

HOUSE BILL NO. 401

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/8/96

Referred: Community and Regional Affairs, State Affairs, Resources, Finance

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
3 solid waste management systems, and estuary conservation and management
4 projects; authorizing the use of the Alaska clean water fund to pay and secure
5 the bonds and to pay costs related to issuance and administration of the
6 bonds; authorizing certain measures to secure payment of the bonds; and
7 amending Alaska Rule of Civil Procedure 3."

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 Alaska municipalities
5 and state agencies 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. The bonds are to be issued by the state bond committee, as provided
8 in AS 37.15.560 - 37.15.605, as part of the Alaska clean water fund revolving loan
9 fund program (AS 46.03.032), a public enterprise of the state. The net proceeds of the
10 sale of the bonds, remaining after any payment of costs of issuance and administration,
11 shall be paid into the Alaska clean water fund. Any accrued interest paid on the bonds
12 shall be paid into the Alaska clean water fund, for transfer to the Alaska clean water
13 fund revenue bond redemption fund (AS 37.15.565).

14 (b) The bonds do not constitute a general obligation of the state. No
15 authorization by the voters of the state or the legislature is required.

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

18 (d) The state bond committee may contract for the services of underwriters,
19 paying agents, trustees, bond printers, rating agencies, bond insurance, credit
20 enhancement providers, accountants, financial advisors, and bond counsel, and other
21 services as are necessary to accomplish the bond issuance and sale.

22 Sec. 37.15.565. BOND REDEMPTION FUND. (a) There is established a
23 special fund of the state, known as the "Alaska clean water fund revenue bond
24 redemption fund," which is a trust fund for paying and securing the payment of the
25 principal of and interest and redemption premium, if any, on the bonds and which shall
26 be at all times completely segregated and set apart from all other funds of the state.
27 The committee, on behalf of the state, may obligate and bind the state to set aside and
28 pay into the bond redemption fund, on a monthly or other periodic basis, any part or
29 parts of, or all of, or a fixed proportion of, or a fixed amount of the money in the
30 Alaska clean water fund (AS 46.03.032) sufficient to pay the principal of and interest
31 and redemption premium, if any, on the bonds and, if it considers it necessary, to set

1 aside and maintain reserves for this purpose. The bond redemption fund shall be
2 drawn upon only for the purpose of paying the principal of and interest and redemption
3 premium, if any, on the bonds, together with related trustee fees, if any.

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

9 (c) Separate accounts may be created in the bond redemption fund for the
10 purposes of paying and securing the bonds. Such accounts may be combined for
11 purposes of investment.

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

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

28 (c) The committee may pledge to the payment of the principal of and interest
29 on bonds issued by the committee part or all of the legally available money or other
30 assets on hand in the Alaska clean water fund (AS 46.03.032); part or all of the
31 revenue of the Alaska clean water fund, including federal capitalization grants, the

1 proceeds of loan repayments, and interest on money in the fund; the proceeds of the
2 sale of bonds; and money on hand in the bond redemption fund. Revenue of the
3 Alaska clean water fund, if so pledged, must be paid into the Alaska clean water fund.
4 The committee may provide for the issuance of additional bonds, secured by a pledge
5 of such money and revenue, ranking junior to, senior to, or on a parity with,
6 outstanding bonds, upon conditions prescribed in the bond resolution. A pledge of
7 loan repayments securing bonds may be made applicable to specific loans from the
8 Alaska clean water fund or, on a pooled basis, to all loan repayments received.

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

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

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

28 Sec. 37.15.573. BOND RESOLUTION. The committee shall authorize the
29 issuance of bonds by adopting a resolution and shall prepare all other documents and
30 proceedings necessary for the issuance, sale, and delivery of the bonds or any part or
31 series of them. The bond resolution must fix the principal amount, denominations,

1 date, maturities, manner of sale, place or places of payment, rights of redemption, if
2 any, terms, form, conditions, and covenants of the bonds or each series of them. A
3 bond resolution may state terms, conditions, amounts, and other limitations on loans
4 to be made from the Alaska clean water fund (AS 46.03.032) from the relevant bond
5 proceeds.

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

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

25 Sec. 37.15.583. ENFORCEMENT BY BONDOWNER. (a) The owner or
26 owners of not less than 10 percent of the aggregate principal amount of any series or
27 issue of bonds or the trustee for the owners of the bonds or any series of them may,
28 by appropriate proceedings in state court, require and compel the transfer, setting aside,
29 and payment of money and the enforcement of all of the terms, conditions, and
30 covenants as required and provided in AS 37.15.560 - 37.15.605, AS 46.03.032, and
31 the bond resolution.

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

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

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

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

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

28 (c) Refunding bonds may be issued in a principal amount sufficient to provide
29 money for the advance or current refunding of all bonds to be refunded and interest
30 on the refunded bonds and, in addition, for the payment of all costs of issuance and
31 administration of the refunding bonds. These expenses also include the difference in

1 amount between the par value of the refunding bonds and any amount less than par for
2 which the refunding bonds are sold; the premium, if any, necessary to be paid in order
3 to call or retire the outstanding bonds and the interest accruing on them to date of the
4 call or retirement; and other such costs. The committee is authorized to incur such
5 expenses.

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

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

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

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

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

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

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

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

31 (4) "commissioner of revenue" means the principal executive officer

1 of the Department of Revenue as provided in AS 44.25.010, or a successor;

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

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

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

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

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

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

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

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

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

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

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

7 (1) for the following categories of projects:

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

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

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

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

18 (A) making loans to municipalities and state agencies;

19 (B) buying or refinancing the debt obligations of a municipality
20 or state agency;

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

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

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

28 (f) The department

29 (1) may spend money from the Alaska clean water fund to pay

30 (A) the costs of administering the fund; and

31 (B) the costs of the department in conducting activities under

1 this section and AS 37.15.560 - 37.15.605, including the costs of issuance and
2 administration as defined in AS 37.15.605;

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

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

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

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

11 (g) A municipality **or state agency** wishing to borrow money from the Alaska
12 clean water fund shall demonstrate to the satisfaction of the department that **it** [THE
13 MUNICIPALITY]

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

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

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

20 (j) **Except as necessary to comply with the covenants of a bond resolution**
21 **under AS 37.15.573, a** [A] loan made by the department shall be made according to
22 the standards, criteria, and procedures established by regulations under this section.
23 **A loan made from the Alaska clean water fund may be subject to the state aid**
24 **intercept provisions of AS 37.15.575. Except as necessary to comply with the**
25 **covenants of a bond resolution under AS 37.15.573, in** [IN] making a loan from the
26 Alaska clean water fund for a solid waste management **system** [FACILITY], the
27 department shall give priority to a project that will alleviate severe health or
28 environmental concerns in the community or region proposing the **system**
29 [FACILITY]. In addition, the department may consider

30 (1) the extent of local or regional support for the proposed **system**
31 [FACILITY]; and

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

6 (A) WASTE SOURCE REDUCTION;

7 (B) RECYCLING OF WASTE;

8 (C) WASTE TREATMENT; AND

9 (D) WASTE DISPOSAL].

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

11 (k) The department shall prepare reports required by the federal government
12 in conjunction with federal capitalization grant award conditions. **The department**
13 **shall also prepare reports and notices, including notices of default, required by**
14 **the state bond committee in conjunction with bonds issued under AS 37.15.560 -**
15 **37.15.605.** The department shall also prepare a biennial report on the Alaska clean
16 water fund and notify the legislature that it is available on or before the first day of
17 each first regular session of the legislature.

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

19 (o) In this section,

20 (1) "solid waste management system [FACILITY]" includes capital
21 improvements and equipment used for the purpose of solid and hazardous waste source
22 reduction, recycling, treatment, or disposal;

23 (2) **"state agency" means a department, authority, public**
24 **corporation, instrumentality, or other administrative unit of the executive branch**
25 **of state government.**

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

27 (p) Regulations adopted by the department under this section that would affect
28 issuance or repayment of revenue bonds under AS 37.15.560 - 37.15.605 may not be
29 inconsistent with those statutes or with regulations adopted by the state bond
30 committee under those statutes. To the extent that regulations adopted by the
31 department are inconsistent with AS 37.15.560 - AS 37.15.605, with regulations

1 adopted by the state bond committee under those statutes, or with the covenants of a
2 bond resolution adopted under AS 37.15.573, the provisions of AS 37.15.560 -
3 37.15.605, the regulations adopted under those statutes, and the covenants of the bond
4 resolution govern.

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

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