the  
8 department are inconsistent with AS 37.15.560 - AS 37.15.605, with regulations  
9 adopted by the state bond committee under those statutes, or with the covenants of a  
10 bond resolution adopted under AS 37.15.573, the provisions of AS 37.15.560 -  
11 37.15.605, the regulations adopted under those statutes, and the covenants of the bond  
12 resolution govern.

13 \* **Sec. 13.** The provisions of AS 37.15.583(b), enacted by sec. 2 of this Act, have the effect  
14 of changing Rule 3, Alaska Rules of Civil Procedure, by limiting, to the Superior Court for  
15 the State of Alaska, First Judicial District at Juneau, the venue district in which a proceeding  
16 under AS 37.15.583(a), enacted by sec. 2 of this Act, may be commenced and conducted.

17 \* **Sec. 14.** The provisions of AS 37.15.583(b), enacted by sec. 2 of this Act, take effect  
18 only if sec. 13 of this Act receives the two-thirds majority vote of each house required by art.  
19 IV, sec. 15, Constitution of the State of Alaska.