

CS FOR SENATE BILL NO. 207(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/28/96
Referred: Finance

Sponsor(s): SENATE 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
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 bonds;
6 authorizing certain measures to secure payment of the bonds; and amending
7 Rule 3, Alaska 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. It is the intent of the legislature in enacting this Act to establish a

1 public enterprise of the State of Alaska, as permitted by art. IX, sec. 11, Constitution of the
2 State of Alaska, for the contracting of debt through the issuance of revenue bonds secured by
3 the revenues of the enterprise.

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

5 **ARTICLE 3A. ALASKA CLEAN WATER FUND BONDS.**

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

17 (b) The state bond committee may not issue more than \$15,000,000 in revenue
18 bonds under AS 37.15.560 - 37.15.605 during a fiscal year, excluding refunding bonds.
19 The total unpaid principal amount of revenue bonds may not exceed \$150,000,000,
20 including refunding bonds, but excluding refunded bonds, issued under AS 37.15.560 -
21 37.15.605.

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

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

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

30 **Sec. 37.15.565. BOND REDEMPTION FUND.** (a) There is established a
31 special fund of the state, known as the "Alaska clean water fund revenue bond

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

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

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

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

25 (b) The bonds mature at the time or times fixed by the committee. The bonds
26 may be subject to redemption before their fixed maturities, as determined by the
27 committee, with or without a premium or premiums. The bonds may be in
28 denominations determined by the committee; may be issued in fully or partially
29 registered form; must be payable as to principal and interest at the place or places
30 determined by the committee; must be signed on behalf of the state in the manner
31 provided by the committee; must be issued under and subject to the terms, conditions,

1 covenants, and protective features safeguarding payment of the bonds and relating to
2 the funding of projects as found necessary by the committee, including covenants
3 requiring the setting aside and maintenance of certain reserves to secure the payment
4 of principal and interest, all under regulations and conditions of the committee.

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

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

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

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

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

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

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

1 contract with the holders.

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

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

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

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

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

29 (b) The issuance of refunding bonds need not be authorized by the voters of
30 the state or by an act of the legislature. The committee shall adopt the resolution or
31 resolutions and prepare all other documents and proceedings necessary for the

1 issuance, exchange or sale, and delivery of the refunding bonds. All provisions of
2 AS 37.15.560 - 37.15.605 and AS 46.03.032 applicable to revenue bonds are applicable
3 to the refunding bonds and to the issuance, sale, or exchange of them, except as
4 otherwise provided in this section.

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

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

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

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;

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 department shall administer the Alaska clean water fund **consistent**
2 **with the requirements of this section and AS 37.15.560 - 37.15.605.**

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

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

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

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

10 (1) for the following categories of projects:

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

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

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

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

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

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

24 (C) providing collateral security for or purchasing insurance for
25 a municipal or other qualified entity debt obligation; and

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

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

31 (f) The department

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

3 (A) administering the fund; and

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

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

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

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

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

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

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

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

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

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

1 environmental concerns in the community or region proposing the system
2 [FACILITY]. In addition, the department may consider

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

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

10 (A) WASTE SOURCE REDUCTION;

11 (B) RECYCLING OF WASTE;

12 (C) WASTE TREATMENT; AND

13 (D) WASTE DISPOSAL].

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

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

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

23 (o) In this section,

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

31 (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 Rule of Civil Procedure by limiting, to the Superior Court for the
15 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
19 art. IV, sec. 15, Constitution of the State of Alaska.