ALASKA LEGISLATURE 1989

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
Sec. 2 AS 14.30.182 Duties of department. The department shall (1) cooperate with the federal government and do all things necessary to continue state eligibility for federal money available under 20 U. S. C. 1400 –1487 (Individuals with Disabilities Education Act), as amended; (2) comply with the requirements of 20 U. S. C. 1400 – 1487 (Individuals with Disabilities Act), as amended, and other federal law related to children with disabilities; if a provision of this chapter conflicts with federal law and the conflict would affect the continued receipt of federal money, the department shall comply with the federal provision necessary to ensure continued receipt of that money; and (3) adopt regulations necessary to comply with state law and federal law for the education of exceptional children, including 20 U.S.C. 1400 – 1487 (Individuals with Disabilities Education Act), as amended.	✔ This new section was added to clearly delineate the duties of the department as they correspond to federal special education requirements. The state will come into compliance with federal law by performing these duties.	20 USC 1400-1487
Sec 3. AS 14.30.186 is repealed and reenacted to read: **Sec. 14.30.186 Coverage.** The school district in which a child with a disability is enrolled is responsible for providing special education and related services to the child.	✔ Currently, the state law requires the student's district of residence to provide special education services. The proposed change clarifies that statewide correspondence programs (that enroll students outside of their districts) are responsible to provide services to students with disabilities.	Publicly funded out-of-district correspondence programs are unique to Alaska.

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Sec. 4. AS 14.30.193(a) is repealed and reenacted to read: (a) A school district or a parent of a student with a disability may request a due process hearing on any issue related to identification, evaluation, educational placement, or the provision of a free, appropriate, public education regarding a student with a disability.	✔ Corresponds to federal language and clarifies/specifies under what circumstances a due process hearing should be requested.	20 USC 1415 This section on "procedural safeguards" is greatly expanded and very clear.
Sec. 5 AS 14.30.193(b) is repealed and reenacted to read: (b) A request by a parent for a due process hearing must be made not later than six months after the date the school district provides the parent with written notice of the decision with which the parent disagrees and with written notice of procedural safeguards available to that parent in federal law. A school district shall make its request under (a) of this section in accordance with regulations adopted by the department.	✔ Provides a timeframe in which parents can request a due process hearing. Federal legislation encourages a timeline to be set.	20 USC 1415
Sec 6. AS 14.30.193(c) is repealed and reenacted to read: (c) If a due process hearing is requested by either a parent or school district, the school district shall provide the parent with the names of three qualified hearing officers	✔ Allows the hearing process to proceed without undue delay.	20 USC 1415 Reg. 300.508 (a)(b)(c)

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from a list maintained by the department. The parent may choose one person from the list of three provided by the school district. If the parent does not select a name, the school district may appoint as hearing officer any person from the list maintained by the department. After appointment under this section, a hearing officer shall proceed in accordance with regulations adopted by the department.		
Sec. 7. AS 14.30.193(h) is amended to read: (h) the department shall maintain a list of qualified hearing officers. The department shall qualify hearing officers through a training program that <u>is</u> [SHALL BE] open to all <u>**persons who meet the criteria set by the department by regulation**</u> [RESIDENTS OF THE STATE. A HEARING OFFICER MAY BE QUALIFIED FOR A PERIOD NOT TO EXCEED FIVE YEARS]. The list of qualified hearing officers shall be maintained as a public record.	✔ Allows only qualified individuals to participate in state hearing officer training. ✔ Criteria will be set in regulation. ✔ Current law requires training to be available to all interested people, whether qualified or not. This is cost prohibitive and has resulted in wasting training resources on individuals who were not able to pass the hearing officer test.	20 USC 1415 Reg. 300.508 (a)(b)(c)
Sec. 8. AS 14.30.195(a) is amended to read: (a) the department shall, by regulation, provide for administrative appeal hearings, based on the record, of impartial hearing officers' decisions under AS 14.30.193. An administrative appeal hearing shall comply with all requirements	✔ To be consistent with the change in the federal statute number (was 1400-1485)	20 USC 1400-1487

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necessary for participation in federal grant-in-aid programs, including 20 U.S.C. 1400 – 1487 [20 U. S. C. 1400 – 1485] (Individuals with Disabilities Education Act), as amended.		
Sec. 9. AS 14.30.315 is repealed and reenacted to read; **Sec. 14.30.315. Programs for gifted children.** Every school district shall establish a program for the provision of educational services for gifted children, consistent with regulations adopted by the department.	✔ The current section, consisting only of subsection (b) does not make sense following the 1998 repeal of subsection (a). ✔ Clarifies that the gifted program is a state entitlement, not federal. Because these are state programs, districts must establish a gifted program.	No corresponding federal citation.
Sec. 10. AS 14.30.340(a) is amended to read: (a) If a parent of a [AN EXCEPTIONAL] child with a disability enrolls the child in a private school at the parent's expense or teaches the child at home, the school district in which the child resides [IS LOCATED] shall make special education and related services available in conformance with an individual services plan as authorized by federal law [INDIVIDUALIZED EDUCATION PROGRAM UNDER AS 14.30.278].	✔ Explains that only a child with a disability (not gifted), enrolled in a private school, shall be afforded special education and related services, by the district of residence, in accordance with an individual service plan. ✔ Federal law allows states to limit the special education services that are provided to children enrolled in a private school. ✔ Federal law allows for a service plan for students in private schools, rather than an individualized education program. ✔ The reference to AS 14.30.278 is deleted because that section is repealed in reliance upon the federal detail on the subject of service plans.	20 USC 1412 (3)(10)(A)(I)(ii) Reg. 300.455

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Sec. 11. AS 14.30.350(1) is amended to read: (i) "appropriate **public** education" means personalized instruction with sufficient support services to permit a child to benefit educationally from the instruction, **in accordance with state and federal law, including regulation adopted by the department;**	✔ Clarifies that this section addresses appropriate "public" education (as opposed to private).	20 USC 1401 (8)
Sec 12. The following are repealed:		
14.30.191 Educational evaluation and placement	✔ Section (b) is incomplete. ✔ Sec. (c) and (e) violate current federal law. Further, the state is under a federal corrective action related to (c). ✔ Section (d) is not required in federal law. ✔ Section (f) is inconsistent with federal law. ✔ Current state law does not address the re-evaluation process. ✔ The state will rely on federal law related to evaluation and placement.	20 USC 1414 (a)(1-5)
14.30.193(d) School district hearings (parent participation in hearing with noncompliance of decision of hearing officer)	✔ The provisions of this subsection were clarified by amendments in AS 14.30.193 (a) and (b) (see Sections 4 and 5 of the bill).	20 USC 1415
14.30.193(e) School district hearings (non participation of parent)	✔ Provisions of this subsection represent unnecessary detail.	20 USC 1415
14.30.235 Withdrawal of consent (parent may withdraw parent's consent)	✔ Once a child is placed in special education at the parent's consent, they don't have the right to withdraw that	20 USC 1414

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	consent. The decision for exiting the child from special education rests with the IEP team. By repealing this section, we will come into compliance with federal law.	
14.30.272 Procedural safeguards	✔ Current state law is violation of federal law and does not include all of the procedural safeguards afforded to students with disabilities. ✔ The state will rely on the federal law. ✔ Procedural safeguards for gifted students will be addressed in state regulation.	20 USC 1415
14.30.274 Identification of exceptional children	✔ Current law does not take into account the responsibility of statewide correspondence programs for identifying children with disabilities ("child find"). ✔ The state will rely on federal law for "child find."	20 USC 1412
14.30.276 Least restrictive environment	✔ The state will rely on federal law, as current language contains unnecessary detail.	20 USC 1414 Reg. 300.550-555
14.30.278 Individualized education program	✔ Federal law changes IEP requirements. ✔ Increases the role of the parent, student and regular education teacher. ✔ The state will rely on federal law.	20 USC 1414
14.30.285 Transfers of exceptional children	✔ Federal law does not require this section for gifted students. ✔ The state will rely on federal law for	20 USC 1412

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	transfers for students with disabilities. ✔ The state will draft regulations for transfers related to students with disabilities.	
14.30.325 Surrogate parents	✔ Federal law does not require this section for gifted students. ✔ The state will rely on federal law. ✔ The state will draft regulations for surrogate parents related to special education students.	20 USC 1415 Reg. 300.515
14.30.340(b) Provision of special education in a private school, home, or hospital setting	✔ Federal law does not require these provisions for gifted students, only for students with disabilities. ✔ The state has been and will continue to rely on federal law. ✔ The state will adopt regulations related to students with disabilities.	20 USC 1412 Reg. 300.402, 300.451, 300.452, 300.460, 300.461
14.30.347 Transportation of exceptional children	✔ Federal law does not require these provisions for gifted students, only for students with disabilities. ✔ The state will rely on federal law. ✔ The state will draft regulations for transportation related to students with disabilities.	20 USC 1401 Reg. 300.24
14.30.350(3) Definitions ("consent")	✔ Contains unnecessary detail. ✔ Subject is thoroughly covered by federal law. ✔ Federal law goes into great detail.	20 USC 1412 20 USC 1415 Reg. 300.505, 300.571
14.30.350(4) Definitions ("educational records")	✔ Contains unnecessary detail. ✔ Subject is thoroughly covered by federal law.	20 USC 1412 20 USC 1417 20 USC 1221e-3

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	✔ Federal law goes into great detail.	Reg. 300.560
14.30.350(7) Definitions ("individualized education program team")	✔ Current definition conflicts with federal law, which goes into considerable detail on the subject. ✔ Participation by parent, student, regular education teacher, and district personnel are several of the many important team member additions to the IEP team.	USC 20 1414
14.30.350(8) Definitions ("parent")	✔ Current definition conflicts with federal law, which goes into considerable detail on the subject.	20 USC 1415 Reg. 300.344, 300.345, 300.502
14.30.350(9) Definitions ("related services")	✔ Current definition conflicts with federal law, which goes into considerable detail on the subject.	20 USC 1414 Reg. 300.24, 300.533
14.30.350(11) Definitions ("special education")	✔ Current definition conflicts with federal law, which goes into considerable detail on the subject.	20 USC 1401 20 USC 1415 Reg. 300.26, 300.527
Sec. 13. This act takes effect immediately under AS 01.10.070(c)		

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March 22, 2000

By fax and regular mail

Hon. John Coghill, Jr.
Co-Chair, HESS Committee
Alaska House of Representatives
Capitol Room 416
Juneau, Alaska

Hon. Fred Dyson
Co-Chair, HESS Committee
Alaska House of Representatives
Capitol Room 104
Juneau, Alaska

Re: **HB 301: Education of exceptional children**

Dear Reps. Coghill and Dyson:

We have reviewed the above-referenced bill. We are generally supportive of the concept of ensuring that state law is not in conflict with the recent revisions in 1997 of the federal IDEA, and the issuance of implementing regulations in 1999. Attached please find detailed comments on specific provisions of the bill. In summary, we believe the following sections of the bill should be revised (listed in section order, although not necessarily in order of priority):

Section 3: We note that this section is not required in order to ensure compliance with federal law, but instead contains an important change in state law. We are concerned that a shift from an obligation to deliver special education and related services **based on residence** to an obligation **based on enrollment**, coupled with the deletion of the mandates of A.S. 14.30.285, will be stepping away from community-based, inclusive special education and related services. We raise several unresolved questions regarding out-of-state and out-of-district placements, expulsions, suspensions, and service to children placed in youth detention facilities. We provide a revised form of AS 14.30.186 that, for the most part, retains the residency-based allocation of fiscal and administrative responsibility, while also attempting to address correspondence, boarding, and private school enrollments, as well as juvenile detention facility placements.

Section 5: we believe the proposed 6-month statute of limitations is contrary to federal law, and that the most analogous period to be applied should be two years. We believe this statute of limitations should apply to both parents and school districts.

Section 6: this section needs only a minor modification to make it consistent with the applicable federal regulation.

Section 12: this section contains the repeal of a number of Alaska special education laws, several of which are not clearly in conflict with federal law and have value in their own right as substantive state mandates. Thus we disagree with the proposal to delete such important State mandates as:

- the obligation to identify children needing special education and related services (also known as "childfind")
- the obligation to provide a free and appropriate public education in the least restrictive environment
- minimum State criteria for an individualized education program (IEP)
- State law definitions of "special education" and "related services" that we believe are nearly if not completely consistent with federal law

Alaskans believe in these public policy mandates. Their repeal cannot be justified on the grounds that there is conflict with federal law. We believe they should not be repealed.

Thank you for your consideration of our comments, and we look forward to continued dialog on this legislation. It is of great importance Alaska's students with disabilities, and their families.

Very truly yours,

Robert B. Briggs

Robert B. Briggs
Staff attorney

Encl.

Cc: (w/ encl.)

Rep. Joe Green
Rep. Carl Morgan, Jr.
Rep Jim Whitaker
Rep. Tom Brice
Rep. Allen Kemplen
Sen. Mike Miller, Chair, Senate HESS committee
Dave Maltman, Governor's Council on Disabilities and Special Education
Faye Nieto, exec. dir., Tim Weiss, PARENTS, INC.
P.J. Ford-Slack, Ph.D., Alaska Dept. of Education & Early Development
Margot Knuth, AAG, Special Assistant to the Commissioner, Dept. of Corrections

(w/o encls.)

Dave Fleurant, legal director, Rick Tessandore, exec. dir., DLC-Anchorage

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Statement of Steve Essley and Robert B. Briggs,
staff attorneys, Disability Law Center of Alaska, Inc.

Testimony before the House Health, Education and Social Services Committee
Alaska Legislature

Hearing on HB 301, Education of exceptional children

March 23, 2000

The Disability Law Center is generally supportive of the proposition that Alaska's special education laws must not be in conflict with federal special education laws. However, in the effort to eliminate conflict, it should not be forgotten that the federal IDEA provides only a framework for special education. Much latitude is left for a state to fashion a specific design that best meets its needs. States remain free to impose mandates independent of the federal law that are found to be in the public interest, over and above what a federal law may require. In reviewing any change to Alaska's special education laws, care should be taken to ensure that a change does not inadvertently discard a valued public policy mandate under the guise of avoiding conflict with a federal law, if there is no real conflict between the two.

In this regard, we believe that certain provisions of HB 301 (and its identical companion, SB 205) make changes in substantive Alaska special education law that are not required, because the existing laws are ***not in conflict*** with federal special education law. We also believe some changes in the bill involve questions purely of state policy, in areas that have been left open by federal law for a state to determine. Viewed in this light, we question the wisdom and necessity of some proposed changes.

Our detailed comments are listed in order of the section numbers in the bill:

A. <u>Section 3: Obligation to provide special education: *enrollment* versus *residence*</u>

Section 3 of the bill proposes to base the obligation to provide special education and related services based on "enrollment," rather than based on a student's residence, as is provided under current Alaska law. A.S. 14.30.186(a), (b); 4 AAC 52.020 (district responsibility owed to those "who reside within the district"). This significant change in state law is ***not required by the federal IDEA***, as amended

in 1997, or its implementing regulations issued in 1999. We believe this approach presents some problems for certain categories of children, may encourage the dumping of students in order to escape special education obligations, and poses new questions for students placed in youth detention facilities.

The federal IDEA regulations impose the obligation to provide a ***free and appropriate public education*** **(FAPE)** based on the fact of a student's residence in the state, even if the student may be enrolled at a school located outside the state, or may have been expelled or suspended from school. 34 C.F.R. § 300.121(a); 300.300(a). However, federal law does not define how within a state the obligation to deliver FAPE is delegated. That is a question of state law, and Section 3 of the bill proposes to change state law.

With regard to special education for students enrolled in private schools or by correspondence courses, our experience is that some parents remove their children from a school district and enroll in a private school or correspondence program precisely because they believe the resident school district is incapable of or failing to provide FAPE. It will lessen the disputes regarding special education if the parent has an option of obtaining FAPE in another way. Thus we believe the Department is on the right to track, for some students, to link the responsibility for special education to enrollment. However, basing the obligation on enrollment raises unanswered questions with regard to a large number of other students.

1. <u>An encouragement to out-of-district placements</u>?

The federal IDEA envisions that school districts may place or refer students with disabilities into private schools rather than serve them in the public school setting. 20 U.S.C. § 1412(a)(10)(B). There is no requirement in the IDEA or its regulations that such schools must be within the school district, or even within the state. Under federal law, ordinarily the referring school district remains "responsible" for ensuring that FAPE is provided to a child referred or placed outside the district. 34 C.F.R. § 300.349(c); Response to Question 15 contained in discussion re: IDEA regulations, 64 Fed. Reg. 12476 (Mar. 12, 1999). However, this mandate of "responsibility" does not include a clear mandate of financial liability for the expenses of providing special education and related services to a student "placed" or "referred" outside the district. Rather, the IDEA leaves financial responsibility within the state to be determined by "State law, policy or practice." *E.g.*, 34 C.F.R. §§ 300.349, 300.401, 300.403; see Response to Questions 15 and 16, contained in discussion re: IDEA regulations, 64 Fed. Reg. 12476 (Mar. 12, 1999). **<u>Ultimately, if no one else does, the state must pick up the tab for Alaskan children placed out-of-state. 34 C.F.R. §§ 300.121(a); 300.300(a).</u>**

Thus an immediate question is, in which school district will a student placed out-of-state or out-of-district be considered to be enrolled? Existing state law clearly imposes on the ***originating*** school district the financial responsibility despite the out-of-district or out-of-state placement, except to the extent the department provides financial assistance to the district. A.S. 14.30.285(b). In past litigation, the Disability Law Center has successfully argued that the school district of residence of a student is defined by the residence of a custodial parent, and that the financial obligation to provide special education and related services follows the student even though placed out-of-state or out-of-district – if the reason for the out-of-state or out-of-district placement was a failure by the district to provide FAPE. Section 3 of the bill implies that this financial obligation based on residence will no longer exist. Section 12 of the bill repeals A.S. 14.30.285 in its entirety.

If a school district could escape financial responsibility by referring children out of the district – because the obligation to provide special education under Section 3 is based on "enrollment" – we expect there could be an effort to "dump" special education students by some school districts by referring them to schools outside of the district, particularly if the school district does not bear the financial obligation for providing special education and services to these students.

The fiscal responsibility for a student expelled or placed on long-term suspension is also put in question under the current form of Section 3 in the bill. Special education and related services may be such a child's only remaining link to academic and social compliance. Section 3 severs that link. This appears to be in conflict with federal special education regulations, which require a school district to continue to provide special education and related services to students removed from school for longer than 10 days, i.e., expulsions or long-term suspensions. 34 C.F.R. § 300.121(d); 300.520(a)(1)(ii).

The state will still have to ensure that special education and related services are provided to expelled or suspended students, even though they may no longer be enrolled in a school district. 34 C.F.R. § 300.121(a); 300.300(a), (b).[1] Section 3 has the potential of turning the problem of how to deal with the expelled student from a local problem into a state problem. The fiscal implications of this for the state have not been explored.

The Department may have developed plans for resolving these questions. We believe that as long as the school district of residence remains primarily financially responsible for providing special education and related services, there will be less incentive to fail to serve students, less incentive to dump students through unnecessary

[1] "Each State must have . . . in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school." 34 C.F.R. § 300.121(a).

referrals out-of-state or out-of-district, expulsions and the like. We believe that financial responsibility that "follows the student" will encourage quality special education services within the community, in the most integrated setting possible.

Thus we do not believe federal law "requires" the repeal of A.S. 14.30.285, and we believe it is poor public policy to abolish the mandate of that statute, without replacing it with fully explained legislative mandate that will prevent unnecessary out-of-district transfers.

2. Responsibility for students placed in juvenile detention centers

Responsibility for providing special education and related services to children placed in juvenile detention centers is unresolved in HB 301. Which school district – if any – bears the responsibility for providing special education to these students? Having been placed in the detention facility, does a student remain "enrolled" at the school district in which he or she was enrolled before incarceration?[2] If so, what are the FAPE obligations of the school district where the youth detention facility is located?

The IDEA '97 and its regulations also leave these sorts of questions up to individual states to resolve. Correctional facilities and juvenile detention facilities are defined as public agencies within the state that are subject to the mandates of the IDEA, 34 C.F.R. § 300.2(b)(1)(iv), but the obligation to provide a free and appropriate public education (FAPE), rests generally with the Department of Education and Early Development.[3] The design of a system to deliver special education and related services is left up to the State, as prescribed by state laws, regulations and policies implemented by the Department.

We believe that school district responsibility for students placed in juvenile detention centers is analogous to ensuring district responsibility for other out-of-district or out-of-state transfers. If school districts (and their base communities) remain financially responsible for special education to students placed elsewhere during a period

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[2] This seems unlikely. A.S. 14.30.010(b)(4) provides an exception to the required enrollment based on residence if a student is in the custody of a court or law enforcement authorities. A.S. 14.30.045 allows the suspension or denial of admission of students based on certain behaviors, including behavior "inimicable to the welfare, safety, or morals of other pupils," and conviction of certain felonies.

[3] The IDEA leaves up to states whether to impose the obligation to provide a free and appropriate public education to persons ages 18 through 21 who become incarcerated at an "adult correctional facility" before having been identified as being eligible for special education or before development of an IEP. IDEA, 20 U.S.C. § 1412(a)(1)(B)(ii). The Governor, or as otherwise provided by state law, may assign to a public agency within the state the responsibility of providing FAPE to "children with disabilities that are convicted as adults . . . and incarcerated in adult prisons." Id., § 1412(a)(11)(C). Other than this class of juveniles incarcerated at adult correctional centers, for which the state-provided special education is optional, the state remains obligated to ensure special education for all other incarcerated juveniles.

of incarceration, the communities may have an additional stake in the success of programs to reduce criminal behavior and promote success in special education. Statistics from youth detention facilities and our experience generally support the proposition that incarcerated youths experience a higher percentage of certain disabilities than the general population, particularly learning disabilities. ***Successful special education for this population will likely have a direct impact on future criminal behavior.***

We make no recommendation as to which entity (the Department of Corrections, the Department of Education and Early Development, the resident school district, or the school district in which the youth detention facility is located) ought to bear financial responsibility for providing special education and related services to incarcerated juveniles, although as discussed above we can see reasons why the resident school district arguably ought to bear that financial obligation. The proposed language below assumes that the school district in which the facility is located bears the obligation to deliver special education and related services, while the school district of residence is financially obligated for that service. We offer this language to foster debate on the subject.

3. An alternative to Section 3 of the bill:

Based on the foregoing discussion, if the Legislature decides to retain the concept of financial obligation to deliver FAPE based on residence, we have prepared an alternative to Section 3 of the bill. This alternative attempts to address the issue of correspondence and boarding school enrollments as well as the other situations:

> **Sec. 14.30.186. Coverage.** (a) Except as provided in (b) of this section, special education and related services shall be provided either
>
> (1) by a borough or city school district, for a child with a disability residing within the district;
>
> (2) by a board of a regional educational attendance area operating a school in the area, for a child with a disability residing in the area served by the school;
>
> (3) by the borough, city school district, or regional educational attendance area in which a correctional or youth detention facility is located, for a child with a disability placed at the facility; or
>
> (4) by a state boarding school established under AS 14.16, for a child enrolled at the boarding school;

> (b) For a child with a disability enrolled in a course of study under AS 14.30.010(b)(1) or a correspondence study program under A.S. 14.30.010(b)(10)(B), the child, parent or surrogate parent may elect that special education and related services be provided by an entity other than as provided in (a)(1) or (a)(2) of this section, under regulations prescribed by the department.
>
> (c) For a child with a disability receiving special education and related services under subsection (a)(3), (a)(4), or (b) of this section, the borough, city school district, or regional educational attendance area where the child resides shall reimburse for the expense of the special education and related services provided, under regulations prescribed by the department.

This alternative envisions that in the first instance, obligation to deliver special education and related services will rest with the school district where the student resides. If a student is incarcerated in a youth detention facility, the school district where the youth detention facility is located is obligated to provide special education and related services. If a student is enrolled in a state-operated boarding school, the boarding school is obligated to provide special education and related services. A parent of a student enrolled in a correspondence or private (including parochial) school will have the option of placing the student in another special education program, under regulations to be prescribed by the department. Financial responsibility for students in a correspondence school, private school, youth detention facility, or state boarding school remains with the school district of residence, with the details of transfer of funds in these situations to be worked out in regulations by the department.

B. <u>Section 5: the statute of limitation should be two years, not 6 months</u>:

We believe the statute of limitations contained in Section 5, at page 2, may conflict with federal interpretations of the IDEA. A legal opinion from the Office of Special Education Programs of the U.S. Department of Education, identified federal courts rejecting state statutes of limitations ("SOL") that effectively limit the exercise of rights under the federal IDEA, where the state-imposed SOL is shorter than one used for a similar state right or cause of action.

A longer limitations period has the added benefit of offering an opportunity for alternative dispute resolution devices, such as mediation, to be tried before litigants need to resort to a formal administrative fair hearing. With a shorter time limit, litigants may be forced to preserve their litigation rights by filing administrative fair hearing requests and prevent the use of alternative methods of dispute resolution. This would be contrary to the IDEA '97 mandate to encourage mediation.

We believe the most analogous Alaska statute of limitations is contained in AS 09.10.070 (a) (two-year statute of limitations for "any injury to the . . . rights of another not arising on contract and not specifically provided for otherwise . . . or . . . upon a liability created by statute. . . .")

A two year statute will not prevent speedy resolution of disputes regarding special education. In cases involving the need for speed, either the school district or the parents will be motivated to seek a prompt administrative hearing. For cases involving monetary liability, AS 09.10.070 (a)(5) is certainly analogous, and we don't believe the Legislature can lawfully impose a shorter time period for initiation of a cause of action for a monetary claim under the IDEA when other types of monetary claims ("liability created by statute") may be brought in Alaska within two years of accrual.

Thus we suggest that the phrase "six months" on page 2, line 21 should be changed to "two years."

Also, we suggest that you consider adoption of a statute of limitations to be applied to actions brought by the state or school districts as well. The current form of the bill appears to leave to the Department the determination of the exact period of time. Section 5, page 2, lines 23-25. We think that an existing state 6-year statute contained in AS 09.10.120(a) for actions brought in the name of the State, political subdivisions, or public corporations, is too long. ***See County of Oneida v. Oneida Indian Nation***, 470 U.S. 226, 240 (1985)(stating rule that in absence of an applicable federal statute, a court must choose the most analogous state statute, in determining a limitation on the right to pursue a federal cause of action in the state, "provided that the application of the state statute would not be inconsistent with underlying federal policies"). We think it would be inconsistent with underlying federal policies to encourage appropriate education if six years were to pass before a school district brought an administrative claim regarding a student's special education, or the state brought an action against a school district to obtain compliance with the IDEA.

C. <u>Section 6: Providing qualifications of hearing officers</u>:

Applicable federal regulations require that a list of prospective hearing officers "must include a statement of the qualifications of each" hearing officer. 34 C.F.R. § 300.508(c). Accordingly, we recommend that in Section 6, at page 2, line 28 of the bill, the phrase "and qualifications" be added after the word "names," such that the bill read as follows: "the school district shall provide the parent with the names and qualifications of three qualified hearing officers from a list maintained by the department."

D. <u>Section 12: State mandates for appropriate special education</u>

should not be repealed

We are concerned that in Section 12 of the bill it is proposed to delete several substantive mandates in our state law, even though the mandates are not in conflict with federal law.[4] We do not believe this is good policy for Alaskans.

- AS 14.30.274 imposes a mandate to identify children needing special education and related services, commonly referred to as the ***"childfind" obligation***. This state mandate is not in conflict with federal law. The Department proposes deleting the state mandate because it does not include correspondence schools. We think AS 14.30.274 ought to be amended to be consistent with federal law, not deleted in its entirety.

- AS 14.30.276 imposes a mandate to provide special education in the ***least restrictive environment.*** This mandate is the linchpin of free and appropriate education, because it provides for inclusion of children with disabilities in the regular education setting, and ultimately in society. This mandate is as important for Alaskans in a regular education program as it is for Alaskans in a special education program. It promotes mutual understanding and respect that is the foundation of an integrated society. This general mandate is not in conflict with federal law. The Department proposes deleting the state mandate because it contains "unnecessary detail" but does not identify how the state mandate conflicts with federal law.

- AS 14.30.278 imposes minimum criteria of what must be contained in an ***individualized education program (IEP)***, including statements of the specific education and related services to be provided, the extent of participation in the regular education setting, IEP goals and objectives, criteria for measuring whether the IEP is achieving the goals and objectives, and minimum standards of who must attend IEP meetings. These requirements are not in conflict with federal law, but instead establish a state-mandated floor of the criteria to be contained in an IEP. Without saying so directly, the bill proposes abandonment of minimal Alaska standards because the Department says it will "rely on federal law" rather than simply amending this statute to include other provisions that may be required by federal law.

---

[4] In analyzing the rationale for the provisions of this bill, we have reviewed a document entitled "FY2000 Proposed Special Education Legislation," dated February 9, 2000, that has been referred to as the "side-by-side" analysis of the bill (copy enclosed).

- AS 14.30.350(9) definition of ***"related services"*** is not inconsistent with federal law, despite the Department's representation that it "conflicts with" federal law. The state's definition in AS 14.30.350(9) matches nearly verbatim the federal definition contained at 34 C.F.R. § 300.24(a). There may be additional gloss and subdefinitions of terms within the federal regulatory definition, but there is no conflict that we can see – other than the inclusion of "a gifted child" – in the state's definition. If the intent is to delete gifted children from the state definition, the entire definition need not be deleted.

- AS 14.30.350(11) definition of ***"special education."*** Here, there is little if any conflict with federal law. The existing state definition again matches nearly verbatim the federal definition in 34 C.F.R. § 300.26. The major differences appear to be addition to the federal definition of a subdefinition of the terms "specially-designed instruction" and "travel training." Again, this difference calls for a simple revision of the state definition, if necessary at all. Repeal cannot be justified based on conflict with a federal definition.

Prior Alaska Legislatures adopted our existing laws on the premise that they are good public policy for the state. The decision was made to place the mandates in state statutes, rather than regulations. The Department has not shown that these statutes are in conflict with federal law, and does not justify why otherwise they should be removed from Alaska's statutes. We believe it is important for the Legislature to retain these mandates as substantive state mandates that do not depend upon the vagaries of federal legislation or regulations, and that the Legislature ought to retain the definitions (perhaps with slight modifications).

Conclusion

For the reasons expressed, we urge you to consider these points and to revise HB 301 accordingly.

DISABILITY LAW CENTER OF ALASKA, INC.

Steve Essley, staff attorney
Robert B. Briggs, staff attorney

Alaska State Legislature

Please enter into the ~~record~~ my testimony to the SHES / House Fin. committee ~~name~~

committee on HB301 SB205 bill/subject, dated 4/14/00.

I would like to take this opportunity to thank Sen. Elton for the Amendment to SB205 HB301 recognizing the needs of the gifted, however, without the procedural safeguards and due process rights granted parents under the current law, any attempts at individualized education and gifted service will be moot. A law without teeth is no law.

The concern is comingling of funds, however, our students themselves are comingled. In Wasilla, fully 60% of my caseload of 125 children are underachieving students who, without the services of gifted programming would receive no support and be doomed to a lifetime of underachievement and regret.

Additionally, many of my students are multiply identified as learning disabled and gifted. Some of these students were first recognized as gifted and their disabilities discovered later. Many more exist in the schools who appear as 'C' average students and they are unserved and live in frustration.

Before services for gifted talented students are lost, legislation must be in place for them that includes due process & procedural safeguards, otherwise we will lose services and programs that are successful and broad reaching.

Signed: Dewayne E. Joehnk

Testifier

Coordinator, Wasilla Extended Learning Program (Gifted)

Representing (Optional)

650 E. Bogard Rd., Wasilla, Ak 99654

Address

(907) 352-5337

Phone No.

April 10, 2000

8440 Sultana Drive
Anchorage, AK
99516

Dear Superintendant Chrystal,

SB205

It has been brought to my attention that a bill (HB301 in opposition of CSHB301) is circulating through the legislature concerning the separation of the gifted/talented program from the other special education programs. As a student of the former, I am concerned.

As you may know, the bill leaves the choice of maintaining the gifted program to the individual school districts. Since the Anchorage school district will, as of next year, have an eight million dollar budget cut, I fear that our program will be the first dropped if the bill passes. Even if the school board decides to keep the gifted/talented program, that program will be void of procedural safeguards (IEPs [Individual Educational Programs], etc.), without which there is a possible discord in the system.

I believe that the gifted program is benificial because it offers more challenges highly gifted students and offers a better pace. It also allows for an environment of others with the same academic strongpoints. Rachel Shauger remarked "At my old school [Alpenglow] people would want to be my friend so that I could help them with answers or things like that. It's better here because it's faster and I'm not just reviewing stuff that I already knew.".

Sincerely,
Justin Birchell

Date: April 14, 2000

To:	House Finance Representatives	Fax #s
	Rep. Eldon Mulder	465-3518
	Rep. Gene Therriault	465-3884
	Rep. Con Bunde	465-3871
	Rep. Bill Williams	465-3793
	Rep. John Davies	465-3519
	Rep. Allen Austerman	465-4956
	Rep. Ben Grussendorf	465-3175
	Rep. Gary Davis	465-3835
	Rep. Dick Foster	465-3789
Fax:	House Finance Committee	465-6813

From: Virginia McKinney
1526 F Street
Anchorage 99501
277-4419; 277-4418 (fax)

Re: SB205/HB301

I am here today to speak in support of maintaining gifted education as a requirement for every school district, and maintaining the procedural safeguards that are currently in the program—the IEPs and appeal process outside the district. In these times of tight budgets, any program that's not mandated won't long survive. Of course we all know that the devil is in the details—and if we don't pay attention, we could very likely end up with a gifted program that exists in name only.

I am the parent of a student in the self-contained gifted program at Rogers Park. She's a 5th grader and has been in the program since kindergarten. Being involved in her classes over the years as a parent volunteer has made me realize that these are very difficult kids to educate. There is a huge dichotomy between their physical and emotional development—and how smart their brains are. This dichotomy often leads to loneliness, isolation and the feeling of just being weird because they're so different from everybody else. These children are among the best and the brightest. They're our future business leaders, scientists, judges, religious leaders and even legislators. But make no mistake—these are ***at-risk children***.

It's been enormously important to have a program with teachers specially trained in how to deal with gifted kids. How to keep them challenged intellectually but also well grounded in the basic values of caring, good citizenship, and responsibility to give back to the community. All my daughter's gifted teachers have done a great job. Today Amelia is well adjusted, learning a lot and having fun—and I kind of have to say that, since she's sitting here in the room with me.

Let me switch gears here and ***talk politics***. I believe every one of you campaigned on a pro-education platform. In your campaign literature and at the candidate forums you spoke of your support for children and schools. Many of you have invested enormous talent and time as leaders in strengthening Alaska's schools and making sure our students are prepared for the jobs of the future. Your work on ensuring high standards was reflected in the benchmark exams and the exit test that my 10th grade daughter took last month.

Taking the procedural teeth out of the gifted program—or even eliminating it by making it an optional add-on for districts—either of these proposals flies in the face of all your hard work and commitment. And frankly—the proposals fly in the face of your campaign promises to support a quality education for every child in Alaska. I hope you do the right thing and vote against these bad ideas.

Thank you for this opportunity to testify.

3108 Wentworth St.
Anchorage, AK 99508

April 14, 2000

Senate Health, Education and Social Services Committee

Re: HB301/SB205

Dear representatives:

I am writing to ask you to vote "no" on this bill. Anyone who has ever worked with highly gifted children should know that they belong in "special education" classes. I am the parent of a highly gifted child. I have taught "regular" kids, worked with autistic children, and know the challenges of ADHD children because there are many of them in our extended family.

At one point, the Anchorage School District was looking for a new name for the "IA." program. My son suggested it be called the "Highly Overactive Synapse-Firing Group" HOSFIG, for short. I think that this says it all. Highly gifted students, almost without exception, have their own challenges. There problems are primarily related to their highly (over?) developed nervous systems. The most important part of which is, of course, the brain. It is truly amazing how these students usually understand each others individual problems and accommodate them. Teachers in the program face enormous challenges in teaching the highly gifted.

Please don't pave the way for probable removal of the existing excellent and essential program.

Please vote "no" on HB301.

Thank you.

Sincerely,

Cass Ariey

Cass Ariey
parent

Members of the Senate Health, Education and Social Services Committee,

As parents of a gifted child, we urge the members of this committee not to recommend passage of SB 205. The bill, as currently written, undermines the protections previously afforded to gifted students under state law, and contrary to the representations of the state DOE, is unnecessary to achieve compliance with federal law, specifically the Individuals with Disabilities Education Act, or IDEA.

Mr. Johnson of the DOE has told you that this statutory change is necessary to achieve compliance with federal law. He overstates the issue. What is needed is not for this state to abandon its commitment to an appropriate education for all exceptional children, but for the DOE to cease commingling funds it receives from the federal government for disabled children with State funds. That is all that is required by Section 300.152 of the regulations implementing the IDEA. As the regulations themselves state, the commingling prohibition can be "satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of the Part B funds." There is no language in the IDEA or in the regulations promulgated under it, that would force a state to change its existing law which provides for services BEYOND what is minimally required by the IDEA, such as is currently the case with gifted education in Alaska. It simply requires that federal monies be accounted for. This statutory change is not necessary. In fact, the IDEA regulations require only changes to state policies and procedures to the extent necessary to "to ensure the State's compliance" with the regulations, and only when the federal government makes an "official finding of noncompliance with Federal law or regulations." No one has presented anything to suggest that providing State services to gifted children is not in compliance with federal law. Where there has been noncompliance is with the state's procedure for spending the federal monies it has received for disabled children. This proposed "solution" does not focus on the real problem. The real problem is NOT the state's policy to provide educational services to exceptional children, and not limit those services only to "disabled" children. The problem is the DOE's failure to properly account for federal dollars provided to it for disabled children. The solution is not to exclude the gifted from the protections afforded by state law for exceptional children, but simply to properly account for the money spent on programs for disabled children.

Compliance with the federal regulations can be achieved without gutting the state statutes that grant procedural protections to all exceptional children. The proposed change would make those protections available only to children who are disabled as that term is defined under the IDEA. This state statute, which has as its express purpose that exceptional children will be provided with an appropriate public education, represents an important state policy that will not be adequately protected if this bill is enacted. The way that the term "exceptional children" is itself defined shows why continuing this policy is important. They are "children with disabilities, and gifted children, who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective." Simply stated, these are students who need special services in order for their education to be worthwhile. Studies show how important it is for gifted students to be taught in programs with their gifted peers, and leaving this critical decision to individual school districts, as opposed to continuing this important statewide policy, would be a tragic mistake.

The DOE has essentially said it wants to abdicate its responsibility to oversee gifted education in the state. It proposes to do just that with the passage of this bill. It would leave the nature and extent of gifted children's education dependent solely on the shifting fortunes of local school districts, and remove it as a statewide priority. The Department gives nothing more than lip service to supporting gifted education; it supports it only to the extent that individual districts are willing to fund these programs. By passing this bill, the legislature would be dooming gifted education as it currently exists, and would relegate it to the status of a program that individual districts could severely curtail or limit. The amendment to the bill really does nothing to change that. It says only that districts will be required to have some form of gifted education, but the form of those programs is wholly undefined, and is dependent on regulations as-yet unpromulgated by a department which has said quite frankly it wants no part of any oversight of gifted education. This "mandate" is an empty promise at best, and the DOE should not be permitted to avoid its responsibilities to oversee gifted education in this state. This bill should not be passed.

Greg Silvey and Arlanda Crail
2948 Princeton Way
Anchorage, AK 99508
aparadis@alaska.net

I have two children in the low incidence gifted program in Anchorage. Both my children LOVE to get up in the morning & go to school . I fear that would not be the case if this program were not in place. They are challenged every day & they happily meet that challenge. I KNOW, particularly for our son, that would NOT be the case in a regular classroom. He would be bored & I am sure, disruptive. I don't want that for either of my children or any of the other children. If we do not channel the minds of these children in a positive direction by having gifted & talented programs, then we run the very great risk of having them become liabilities rather than assets to our communities & society. A telling statistic: 7% of the general population is considered gifted; 30% of the prison population falls in the gifted category!!

We need to have gifted & talented programs to ensure these children are given the opportunity to become positive, productive members of our communities & society. That would not happen for them in a regular classroom. These children have the greatest potential to be among those who do great things for our communities & society. They may very well be the ones who discover cures for diseases & the cause &/or cure for other children with disabilities. By investing in gifted & talented programs for these children, we help them fulfill their potential to be the best they can be, & we make an investment in our future. An investment that will come back to us many times over, by allowing them to be positive, productive members of our society. A mind is a terrible thing to waste, in this case, the waste of these minds would be a tragedy.

It seems only right & just that if we are willing to fund programs for other children with disabilities, then we should be willing to do at least as much for the gifted & talented. The goal for these other children is to allow them to develop to the best of their ability-why should it be any different for the gifted & talented? I invite you to spend time in the classroom with these gifted & talented children, as I have, & observe first hand this wise investment in our future.

Thank you for the opportunity to present my views.

Sincerely, Karen Louder Strobe

Rogers Park reading program chair 1998-2000, classroom volunteer, Community School volunteer & board member, community volunteer

Date: April 14, 2000

To: Senate HESS

Senator	fax #
Sen. Mike Miller, Chair	465-3883
Sen. Pete Kelly, Co-Chair	465-5241
Sen. Gary Wilken	465-4714
Sen. Drue Pearce	465-3872
Sen. Kim Elton	465-2108

Fax: Senate HESS Committee 465-3883

From: Virginia McKinney
1526 F Street
Anchorage 99501
277-4419; 277-4418 (fax)

Re: SB205/HB301

I am here today to speak in support of maintaining gifted education as a requirement for every school district, and maintaining the procedural safeguards that are currently in the program—the IEPs and appeal process outside the district. In these times of tight budgets, any program that's not mandated won't long survive. Of course we all know that the devil is in the details—and if we don't pay attention, we could very likely end up with a gifted program that exists in name only.

I am the parent of a student in the self-contained gifted program at Rogers Park. She's a 5th grader and has been in the program since kindergarten. Being involved in her classes over the years as a parent volunteer has made me realize that these are very difficult kids to educate. There is a huge dichotomy between their physical and emotional development—and how smart their brains are. This dichotomy often leads to loneliness, isolation and the feeling of just being weird because they're so different from everybody else. These children are among the best and the brightest. They're our future business leaders, scientists, judges, religious leaders and even legislators. But make no mistake--these are ***at-risk children***.

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Let me switch gears here and ***talk politics***. Every one of you campaigned on a pro-education platform. In your campaign literature and at the candidate forums you spoke of your support for children and schools. Many of you have invested enormous talent and time as leaders in strengthening Alaska's schools and making sure our students are prepared for the jobs of the future. Your work on ensuring high standards was reflected in the benchmark exams and the exit test that my 10th grade daughter took last month.

Taking the procedural teeth out of the gifted program—or even eliminating it by making it an optional add-on for districts--either of these proposals flies in the face of all your hard work and commitment. And frankly—the proposals fly in the face of your campaign promises to support a quality education for every child in Alaska. I hope you do the right thing and vote against these bad ideas.

Thank you for this opportunity to testify.

Testimony 4-14-00 Senate HESS

I'm a student in the 6th grade at Rogers Park Elementary, in the I.A. fulltime gifted program. The SB205 is very disturbing. It would mean that gifted education is not directly mandated. Also lately, funding for the Anchorage School District was cut by millions of dollars because of a possible ten mil tax cap. And quite surprisingly, property tax surpluses just occurred, money that could potentially have been used for education. Added up, this reduces education to mere ashes. Children need a good education to reach full potential in life. The gifted program is important to me because it's the best way for me to receive a good education, as well as hundreds of other children. Teachers and parents have worked hard for the gifted program to work, and it's not fair to take their hard work away. WE NEED TO CONTINUE TO INCLUDE GIFTED STUDENTS AS EXCEPTIONAL CHILDREN UNDER THE LAW (ALONG WITH THE HANDICAPPED) SO THAT THEY'RE LEGALLY PROTECTED. Thank you.

Alexander Richert
Anchorage, AK
907/ 222-5304

As the parents of Alex and another son who would not have been able to attend school without the IA program, we strongly urge you to not pass out SB205, or if passed out, only if it requires the development of an IEP (Individual Educational Plan) for gifted students. These IEPs are in practice fairly general (i.e., that they will participate in the gifted or full time highly gifted program) but are the key to ensuring that there is an effort to meet their needs. Without this, another population of disenfranchised and high-risk children will be created, while also placing tremendous burdens on parents and children and wasting one of our State's best resources.

Jean Kollantai
Bernhard Richert

April 14, 2000

Senate HESS Committee

To Whom it may concern:

I teach sixth grade in a self-contained highly gifted program in Anchorage. Each of my twenty-eight sixth graders has an Individual Education Plan. The IEP ensures their rights to a free and appropriate public education, guarantees transportation to the program that provides them the appropriate services, and secures their education by holding the district accountable for the required amount of services needed to meet their exceptional needs. Many students would not be able to participate in the program without this transportation, therefore denying their right to a free and appropriate public education.

Some might say gifted kids are lucky just to have the program, and the transportation is just a perk. Some might even assume that parents of gifted students should can afford to transport their children to special schools if they want them to benefit from the "extras" that gifted education provides. On the contrary, these children need these services. Receiving gifted services is not a reward that children get for good behavior or getting straight A's on a report card. Gifted education is crucial to the survival of highly able individuals in a public educational system. An appropriate education is NOT a privilege for highly able children, but a requirement! Removing the language "Exceptional Children" from HB 301 takes away the right for gifted students to receive their appropriate education.

In a regular classroom environment, these exceptional learners are truly disabled. Very few teachers have sufficient training in administering gifted services, and even fewer have training in meeting the unique needs of highly gifted students. The children in my classroom are here because the regular classroom environment was a complete disaster for them. Many left regular classrooms in tears each day due to the sheer frustrations of endless boredom and difficulty making friends who had similar interests. Research proves that gifted students whose needs are not met become underachievers, and often high school drop-outs (many become criminals).

It is up to you and me to ensure these exceptional children's rights to an appropriate public education. They must have the same right to an appropriate education as all other children with special needs. If they are denied rights to procedural safeguards, currently provided by IEPs, these children will have absolutely no guarantee of an appropriate education—what a waste for them and our state! Please do not make any hasty decisions regarding the education of these exceptional youth!

Sincerely,

Tara Lindh

Tara Lindh
PO BOX 241924
Anchorage, AK
99524
(907) 229-5746

HB

304

1-GH2031\H.1
Cook
3/24/00

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 304(FIN)

Page 2, line 18, following "$150,000,000":

Insert "**for each program**"

Page 7, line 26, following "**provides**":

Insert "**waste**"

Page 9, line 8, following "assistance"

Insert "for drinking water system projects, including projects to plan, design, build, construct, or rehabilitate a public drinking water collection, storage, treatment, or distribution system,"

Page 9, lines 9 - 11:

Delete all material and insert:

"(A) municipalities;"

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 28, 2000 FURTHER REFERRALS:

Date of Committee Action: 3/17/00

The FINANCE Committee considered: HB 304

HOUSE BILL NO. 304 CLEAN WATER FUND/DRINKING WATER FUND

"An Act relating to issuance and sale of revenue bonds to fund drinking water projects, 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."

recommends it be replaced with the following committee substitute CSHB 304 (FIN) [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee

[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [X] fiscal note(s) DEC 1-21-00

[ ] zero fiscal note(s) _____ [X] zero fiscal note(s) REV 1-21-00

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Therriault	X			
Brenda Bunde	—			
Custerman			X	
DAVIES			X	
Grussendorf			X	
Davis	X			
Williams			X	
Phillips	—			
Foster	X			

CHAIR'S SIGNATURE Jerry Therriault

No: 2

FISCAL NOTE

Bill Version: HB 304
(H) Publish Date: 1/21/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____
Dept. Affected DEC
Title AK Bonding - AK Drinking Water Fund
BRU Facility Construction and Operation
Component Facility Construction and Operation
Sponsor Rules Committee
Requester Governor
Component No. 637

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**70.0**	**70.0**	**70.0**	**70.0**	**70.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	(1,551.4)	(1,551.4)	(1,551.4)	(1,551.4)	(1,551.4)
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1075 Clean Water Loan Fund	0.0	0.0	(395.5)	(455.3)	(455.3)	(455.3)
1100 Drinking Water Loan Fund	0.0	70.0	(380.4)	(448.4)	(448.4)	(448.4)
Drinking Water Fund Bond Recpts	0.0	1,551.4	1,551.4	1,551.4	1,551.4	1,551.4
Clean Water Administrative Fund	0.0	0.0	395.5	455.3	455.3	455.3
Drinking Water Administrative Fund	0.0	0.0	450.4	518.4	518.4	518.4
TOTAL	**0.0**	**70.0**	**70.0**	**70.0**	**70.0**	**70.0**

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

This legislation would provide for:

1) Using bond proceeds instead of GF Match to capitalize the Alaska Drinking Water Fund; and

2) Using fees deposited into (and appropriated from) two new administrative funds to pay the operating expenses of the Clean Water and Drinking Water loan programs. (Continued next page.)

Prepared by: Dan Easton, Director
Phone 465-5135
Division Facility Construction and Operation
Date/Time 12/30/99 12:04 PM
Approved by
Date 12-29-99
Agency Dept. of Environmental Conservation

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 304

Revision Date/Time (Note if correction) _____ Dept. Affected DEC

Title: AK Bonding - AK Drinking Water Fund

BRU: Facility Construction and Operation

Component: Facility Construction and Operation

Sponsor: Rules Committee

Requester: Governor

Component No.: 637

ANALYSIS: *(Continued)*

The Drinking Water and Clean Water Loan Programs offer low-interest loans to municipalities for drinking water and sewerage facility construction projects. Loans are made from the Alaska Drinking Water Fund and the Alaska Clean Water Fund. Both funds are capitalized by annual federal grants that require a 20 percent state match. The Funds also earn investment and repayment interest.

To date, the state capitalization match requirement for the Drinking Water Fund has been met with GF Match. Federal law provides an alternative to general fund outlays for satisfying the state match requirement. States may use bond financing as match for federal funds to capitalize the Fund, and repay the bonds from interest earnings from the Fund. Statutes (AS 37.15.560) currently provide the bonding authority for the Clean Water Fund needed to take advantage of this funding mechanism. This legislation would provide the same bonding authority for the Drinking Water Fund.

Beginning in FY 2002 there will be sufficient interest in the Alaska Drinking Water Fund to meet the match requirement. Interest will be converted to bond proceeds and supplant the annual general fund appropriation. The effect will be to save approximately $1.5 million in GF Match that year and each year thereafter. Bonding costs will be about $70.0 per year.

This legislation would also provide authority to collect fees as a means of funding the operation of the two loan programs. Federal law allows states to set aside four percent of the federal capitalization grants to help pay for program administration. To date, annual operating expenditures of $973.7 have been met with this Loan Fund set aside. With decreasing federal grant levels, the Loan Fund set-aside is also decreasing and is no longer sufficient to cover the costs of program administration. This legislation would create two new administrative funds into which loan fees would be deposited. Money could then be transfered from these administrative funds to the operating budget to finance program operating costs. This legislation would result in fully fee-supported loan programs by FY 2005.

Prepared by: Dan Easton, Director — Phone 465-5135

Division: Facility Construction and Operation — Date/Time 12/30/99 12:04 PM

Agency: Dept. of Environmental Conservation

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No: 1

FISCAL NOTE

Bill Version: HB 304

(H) Publish Date: 1/21/00

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue

Title Drinking Water Fund Bonds BRU Revenue Operations

Component Treasury Division

Sponsor Rules Committee

Requester Governor Component Serial No. 121

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY00) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The Alaska Drinking Water Fund will pay all costs of issuance, administration, and debt service for bonds issued. Bond proceeds will be deposited in the Drinking Water Fund to make loans to municipalities.
There is no other fiscal impact on state funds.

Prepared by Deven Mitchell, Debt Manager Phone 465-3750

Division Treasury Division Date/Time December 22, 1999

Approved by Commissioner Wilson L. Condon Date December 22, 1999

Agency Department of Revenue

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COMMITTEE COPY

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 28, 2000 FURTHER REFERRALS:

Date of Committee Action: 3/17/00

The FINANCE Committee considered: HB 304

HOUSE BILL NO. 304 CLEAN WATER FUND/DRINKING WATER FUND

"An Act relating to issuance and sale of revenue bonds to fund drinking water projects, 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."

recommends it be replaced with the following committee substitute CS HB 304 (FIN) [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) DEC 1-21-00

[X] zero fiscal note(s) REV 1-21-00

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Therriault	X			
Brenda Bunde	—			
Custerman			X	
Davies			X	
Ben Grussendorf			X	
Davis	X			
Williams			X	
Phillips	—			
Foster	X			

CHAIR'S SIGNATURE Therriault

No: 2

FISCAL NOTE

Bill Version: HB 304
(H) Publish Date: 1/21/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)
Dept. Affected DEC
Title AK Bonding - AK Drinking Water Fund
BRU Facility Construction and Operation
Component Facility Construction and Operation
Sponsor Rules Committee
Requester Governor
Component No. 637

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**70.0**	**70.0**	**70.0**	**70.0**	**70.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	(1,551.4)	(1,551.4)	(1,551.4)	(1,551.4)	(1,551.4)
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1075 Clean Water Loan Fund	0.0	0.0	(395.5)	(455.3)	(455.3)	(455.3)
1100 Drinking Water Loan Fund	0.0	70.0	(380.4)	(448.4)	(448.4)	(448.4)
Drinking Water Fund Bond Recpts	0.0	1,551.4	1,551.4	1,551.4	1,551.4	1,551.4
Clean Water Administrative Fund	0.0	0.0	395.5	455.3	455.3	455.3
Drinking Water Administrative Fund	0.0	0.0	450.4	518.4	518.4	518.4
TOTAL	**0.0**	**70.0**	**70.0**	**70.0**	**70.0**	**70.0**

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

This legislation would provide for:

1) Using bond proceeds instead of GF Match to capitalize the Alaska Drinking Water Fund; and

2) Using fees deposited into (and appropriated from) two new administrative funds to pay the operating expenses of the Clean Water and Drinking Water loan programs. (Continued next page.)

Prepared by: Dan Easton, Director
Phone 465-5135
Division Facility Construction and Operation
Date/Time 12/30/99 12:04 PM
Approved by
Date 12-29-99
Agency Dept. of Environmental Conservation

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 304

Revision Date/Time (Note if correction) _____
Dept. Affected DEC
Title AK Bonding - AK Drinking Water Fund
BRU Facility Construction and Operation
Component Facility Construction and Operation
Sponsor Rules Committee
Requester Governor
Component No. 637

ANALYSIS: *(Continued)*

The Drinking Water and Clean Water Loan Programs offer low-interest loans to municipalities for drinking water and sewerage facility construction projects. Loans are made from the Alaska Drinking Water Fund and the Alaska Clean Water Fund. Both funds are capitalized by annual federal grants that require a 20 percent state match. The Funds also earn investment and repayment interest.

To date, the state capitalization match requirement for the Drinking Water Fund has been met with GF Match. Federal law provides an alternative to general fund outlays for satisfying the state match requirement. States may use bond financing as match for federal funds to capitalize the Fund, and repay the bonds from interest earnings from the Fund. Statutes (AS 37.15.560) currently provide the bonding authority for the Clean Water Fund needed to take advantage of this funding mechanism. This legislation would provide the same bonding authority for the Drinking Water Fund.

Beginning in FY 2002 there will be sufficient interest in the Alaska Drinking Water Fund to meet the match requirement. Interest will be converted to bond proceeds and supplant the annual general fund appropriation. The effect will be to save approximately $1.5 million in GF Match that year and each year thereafter. Bonding costs will be about $70.0 per year.

This legislation would also provide authority to collect fees as a means of funding the operation of the two loan programs. Federal law allows states to set aside four percent of the federal capitalization grants to help pay for program administration. To date, annual operating expenditures of $973.7 have been met with this Loan Fund set aside. With decreasing federal grant levels, the Loan Fund set-aside is also decreasing and is no longer sufficient to cover the costs of program administration. This legislation would create two new administrative funds into which loan fees would be deposited. Money could then be transfered from these administrative funds to the operating budget to finance program operating costs. This legislation would result in fully fee-supported loan programs by FY 2005.

Prepared by: Dan Easton, Director
Phone 465-5135
Division Facility Construction and Operation
Date/Time 12/30/99 12:04 PM
Agency Dept. of Environmental Conservation

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No: 1

FISCAL NOTE

Bill Version: HB 304

(H) Publish Date: 1/21/00

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue

Title Drinking Water Fund Bonds BRU Revenue Operations

Component Treasury Division

Sponsor Rules Committee

Requester Governor Component Serial No. 121

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of current year (FY00) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The Alaska Drinking Water Fund will pay all costs of issuance, administration, and debt service for bonds issued. Bond proceeds will be deposited in the Drinking Water Fund to make loans to municipalities.
There is no other fiscal impact on state funds.

Prepared by Deven Mitchell, Debt Manager Phone 465-3750

Division Treasury Division Date/Time December 22, 1999

Approved by Commissioner Wilson L. Condon Date December 22, 1999

Agency Department of Revenue

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Cook
3/17/00

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Adopted 3/17/00

CS FOR HOUSE BILL NO. 304(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"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:

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

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

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

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

(b) The state bond committee may not issue more than $15,000,000 in revenue bonds under AS 37.15.560 - 37.15.605 during a fiscal year **for each revolving loan fund program referred to in (a) of this section**, excluding refunding bonds. The total unpaid principal amount of revenue bonds, including refunding bonds, but excluding refunded bonds, issued under AS 37.15.560 - 37.15.605 [,] may not exceed $150,000,000.

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

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

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

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

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

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

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

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

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

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

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

(e) In its determination of all matters and questions relating to the issuance and sale of the bonds and the fixing of their maturities, terms, conditions, and covenants as provided in (a) - (d) of this section, the decisions of the committee shall be those that are reasonably necessary for the best interests of the state and its inhabitants and that will accomplish the most advantageous sale of the bonds, with due regard, however, for the continued funding under AS 46.03.032 **and AS 46.03.306** of the categories of projects identified in AS 46.03.032(d) **and 46.03.036(b)**. Decisions of the committee, as expressed in a bond resolution, are final and are conclusively considered to comply with the requirements of AS 37.15.560 - 37.15.605**,** [AND] AS 46.03.032**, and 46.03.036**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) "other qualified entity" means an **entity that is not a municipality and that is eligible for assistance under** [INTERMUNICIPAL OR INTERSTATE AGENCY AS THOSE TERMS ARE USED IN] 33 U.S.C. 1383 [, AND MAY INCLUDE AN AUTHORITY, CORPORATION, INSTRUMENTALITY, ENTERPRISE, OR OTHER ENTITY FORMED THROUGH AN AGREEMENT BETWEEN A MUNICIPALITY AND ONE OR MORE OTHER GOVERNMENTAL ENTITIES UNDER AS 29.35.010(13) OR UNDER ART. X, SEC. 13, CONSTITUTION OF THE STATE OF ALASKA, OR BETWEEN A MUNICIPALITY AND A REGIONAL HOUSING AUTHORITY UNDER AS 18.55.996(b)];

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

Sec. 46.03.034. Alaska clean water administrative fund. (a) The Alaska clean water administrative fund is established as a separate fund that is distinct from other money or funds in the treasury. The fund is composed of two accounts, the

(1) Alaska clean water administrative operating account; and

(2) Alaska clean water administrative income account.

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

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

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

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

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

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

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

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

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

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

(3) loan repayments; and

(4) interest received from loan repayments and interest received from

investment of money in the Alaska drinking water fund.

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

(1) provide financial assistance to

(A) municipalities for municipal drinking water system projects, including projects to plan, design, build, construct, or rehabilitate a public drinking water collection, storage, treatment, or distribution system;

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

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

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

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

(5) pay

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

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

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

(d) Separate accounts may be created in the Alaska drinking water fund. The

accounts may be combined for purposes of investment.

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

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

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

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

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

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

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

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

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

(4) collateral or other security required for loans;

(5) terms of loans; and

(6) other relevant standards or procedures.

(i) Except as necessary to comply with the covenants of a bond resolution under AS 37.15.573, a loan made by the department shall be made according to the standards and procedures established by regulations under this section. A loan made

from the Alaska drinking water fund may be subject to the state aid intercept provisions of AS 37.15.575.

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

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

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

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

(1) Alaska drinking water administrative operating account; and

(2) Alaska drinking water administrative income account.

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

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

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

(e) Money received in payment of fees charged by the department under the authority of AS 46.03.039 and earnings on the Alaska drinking water administrative

fund shall be deposited in the Alaska drinking water administrative income account.

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

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

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

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

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

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

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

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

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

TRANSITION: REGULATIONS. The respective state agencies may proceed to adopt any regulations necessary to implement their duties under this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of secs. 1 - 23 and 25 of this Act.

*** Sec. 28.** Section 27 of this Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

REGULATORY COMMISSION OF ALASKA

1016 WEST SIXTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501-1963
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533

March 7, 2000

The Honorable Gene Therriault
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: HB 304 – Request for Information

Dear Representative Therriault:

This is in response to your request for information regarding privately owned economically regulated water utilities. For economically exempt utilities, the Commission does not perform its traditional rate-based/rate-of-return regulatory review of utility operations. Therefore, the Commission is unable to assess any potential impact on rates. An economically unregulated utility would determine whether to pass any reduced debt service costs on to its ratepayers, without benefit of review by the Commission.

For those investor-owned (private) utilities which are subject to economic regulation by the RCA, any costs, regardless of the source of financing, are subject to Commission review and must be necessary, reasonable, prudently incurred, and of benefit to the ratepayers. Generally, all economically regulated expenses are reviewed according to these criteria. Accordingly, any reduction in debt-service expense associated with allowed costs would generally be of benefit to the ratepayers of the utility. The ratepayers would benefit through rates lower than would otherwise be required to allow the utility to recover its debt-service expense.

Attached is a list of privately owned and economically regulated water and sewer companies in Alaska. Please note that this list does not contain those entities that have not yet completed the certification process.

If you have further questions or need additional information, please contact me at (907) 276-6222.

Sincerely,

REGULATORY COMMISSION OF ALASKA

G. Nanette Thompson
Chair

HOUSE BILL 304
SENATE BILL 210

SECTIONAL ANALYSIS

Introduction. This bill authorizes revenue bonds to be sold to make available bond receipts for the Alaska Drinking Water Fund by providing the same bonding authority that currently exists with the Alaska Clean Water Fund. The bill also creates two administrative funds to provide the authority to use a portion of the repayments being made on the loans to support program operations for both Funds. And it clarifies the uses of the Alaska Drinking Water Fund to ensure that its purposes conform to current federal statutes.

Section 1 and 2. AS 37.15.560 (a) (b). BOND AUTHORIZATION- Authorizes the state bond committee to issue and sell bonds to raise money to be placed into the **Alaska Drinking Water Fund.** Because these are revenue bonds, they can be issued when the committee decides and this does not require a public vote. The committee may enter into agreements and perform those functions that are normally required to accomplish the task of issuing and selling bonds.

Section 3. AS. 37.15.565. BOND REDEMPTION FUND- A new bond redemption fund is established as the **Alaska Drinking Water Fund Revenue Bond Redemption Fund.** This is a standard industry technique for making it easier and more accountable to perform the many functions necessary in the bond issuance and sales process. And also, to provide accountability for any future principle and interest payments and any premium redemption on the bonds.

Sections 4. 5. 6. 7. AS 37.15.570(c)(d)(e)(f) BOND TERMS- The state bond committee may issue, sell, control or redeem bonds for the **Alaska Drinking Water Fund** in such a way as to achieve the greatest advantage for the State. They can make decisions based upon the market conditions of that moment and do not require approval of another agency or group to execute these decisions. The committee will decide the level of security required from the fund that will provide this collateral security. A trustee may be appointed by the committee to perform all necessary functions as directed by the committee. The committee must give due regard to the federal requirements of this drinking water fund, but any decisions made after giving this consideration are final. Bond resolutions that reference these statutes shall be regarded as having given this consideration.

Section 8. AS 37.15.573. BOND RESOLUTION- The committee must adopt a bond resolution to issue bonds for the **Alaska Drinking Water Fund.** The resolution will contain those items that are necessary to identify and define the bonds and the bond sales process.

Section 9. AS 37.15.575. STATE AID INTERCEPT- This paragraph defines the procedure for allowing the State to intercept or garnish other legitimate sources of State aid should a community default on a loan from the **Alaska Drinking Water Fund.** This paragraph is included in the legislation to enhance investor confidence in the program and ultimately, lower

for making and servicing loans.

Section 20 AS 46.03.036 ALASKA DRINKING WATER FUND. This section is updated so that the proceeds and interest from the sale of bonds can be deposited into the fund and well as funding the administration of the fund. The requirement is set that municipalities wishing to borrow money have to have the authority to incur debt and establish a source of revenue for payment. Regulations are required that set out criteria for priority setting, standards for borrowers eligibility, types of projects to be funded and long term interest rates, standards for self sufficiency, collateral and loan terms.

Section 21. AS 46.03.038 ALASKA DRINKING WATER ADMINISTRATIVE FUND. This fund is set up the same as the Alaska Clean Water Administrative Fund in Section 18 with a 1). Alaska Drinking Water Administrative Operating Account and the 2). Alaska Drinking Water Administrative Income Account to receive payment of fees and earnings of the Alaska Clean Water Administrative Fund.

Section 22. AS46.03.039 FEES CHARGED FOR LOANS MADE FROM THE ALASKA DRINKING WATER FUND. This authorizes the department to charge and collect reasonable fees for making and servicing loans.

Section 23. Clarifies that this portion of the legislation would create a change in Civil Procedure 3 and cause all actions to be filed in Superior Court in Juneau. The second paragraph recognizes that in order for this procedure change to be in effect, this section must receive a two-thirds majority vote of each house as required by Article IV, Section 15. Constitution of the State of Alaska.

Section 24. Specifies that the regulations adopted under this statute may not take effect before the statutory effective date of sections 1 through 22.

Section 25. States that section 24 takes effect immediately upon passage of the statute.

Water Bond Bill

SHORT FACT SHEET

The Governor has introduced the ADEC Drinking Water Bonding and Fee Authority bill for consideration by the Legislature. The primary purpose of the bill is to provide ADEC with bonding authority for the Drinking Water Loan Program and allow for program operation costs to be charged back to loans through finance charges.

Some of the cost-saving measures and efficiencies achieved by enactment of this legislation are:

- By allowing ADEC the authority to bond for the **Drinking Water Loan Program** this bill would save general funds currently used to match federal funds. This year, $7.7 million in drinking water funds will be offered from EPA and the State must come up with $1.5 million to match it. Through this bill, the State could bond for this match in future budget years instead of drawing money from general funds.

- Already, bonding authority in the companion **Clean Water Fund** will result in a direct savings to the State of 1.6 million this year.

- Through bonding authority for both programs the State could realize over $3.0 million each year in general funds savings. At the same time, the State will draw in over $15 million each year in federal funds for needed water and wastewater project loans.

- The bill provides for additional savings of general funds and low finance costs to communities by using a portion of the finance charges to pay program costs. Currently, this cost is paid for by a small part of the federal grants awarded the State. That money is limited and will run out in about four years.

- Additional savings to the communities will be realized through regulation amendments allowing the interest rate charged to communities to drop from 4.3% to 2.5%. ADEC has operated the loan programs for many years and they now have the financial strength to offer this rate reduction and still absorb the program costs.

- ADEC would use only the amount of funds needed and allowed by the Governor and the Legislature to cover program costs

- No new positions or significant program cost increases are expected.

- Already, these two loan programs have provided low-interest loans in the amount of $160,000,000 to Alaskan communities. They are a vital financial option for municipalities that must construct drinking water and wastewater capital projects.

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE AND ALASKA CONFERENCE OF MAYORS

RESOLUTION 00-01

A RESOLUTION URGING THE LEGISLATURE TO PASS THE GOVERNOR'S ADEC BONDING AND FEE AUTHORITY BILL

WHEREAS, it is important that the State promote the health of its citizens and encourage the growth of infrastructure by assisting communities in developing safe water supplies and sanitary means of wastewater treatment and disposal; and

WHEREAS, the Alaska Clean Water Fund and the Alaska Drinking Water Fund are important financial alternatives for communities, having so far provided $160,000,000 in subsidized, low-interest loans to communities for projects of this type; and

WHEREAS, Governor Knowles has introduced a bill to provide for the issuance of bonds as an alternative to using state general funds to capitalize the loan Funds; and

WHEREAS, the alternative financing method provided by the bill will allow the State to continue securing federal grants to grow the Funds and the amounts available for loans; and

WHEREAS, the alternative financing method provided by the bill will save approximately $1.5 million in state general fund expenditures annually; and

WHEREAS, the bill also reserves a portion of the finance charges paid on the loans to pay the costs of administering the loan programs to offset decreasing federal grant funding available; and

WHEREAS, reserving a portion of the loan finance charges for program administration will not increase the cost of the loans to the communities of the State nor increase the need for any State general fund dollars;

NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League and Alaska Conference of Mayors that the Alaska State Legislature is urged to adopt the ADEC Bonding and Fee Authority legislation during the 2000 legislative session.

Adopted on January 27, 2000.

Attest: _____
Kevin C. Ritchie, Executive Director

Post-it™ Fax Note 7671	Date 1-31	# of pages ▶ 1
To Mary	From [illegible]	
Co./Dept. ADEC	Co. AML	
Phone #	Phone #	
Fax # 465-5312	Fax #	

H-13-3

TONY KNOWLES
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 20, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

Low-interest state loans from the Alaska Drinking Water Fund and the Alaska Clean Water Fund offer municipalities the means to build drinking water and sewage facility projects. This bill I transmit today will allow the state to use revenue bonds to capitalize the Alaska Drinking Water Fund.

Both the Drinking Water and Clean Water funds are capitalized by annual federal grants that require a 20 percent state match. Bond revenues will help provide the state match for federal drinking water project money. But the state is only authorized to sell bonds for the Clean Water Fund. It makes sense to extend this leveraging power to the Drinking Water Fund.

As with existing law, the bill requires the state bond committee to conduct its activities in the best interests of the state, in a manner that will accomplish the most advantageous sale of the bonds. The bill also provides for a new, self-supporting structure to pay for the costs of operating these important loan programs.

I urge your prompt consideration and passage of this bill.

Sincerely,

Tony Knowles
Governor

CITY OF PETERSBURG
P.O. BOX 329 • PETERSBURG, ALASKA 99833
TELEPHONE (907) 772-4511
TELECOPIER (907) 772-3759

February 22, 2000

Representative Eldon Mulder, Co-Chair
Representative Gene Therriault, Co-Chair
House Finance Committee
State Capitol
Juneau, Alaska 99801

Dear Representatives Mulder and Therriault:

Please accept this letter of support for House Bill 304, Clean Water Fund/Drinking Water Fund. The citizens of Petersburg have benefited greatly from this program as it has provided clean drinking water and wastewater disposal at an affordable cost. Our state has so many small communities that need help providing safe drinking water and safe wastewater disposal. Only with programs such as this, can they be provided basic needs.

On behalf of the citizens of Petersburg and all the other small communities in the State, please support House Bill 304.

Sincerely,

Ted Smith, Mayor

Water Bond Bill

SHORT FACT SHEET

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- Through bonding authority for both programs the State could realize over $3.0 million each year in general funds savings. At the same time, the State will draw in over $15 million each year in federal funds for needed water and wastewater project loans.

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Alaska Department of Environmental Conservation
Division of Facility Construction and Operation
Municipal Loans Program

Interest Structure and Fee Rate Regulation Amendments

FACT SHEET

February 1, 2000

What do the proposed regulation amendments do?

The proposed changes would:

- Lower the charges on subsidized loans to communities for drinking water and wastewater projects;
- Designate a portion of the new, lower finance charges to help pay for the loan programs;
- Remove superfluous or expired federal program requirements from the loan program regulations;
- Make other minor changes to clarify the intent of the loan program; and
- Repeal an unused and unnecessary chapter of the Department's regulations (18 AAC 77).

What are the Drinking Water and Clean Water loan programs?

DEC-operated loan programs that offer low-interest loans to municipalities for drinking water, sewerage and other water-quality construction projects.

What are the current finance loan charges?

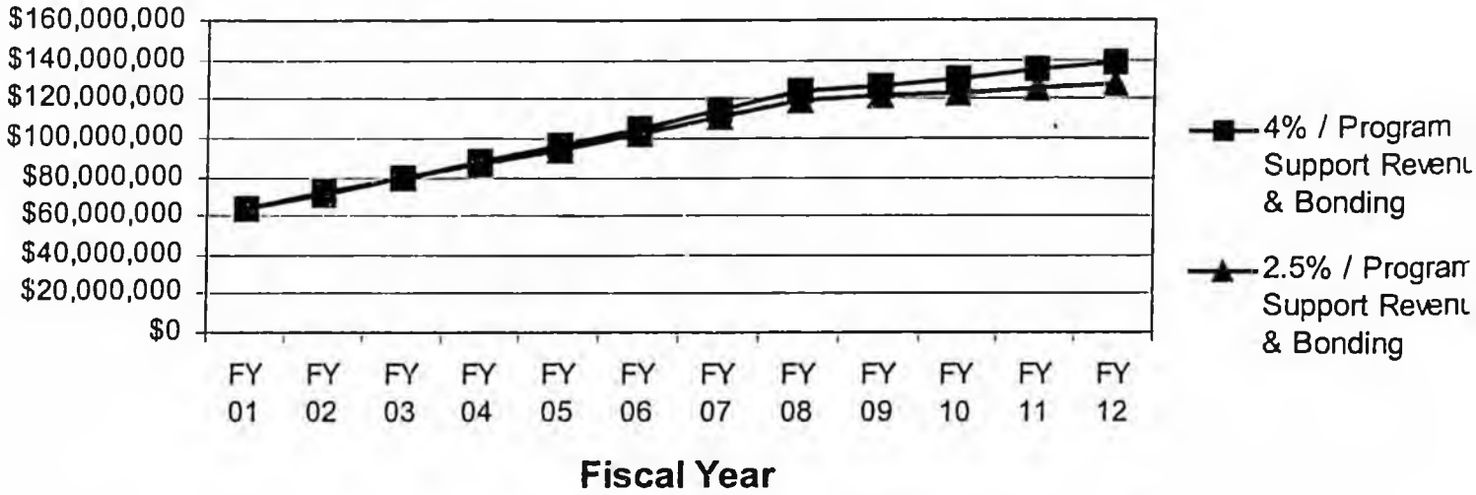
The finance charges are found in 18 AAC 76.080 and 76.255. The table below outlines the current charges for both programs.

Loan Term	Finance Charge
5 - 20 years	75% of market rate (4.3% currently)
2 - 5 years	The greater of 2.5% or 33% of the market rate
Less than 2 years	The greater of 1.5% or 25% of the market rate

What would the new finance charges be?

The proposed amendments would lower the finance charge for each loan term for the two programs. Most loans made now are for 20-year terms and contain a finance rate of about 4.3%. The new structure would have loans with a flat finance charge of 2.5% or 30% of the current bond index; whichever is greater, for a term of 5-20 years. For a term of less than 5 years; the finance charge would be a flat 1% or 12.5 % of the current bond index, whichever is greater. These changes also propose to give a community

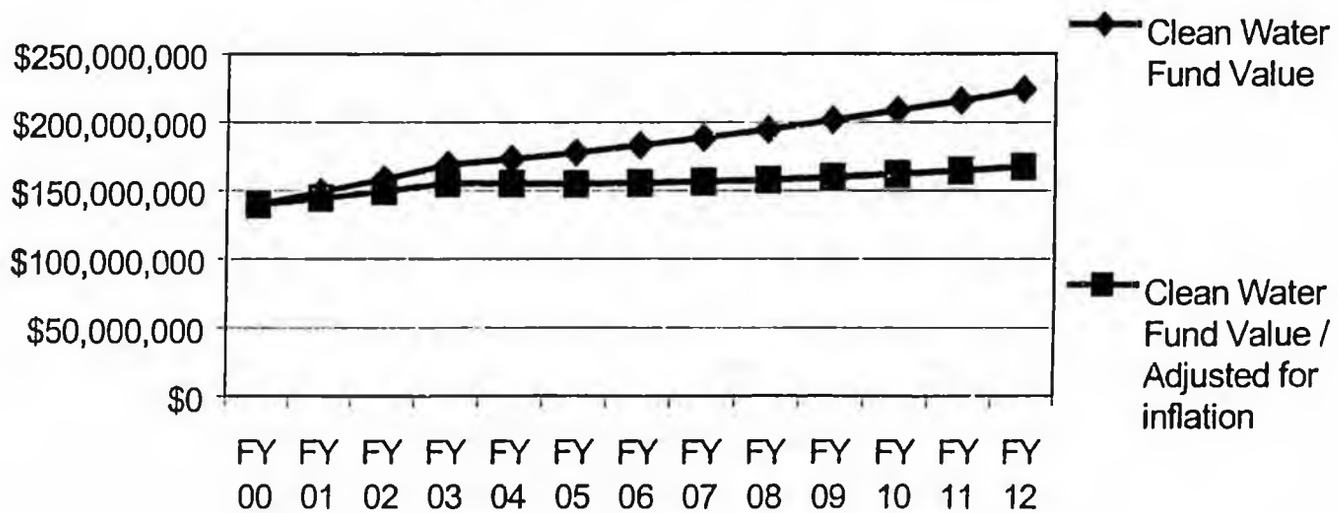
Drinking Water Projected Growth



How would the new rates affect the real or inflation-adjusted growth of the Funds?

We examined whether these proposed actions would reduce the ability of the program to fund an equivalent amount of projects in the future. For our analysis, we assumed that inflation would grow at an average rate of 3% (a conservative rate used by the Permanent Fund Corporation). The graphs below plot the value of the two Funds using unadjusted and inflation-adjusted factors and demonstrate that the amount of money available for loans will continue to grow.

CLEAN WATER FUND



CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

Alaska Department of Environmental Conservation
Division of Facility Construction and Operation
Municipal Loans Program

Interest Structure and Fee Rate Regulation Amendments

FACT SHEET

February 1, 2000

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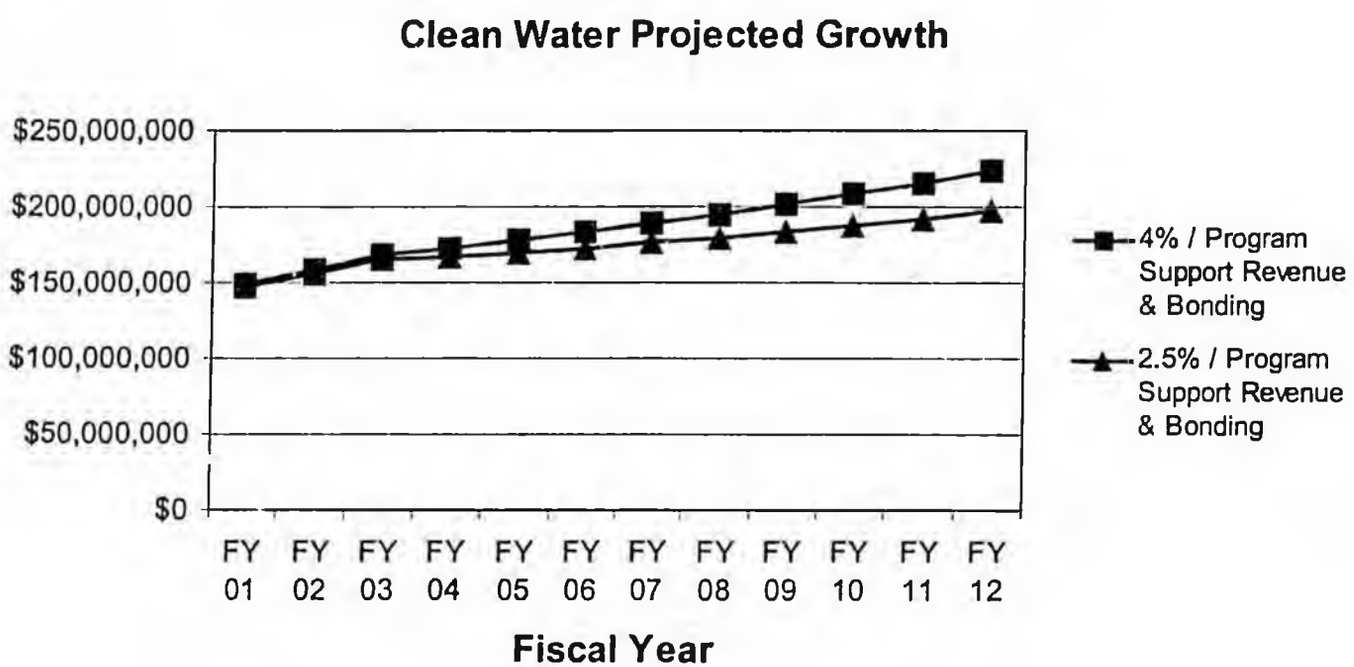
with an existing loan, one year to convert to a new finance rate. The tables below illustrate the differences between the existing rates and the proposed rates in the amendments.

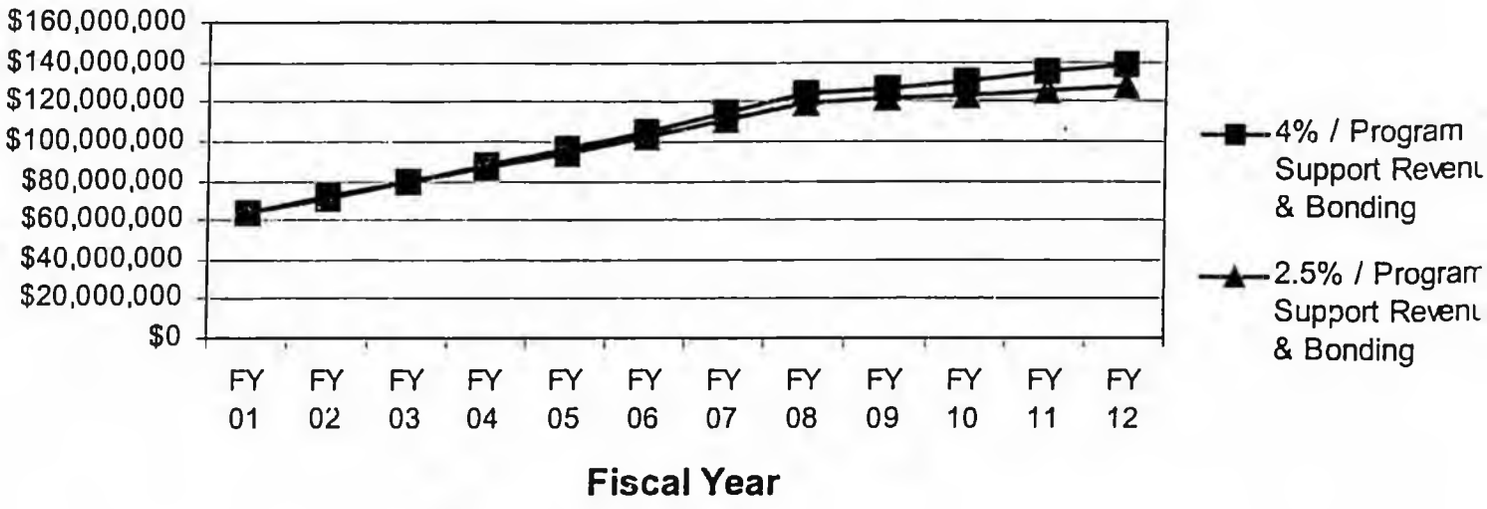
Current		Proposed	
Loan Term	**Finance Charge**	**Loan Term**	**Finance Charge**
5-20 years	75%of market (4.3% today)	5- 20 years	2.5% or 30%of market
2- 5 years	2.5% or 33%of market	0- 5 years	1% or 12.5% of market
0- 2 years	1.5% or 25% of market		

How were these rates established?

The rates were established to make the loans more attractive. A series of projections were used to examine the impacts of different finance charges on the growth of the funds from which loans are made. The smallest finance charge that would protect the long-term integrity of the Funds was selected. To protect the Funds during inflationary periods, finance charges graduate from a flat fee to a percentage of the Municipal Bond Index when the index hits or exceeds approximately 8 percent. The charts below demonstrate the effects of different finance charges upon the growth of the Funds. By reducing the finance charge from an average of 4% to 2.5%, we reduce the rate of growth from 4.6% to 3.2% in the Clean Water Fund and 11.9% to 10.3% in the Drinking Water Fund. Both of these exercises show that the Funds will continue to grow even with the lower finance charges.



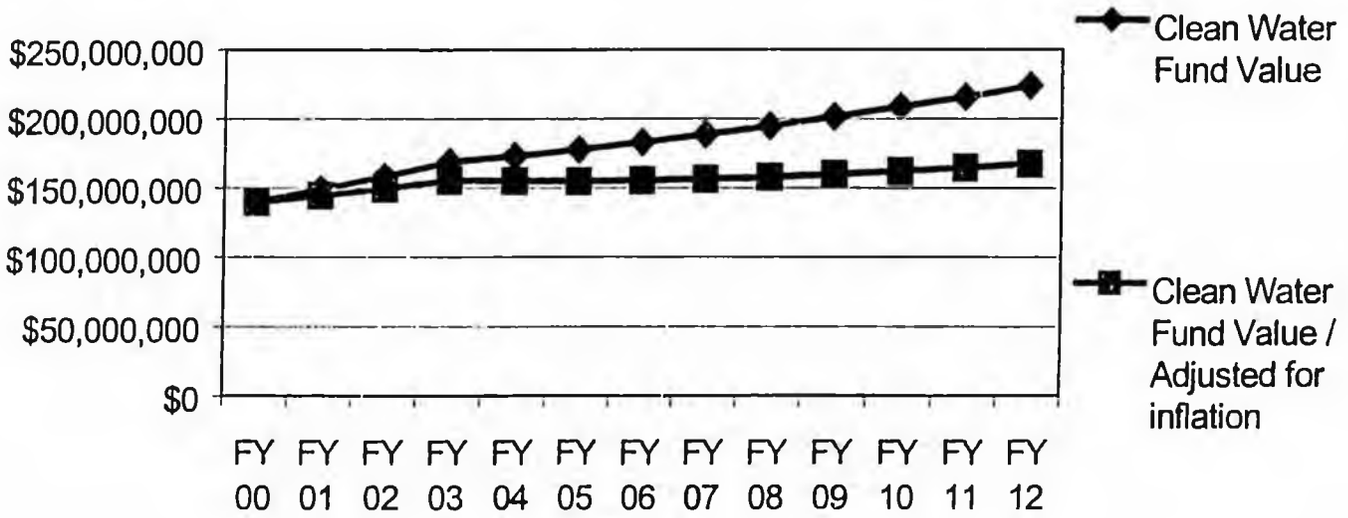
Drinking Water Projected Growth



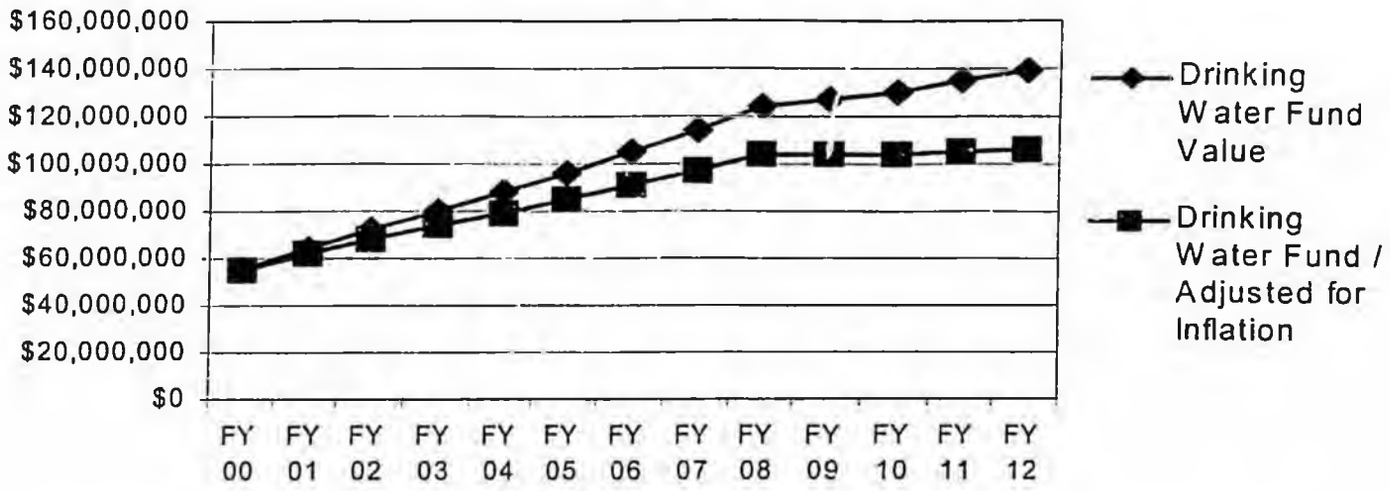
How would the new rates affect the real or inflation-adjusted growth of the Funds?

We examined whether these proposed actions would reduce the ability of the program to fund an equivalent amount of projects in the future. For our analysis, we assumed that inflation would grow at an average rate of 3% (a conservative rate used by the Permanent Fund Corporation). The graphs below plot the value of the two Funds using unadjusted and inflation-adjusted factors and demonstrate that the amount of money available for loans will continue to grow.

CLEAN WATER FUND



DRINKING WATER FUND



Switching to the next change, why is DEC proposing to use a portion of the loan finance charge to pay program operating costs?

These proposed changes are found in new sections to the regulations, 18 AAC 76.085 and 76.257. It costs about $1 million each year to operate the two programs – to provide engineering assistance, to execute loan agreements, to review payment requests and issue payments to communities, to track loan debt, to collect and record repayments from communities, and to pay for audits by CPA firms. Federal law allows states to use a small part of the grants received from EPA to pay for program costs. DEC has relied on this source to fund program operations. With decreasing federal grant levels, this funding source will not be sufficient to cover program costs – even though those costs are expected to remain stable. Another source of funding is needed. Most states already use a portion of the repayment interest to pay for program costs. Eventually all states will be doing the same. We think it makes sense in Alaska as well.

Is this needed to cover increasing numbers of personnel and other increases in administrative costs?

No. The number of personnel and other program costs are expected to remain at current levels for the foreseeable future. We are seeking only to replace the declining federal subsidy.

How do projected revenues compare with program administration costs?

Adding an additional revenue stream will extend the life of the federal subsidy. The following chart shows the relationship between the federal set-asides and expected revenues.

Alaska Department of Environmental Conservation
Division of Facility Construction and Operation
Municipal Loans Program

Loan Fund Bonding and Fee Authority Legislation
FACT SHEET

February 1, 2000

What does the legislation do?

Authorizes DEC to:

- Sell bonds as a means of capitalizing the Alaska Drinking Water Fund; and
- Designate a portion of the interest charged on Drinking Water and Clean Water program loans to help pay for program operations.

What are the Drinking Water and Clean Water Loan Programs?

DEC-operated loan programs that offer low-interest loans to municipalities for drinking water, sewerage and other water-quality construction projects.

How are the programs funded?

Each year the State may apply for two federal capitalization grants: one for the Drinking Water Loan Program and one for the Clean Water Loan Program. Both federal grants require a 20 percent state match. In state fiscal year 2000, the State received $15.5 million in federal grants and contributed $3.1 million in state funds.

In addition to annual contributions of state and federal capitalization money, the funds also earn interest. Funds that have yet to be loaned out are invested in interest bearing accounts and earn investment interest. Communities also pay interest when they repay their loans. Both investment and repayment interest must, by federal law, be retained in the Alaska Drinking Water and Clean Water Funds and thus contribute to the growth of the Funds.

What are the rules about how the programs are operated?

The funds must be used in accordance with federal rules derived from the Safe Drinking Water Act for the Alaska Drinking Water Fund and the Clean Water Act for the Alaska Clean Water Fund. The federal rules are complex, but an important concept is central: Once money is deposited into a fund, it must remain in the fund and unavailable for any

purposes other than to make loans to communities – except in a very limited number of special cases.

How do the programs work?

Each year DEC mails applications to all Alaska municipalities. Interested communities complete and return the applications proposing specific projects for funding. DEC ranks the applications based primarily on the degree of public health benefit expected from the projects. Loan agreements with municipalities are executed for the highest-ranking projects. As construction costs are incurred, monies are drawn from the Funds and loaned to municipalities. The municipalities pay back the loans when projects are complete. This money is returned to the loan Funds where it becomes available for other projects.

For each loan project, DEC assigns an engineer to assist the community in selecting an appropriate project design, in getting permits and other authorizations, and generally in serving as an advisor to the community on the project. There is a broad range of assistance provided depending on each community's capabilities and needs. The engineers also approve all payments to communities to make certain that all costs are eligible for funding under state and federal law.

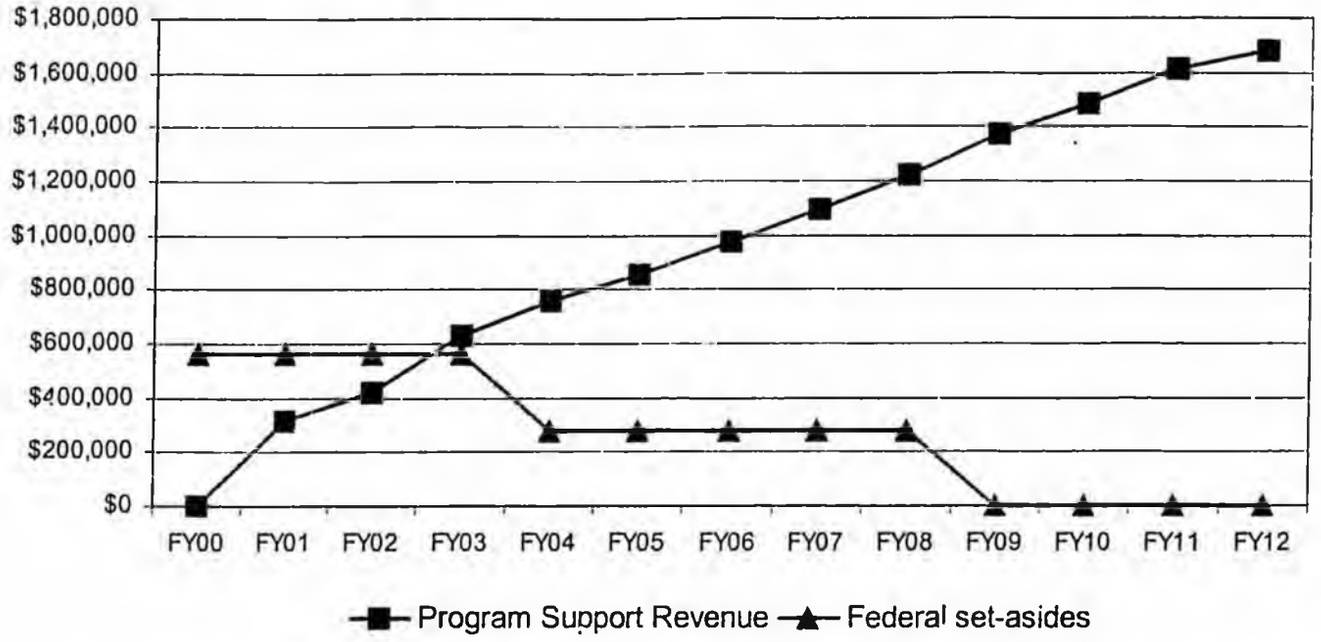
Why is bonding authority needed?

Until now, the State of Alaska has met its match obligation using general funds. However, the federal government recently offered the states another option for meeting their match requirements. The option is to use interest retained in the Funds in a form of short-term bonding exercise to meet the state match requirement. In essence, this form of bonding lets the states convert interest earned by the funds into bonds and then use the bonds to meet the state match requirement. To take advantage of that option requires that state statutes provide bonding authority. The statutes establishing the Alaska Clean Water Fund currently provide authority to use bonds for financing. That authority does not exist for the Alaska Drinking Water Fund.

Since the statutes currently provide authority to use bonds to capitalize the Alaska Clean Water Fund, does DEC plan to exercise that authority in FY 2001?

Yes. DEC intends to use the existing Clean Water Loan Program bonding authority to obtain the $1.5 million in state match needed to capture the $7.5 million in federal grant funds expected for FY 2001. That will save the State $1.5 million in general funds in FY 2001.

CW & DW Set-Asides & Program Support Revenue



When interest rates go down, what will happen to the existing loans made at higher rates? Will communities be stuck with the higher rate loans?

The proposed regulations allow communities with existing loans to convert to the new rate structure. No communities will be stuck with higher rate loans.

If more money is collected than is needed to cover program costs, what will happen?

Funds will be deposited into an income account. Each year we will request that the legislature appropriate funds from the income account to an operating account to cover program costs. If there are more funds in the income account than are needed to cover program costs, we will use those excess funds to make loans to communities.

As for removing unnecessary federal requirements, why are they in the loan program in the first place?

The loan program regulations include provisions that were once mandated by federal law, but are no longer required. The concepts behind the federal requirements have merit but most of them have equivalent State requirements that have to be adhered to. By not having to take the extra time, effort and money to address these unneeded issues, communities will save on project costs. Projects can be built by using less money or more capacity can be achieved by using the same amount of money.

What specific changes are proposed to remove these old requirements?

A listing of the changes is presented here:

- Section 030- discontinues two expired federal application requirements. Sections (a)(4) and (a)(7) clarifies that project facility plans and value-engineering studies are no longer required by federal law to be submitted as part of the assistance application.
- Section 060- discontinues the federal requirement for using Davis-Bacon wages on clean water construction projects. Section (a)(9) allows DEC to use Alaska Department of Labor rates instead.
- Sections 020 and 220 discontinues the requirement for federal approval of the project priority lists. The federal government does not have the authority to approve these State generated lists. Only a state may create and approve these lists. Sections 020(a) and 220(a) and (d) clarify this point.
- Section 230(c)- clarifies that EPA does not approve the department's intended use plans. Again, only a state may create and approve this plan.

What other regulation changes are proposed?

There are two other proposed changes and they are fairly simple. They are:

- Sections 030(a)(2) and 225(b)(2)- clarifies when a community submits a loan acceptance resolution. The Attorney General has opined that a community must have an ordinance that formally accepts an offer of financial assistance. These sections clarify that point.
- Section 245(a)(5)- clarifies that operation and maintenance manuals are not required on some projects. EPA does not require that operation and maintenance manuals be provided on all types of projects. This section states that the Department will determine if the manual is needed for a project.

DEC is proposing to eliminate 18 AAC 77 in its entirety, why?

This chapter was established to implement a program that was created in statute and proposed to receive State funding. The accounts have never received any funding and therefore, they have never made any loans. The regulations are for a program that is not funded now and probably never will be. We propose to eliminate the unused and unneeded regulations.

What will the bonding costs be?

The costs for preparing bond documents and finance charges will be approximately $50,000.

What about the Alaska Drinking Water Fund? Can the State do the same for the Alaska Drinking Water Fund?

Not until two things happen. First, the statutes need to be amended to provide authority to use bonds to capitalize the Alaska Drinking Water Fund. Second, there needs to be an amount of interest earnings in the Alaska Drinking Water Fund equal to the state match requirement plus bonding costs. In other words, there needs to be about $1.5 million in interest in the Fund to execute a short-term bonding exercise. Because the Alaska Drinking Water Fund is much younger than the Alaska Clean Water Fund, there aren't enough interest earnings in the fund to take advantage of this short-term bonding option in FY 2001.

When will the State be in a position to use short-term bonds to meet its capitalization obligation for the Alaska Drinking Water Fund?

There should be enough interest earnings in the Alaska Drinking Water Fund by FY 2002. With enough interest and bonding authority for this Fund, the State would be positioned to save $1.5 million in general funds in the FY 2002 budget.

What overall savings could the State realize by bonding for both the loan Funds?

The State could save about $3 million each year in money needed to capture $15 million in federal grants. Our hope is to save $1.5 million beginning in FY 2001 and $3.0 million in FY 2002 and beyond.

Will bonding affect the amount of federal grant funds the state qualifies for?

No. The amount of the federal grant awards will be the same whether the State match comes from general funds or bond proceeds.

Switching to the second part of this legislation, why is fee authority needed?

It costs about $1 million each year to operate the two programs – to provide engineering assistance, to execute loan agreements, to review payment requests and issue payments to communities, to track loan debt, to collect and record repayments from communities, and to pay for audits by CPA firms. Federal law allows states to use a small part of the federal capitalization grants to pay for program costs. For the past few years, DEC has relied entirely on this source to fund program operations. With decreasing federal grant levels, this funding source will not be sufficient to cover program costs – even though those costs are expected to remain stable. Another source of funding is needed. Most states already use a portion of the repayment

interest to pay for program costs. Eventually all states will be doing the same. We think it makes sense in Alaska as well.

Are personnel and other costs increasing?

No. The number of personnel and other program costs are expected to remain at current levels for the foreseeable future. We are seeking only to replace the declining federal subsidy.

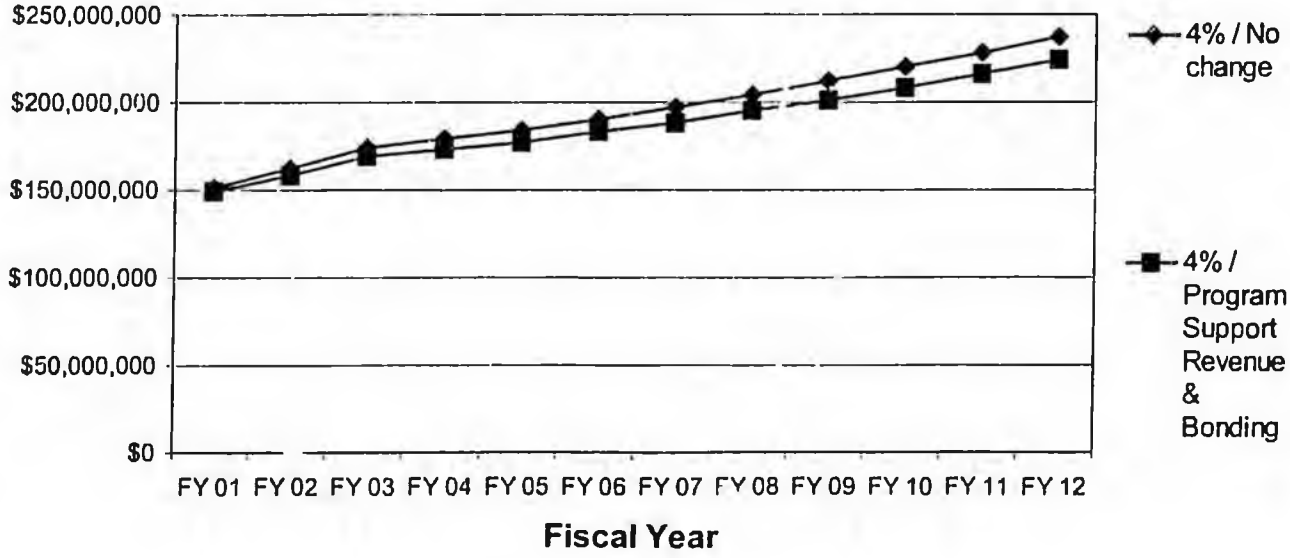
How will these changes affect the terms of the loans DEC makes to communities? Will costs go up?

Finance charges on the loans will not go up. In fact we are proposing to lower finance rates. All of the finance charges for the loans are currently treated as interest and returned to the Funds. To assess fees, the finance charges that communities pay would be broken into two parts: a portion that is interest to be returned to the Fund, and a portion that would go to paying for program operations. For example, if the overall financing charge is 2.5 percent, 2 percent might be interest that is returned to the Fund, and 0.5 percent might go to fund program operations. Again though, the overall debt service cost to the municipalities is expected to go down.

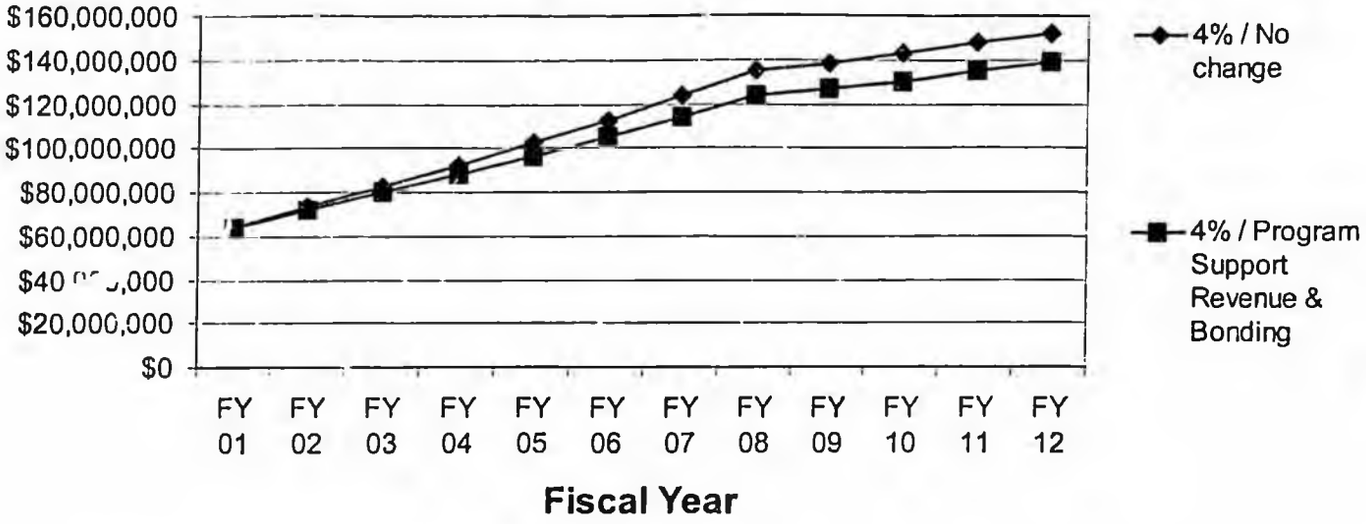
What about the impacts on the amount of money available to loan out? Will the changes reduce the rate of growth of the funds?

Yes. The changes will result in slower growth in the Funds. For example, the projected annual growth in the Alaska Clean Water Fund over the next 12 years is expected to decrease from 5.3% to 4.6% per year. Similarly the annual growth in the Alaska Drinking Water Fund is expected to slow from 13.8% to 11.9%. Nevertheless, the funds will remain healthy and capable of meeting the expected demand for loans.

Clean Water Projected Growth



Drinking Water Projected Growth



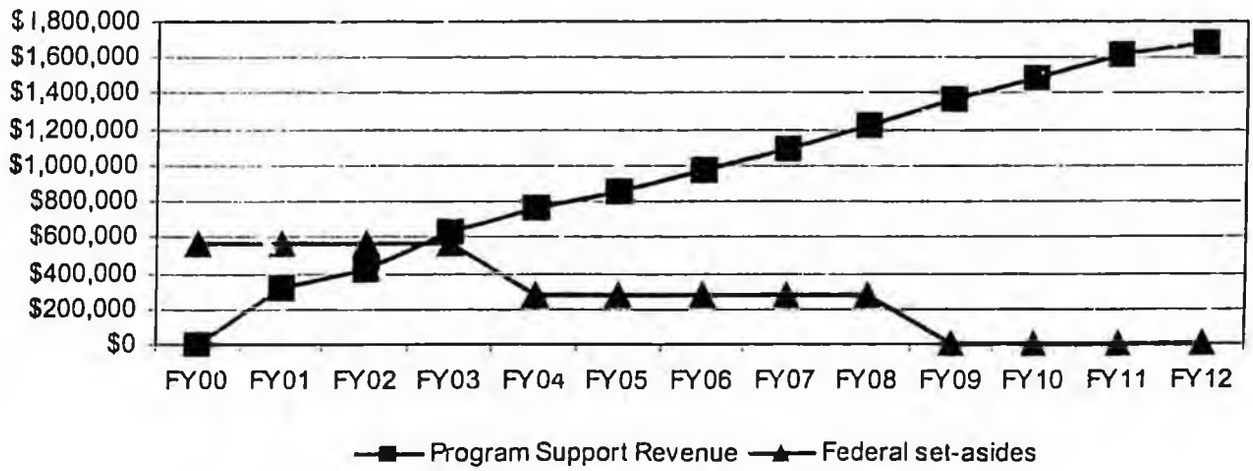
What else needs to happen?

The new finance charge structure and amounts need to be established in regulation (18 AAC 76). We are proposing a structure that satisfies the conflicting goals of trying to provide the lowest loan cost to the communities and still protect the long-term financial integrity of the Funds. We are proposing a flat loan rate of 2.5% that graduates to a bond-indexed rate when the municipal bond index hits 8 percent. Included within that rate is a designated 0.5% to pay for program administration. For purposes of comparison, the current interest rate is about 4.3%.

Will this cover program costs?

The expected revenue will be small at first and gradually increase. At the proposed rate of 0.5%, we expect to collect enough money to cover operating expenses. The following chart shows the relationship between the expected revenues and program costs.

CW & DW Set-Asides & Program Support Revenue



When interest rates go down, what will happen to the existing loans made at higher rates? Will communities be stuck with the higher rate loans?

We will offer all communities with existing loans the opportunity to convert to the new rate structure. No communities will be stuck with higher rate loans.

If more fees are collected than are needed to cover program costs, what will happen?

Fees will be deposited into an income account. Each year we will request that the legislature appropriate funds from the income account to an operating account to cover program costs. If there are more funds in the income account than are needed to cover program costs, we will use those excess funds to make loans to communities.