

CS HB 293 (GHA)

Introduced: 3/15/85
Referred: Community & Regional
Affairs, Judiciary and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

HOUSE BILL NO. 293

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to municipal default on bonded indebtedness; establishing the Municipal Financial Emergency Commission; and providing for an effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

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(1) while the power of municipalities to contract debt for capital improvements is granted by the Alaska Constitution, revenues that may be raised to repay the debt are limited by the extent to which the state has delegated taxing authority to the municipalities under art. X, sec. 2 of the Alaska Constitution;

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(2) the state has a strong interest in debt issuance by municipalities because of the impact on state revenue as a result of municipal assessment to repay debt and because of the effect on the marketability of bonds issued by the state and its agencies, by public corporations of the state, by other municipalities, and by the Alaska Municipal Bond Bank Authority;

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(3) bonds issued by municipalities are not legal obligations of the state, nor are the bonds supported by the moral obligation of the state; and

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(4) it is in the public interest, and is declared to be a public purpose, to promote the prosperity and general welfare of all the people of the state by assisting in the development and implementation of refinancing plans for municipalities that have defaulted on outstanding debt.

1 * Sec. 2. AS 29.58 is amended by adding new sections to read:

2 ARTICLE 7. DEFAULT ON BONDED INDEBTEDNESS.

3 Sec. 29.58.400. MUNICIPAL FINANCIAL EMERGENCY COMMISSION. (a)

4 The Municipal Financial Emergency Commission is established in the
5 Department of Community and Regional Affairs.

6 (b) The members of the commission consist of the commissioner of
7 the Department of Community and Regional Affairs, the commissioner of
8 the Department of Revenue, and the commissioner of the Department of
9 Administration. Members of the commission may appoint a designee to
10 serve on the commission.

11 (c) The commissioner of the Department of Community and Regional
12 Affairs shall chair the commission. A quorum of the commission con-
13 sists of two members.

14 (d) The commission may employ staff as is necessary to accom-
15 plish the purposes of the commission.

16 Sec. 29.58.410. DUTIES AND POWERS OF THE COMMISSION. (a) Upon
17 receipt of a written notice of a default by a municipality, as provid-
18 ed in AS 29.58.420, the Municipal Financial Emergency Commission may

19 (1) investigate the defaulting municipality's fiscal af-
20 fairs, consult with the assembly or council of the defaulting munici-
21 pality, and negotiate with creditors in order to assist the municipali-
22 ty in developing a plan for satisfaction of the outstanding debt;

23 (2) direct a state agency holding money on behalf of or
24 payable to the defaulting municipality to pay the money either to the
25 commission for payment to creditors, or to the defaulting municipality
26 for disposition as required under an adopted plan;

27 (3) determine whether a proposed plan is fair and equitable
28 and within the ability of the defaulting municipality to meet, and, if
29 so, enter an order finding that it is fair, equitable, and within the

1 ability of the municipality to meet;

2 (4) advise the defaulting municipality to take the neces-
3 sary steps to implement the plan;

4 (5) order the defaulting municipality to take the necessary
5 steps to implement the plan if the municipality fails to implement the
6 plan within 30 days after receiving the advice of the commission to
7 implement the plan;

8 (6) require periodic reports on the defaulting municipali-
9 ty's financial affairs during the period in which the plan is imple-
10 mented;

11 (7) approve or reject the defaulting municipality's annual
12 budget ordinance during the period in which the plan is implemented;

13 (8) approve or reject the issuance of additional bonds,
14 notes, or other debt, whether short- or long-term, during the period
15 in which the plan is implemented;

16 (9) impound the books and records of a defaulting munic-
17 ipality and assume full control of its financial affairs, including the
18 levying of taxes, expenditure of money, and adoption of budgets, if
19 the municipality fails to implement a plan, or if, in the opinion of
20 the commission, the defaulting municipality will default on a future
21 debt service payment under the plan if the financial policies and
22 practices of the municipality are not improved; and

23 (10) order a defaulting municipality to pay for the cost of
24 developing and implementing a plan.

25 (b) The power and authority granted to the commission continues,
26 with respect to a defaulting municipality, until the commission is
27 satisfied that the defaulting municipality has performed or will
28 perform the duties required of it in the plan, and until agreements
29 made with the defaulting municipality's creditors have been performed

1 in accordance with the plan.

2 (c) The commission is authorized to take all actions necessary
3 to accomplish the purposes of AS 29.58.400 -- 29.58.490, including,
4 but not restricted to, the authority to issue subpoenas necessary for
5 the production of documents and the authority to issue orders. A
6 superior court may, upon application of the commission, compel obedi-
7 ence with a subpoena or order issued by the commission.

8 Sec. 29.58.420. NOTICE OF DEFAULT. (a) A municipality shall
9 give notice of default to the commissioner of community and regional
10 affairs within 10 calendar days after actual knowledge of the default.

11 (b) A creditor may give notice to the commissioner of community
12 and regional affairs any time after a default by a municipality.

13 (c) A municipality may request the assistance of the commission
14 at any time before default if, in the judgment of the municipality,
15 assistance from the commission will assist the municipality in reliev-
16 ing financial distress.

17 Sec. 29.58.430. ACTION UPON RECEIVING NOTICE OF DEFAULT. The
18 commissioner of community and regional affairs shall convene a meeting
19 of the commission within 15 days after the receipt of a notice of de-
20 fault, or of a request for assistance, under AS 29.58.420. The de-
21 faulting municipality must be given notice of the meeting, and shall
22 send an authorized representative to the meeting to represent the
23 defaulting municipality during the development of a plan under AS 29.-
24 58.410.

25 Sec. 29.58.440. STAY OF COURT PROCEEDING. (a) A proceeding
26 initiated in court by a creditor must be stayed until 90 days after
27 the first meeting of the commission following the receipt of the no-
28 tice of default by the commissioner of community and regional affairs.

29 (b) The court may grant one or more 30-day extensions of the

1 stay, at the request of the commission, unless the court finds that
2 the defaulting municipality or the commission has not made a good
3 faith effort to negotiate a plan under AS 29.58.410.

4 Sec. 29.58.450. BANKRUPTCY PETITION. AS 29.58.400 -- 29.58.490
5 do not limit or otherwise affect the authority of a municipality to
6 file a petition in bankruptcy under 11 U.S.C. secs. 901 -- 946.

7 Sec. 29.58.460. PENALTY. A municipal official, employee, or
8 agent who knowingly violates a provision of a plan developed under
9 AS 29.58.410 is guilty of a class C felony.

10 Sec. 29.58.490. DEFINITIONS. In AS 29.58.400 -- 29.58.490,

11 (1) "commission" means the Municipal Financial Emergency
12 Commission;

13 (2) "creditor" means a person having standing to bring an
14 action for default on outstanding debt against the defaulting muni-
15 cipality;

16 (3) "default" means the failure by a municipality to pay an
17 installment of principal or interest on its outstanding debt, on or
18 before the due date;

19 (4) "defaulting municipality" means a municipality that has
20 defaulted, or which continues to be subject to the jurisdiction of the
21 commission after the implementation of a plan under AS 29.58.410;

22 (5) "outstanding debt" means revenue anticipation notes,
23 bond anticipation notes, general obligation bonds, revenue bonds, or
24 refunding bonds issued under this chapter.

25 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
26 10.070(c).