

CS FOR HOUSE BILL NO. 392(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 2/17/06

Referred: Labor and Commerce

Sponsor(s): REPRESENTATIVE WILSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing the establishment of regional solid waste management authorities;**
2 **relating to withdrawal from a port authority by a municipality; and providing for an**
3 **effective date."**

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

5 *** Section 1.** AS 29.35.070(a) is amended to read:

6 (a) The assembly acting for the area outside all cities in the borough and the
7 council acting for the area in a city may regulate, fix, establish, and change the rates
8 and charges imposed for a utility service provided to the municipality or its inhabitants
9 by a utility that is not subject to regulation under AS 42.05 unless that utility is
10 exempted from regulation under AS 42.05.711(a), (d) - (k), [OR] (o), or (p), or is
11 exempted under regulations adopted under AS 42.05.810 from complying with all or
12 part of AS 42.05.141 - 42.05.721.

13 *** Sec. 2.** AS 29.35.610(b) is amended to read:

14 (b) If an authority ceases to exist, its assets shall be distributed to the

1 municipalities that were participating [PARTICIPATED] in the authority on the day
 2 before the date of dissolution in proportion to the difference between their
 3 contributions to the authority and any outstanding debt or obligation of that
 4 municipality to the authority, provided that any obligation to bondholders then
 5 outstanding shall first be satisfied in full.

6 * **Sec. 3.** AS 29.35.610 is amended by adding a new subsection to read:

7 (c) A municipality that is participating in an authority with one or more other
 8 municipalities may withdraw from participation without dissolving the authority. The
 9 contributions to the authority made by the withdrawing municipality remain the
 10 property of the authority, and the municipality remains liable for obligations under any
 11 agreement with the authority or other participating municipalities unless the agreement
 12 is changed by the contractual parties. A municipality withdraws from participation in
 13 an authority by repealing the ordinance adopted under AS 29.35.605(a)(2) or (b).

14 * **Sec. 4.** AS 29.35 is amended by adding new sections to read:

15 **Article 10. Regional Solid Waste Management Authorities.**

16 **Sec. 29.35.800. Purpose of authorities.** The purpose of a regional solid waste
 17 management authority is to provide environmentally sound and cost-effective
 18 management of solid waste, including storage, collection, transportation, separation,
 19 processing, recycling, and disposal, to protect the public health, safety, and welfare;
 20 improve the environment of the state; recover resources and energy; and prevent
 21 pollution.

22 **Sec. 29.35.805. Establishment of regional solid waste management**
 23 **authorities.** (a) A regional solid waste management authority may be created in one of
 24 the following ways:

25 (1) the governing body of a municipality may, by ordinance, create a
 26 regional solid waste management authority as a public corporation of the municipality;

27 (2) the governing bodies of two or more municipalities may, by
 28 substantially identical ordinances adopted by each of the governing bodies, create a
 29 regional solid waste management authority as a public corporation of the
 30 municipalities.

31 (b) One or more municipalities may join an authority established under (a)(1)

1 or (2) of this section upon the adoption of substantially identical ordinances by the
2 governing bodies of each affected municipality.

3 (c) A regional solid waste management authority created under this section is
4 a body corporate and politic and an instrumentality of the municipality or
5 municipalities creating it but has a separate and independent legal existence.

6 (d) Creation of a regional solid waste management authority under
7 AS 29.35.800 - 29.35.925 is an exercise of a municipality's extraterritorial jurisdiction
8 under AS 29.35.020.

9 (e) The enabling ordinance by which a regional solid waste management
10 authority is established must specify the powers, boundaries, and limitations of the
11 regional solid waste management authority.

12 (f) An ordinance creating a regional solid waste management authority must
13 be approved by the voters of the municipality or municipalities participating in the
14 authority for the authority to be established.

15 (g) Nothing in AS 29.35.800 - 29.35.925 prevents a municipality or
16 municipalities from creating or participating in a public corporation, including a
17 regional solid waste management authority, in any form or manner not prohibited by
18 law. However, AS 29.35.800 - 29.35.925 only apply to and may only be used by a
19 regional solid waste management authority created under this section.

20 **Sec. 29.35.810. Dissolution of a regional solid waste management**
21 **authority.** (a) The enabling ordinance creating a regional solid waste management
22 authority must provide for the manner by which a regional solid waste management
23 authority may be dissolved.

24 (b) If an authority ceases to exist, its assets shall be distributed to each
25 municipality that was participating in the authority on the day before the date of
26 dissolution in proportion to the municipality's contribution to the authority less any
27 outstanding debt or obligation of that municipality to the authority. Any obligation to
28 bondholders then outstanding shall first be satisfied in full.

29 (c) A municipality that is participating in an authority with one or more other
30 municipalities may withdraw from participation without dissolving the authority. The
31 contributions to the authority made by the withdrawing municipality remain the

1 property of the authority, and the municipality remains liable for obligations under any
 2 agreement with the authority or other participating municipalities unless the agreement
 3 is changed by the contractual parties. A municipality withdraws from participation in
 4 an authority by repealing the ordinance adopted under AS 29.35.805(a)(2) or (b).

5 **Sec. 29.35.815. Municipal property.** (a) A municipality may transfer and
 6 otherwise convey or lease real property and improvements to real property to an
 7 authority for use by the authority for the purposes set out in the ordinance adopted
 8 under AS 29.35.805.

9 (b) A municipality may transfer and otherwise assign or lease personal
 10 property to an authority for use by the authority for the purposes set out in the
 11 ordinance adopted under AS 29.35.805.

12 **Sec. 29.35.820. Powers and duties.** (a) If provided in the enabling ordinance,
 13 an authority may

14 (1) sue and be sued;

15 (2) have a seal and alter it;

16 (3) acquire an interest in a project as necessary or appropriate to
 17 provide financing for the project, whether by purchase, gift, or lease;

18 (4) lease to others a project acquired by the authority on the terms and
 19 conditions the authority may consider advisable, including, without limitation,
 20 provisions for purchase or renewal;

21 (5) sell, by installment sale or otherwise, exchange, donate, convey, or
 22 encumber in any manner by mortgage or by creation of another security interest, real
 23 or personal property owned by it or in which it has an interest, including a project,
 24 when, in the judgment of the authority, the action is in furtherance of the authority's
 25 purposes;

26 (6) accept gifts, grants, or loans, under the terms and conditions
 27 imposed under the gift, grant, or loan, and enter into contracts, conveyances, or other
 28 transactions with a federal agency or an agency or instrumentality of the state, a
 29 municipality, a private organization, or another person;

30 (7) deposit or invest its funds, subject to agreements with bondholders;

31 (8) purchase or insure loans to finance the costs of projects;

- 1 (9) provide for security within the boundaries of the authority;
- 2 (10) enter into loan agreements for one or more projects on the terms
3 and conditions the authority considers advisable;
- 4 (11) acquire, manage, and operate projects the authority considers
5 necessary or appropriate to serve the authority's purposes;
- 6 (12) assist private lenders to make loans to finance the costs of projects
7 through loan commitments, short-term financing, or otherwise;
- 8 (13) charge fees or other forms of remuneration for the use or
9 possession of projects under the agreements described in this subsection; other
10 agreements relating to the projects, covenants, or representations made in bond
11 documents relating to the projects; or regulations of the authority relating to the
12 projects;
- 13 (14) exercise the powers of eminent domain and declaration of taking
14 within its physical boundaries under AS 29.35.030 to acquire land or materials for
15 authority purposes;
- 16 (15) regulate land use within the boundaries of the authority;
- 17 (16) defend and indemnify a current or former member of the board,
18 employee, or agent of the authority against all costs, expenses, judgments, and
19 liabilities, including attorney fees, incurred by or imposed on that person in connection
20 with a civil or criminal action in which the person is involved because of the person's
21 affiliation with the authority if the person acted in good faith on behalf of the authority
22 and within the scope of the person's official duties and powers;
- 23 (17) purchase insurance to protect and hold harmless its employees,
24 agents, and board members from an action, claim, or proceeding arising out of the
25 performance of, purported performance of, or failure to perform in good faith, duties
26 for the authority or arising out of employment with the authority and to hold them
27 harmless from expenses connected with the defense, settlement, or monetary
28 judgments from that action, claim, or proceeding; the purchase of insurance is subject
29 to the discretion of the board; insurance purchased under this paragraph is not
30 compensation to the insured person; and
- 31 (18) protect its assets, services, and employees by purchasing

1 insurance or providing for certain self-insurance retentions.

2 (b) An authority shall maintain casualty, property, business interruption,
3 marine, boiler and machinery, pollution liability, and other insurance in amounts
4 reasonably calculated to cover potential claims against the authority or a municipality
5 for bodily injury, death or disability, and property damage that arises from or is related
6 to authority operations and activities.

7 **Sec. 29.35.825. Bonds of a regional solid waste management authority;**
8 **superior court jurisdiction.** (a) If authorized by the enabling ordinance, an authority
9 may borrow money and issue bonds on which the principal and interest are payable

10 (1) exclusively from the income and receipts of, or other money
11 derived from, the project financed with the proceeds of the bonds;

12 (2) exclusively from the income and receipts of, or other money
13 derived from, designated projects or other sources, whether they are financed, insured,
14 or guaranteed in whole or in part with the proceeds of the bonds; or

15 (3) from its income and receipts or a designated part or parts of them.

16 (b) All bonds shall be sold at public or private sale in the manner, for the price
17 or prices, and at the time or times the authority may determine.

18 (c) Before issuing bonds, an authority shall provide for consideration at least
19 sufficient, in the judgment of the authority, to

20 (1) pay the principal of and interest on the bonds as they become due;

21 (2) create and maintain the reserves for the payment that the authority
22 considers necessary or desirable; and

23 (3) meet all obligations in connection with the lease or agreement and
24 all costs necessary to service the bonds, unless the lease or agreement provides that the
25 obligations are to be met or costs are to be paid by a party other than the authority.

26 (d) Bonds shall be authorized by resolution of the authority and shall be dated
27 and mature as the resolution may provide, except that a bond may not mature more
28 than 40 years after the date of its issue. Bonds shall bear interest at the rate or rates, be
29 in the denominations, be in the form, either coupon or registered, carry the registration
30 privileges, be executed in the manner, be payable in the medium of payment, at the
31 place or places, and be subject to the terms of redemption that the resolution or a

1 subsequent resolution may provide.

2 (e) All bonds issued under this section, regardless of form or character, are
3 negotiable instruments for all the purposes of AS 45.01 - AS 45.08, AS 45.12,
4 AS 45.14, and AS 45.29 (Uniform Commercial Code).

5 (f) The superior court has jurisdiction to hear and determine suits, actions, or
6 proceedings relating to an authority, including suits, actions, or proceedings brought to
7 foreclose or otherwise enforce a mortgage, pledge, assignment, or security interest
8 brought by or for the benefit or security of a holder of the authority's bonds or by a
9 trustee for or other representative of the holders.

10 **Sec. 29.35.830. Bonds eligible for investment.** Bonds issued under
11 AS 29.35.825 are securities in which public officers and public bodies of the state and
12 its political subdivisions, insurance companies, trust companies, banks, investment
13 companies, executors, administrators, trustees, and other fiduciaries may properly and
14 legally invest funds, including capital in their control or belonging to them. The bonds
15 may be deposited with a state or municipal officer of an agency or political
16 subdivision of the state for any purpose for which the deposit of bonds of the state is
17 authorized by law.

18 **Sec. 29.35.835. Validity of pledge.** The pledge of revenue of an authority to
19 the payment of the principal or interest on bonds or notes of the authority is valid and
20 binding from the time the pledge is made, and the revenue is immediately subject to
21 the lien of the pledge without physical delivery or further act. The lien of a pledge is
22 valid and binding against all parties having claims of any kind against the authority
23 irrespective of whether those parties have notice of the lien of the pledge.

24 **Sec. 29.35.840. Credit of state or a municipality not pledged.** (a) The state
25 and municipalities participating in an authority are not liable for the debts of that
26 authority. Bonds issued under AS 29.35.825 are payable solely from the revenue of
27 the authority and do not constitute a

28 (1) debt, liability, or obligation of the state or a municipality; or

29 (2) pledge of the faith and credit of the state or a municipality.

30 (b) An authority may not pledge the credit or the taxing power of the state or
31 its municipalities. A bond issued under AS 29.35.825 must contain on its face a

1 statement that

2 (1) the authority is not obligated to pay it or the interest on it except
3 from the revenue pledged for it; and

4 (2) the faith and credit of the taxing power of the state or of a political
5 subdivision of the state is not pledged to the payment of it.

6 **Sec. 29.35.845. Pledges of the state and municipalities.** The state and
7 municipalities participating in an authority pledge to and agree with the holders of
8 bonds issued under AS 29.35.825 and with the federal agency, if any, that loans or
9 contributes funds for a project of the authority that the state and the municipalities
10 participating in the authority will not limit or alter the rights and powers vested in the
11 authority by its enabling ordinance or other law so that it is unable to fulfill the terms
12 of a contract made by it with those holders or that federal agency or in any way impair
13 the rights and remedies of those holders or that federal agency until the bonds,
14 together with the interest on them and interest on unpaid installments of interest, and
15 all costs and expenses in connection with an action or proceeding by or on behalf of
16 those holders or that federal agency, are fully met and discharged. An authority may
17 include this pledge and agreement of the state and the municipalities participating in
18 the authority, to the extent that it refers to holders of bonds of the authority, in a
19 contract with those holders, and to the extent that it relates to a federal agency, in a
20 contract with that federal agency.

21 **Sec. 29.35.850. Limitation of liability.** A liability incurred by an authority
22 shall be satisfied exclusively from the assets or revenue of the authority. A creditor or
23 other person does not have a right of action against the state or a municipality
24 participating in an authority because of a debt, obligation, or liability of an authority.

25 **Sec. 29.35.855. Limitation on personal liability.** A board member or
26 employee of an authority is not subject to personal liability or accountability because
27 of the execution or issuance of bonds.

28 **Sec. 29.35.860. Fidelity bond.** An authority shall obtain a fidelity bond in an
29 amount determined by the board for board members and each executive officer
30 responsible for accounts and finances of that authority. A fidelity bond must be in
31 effect during the entire tenure in office of the bonded person.

1 **Sec. 29.35.865. No taxing authority.** An authority may not levy an income or
2 other tax.

3 **Sec. 29.35.870. Exemption from taxation.** (a) An authority exercising the
4 powers granted by the enabling ordinance under AS 29.35.800 - 29.35.925 is in all
5 respects for the benefit of the people of the municipalities participating in the authority
6 and the people of the state in general, for their well-being and prosperity, and for the
7 improvement of their social and economic condition. The real and personal property of
8 an authority and its assets, income, and receipts are exempt from all taxes and special
9 assessments of the state or a political subdivision of the state.

10 (b) Bonds issued by the authority under AS 29.35.825 are issued for an
11 essential public and governmental purpose; therefore, the bonds, the interest and
12 income from them, and all fees, charges, funds, revenue, income, and other money
13 pledged or available to pay or secure the payment of the bonds or interest on them are
14 exempt from taxation except for inheritance, transfer, and estate taxes.

15 (c) Notwithstanding the provisions of (a) of this section, an authority and the
16 municipalities participating in the authority may enter into agreements under which
17 the authority agrees to pay the participating municipalities' payments in lieu of taxes
18 and special assessments on real and personal property of the authority that is within
19 the taxing jurisdiction of the municipality.

20 (d) Nothing in this section creates a tax exemption with respect to the interests
21 of a business enterprise or other person, other than the authority, in property, assets,
22 income, or receipts, whether or not financed under AS 29.35.800 - 29.35.925.

23 **Sec. 29.35.875. Administration of regional solid waste management**
24 **authorities; board.** (a) An authority shall be governed by a board of directors, which
25 shall exercise the powers of the authority. The enabling ordinance establishing the
26 authority under AS 29.35.805 must specify the number, qualifications, manner of
27 appointment or election, and terms of members of the board.

28 (b) The board shall appoint a chief executive officer of the authority, who
29 serves at the pleasure of the board. The board shall fix the compensation of the chief
30 executive officer.

31 **Sec. 29.35.880. Continuation of collective bargaining agreements;**

1 **application of AS 23.40.070 - 23.40.260.** (a) A collective bargaining agreement for
 2 employees of the state or its political subdivisions who are transferred to an authority
 3 under AS 29.35.800 - 29.35.925 remain in effect for the term of the agreement or one
 4 year, whichever is longer, and are binding on the authority unless the parties agree to
 5 the contrary before the agreement expires. A labor-management negotiation impasse
 6 declared after a transfer of employees under this subsection but before the negotiation
 7 of a new collective bargaining agreement shall be resolved as provided in the
 8 collective bargaining agreement or, if the collective bargaining agreement does not
 9 provide for a resolution, as provided in AS 23.40.070 - 23.40.260.

10 (b) Employees of the state or a political subdivision of the state transferred to
 11 an authority shall retain, for one year following the date of transfer or for the duration
 12 of a collective bargaining agreement transferred under (a) of this section, whichever is
 13 greater, all rights of participation in fringe benefit programs available to the employees
 14 on the day before the transfer, or in substantially equivalent programs.

15 (c) AS 23.40.070 - 23.40.260 apply to employees of an authority established
 16 under AS 29.35.800 - 29.35.925 unless all municipalities participating in the authority
 17 are exempt under sec. 4, ch. 113, SLA 1972.

18 **Sec. 29.35.885. Bylaws and regulations.** (a) A board shall adopt bylaws and
 19 appropriate regulations consistent with the enabling ordinance to carry out its
 20 functions and purposes.

21 (b) A board shall adopt bylaws as soon after the authority is established as
 22 possible and may, from time to time, amend those bylaws. The bylaws may contain
 23 any provision not in conflict with law for managing the business of the authority and
 24 for conducting the affairs of the authority, including provisions relating to

25 (1) the time, place, and manner of calling, conducting, and giving
 26 notice of meetings of the board and committees of the board, if any;

27 (2) the compensation of directors, if any;

28 (3) the appointment and authority of committees of the board, if any;

29 (4) the appointment, duties, compensation, and tenure of officers,
 30 directors, the chief executive officer, and other employees, if any;

31 (5) procedures for adopting regulations;

1 (6) procedures for adopting bylaws;

2 (7) procedures for making annual reports and financial statements; and

3 (8) other matters for the conduct of business by the board.

4 **Sec. 29.35.890. Authority subject to public records and open meetings**
 5 **laws.** An authority established under AS 29.35.805 is subject to AS 40.25.110 -
 6 40.25.220 and to AS 44.62.310 and 44.62.312.

7 **Sec. 29.35.895. Annual report.** Within 90 days following the end of the fiscal
 8 year of an authority, the board shall distribute to the mayor and governing body of
 9 each municipality participating in the authority a report describing the operations and
 10 financial condition of the authority during the preceding fiscal year. The report may
 11 include suggestions for legislation relating to the structure, powers, or duties of the
 12 authority or operation of facilities of the authority. The report must itemize the cost of
 13 providing each category of service offered by the authority and the income generated
 14 by each category.

15 **Sec. 29.35.900. Audits.** (a) The board shall have the financial records of an
 16 authority audited annually by an independent certified public accountant.

17 (b) An authority shall make all of its financial records available to an auditor
 18 appointed by a municipality participating in the authority for examination.

19 **Sec. 29.35.905. Remedies.** A holder of bonds or notes or coupons attached to
 20 the bonds issued by an authority under AS 29.35.825, and a trustee under a trust
 21 agreement or resolution authorizing the issuance of the bonds, except as restricted by a
 22 trust agreement or resolution, either at law or in equity, may

23 (1) enforce all rights granted under AS 29.35.800 - 29.35.925, the trust
 24 agreement or resolution, or another contract executed by the authority; and

25 (2) compel the performance of all duties of the authority required by
 26 AS 29.35.800 - 29.35.925 or the trust agreement or resolution.

27 **Sec. 29.35.910. Claims.** In judicial and regulatory proceedings by and against
 28 an authority, an authority and its board members and employees enjoy the same rights,
 29 privileges, and immunities as a municipality and municipal officers.

30 **Sec. 29.35.915. Conflicting laws inapplicable.** If a provision of AS 29.35.800
 31 - 29.35.925 conflicts with another provision of this title, the provision of AS 29.35.800

1 - 29.35.925 prevails.

2 **Sec. 29.35.920. Definitions.** In AS 29.35.800 - 29.35.925, unless the context
3 otherwise requires,

4 (1) "authority" means a regional solid waste management authority
5 established under AS 29.35.805;

6 (2) "board" means the board of directors of an authority;

7 (3) "bonds" includes bonds, bond anticipation notes, notes, refunding
8 bonds, or other forms of indebtedness of the authority;

9 (4) "bylaws" means the guidelines adopted by and amended by the
10 board from time to time under AS 29.35.800 - 29.35.925;

11 (5) "costs of projects" means all or any part of the aggregate costs
12 determined by an authority to be necessary to finance the construction or acquisition
13 of a project, including, without limitation, the cost of acquiring real property; the cost
14 of constructing buildings and improvements; the cost of financing the project,
15 including, without limitation, interest charges before, during, or after construction or
16 acquisition of the project; costs related to determining the feasibility of, planning,
17 design of, or engineering of the project and, to the extent determined necessary by the
18 authority, administrative expenses; the costs of machinery or equipment to be used in
19 the operation or rehabilitation of a solid waste management facility or operation; and
20 all other costs, charges, fees, and expenses that the authority determines necessary to
21 finance the construction or acquisition;

22 (6) "land" or "real property" means any interest in real property,
23 including tidal and submerged land, any right appurtenant to the interest, and, without
24 limitation, interests less than full title, such as easements, uses, leases, and licenses;

25 (7) "project" means a solid waste management facility, and
26 administrative facilities, including property necessary for solid waste management;

27 (8) "regulation" means a standard of general application or the
28 amendment, supplement, revision, or repeal of a standard adopted by an authority to
29 implement, interpret, or make specific the law enforced or administered by it or to
30 govern its procedure.

31 **Sec. 29.35.925. Short title.** AS 29.35.800 - 29.35.925 may be cited as the

1 Regional Solid Waste Management Authority Act.

2 * **Sec. 5.** AS 42.05.711 is amended by adding a new subsection to read:

3 (p) a regional solid waste management authority established under
4 AS 29.35.800 - 29.35.925 is exempt from regulation under this chapter, except that a
5 solid waste management authority is subject to this chapter if it directly competes with
6 a utility subject to this chapter.

7 * **Sec. 6.** AS 44.85.410(3) is amended to read:

8 (3) "municipal bond" means a bond or note or evidence of debt that
9 constitutes

10 (A) a general obligation bond that is a direct and general
11 obligation of a political subdivision of the state, all the taxable property within
12 which is subject to taxation to pay the bond, note, or evidence of debt, and the
13 interest without limitation, as to rate or amount generally to the extent
14 permitted by law or to avoid a default as provided for second class cities under
15 AS 29.45.590;

16 (B) a revenue bond, except a revenue bond for electrical
17 generation purposes other than diesel-powered generation, issued by a
18 municipality, **a solid waste management authority**, or a port authority that
19 pledges the revenue of a revenue-producing capital improvement and that is
20 payable solely from the revenue of the revenue-producing capital
21 improvement;

22 (C) a general obligation bond or revenue bond combined or
23 additionally secured;

24 (D) a bond of a borough issued as a general obligation of a
25 service area under AS 29.47.440 or former AS 29.58.340; or

26 (E) an obligation of a municipality secured only by

27 (i) special assessments on benefited property;

28 (ii) tax increments and a letter of credit or equal
29 security; or

30 (iii) a lease for equipment or building improvements if
31 the state is not a lessee;

1 * **Sec. 7.** Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c).