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Source

CSHB 401(RES)

Chapter No.

141

AN ACT

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

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: August 5, 1996

Actual Effective Date: November 3, 1996

AN ACT

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

7

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

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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 under AS 37.15.560 - 37.15.605 during a fiscal year, excluding refunding bonds.
16 The total unpaid principal amount of revenue bonds, including refunding bonds, but
17 excluding refunded bonds, issued under AS 37.15.560 - 37.15.605, may not exceed
18 \$150,000,000.

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

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

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

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

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

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

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

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

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

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1 of principal and interest, all under regulations and conditions of the committee.

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

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

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

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

1 in conformity with AS 37.15.560 - 37.15.605 and AS 46.03.032.

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

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

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

30 Sec. 37.15.583. ENFORCEMENT BY BOND OWNER. (a) The owner or
31 owners of not less than 10 percent of the aggregate principal amount of any series or

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1 issue of bonds or the trustee for the owners of the bonds or any series of them may,
2 by appropriate proceedings in state court, require and compel the transfer, setting aside,
3 and payment of money and the enforcement of all of the terms, conditions, and
4 covenants as required and provided in AS 37.15.560 - 37.15.605, AS 46.03.032, and
5 the bond resolution.

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

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

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

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

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

1 otherwise provided in this section.

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

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

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

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

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

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

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

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1 (2) "bond resolution" means the resolution or resolutions adopted by
2 the committee under AS 37.15.573 authorizing the issuance of bonds;

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

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

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

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

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

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

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

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

1 (b) The provisions of this section shall be liberally construed in order to
2 carry out the purposes for which they were enacted. The department shall
3 administer the Alaska clean water fund consistent with the requirements of this
4 section and AS 37.15.560 - 37.15.605.

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

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

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

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

12 (1) for the following categories of projects:

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

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

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

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

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

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

26 (C) providing collateral security for or purchasing insurance for
27 a municipal, state agency, or other qualified entity debt obligation; and

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

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

2 (f) The department

3 (1) may spend money from the Alaska clean water fund to pay the
4 costs of

5 (A) administering the fund; and

6 (B) the department in conducting activities under this section
7 and AS 37.15.560 - 37.15.605, including the costs of issuance and
8 administration as defined in AS 37.15.605;

9 (2) shall spend money from the Alaska clean water fund to pay

10 (A) into the bond redemption fund (AS 37.15.565), and into any
11 other bond redemption fund or account created by a relevant bond resolution,
12 the amount certified by the state bond committee under AS 37.15.585; and

13 (B) the costs of the state bond committee in conducting activities
14 under this section and AS 37.15.560 - 37.15.605, including the costs of
15 issuance and administration as defined in AS 37.15.605.

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

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

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

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

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

26 (j) **Except as necessary to comply with the covenants of a bond resolution**
27 **under AS 37.15.573, a** [A] loan made by the department shall be made according to
28 the standards, criteria, and procedures established by regulations under this section.
29 **A loan made from the Alaska clean water fund may be subject to the state aid**
30 **intercept provisions of AS 37.15.575. Except as necessary to comply with the**
31 **covenants of a bond resolution under AS 37.15.573, in** [IN] making a loan from the

1 Alaska clean water fund for a solid waste management system [FACILITY], the
2 department shall give priority to a project that will alleviate severe health or
3 environmental concerns in the community or region proposing the system
4 [FACILITY]. In addition, the department may consider

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

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

12 (A) WASTE SOURCE REDUCTION;

13 (B) RECYCLING OF WASTE;

14 (C) WASTE TREATMENT; AND

15 (D) WASTE DISPOSAL].

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

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

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

25 (o) In this section,

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

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1 AS 18.55.996(b):

2 (2) "solid waste management system [FACILITY]" includes capital
3 improvements and equipment used for the purpose of solid and hazardous waste source
4 reduction, recycling, treatment, or disposal.

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

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

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

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