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Chapter No.

61

AN ACT

Relating to issuance and sale of revenue bonds to fund drinking water projects, to the Alaska clean water fund, to creation of an Alaska clean water administrative fund and an Alaska drinking water administrative fund, to fees to be charged in connection with loans made from the Alaska clean water fund and the Alaska drinking water fund, and to clarification of the character and permissible uses of the Alaska drinking water fund; amending Rule 3, Alaska Rules of Civil Procedure; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: May 19, 2000

Actual Effective Date: Section 27 takes effect May 20, 2000; remainder of Act takes effect August 17, 2000

AN ACT

1 Relating to issuance and sale of revenue bonds to fund drinking water projects, to the Alaska
2 clean water fund, to creation of an Alaska clean water administrative fund and an Alaska
3 drinking water administrative fund, to fees to be charged in connection with loans made from
4 the Alaska clean water fund and the Alaska drinking water fund, and to clarification of the
5 character and permissible uses of the Alaska drinking water fund; amending Rule 3, Alaska
6 Rules of Civil Procedure; and providing for an effective date.

7

8 * Section 1. AS 37.15.560(a) is amended to read:

9 (a) For purposes of providing part of the money to be used to provide financial
10 assistance to municipalities and other qualified entities under AS 46.03.032 and
11 46.03.036 [FOR THE PURPOSES STATED IN AS 46.03.032(d)], including the costs
12 of bond issuance and administration, the issuance and sale of revenue bonds of the

1 state is authorized subject to (b) of this section. The bonds are to be issued by the
2 state bond committee, as provided in AS 37.15.560 - 37.15.605, as part of the Alaska
3 clean water fund and the Alaska drinking water fund revolving loan fund programs
4 [PROGRAM] (AS 46.03.032 and 46.03.036), [A] public enterprises [ENTERPRISE]
5 of the state. The net proceeds of the sale of the bonds [,] remaining after any payment
6 of costs of issuance and administration [,] shall be paid into the Alaska clean water
7 fund or the Alaska drinking water fund, as appropriate. Accrued interest paid on
8 the bonds shall be paid into the Alaska clean water fund or the Alaska drinking
9 water fund for transfer to the Alaska clean water fund revenue bond redemption fund
10 or the Alaska drinking water fund revenue bond redemption fund (AS 37.15.565),
11 as appropriate.

12 * Sec. 2. AS 37.15.560(b) is amended to read:

13 (b) The state bond committee may not issue more than \$15,000,000 in revenue
14 bonds under AS 37.15.560 - 37.15.605 during a fiscal year for each revolving loan
15 fund program referred to in (a) of this section, excluding refunding bonds. The
16 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 for each program.

19 * Sec. 3. AS 37.15.565 is amended to read:

20 Sec. 37.15.565. Bond redemption funds [FUND]. (a) There are [IS]
21 established [A] special funds [FUND] of the state, known as the "Alaska clean water
22 fund revenue bond redemption fund [,]" and the "Alaska drinking water fund
23 revenue bond redemption fund." which are [IS A] trust funds [FUND] for paying
24 and securing the payment of the principal of and interest and redemption premium, if
25 any, on the bonds and which shall be at all times completely segregated and set apart
26 from all other funds of the state. The committee, on behalf of the state, may obligate
27 and bind the state to set aside and pay into the bond redemption funds [FUND], on
28 a monthly or other periodic basis, any part or parts of, or all of, or a fixed proportion
29 of, or a fixed amount of the money in the Alaska clean water fund (AS 46.03.032) or
30 the Alaska drinking water fund (AS 46.03.036) sufficient to pay the principal of and
31 interest and redemption premium, if any, on the bonds and, if it considers it necessary,

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

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

10 (c) Separate accounts may be created in the bond redemption funds [FUND]
11 for the purposes of paying and securing the bonds. The accounts may be combined for
12 purposes of investment and for financial support to achieve the purposes of
13 AS 37.15.570(c).

14 * Sec. 4. AS 37.15.570(c) is amended to read:

15 (c) The committee may pledge to the payment of the principal of and interest
16 on bonds issued by the committee part or all of the legally available money or other
17 assets on hand in the Alaska clean water fund (AS 46.03.032) or the Alaska drinking
18 water fund (AS 46.03.036); part or all of the revenue of the Alaska clean water fund
19 or the Alaska drinking water fund, including federal capitalization grants, the
20 proceeds of loan repayments, and interest on money in the funds [FUND]; the
21 proceeds of the sale of bonds; and money on hand in the bond redemption funds
22 [FUND]. Revenue of the Alaska clean water fund or the Alaska drinking water fund,
23 if so pledged, must be paid into the Alaska clean water fund or the Alaska drinking
24 water fund, as appropriate. The committee may provide for the issuance of
25 additional bonds, secured by a pledge of such money and revenue, ranking junior to,
26 senior to, or on a parity with, outstanding bonds, upon conditions prescribed in the
27 bond resolution. A pledge of loan repayments securing bonds may be made applicable
28 to specific loans from the Alaska clean water fund or the Alaska drinking water
29 fund, or, on a pooled basis, to all loan repayments received.

30 * Sec. 5. AS 37.15.570(d) is amended to read:

31 (d) If the committee finds it reasonably necessary, the committee may select

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1 a trustee or trustees for the holders of the bonds, or any series of them, for the
2 safeguarding and disbursement of any of the money in the bond redemption funds
3 [FUND] created by AS 37.15.565, or for duties with respect to the enforcement,
4 authentication, delivery, payment, and registration of the bonds as the committee may
5 determine. The committee shall fix the rights, duties, powers, and obligations of the
6 trustee or trustees.

7 * **Sec. 6.** AS 37.15.570(e) is amended to read:

8 (e) In its determination of all matters and questions relating to the issuance and
9 sale of the bonds and the fixing of their maturities, terms, conditions, and covenants
10 as provided in (a) - (d) of this section, the decisions of the committee shall be those
11 that are reasonably necessary for the best interests of the state and its inhabitants and
12 that will accomplish the most advantageous sale of the bonds, with due regard,
13 however, for the continued funding under AS 46.03.032 and AS 46.03.036 of the
14 categories of projects identified in AS 46.03.032(d) and 46.03.036(b). Decisions of
15 the committee, as expressed in a bond resolution, are final and are conclusively
16 considered to comply with the requirements of AS 37.15.560 - 37.15.605, [AND]
17 AS 46.03.032, and 46.03.036.

18 * **Sec. 7.** AS 37.15.570(f) is amended to read:

19 (f) A bond resolution may provide that the bonds issued must contain a recital
20 that they are issued under AS 37.15.560 - 37.15.605 and under AS 46.03.032 or
21 46.03.036, as appropriate, and a bond containing this recital is conclusively
22 considered to be valid and to have been issued in conformity with AS 37.15.560 -
23 37.15.605 and with AS 46.03.032 or 46.03.036, as appropriate.

24 * **Sec. 8.** AS 37.15.573 is amended to read:

25 **Sec. 37.15.573. Bond resolution.** The committee shall authorize the issuance
26 of bonds by adopting a resolution and shall prepare all other documents and
27 proceedings necessary for the issuance, sale, and delivery of the bonds or any part or
28 series of them. The bond resolution must fix the principal amount, denominations,
29 date, maturities, manner of sale, place or places of payment, rights of redemption, if
30 any, terms, form, conditions, and covenants of the bonds or each series of them. A
31 bond resolution may state terms, conditions, amounts, and other limitations on loans

1 to be made from the Alaska clean water fund (AS 46.03.032) or the Alaska drinking
2 water fund (AS 46.03.036), as appropriate, from the relevant bond proceeds.

3 * **Sec. 9.** AS 37.15.575 is amended to read:

4 **Sec. 37.15.575. State aid intercept.** If a municipality is in [THE] default on
5 the payment of principal or interest on a loan from the Alaska clean water fund
6 (AS 46.03.032) or the Alaska drinking water fund (AS 46.03.036), the committee
7 may provide written notice of default to any state agency that is the custodian of
8 money that is payable to the municipality. If the committee determines to provide
9 notice, a separate written notice shall be given in each instance of default.
10 Notwithstanding any other provision of law, at any time after receipt of written notice
11 of default, the agency head shall withhold payment of the money from the
12 municipality. The agency head shall pay over the withheld money to the committee
13 for deposit in the Alaska clean water fund or the Alaska drinking water fund, as
14 appropriate, for the purpose of paying or securing the principal and interest on the
15 loan.

16 * **Sec. 10.** AS 37.15.580 is amended to read:

17 **Sec. 37.15.580. Pledge of the state.** The state pledges to and agrees with the
18 holders of bonds issued by the committee under AS 37.15.560 - 37.15.605 and under
19 AS 46.03.032 or 46.03.036, as appropriate, that the state will not limit or alter the
20 rights and powers vested in the committee by AS 37.15.560 - 37.15.605 and by
21 AS 46.03.032 or 46.03.036, as appropriate, to fulfill the terms of any contract made
22 by the committee with the holders, or in any way impair the rights and remedies of the
23 holders until the principal amount of the bonds, together with the interest on them with
24 interest on unpaid installments of interest, are fully met and discharged. The
25 committee may include this pledge and agreement of the state in a contract with the
26 holders.

27 * **Sec. 11.** AS 37.15.583(a) is amended to read:

28 (a) The owner or owners of not less than 10 percent of the aggregate principal
29 amount of any series or issue of bonds or the trustee for the owners of the bonds or
30 any series of them may, by appropriate proceedings in state court, require and compel
31 the transfer, setting aside, and payment of money and the enforcement of all of the

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1 terms, conditions, and covenants as required and provided in AS 37.15.560 -
2 37.15.605, AS 46.03.032 or 46.03.036, as appropriate, and the bond resolution.

3 * **Sec. 12.** AS 37.15.585 is amended to read:

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

14 * **Sec. 13.** AS 37.15.587 is amended to read:

15 **Sec. 37.15.587. Purposes and sufficiency of revenue.** The proceeds of bonds
16 may be used for the purposes described in AS 46.03.032 or 46.03.036, as appropriate
17 [AS 46.03.032(d)]. Bonds may not be issued unless the committee first finds that
18 revenue to be derived from repayment of loans from the Alaska clean water fund or
19 the Alaska drinking water fund, as appropriate, will be sufficient, together with
20 other available money, to comply with all covenants of the bond resolutions.

21 * **Sec. 14.** AS 37.15.590(b) is amended to read:

22 (b) The issuance of refunding bonds need not be authorized by the voters of
23 the state or by an act of the legislature. The committee shall adopt the resolution or
24 resolutions and prepare all other documents and proceedings necessary for the
25 issuance, exchange or sale, and delivery of the refunding bonds. All provisions of
26 AS 37.15.560 - 37.15.605 and of AS 46.03.032 and 46.03.036, as appropriate,
27 applicable to revenue bonds are applicable to the refunding bonds and to the issuance,
28 sale, or exchange of them, except as otherwise provided in this section.

29 * **Sec. 15.** AS 37.15.605(1) is amended to read:

30 (1) "bond redemption funds [FUND]" means the Alaska clean water
31 fund revenue bond redemption fund and the Alaska drinking water fund revenue

1 **bond redemption fund** established in AS 37.15.565, **as applicable**;

2 * Sec. 16. AS 37.15.605(3) is amended to read:

3 (3) "bonds" means the Alaska clean water fund revenue bonds **or the**
4 **Alaska drinking water fund revenue bonds** authorized in AS 37.15.560 - 37.15.605,
5 **as applicable**;

6 * Sec. 17. AS 37.15.605(7) is amended to read:

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

15 * Sec. 18. AS 46.03.032(p)(1) is amended to read:

16 (1) "other qualified entity" means

17 **(A)** an intermunicipal or interstate agency as those terms are
18 used in 33 U.S.C. 1383, and may include an authority, corporation,
19 instrumentality, enterprise, or other entity formed through an agreement
20 between a municipality and one or more other governmental entities under
21 AS 29.35.010(13) or under art. X, sec. 13, Constitution of the State of Alaska,
22 or between a municipality and a regional housing authority under
23 AS 18.55.996(b); **or**

24 **(B) an organization that is eligible for assistance under 33**
25 **U.S.C. 1383, that is not exempted from regulation under AS 42.05.711(d),**
26 **that provides wastewater service under a certificate of convenience and**
27 **necessity from the former Alaska Public Utilities Commission or the**
28 **Regulatory Commission of Alaska, and that is economically regulated by**
29 **the Regulatory Commission of Alaska;**

30 * Sec. 19. AS 46.03.034 is repealed and reenacted to read:

31 Sec. 46.03.034. Alaska clean water administrative fund. (a) The Alaska

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1 clean water administrative fund is established as a separate fund that is distinct from
2 other money or funds in the treasury. The fund is composed of two accounts, the

3 (1) Alaska clean water administrative operating account; and

4 (2) Alaska clean water administrative income account.

5 (b) The legislature may appropriate to the Alaska clean water administrative
6 operating account the annual balance of the Alaska clean water administrative income
7 account.

8 (c) The department shall administer the Alaska clean water administrative
9 fund.

10 (d) The Alaska clean water administrative operating account may be used to
11 pay for the department's operational and administrative costs necessary to manage the
12 Alaska clean water fund and the Alaska clean water administrative fund and for such
13 other purposes permitted by federal law.

14 (e) Money received in payment of fees charged by the department under the
15 authority of AS 46.03.035 and earnings on the Alaska clean water administrative fund
16 shall be deposited in the Alaska clean water administrative income account.

17 * Sec. 20. AS 46.03 is amended by adding a new section to read:

18 **Sec. 46.03.035. Fees charged for loans made from the Alaska clean water**
19 **fund.** The department may charge and collect reasonable fees in connection with
20 making and servicing loans made by the department under the authority of
21 AS 46.03.032. The department shall by regulation specify the rates and amounts of
22 the fees.

23 * Sec. 21. AS 46.03.036 is repealed and reenacted to read:

24 **Sec. 46.03.036. Alaska drinking water fund.** (a) The Alaska drinking water
25 fund is established as a separate fund that is distinct from other money or funds in the
26 treasury. The fund shall be administered by the department. The Alaska drinking
27 water fund consists of the following items, all of which shall be deposited into the
28 fund upon receipt:

29 (1) the proceeds and accrued interest received from the sale of revenue
30 bonds issued under AS 37.15.560 - 37.15.605 and secured by the Alaska drinking
31 water fund;

1 (2) money appropriated by the legislature, including federal
2 capitalization grants;

3 (3) loan repayments; and

4 (4) interest received from loan repayments and interest received from
5 investment of money in the Alaska drinking water fund.

6 (b) Except as otherwise limited by federal law, the department may use money
7 in the Alaska drinking water fund to

8 (1) provide financial assistance for drinking water system projects,
9 including projects to plan, design, build, construct, or rehabilitate a public drinking
10 water collection, storage, treatment, or distribution system, to

11 (A) municipalities;

12 (B) organizations that are not exempted from regulation under
13 AS 42.05.711(d), that provide water service under a certificate of convenience
14 and necessity from the former Alaska Public Utilities Commission or the
15 Regulatory Commission of Alaska, and that are economically regulated by the
16 Regulatory Commission of Alaska;

17 (2) earn interest on the amounts deposited in the fund;

18 (3) pay the costs of administering the fund and conducting activities
19 under this section and AS 37.15.560 - 37.15.605, including the costs of issuance and
20 administration as defined in AS 37.15.605;

21 (4) pay and secure the payment of the principal of and interest on
22 revenue bonds issued by the state and to pay the costs of issuance and administration
23 of the bonds, so long as the proceeds of the bond sale are deposited in the Alaska
24 drinking water fund;

25 (5) pay

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

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

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1 (c) Repayment of loans shall be secured in a manner that the department
2 determines is feasible to ensure prompt repayment under a loan agreement entered into
3 with the borrower.

4 (d) Separate accounts may be created in the Alaska drinking water fund. The
5 accounts may be combined for purposes of investment.

6 (e) The department may adopt regulations necessary to implement the Alaska
7 drinking water fund in a manner consistent with federal law. The regulations adopted
8 by the department under (h) of this section may establish different loan terms, charges,
9 rates, and standards for different classes of borrowers to accommodate the different
10 levels of risk and costs that the different classes may present.

11 (f) An organization that qualifies for financial assistance under (b)(1)(B) of this
12 section or a municipality wishing to borrow money from the Alaska drinking water
13 fund shall demonstrate to the satisfaction of the department that it

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 (g) Allocation of Alaska drinking water fund loans shall be made in
20 accordance with a priority list developed by the department, using criteria specified in
21 regulations adopted by the department. A loan may not be made to an organization
22 that is not a municipality to refinance debt of that organization.

23 (h) Before making a loan from the Alaska drinking water fund, the department
24 shall, by regulation, specify

25 (1) standards for the eligibility of borrowers and the type of projects
26 to be financed with loans;

27 (2) loan term and interest rate policies for loans made from the fund;

28 (3) standards regarding the technical and economic viability and
29 revenue of self-sufficiency of eligible projects;

30 (4) collateral or other security required for loans;

31 (5) terms of loans; and

1 (6) other relevant standards or procedures.

2 (i) Except as necessary to comply with the covenants of a bond resolution
3 under AS 37.15.573, a loan made by the department shall be made according to the
4 standards and procedures established by regulations under this section. A loan made
5 from the Alaska drinking water fund may be subject to the state aid intercept
6 provisions of AS 37.15.575.

7 (j) The department shall also prepare reports and notices, including notices of
8 default, required by the state bond committee in conjunction with bonds issued under
9 AS 37.15.560 - 37.15.605.

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

19 * **Sec. 22.** AS 46.03.038 is repealed and reenacted to read:

20 **Sec. 46.03.038. Alaska drinking water administrative fund.** (a) The Alaska
21 drinking water administrative fund is established as a separate fund that is distinct from
22 other money or funds in the state treasury. The fund is composed of two accounts, the

23 (1) Alaska drinking water administrative operating account; and

24 (2) Alaska drinking water administrative income account.

25 (b) The legislature may appropriate to the Alaska drinking water administrative
26 operating account the annual balance of the Alaska drinking water administrative
27 income account.

28 (c) The department shall administer the Alaska drinking water administrative
29 fund.

30 (d) The Alaska drinking water administrative operating account may be used
31 to pay for the department's operational and administrative costs necessary to manage

1 the Alaska drinking water fund and the Alaska drinking water administrative fund and
2 for such other purposes permitted by federal law.

3 (e) Money received in payment of fees charged by the department under the
4 authority of AS 46.03.039 and earnings on the Alaska drinking water administrative
5 fund shall be deposited in the Alaska drinking water administrative income account.

6 * Sec. 23. AS 46.03 is amended by adding a new section to read:

7 **Sec. 46.03.039. Fees charged for loans made from the Alaska drinking**
8 **water fund.** The department may charge and collect reasonable fees in connection
9 with making and servicing loans made by the department under the authority of
10 AS 46.03.036. The department shall by regulation specify the rates and amounts of
11 such fees.

12 * Sec. 24. The uncodified law of the State of Alaska is amended by adding a new section
13 to read:

14 **INDIRECT COURT RULE AMENDMENT.** The provisions of sec. 11 of this Act
15 have the effect of changing Rule 3, Alaska Rules of Civil Procedure, by limiting to the
16 Superior Court for the State of Alaska, First Judicial District at Juneau the venue district in
17 which a proceeding under AS 37.15.583(a) may be commenced and conducted.

18 * Sec. 25. The uncodified law of the State of Alaska is amended by adding a new section
19 to read:

20 **TEMPORARY LIMITATION ON LOANS.** Until July 1, 2002, loans may be made
21 from the Alaska drinking water fund only to municipalities, notwithstanding the provision
22 authorizing financial assistance to certain other organizations in AS 46.03.036(b)(1)(B), as
23 repealed and reenacted in sec. 21 of this Act.

24 * Sec. 26. The uncodified law of the State of Alaska is amended by adding a new section
25 to read:

26 **CONDITIONAL EFFECT.** Section 11 of this Act takes effect only if sec. 24 of this
27 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
28 Constitution of the State of Alaska.

29 * Sec. 27. The uncodified law of the State of Alaska is amended by adding a new section
30 to read:

31 **TRANSITION: REGULATIONS.** The respective state agencies may proceed to adopt

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- 1 any regulations necessary to implement their duties under this Act. The regulations take effect
- 2 under AS 44.62 (Administrative Procedure Act), but not before the effective date of secs. 1 -
- 3 23 and 25 of this Act.
- 4 * **Sec. 28.** Section 27 of this Act takes effect immediately under AS 01.10.070(c).