

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8900 SENATE JUDICIARY

1 (9) communicates in person with another in violation of AS 11.56.740
2 and, during the communication, possesses on the person a defensive weapon or a deadly
3 weapon, other than an ordinary pocketknife;

4 (10) resides in a dwelling knowing that there is a firearm capable of
5 being concealed on one's person or a prohibited weapon in the dwelling if the person has
6 been convicted of a felony by a court of this state, a court of the United States, or a
7 court of another state or territory, unless the person has written authorization to live in
8 a dwelling in which there is a concealable weapon described in this paragraph from a
9 court of competent jurisdiction or from the head of the law enforcement agency of the
10 community in which the dwelling is located; or

11 (11) discharges a firearm from a propelled vehicle while the vehicle is
12 being operated in circumstances other than described in AS 11.61.190(a)(2).

13 • Sec. 5. AS 11.81.900(b) is amended by adding a new paragraph to read:

14 (59) "criminal street gang" means a group of three or more persons

15 (A) who have in common a name or identifying sign, symbol,
16 tattoo or other physical marking, style of dress, or use of hand signs; and

17 (B) who, individually, jointly, or in combination, have committed
18 or attempted to commit, within the preceding three years, for the benefit of, at
19 the direction of, or in association with the group, two or more offenses under any
20 of, or any combination of, the following:

21 (i) AS 11.41; or

22 (ii) a felony offense.

23 • Sec. 6. AS 12.45 is amended by adding a new section to read:

24 Sec. 12.45.037. ADMISSIBILITY OF EXPERT TESTIMONY RELATING TO
25 CRIMINAL STREET GANG ACTIVITY. (a) In a criminal prosecution, expert
26 testimony is admissible to show, in regard to a specific criminal street gang or criminal
27 street gangs whose conduct is relevant to the prosecution,

28 (1) common characteristics of persons who are members of the criminal
29 street gang or criminal street gangs;

30 (2) rivalries between specific criminal street gangs;

31 (3) common practices and operations of the criminal street gang or
32 criminal street gangs and the members of those gangs;

1 (4) social customs and behavior of members of the criminal street gang
2 or the criminal street gangs;

3 (5) terminology used by members of the criminal street gang or the
4 criminal street gangs;

5 (c) codes of conduct of the particular criminal street gang or criminal
6 street gangs; and

7 (7) the types of crimes that are likely to be committed by the particular
8 criminal street gang.

9 (b) In this section, "criminal street gang" has the meaning given in
10 AS 11.81.900(b).

11 * Sec. 7. AS 12.55.015(a) is amended to read:

12 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
13 sentence on a defendant convicted of an offense, may singly or in combination

14 (1) impose a

15 (A) fine when authorized by law and as provided in
16 AS 12.55.035; or

17 (B) [A] day fine when authorized by law and as provided in
18 AS 12.55.036, if the court does not impose a term of periodic or continuous
19 imprisonment or place the defendant on probation;

20 (2) order the defendant to be placed on probation under conditions
21 specified by the court that may include provision for active supervision;

22 (3) impose a definite term of periodic imprisonment;

23 (4) impose a definite term of continuous imprisonment;

24 (5) order the defendant to make restitution under AS 12.55.045;

25 (6) order the defendant to carry out a continuous or periodic program of
26 community work under AS 12.55.055;

27 (7) suspend execution of all or a portion of the sentence imposed under
28 AS 12.55.080;

29 (8) suspend imposition of sentence under AS 12.55.085;

30 (9) order the forfeiture to the commissioner of public safety of a deadly
31 weapon that was in the actual possession of or used by the defendant during the
32 commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

1 (10) order the defendant, while incarcerated, to participate in or comply
2 with the treatment plan of a rehabilitation program that is related to the defendant's
3 offense or to the defendant's rehabilitation if the program is made available to the
4 defendant by the Department of Corrections;

5 (11) order the forfeiture to the state of a motor vehicle, weapon,
6 electronic communication device, or money or other valuables, used in or obtained
7 through an offense that was committed for the benefit of, at the direction of, or in
8 association with a criminal street gang.

9 * Sec. 8. AS 12.55 is amended by adding a new section to read:

10 Sec. 12.55.137. PENALTIES FOR GANG ACTIVITIES PUNISHABLE AS
11 MISDEMEANORS. (a) If a person commits an offense that would be a class B
12 misdemeanor and the person committed the offense for the benefit of, at the direction of,
13 or in association with a criminal street gang, the offense is a class A misdemeanor.

14 (b) If a person commits an offense that would be a class A misdemeanor and the
15 person committed the offense for the benefit of, at the direction of, or in association with
16 a criminal street gang, the offense is a class C felony.

17 * Sec. 9. AS 12.55.155(c) is amended by adding a new paragraph to read:

18 (29) the defendant committed the offense for the benefit of, at the
19 direction of, or in association with a criminal street gang.

20 * Sec. 10. AS 12.55.185 is amended by adding a new paragraph to read:

21 (14) "criminal street gang" has the meaning given in AS 11.81.010(b).

22 * Sec. 11. AS 12.45.037, added by sec. 6 of this Act, has the effect of amending Rule 702(a),
23 Alaska Rules of Evidence, to allow the admissibility of expert testimony to show criminal gang
24 characteristics, activity, and practices by a person having that specialized knowledge based on
25 the person's knowledge, skill, experience, training, or education.

26 * Sec. 12. APPLICABILITY. This Act applies to an act that occurs on or after the effective
27 date of this Act, except that references to previous offenses refer to acts occurring before, on,
28 or after the effective date of this Act.

29 * Sec. 13. This Act takes effect September 1, 1996.

CS FOR SENATE BILL NO. 194(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS KELLY, Phillips, Leman, Pearce, Green, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses associated with criminal street gangs, and to
2 sentencing for those offenses; relating to the offenses of murder in the second
3 degree, an unclassified felony, misconduct involving weapons in the first degree,
4 a class A felony, and misconduct involving weapons in the third degree, a class
5 C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for
6 an effective date."

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

8 * Section 1. AS 11.41.110(a) is amended to read:

- 9 (a) A person commits the crime of murder in the second degree if
- 10 (1) with intent to cause serious physical injury to another person or
- 11 knowing that the conduct is substantially certain to cause death or serious physical injury
- 12 to another person, the person causes the death of any person;
- 13 (2) the person knowingly engages in conduct that results in the death of

1 another person under circumstances manifesting an extreme indifference to the value of
2 human life; [OR]

3 (3) acting either alone or with one or more persons, the person commits
4 or attempts to commit arson in the first degree, kidnapping, sexual assault in the first
5 degree, sexual assault in the second degree, burglary in the first degree, escape in the
6 first or second degree, [OR] robbery in any degree, or misconduct involving a
7 controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
8 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime, or in
9 immediate flight from that crime, any person causes the death of a person other than one
10 of the participants; or

11 (4) acting with a criminal street gang, the person commits or
12 attempts to commit a crime that is a felony and, in the course of or in furtherance
13 of that crime or in immediate flight from that crime, any person causes the death
14 of a person other than one of the participants.

15 * Sec. 2. AS 11.61 is amended by adding new sections to article 1 to read:

16 Sec. 11.61.160. RECRUITING A GANG MEMBER IN THE FIRST DEGREE.

17 (a) A person commits the crime of recruiting a gang member in the first degree if the
18 person uses or threatens the use of force against a person or property to induce a person
19 to participate in a criminal street gang or to commit a crime on behalf of a criminal street
20 gang.

21 (b) Recruiting a gang member in the first degree is a class C felony.

22 Sec. 11.61.165. RECRUITING A GANG MEMBER IN THE SECOND
23 DEGREE. (a) A person commits the crime of recruiting a gang member in the second
24 degree if the person is 18 years of age or older and, without force or the threat of force,
25 encourages or recruits a person who is under 18 years of age and at least three years
26 younger than the offender to participate in a criminal street gang.

27 (b) Recruiting a gang member in the second degree is a class A misdemeanor.

28 * Sec. 3. AS 11.61.190(a) is amended to read:

29 (a) A person commits the crime of misconduct involving weapons in the first
30 degree if the person

31 (1) uses or attempts to use a firearm during the commission of an offense
32 under AS 11.71.010 - 11.71.040; or

1 (2) discharges a firearm from a propelled vehicle while the vehicle
2 is being operated and under circumstances manifesting substantial and unjustifiable
3 risk of physical injury to a person or damage to property.

4 * Sec. 4. AS 11.61.200(a) is amended to read:

5 (a) A person commits the crime of misconduct involving weapons in the third
6 degree if the person

7 (1) knowingly possesses a firearm capable of being concealed on one's
8 person after having been convicted of a felony or adjudicated a delinquent minor for
9 conduct that would constitute a felony if committed by an adult by a court of this state,
10 a court of the United States, or a court of another state or territory;

11 (2) knowingly sells or transfers a firearm capable of being concealed on
12 one's person to a person who has been convicted of a felony by a court of this state, a
13 court of the United States, or a court of another state or territory;

14 (3) manufactures, possesses, transports, sells, or transfers a prohibited
15 weapon;

16 (4) knowingly sells or transfers a firearm to another whose physical or
17 mental condition is substantially impaired as a result of the introduction of an
18 intoxicating liquor or controlled substance into that other person's body;

19 (5) removes, covers, alters, or destroys the manufacturer's serial number
20 on a firearm with intent to render the firearm untraceable;

21 (6) possesses a firearm on which the manufacturer's serial number has
22 been removed, covered, altered, or destroyed, knowing that the serial number has been
23 removed, covered, altered, or destroyed with the intent of rendering the firearm
24 untraceable;

25 (7) violates AS 11.46.320 and, during the violation, possesses on the
26 person a firearm when the person's physical or mental condition is impaired as a result
27 of the introduction of an intoxicating liquor or controlled substance into the person's
28 body;

29 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining
30 unlawfully on premises or in a propelled vehicle in violation of a provision of an order
31 issued under AS 25.35.010(h) or 25.35.020 and, during the violation, possesses on the
32 person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

1 (9) communicates in person with another in violation of AS 11.56.740
2 and, during the communication, possesses on the person a defensive weapon or a deadly
3 weapon, other than an ordinary pocketknife;

4 (10) resides in a dwelling knowing that there is a firearm capable of
5 being concealed on one's person or a prohibited weapon in the dwelling if the person has
6 been convicted of a felony by a court of this state, a court of the United States, or a
7 court of another state or territory, unless the person has written authorization to live in
8 a dwelling in which there is a concealable weapon described in this paragraph from a
9 court of competent jurisdiction or from the head of the law enforcement agency of the
10 community in which the dwelling is located; or

11 (11) discharges a firearm from a propelled vehicle while the vehicle is
12 being operated in circumstances other than described in AS 11.61.190(a)(2).

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16 tattoo or other physical marking, style of dress, or use of hand signs; and

17 (B) who, individually, jointly, or in combination, have committed
18 or attempted to commit, within the preceding three years, for the benefit of, at
19 the direction of, or in association with the group, two or more offenses under any
20 of, or any combination of, the following:

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22 (ii) AS 11.46; or

23 (iii) a felony offense.

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28 street gangs whose conduct is relevant to the case,

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30 street gang or criminal street gangs;

31 (2) rivalries between specific criminal street gangs;

32 (3) common practices and operations of the criminal street gang or

1 criminal street gangs and the members of those gangs;

2 (4) social customs and behavior of members of the criminal street gang
3 or the criminal street gangs;

4 (5) terminology used by members of the criminal street gang or the
5 criminal street gangs;

6 (6) codes of conduct of the particular criminal street gang or criminal
7 street gangs; and

8 (7) the types of crimes that are likely to be committed by the particular
9 criminal street gang.

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11 AS 11.81.900(b).

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18 (B) [A] day fine when authorized by law and as provided in
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20 imprisonment or place the defendant on probation;

21 (2) order the defendant to be placed on probation under conditions
22 specified by the court that may include provision for active supervision;

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25 (5) order the defendant to make restitution under AS 12.55.045;

26 (6) order the defendant to carry out a continuous or periodic program of
27 community work under AS 12.55.055;

28 (7) suspend execution of all or a portion of the sentence imposed under
29 AS 12.55.080;

30 (8) suspend imposition of sentence under AS 12.55.085;

31 (9) order the forfeiture to the commissioner of public safety of a deadly
32 weapon that was in the actual possession of or used by the defendant during the

1 commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

2 (10) order the defendant, while incarcerated, to participate in or comply
3 with the treatment plan of a rehabilitation program that is related to the defendant's
4 offense or to the defendant's rehabilitation if the program is made available to the
5 defendant by the Department of Corrections;

6 (11) order the forfeiture to the state of a motor vehicle, weapon,
7 electronic communication device, or money or other valuables, used in or obtained
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14 or in association with a criminal street gang, the offense is a class A misdemeanor.

15 (b) If a person commits an offense that would be a class A misdemeanor and the
16 person committed the offense for the benefit of, at the direction of, or in association with
17 a criminal street gang, the offense is a class C felony.

18 * Sec. 9. AS 12.55.155(c) is amended by adding a new paragraph to read:

19 (29) the defendant committed the offense for the benefit of, at the
20 direction of, or in association with a criminal street gang.

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24 Alaska Rules of Evidence, to allow the admissibility of expert testimony to show criminal gang
25 characteristics, activity, and practices by a person having that specialized knowledge based on
26 the person's knowledge, skill, experience, training, or education.

27 * Sec. 12. APPLICABILITY. This Act applies to an act that occurs on or after the effective
28 date of this Act, except that references to previous offenses refer to acts occurring before, on,
29 or after the effective date of this Act.

30 * Sec. 13. This Act takes effect September 1, 1996.

MEMBER

TENTH ALASKA LEGISLATURE
 ELEVENTH ALASKA LEGISLATURE
 TWELFTH ALASKA LEGISLATURE
 THIRTEENTH ALASKA LEGISLATURE
 FOURTEENTH ALASKA LEGISLATURE
 FIFTEENTH ALASKA LEGISLATURE
 SIXTEENTH ALASKA LEGISLATURE
 EIGHTEENTH ALASKA LEGISLATURE
 NINETEENTH ALASKA LEGISLATURE

ALASKA STATE SENATE



SENATOR TIM KELLY

STATE CAPITOL
 JUNEAU, ALASKA 99801-1102
 (907) 465-3822
 FAX (907) 465-3756

716 WEST 4TH, SUITE 400
 ANCHORAGE, ALASKA 99501
 (907) 258-1100
 FAX (907) 258-4524

1-800-770-3822
 (JANUARY 1996 - MAY 1996)
 INTERNET: /http://www.state.ak.us/

Sponsor Statement
CCSB 194

"An Act relating to offenses associated with criminal street gangs, and to sentencing for those offenses; relating to the offenses of murder in the second degree, an unclassified felony, misconduct involving weapons in the first degree, a class A felony, and misconduct involving weapons in the third degree, a class C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for an effective date."

SB 194 was introduced in response to the rapid escalation of violent gang-related crime in Anchorage and throughout Alaska. In 1995, more than four gang-related murders were committed in Anchorage as well as numerous gang-related hold-ups and drive by shootings. Presently there are over 463 identified gang members in Anchorage alone. The central purpose behind the introduction of SB 194 is to give law enforcement and prosecutors the tools necessary to deal effectively with the increased presence of gangs in Alaska. The committee substitute now before you represents consensus language reached after many discussions with the Attorney General's Office.

Specifically, CSSB 194 would:

- Amend the crime of murder in the second degree to include a "felony murder" provision for a death resulting from a drug offense or a gang related shooting. Under current law, if a bystander is shot in a shoot-out between drug-dealers attempting to complete a drug deal or in a crime committed by a gang or gangs, the shooter can claim he was firing in self defense. This provision would eliminate a claim of self-defense when an innocent bystander is injured and would hold drug-dealers and gang members accountable for their violent and dangerous behavior.

- Make it a crime to recruit a gang member if the person uses or threatens to use force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a street gang. This crime would constitute a class C felony. This crime of

recruiting would also be extended to recruitment without force by a person 18 years or older who encourages a person under the age of 18 to participate in a gang. Recruitment in the second degree would constitute a class A misdemeanor.

- Elevates the crime of weapons misconduct--applicable to drive-by shootings-- to a class A felony. (5 to 10 years).

- Allows for expert testimony relating to criminal street gang activity such that in a criminal prosecution, expert testimony is admissible to show gang affiliation, custom, rivalry, and other characteristics of gangs. This section will give prosecutors the ability to introduce evidence of gang affiliation.

- Provides for the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang.

- Allows for gang membership to be considered as an aggravator for sentencing purposes in felonies. Further, SB 194 would elevate misdemeanors committed for the benefit of, at the direction of, or in association with a criminal street gang. For example, a B misdemeanor committed for the benefit of, at the direction of, or in association with a criminal street gang would be elevated to an A misdemeanor. Similarly, a class A misdemeanor would be elevated to a class C felony.

The CS for SB 194 now before this Committee is the result of much negotiation and deliberation between the Attorney General's Office and my office. The CS represents a consensus approach to dealing with the menace of gangs and gang-related violence in Alaska. I ask for your support of this legislation so we can move forward in sending the message that gang violence will not be tolerated in this state.

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
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NINETEENTH ALASKA LEGISLATURE

ALASKA STATE SENATE



SENATOR TIM KELLY

STATE CAPITOL
JUNEAU, ALASKA 99801-1102
(907) 465-3822
FAX (907) 465-3756

716 WEST 4TH, SUITE 400
ANCHORAGE, ALASKA 99501
(907) 258-8180
FAX (907) 258-4524

1-800-770-3822
(JANUARY 1996 - MAY 1996)
INTERNET //http://www.state.ak.us/

Sponsor Statement
SB 194

"An Act relating to offenses associated with criminal street gangs, and to sentencing for those offenses; and amending Rule 702(a), Alaska Rules of Evidence."

SB 194 was introduced in response to the rapid escalation of violent gang-related crime in Anchorage and throughout Alaska. In 1995, more than four gang-related murders were committed in Anchorage as well as numerous gang-related hold-ups and drive by shootings. Presently there are over 463 identified gang members in Anchorage alone. The central purpose behind the introduction of SB 194 is to give law enforcers the tools necessary to deal effectively with the increased presence of gangs in Alaska.

Specifically, SB 194 would:

* Amend the crime of murder in the second degree to include a "felony murder" provision for a death resulting from a gang related shooting, and set the minimum sentence to 7 years, with a 99 year maximum. Under current law, if a bystander is shot in a shoot-out between gangs, the shooter can claim he was firing in self defense. This provision would eliminate a claim of self-defense when an innocent bystander is injured and would hold gang members accountable for their violent and dangerous behavior.

* Allow police to arrest all identified members of a gang involved in a drive by shooting for a Class A misdemeanor for remaining in the car after the shooting. Currently, when police apprehend a vehicle identified in a drive by shooting if they cannot identify the person who pulled the trigger they cannot arrest or detain the passengers in the car. This provision will allow the police to detain all persons in the car while investigating to determine who was the triggerman.

* Elevate the crime of drive-by shooting committed by a gang member from a Class C Felony (0 to 5 years) to a Class B Felony (5 to 10 years).

* Create as a new crime participation in a "criminal street gang," as modeled after the California Penal Code punishable as a Class C felony, and provide for forfeiture of gang property upon conviction of a gang-related crime.

SB

2000

Alaska State Legislature

Senator Al Adams

WHILE IN SESSION
State Capitol
Juneau, Alaska 99801-4182
(907) 465-3707
Fax 463-4807

OUT OF SESSION
Rt. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

Official Business

January 30, 1996

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Senator Al Adams *ATA*

RE: Hearing Request for SB 200

I would appreciate it if you would schedule a hearing for SB 200, a bill which would amend the Alaska Statehood Act regarding the revenue split should ANWR be opened.

I believe there is still a chance for the 104th Congress to approve the opening of ANWR to oil and gas development. We have been told repeatedly that there is no chance for this option unless and until the revenue split, as proposed in the Budget Reconciliation Act, is approved by the Legislature.

Throughout this past year, our state leaders including the Governor, the President of the Senate, the Speaker of the House, other high ranking officials of this Administration as well as many business leaders have testified in support of this revenue sharing agreement. This bill accomplishes that goal.

SB 200 says that the State will assent to any division of oil and gas revenues from ANWR so long as the percentage received by the State is no less than that retained by the United States. It further states that we will only agree to this changed allocation of revenues from ANWR if this issue is acted upon during the 104th Congress.

Thank you for your attention to this matter. I look forward to discussing this issue with you in the Senate Judiciary Committee.



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

MEMORANDUM

To: Senator Robin Taylor
Chair, Senate Judiciary Committee

From: Senator Dave Donley

Re: Hearing Request for Senate Bill 209 (Crime of Kidnapping)

Date: February 6, 1996

I request that you schedule Senate Bill 209, relating to the crime of kidnapping, for a hearing in your committee.

Senate Bill 209 would require that persons convicted of an unclassified felony of kidnapping be sentenced to a mandatory term of 99 years if the court, at the time of the sentencing, does not know the whereabouts of the victim of the kidnapping.

Senate Bill 209 also specifies that defendants sentenced under this law would not be eligible for discretionary parole for their entire term in prison. However, persons convicted under this proposed law may apply for a modification or reduction of their sentence under the Alaska Rules of Criminal Procedure after serving one-half of their mandatory 99 year term.

If you have any questions, please contact myself or James Armstrong of my staff 465-3892.

Previous requests: 1/10/96, 1/19/96

DD/jja

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER: Senate Finance Committee • Senate State Affairs Committee

SB

204

TONY KNOWLES, GOVERNOR

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

**GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894**

**(907) 465-2800
FAX (907) 465-4156**

February 2, 1996

The Honorable Robin Taylor
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Taylor:

I respectfully request that you schedule Senate Bill 204 for a hearing in the Senate Judiciary Committee pending referral.

As you know, SB 204 is the product of a committee consisting of parents, school board members, teachers, and administrators who were asked to formulate a compromise piece of legislation in response to the Governor's veto of last session's HB 217. SB 204 lengthens the probationary period for teachers; supports professional competence as a basis for granting and maintaining "continuing employment status"; focuses on a strong supervision and evaluation process, providing special support for teachers new to the profession; eliminates "trial de novo"; provides for the development of locally determined procedures to address teacher layoff and recall; and increases public information in the collective bargaining process. A packet of back-up information is enclosed.

Thank you for your consideration.

Sincerely,


Shirley J. Holloway, Ph. D.
Commissioner

cc: Senator Lyda Green, Vice Chair
Senator Mike Miller
Senator Johnny Ellis
Senator Al Adams

Enclosures

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P O Box 11000
Juneau, Alaska 99811-0001
1907 465 3500
Fax 1907 465 3532

January 8, 1996

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that addresses a number of issues related to promoting professional excellence in education.

Last summer I vetoed similar legislation that was divisive and did not adequately address the real problems that face our educational system. With my veto, I promised an opportunity to seek a compromise with which the Alaska educational family would agree. A committee met and provided me with a proposal that addresses all of the issues contained in the vetoed legislation and that additionally highlights the importance of the evaluation process. This legislation lengthens the probationary period for teachers; supports professional competence as a basis for achieving and maintaining "continuing employment status"; focuses on a strong supervision and evaluation process that provides special support for teachers new to the profession; revises appeal procedures regarding dismissal and nonretention decisions; provides for the development of locally determined procedures to address teacher layoff and recall; and increases public access to information on the collective bargaining process.

This legislation is the product of the efforts of parents, school board members, teachers, administrators, Department of Education employees, and others. While these groups often voice different views and perspectives, in this instance they worked together and produced a bill that I believe begins to improve education in this state.

The bill requires each school district to adopt a professional assessment system to be used to evaluate that district's teachers. (Under existing law, "teacher" includes

The Honorable Drue Pearce
January 8, 1996
Page 2

administrators and others). The assessment systems will be developed with input from parents, students, community members, classroom teachers, and administrators and will focus on improving the performance of the professional staff. The assessment systems will contain provisions specifically designed to assist teachers new to the profession.

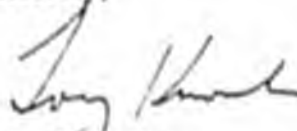
The bill replaces the current statutory term "tenure" with the phrase "continuing employment status" and increases from two to three the number of years that a teacher must be continuously employed with a district before acquiring continuing employment status. Although tenured teachers have always been subject to dismissal or nonretention for unsatisfactory performance, tenure nevertheless connotes to many a right to lifelong employment in a school district. Under this bill, a teacher earns a right to continuing employment status in a district by receiving a satisfactory evaluation in a third year of continuous employment with the district, among other requirements. The bill also clarifies that, before acquiring continuing employment status, a teacher is on probationary status. Several statutes are amended in the bill without substantive change in order to replace "tenure" with "continuing employment status" or to add the term "probationary." I believe that use of the new phrase to describe the right to continued employment, coupled with the important substantive changes made by this bill, signals a healthy shift in focus in the area of teacher employment.

The bill permits school districts to place continuing employment status teachers on layoff status as a result of financial emergency or a decrease in enrollment. Before such teachers are placed on layoff status, however, all probationary teachers must first be nonretained (unless there is no qualified continuing employment status teacher to replace a probationary teacher). Local districts will adopt reduction-in-force plans that identify procedures related to layoff and rehire. The bill also identifies several routes for review of a local board's decision to dismiss or nonretain a teacher and gives the public more access to collective bargaining information.

A sectional description of the bill is available from the Department of Education.

I urge your prompt consideration and passage of this important bill.

Sincerely,



Tony Knowles
Governor

SECTIONAL ANALYSIS OF BILL
RELATING TO PROFESSIONAL EXCELLENCE IN EDUCATION

Section one of the bill sets forth findings and purposes related to the legislation. Sections 2, 3, 4, 5, 7, 12, 13, 19, and 20 amend existing sections of law either by substituting the phrase "continuing employment status" for the word "tenure" or "probationary" for a teacher who has not acquired continuing employment status.

Section six of the bill clarifies existing law with respect to a teacher's right to reemployment in a district if the teacher is not notified timely of nonretention. It includes right to reemployment if a district fails to notify a teacher of layoff according to the district's reduction-in-force plan.

Section eight of the bill adds a new section requiring local school boards to adopt a professional assessment system to be used for evaluating teachers other than the district superintendent. The assessment system is to be developed at the local level with input from students, parents, community members, teachers and administrators. The system must provide for multiple observations and appropriate intervention strategies for teachers new to the profession, and at least annual observation and evaluation for other than first year teachers. Staff will be trained in the use of the professional assessment system prior to conducting an evaluation and prior to being evaluated.

Section nine of the bill provides that a teacher acquires continuing employment status after being a probationary teacher for three full years in a district, receiving a satisfactory evaluation in the third year of employment, and teaching a day of a fourth consecutive year in that district. This section also defines a full year of employment for purposes of acquiring continuing employment status.

Section ten of the bill changes the word "tenure" to the phrase "continuing employment status." It also provides that a teacher who does not sign and return a contract within 30 days after the date on which the teacher receives the contract loses the right to continued employment in the district.

Section 11 of the bill also replaces the existing tenure language, and provides that a teacher on layoff status does not lose continuing employment status during a period of layoff.

Section 14 of the bill replaces the tenure language. It also removes as a reason for nonretention a necessary reduction of staff occasioned by a decrease in school attendance. Under this bill, a decrease in school attendance is grounds for placing a continuing employment status teacher on layoff status, rather than

a basis for nonretention.

Section 15 creates a new section providing that a district may place a teacher on layoff status due to a decrease in school attendance or as a result of a financial emergency. The district must nonretain all probationary teachers before placing a continuing employment status teacher on layoff status, unless there is no qualified continuing employment status teacher to replace the probationary teacher. School districts must adopt plans that provide procedures for layoff and recall and for determining who is a qualified teacher for purposes of layoff and recall.

Section 16 provides that all teachers must receive a pre-termination hearing that meets the minimum requirements of due process before dismissal. Additionally, a continuing employment status teacher is entitled to a pretermination hearing before nonretention. A dismissed teacher and a nonretained continuing employment status teacher may request a post-termination hearing before the school board. The procedures governing such a hearing are the same as the procedures set out in existing law for a board hearing on a teacher dismissal. A teacher may appeal the board's decision to the superior for a review on the record. A continuing employment status teacher who is dismissed or nonretained may elect to forego the board hearing and instead choose either to file an original action in superior court or, if the teacher and school board agree, to follow the grievance procedures contained in that district's collective bargaining agreement.

Section 17 authorizes a school board to adopt bylaws or the department to adopt regulations that relate to continuing employment status so long as they do not conflict with state law.

Section 18 of the bill defines "financial emergency" as a significant demonstrated reduction in per-pupil expenditures due to a decrease in revenue from one year to the next, and defines a "probationary teacher" as a teacher who has not acquired continuing employment status with a district and who is providing educational services under contract with the district.

Section 21 requires school boards to provide opportunities for public input on issues to be addressed in the collective bargaining process. It also provides that initial proposals, last-best-offer proposals, tentative agreements before ratification and final agreements are public records.

Section 22 of the bill repeals AS 14.16.050(b), which is a transition measure regarding teacher employment at Mt. Edgecumbe High School. It is no longer necessary, as those teachers are covered by teacher employment statutes under AS 14.16.050(a)(3). This section repeals AS 14.20.147(b) and (c), as the state no longer has schools operated by federal agencies. It also repeals AS 14.20.205, dealing with judicial review. Under this bill,

judicial review of board decisions is addressed in AS 14.20.180.

Section 23 of the bill is a transition measure that permits the department to begin promulgating regulations that may be necessary to carry out the provisions of the bill prior to the bill's enactment. No regulations would become effective, however, until the effective date of the Act.

Section 24 of the bill provides that the new provisions of acquiring continuing employment status apply to teachers first hired by a district after the effective date of the Act and to teachers rehired by a district following an interruption in continuous service.

Section 25 of the bill provides that the Act does not affect collective bargaining agreements presently in effect.

Section 26 of the bill explains that existing case law on tenure will apply to continuing employment status cases, to the extent that the cases address the nature and importance of a teacher's right to continuing employment in a district.

Sections 27 and 28 of the bill provide effective dates.

FISCAL NOTE

STATE OF ALASKA

1996 LEGISLATIVE SESSION

BILL NO. HB 398/SB 204

Revision Date: November 21, 1995

Department Affected: Education

Title: Professional Excellence in Education

BRU: Executive Administration

Sponsor: Rules Committee by Request

Component: Commissioner's Office

Requester: Governor Knowles

COMPONENT SERIAL NO. 185

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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						
---------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY96) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

This legislation lengthens the probationary period for teachers; supports professional competence as a basis for granting and maintaining continuing employment status; focuses on a strong supervision and evaluation process, providing special support for teachers new to the profession; eliminates trial de novo; provides for the development of locally determined procedures to address teacher layoff and recall; and increases public information in the collective bargaining process.

Prepared by: Kimberly Homme, Special Assistant

Phone: 465-2803

Division: Commissioner's Office

Date: November 21, 1995

Approved by Commissioner: *Richard S. Cross*

Richard S. Cross, Deputy Commissioner

Agency: Education

Date: November 21, 1995

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**Statements of Support for
the Professional Excellence in Education Bill**

**Association of Alaska School Boards
Alaska Association of Elementary School Principals
Alaska Association of Secondary School Principals
Alaska Association of School Administrators
Alaska Parent Teacher Association
Alaska State Board of Education
National Education Association-Alaska
Other Resolutions**

AASB

ASSOCIATION OF ALASKA SCHOOL BOARDS

SUBJECT AREA: PERSONNEL

96-30

PROFESSIONAL EXCELLENCE

WHEREAS, following the demise of HB217 after the last legislative session, Governor Knowles appointed a task force to devise a compromise bill that would address the most important objectives of teachers, parents, students, school board members and administrators; and

WHEREAS, the resulting proposal for professional excellence addresses many concerns historically expressed by the Association of Alaska School Boards, including:

- the length of time required for a teacher to obtain "continuing employment status;"
- "continuing employment status" is predicated upon satisfactory performance as demonstrated by an evaluation mechanism grounded in community-based standards and values and involving students, parents, and other community input,
- refinement of teacher layoff and rehire rights;
- opening the negotiation process to a degree of public scrutiny and involvement; and
- elimination of costly and cumbersome trial de novo provisions in current law; and

WHEREAS, AASB wants to work with other educational stakeholders to gain consensus on these concerns and to put these divisive issues to rest,

NOW THEREFORE BE IT RESOLVED, that the Association of Alaska School Board does hereby endorse the concepts outlined in the task force proposal for Professional Excellence.

***Passed by the General Membership
Association of Alaska School Boards
Nov. 14, 1995***

ALASKA ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS

RESOLUTION 95-9

SUPPORT OF THE GOVERNOR'S BILL FOR PROFESSIONAL EXCELLENCE

WHEREAS, House Bill 217 was an attempt to deal with the issues relating to tenure, layoff and appeal procedures for school employees; and

WHEREAS, the Governor of Alaska vetoed HR217 and requested the education community to reach consensus on ways to enhance Professional Excellence for educators; and

WHEREAS, a legislative proposal has been developed by a broad group of parents, teachers, school administrators, and school board members; and the consensus legislation will address the issues in ways that benefit all students and local communities; and

WHEREAS, the proposal changes the concept of "tenure" to professional competence as a basis for granting and maintaining continuing employment; and

WHEREAS, the proposal focuses on strong supervision and evaluation developed with input from parents, students, and the community; and

WHEREAS, the amended legislation

- increases the time a teacher remains on probationary status from two to three years; and
- provides, in general, for more public information and involvement in collective bargaining; and
- provides for the development of locally determined procedures to address key issues such as, layoff, recall and dismissal; it provides for several mechanisms through which dismissed and non retained teachers can be heard.

WHEREAS, the compromise helps ensure that a quality teaching staff is provided to meet the needs of Alaska's public school students; so

THEREFORE BE IT RESOLVED that Alaska Association of Elementary School Principals strongly supports the Governor's Bill for Professional Excellence and urges the Legislature to pass this important legislation.



Alaska Association Secondary School Principals
Educational Leadership for Alaska's Future
1720 Otter Street • Anchorage, Alaska 99504-2634
(907) 333-9613 • Fax (907) 333-3060

Larry S. LaDous, President
Kodiak High School
Kodiak

Low Matheson, Pres-Elect
Southwest Region SD
Dillingham

Carol G. Kane, Past President
Matanuska-Susitna BSD
Palmer

Keith Tison, Coordinator
Central Jr. High School
Anchorage

DIRECTORS

Tom Brisson, Region I
Koyuk-Malemute School
Koyuk

Tim Clae, Region II
Yukon-Koyukuk School District
Fairbanks

David Spruce, Region III
Kenai Central High School
Kenai

Jim Taylor, Region IV
Bartlett High School
Anchorage

Richard Hebbardt, Region V
Hezard High School
Haines

Andri Layral, Region VI
North Pole Middle School
North Pole

Krasodi Eggleston, Region VII
Newhalen School
Haines

Leslie VanderHoff
Assistant Principal at Large
Clark Junior High School
Anchorage

Laurence H. Graham
Executive Director
Anchorage

RESOLUTION #95-2: SUPPORT FOR REVISED HB 217

SUBMITTED BY: Alaska Association of Secondary School Principals

WHEREAS the Governor of the State of Alaska vetoed HB 217 following its passage in the 1995 session of the state legislature; and

WHEREAS the Governor appointed a task force to come up with a compromise bill which would meet the most important objectives of all parties and that task force included the president of AASSP as well as members of local school boards, the State School Board, teachers, parents, and other administrators' organizations; and

WHEREAS the compromise bill speaks to improvement of education for students through increasing the time of probationary status of teachers from two to three years, requires improved teacher and administrator evaluation, district ability to reduce the number of teachers in the event of a financial crisis or when enrollment is reduced significantly based on program needs, not seniority or tenure status; provides for more public information and involvement in collective bargaining, and other items; and

WHEREAS passage of this compromise bill would allow the state to move forward on other important issues dealing with education;

THEREFORE BE IT RESOLVED that the Alaska Association of Secondary School Principals supports the compromise Revised House Bill 217, urges the state legislature to pass it, and urges the governor to sign it into law.

APPROVED: 10-17-95



ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS

328 Fourth Street • Suite 404 • Juneau, Alaska 99801-1101 • (907) 586-6702 • FAX (907) 586-6479

LEADERSHIP
FOR LEARNING

**Alaska Association of School Administrators
Standing Resolutions as of November, 1995**

**H-5. HB 217: The Association supports the compromise language for
HB 217. (1995)**

Alaska Parent Teacher Association

**Legislative Priorities
from Issues Conference
November, 1995**

"PTA members support legislation, regulations and resources dedicated to building partnerships between families and school. Alaska PTA supports reform efforts to increase to 3 years the probationary time before a teacher attains continuing employment status (tenure) and to provide for public involvement in the collective bargaining process. "

Excerpted from the PTA "Legislative Priorities," a one page document published in November, 1995.

RESOLUTION

ALASKA STATE BOARD OF EDUCATION

WHEREAS, House Bill 217 was an attempt to deal with the issues relating to tenure, layoff and appeal procedures for school employees; and

WHEREAS, the Governor of Alaska vetoed HB 217 and requested the education community to reach consensus on ways to enhance Professional Excellence for educators; and

WHEREAS, a legislative proposal has been developed by a broad group of parents, teachers, school administrators, and school board members; and the consensus legislation will address the issues in ways that benefit all students and local communities; and

WHEREAS, the proposal changes the concept of "tenure" to professional competence as a basis for granting and maintaining continuing employment; and


WHEREAS, the proposal focuses on strong supervision and evaluation based on the Alaska Teacher Standards and developed with input from parents, students, and the community; and

WHEREAS, the amended legislation

- increases the time a teacher remains on probationary status from two to three years; and
- provides, in general, for more public information and involvement in collective bargaining; and
- provides for the development of locally determined procedures to address key issues such as, layoff, recall and dismissal; it provides for several mechanisms through which dismissed and nonretained teachers can be heard.

WHEREAS, the compromise helps ensure that a quality teaching staff is provided to meet the needs of Alaska's public school students; so

THEREFORE BE IT RESOLVED that Alaska State Board of Education strongly supports the Governor's Bill for Professional Excellence and urges the Legislature to pass this important legislation.


Commissioner Shirley J. Holloway, Ph.D.


Stowell Johnstone, Board Chair

October 25, 1995



NEA-ALASKA

Affiliated with the National Education Association

February 2, 1996

Governor Tony Knowles
State of Alaska
P. O. Box 110001
Juneau, AK 99811-0001

Dear Governor Knowles:

NEA-Alaska delegates adopted the following new business item at our 1996 Delegate Assembly:

Moved to ADOPT NBI #96-70: The Governor's Bill for Professional Excellence in Education:
NEA-Alaska shall lobby the legislature to support SB 204/HB 398 as submitted by the Governor as introduced on January 8, 1996

On behalf of NEA-Alaska, I thank you for your leadership and your support in working to improve the quality of education in Alaska. HB 389 and SB 204, "The Governor's Bill for Professional Excellence in Education," represents the efforts and hard work of many Alaskans. We appreciate your efforts to reach a resolution to a very complicated and complex issue. NEA-Alaska is ready and willing to offer our assistance in the passage of this legislation.

We look forward to working with you and your administration during the legislative session. We will stand behind our commitment to support the compromise bill that was developed.

Again, thank you.

Sincerely,

Claudia Douglas
President



1996 ANCHORAGE SCHOOL DISTRICT LEGISLATIVE PRIORITIES "

2nd Session 19th Alaska State Legislature

SCHOOL BOARD PASSES 1996 LEGISLATIVE PRIORITIES

The 1996 Anchorage School District Legislative Priorities for the 2nd Session of the 19th Alaska State Legislature were passed by the School Board on October 30, 1995 (Attachment).

LEGISLATIVE CHANGES TO LAWS AND REGULATIONS

Support legislative actions in pursuit of professional teaching excellence

The Anchorage School Board supports legislative actions in pursuit of professional teaching excellence as shown by the following, and discussed in the Governor's proposed legislation:

1. Require regular teacher evaluations based on adopted professional teaching standards. Use an assessment system developed and reviewed with parent, student and community input. Provide staff training to adequately meet these goals.
2. Increase the time for a teacher to acquire 'continuing employment status' to three full school years.
3. Provide school districts with increased flexibility during changing conditions. Districts should have the ability to layoff teachers who have acquired continuing employment status when faced with declining enrollment or financial emergency.
4. Eliminate the costly and duplicative trial de novo provisions.
5. Institute requirements for public involvement in school district negotiations, to provide opportunities for public input and to make available all initial proposals, last-best-offer proposals, tentative agreements prior to ratification and final agreements reached by the parties at the time they are made.

CITY AND BOROUGH OF JUNEAU
BOARD OF EDUCATION
RESOLUTION 4-96

**A RESOLUTION SUPPORTING THE GOVERNOR'S PROPOSAL FOR
PROFESSIONAL EXCELLENCE**

WHEREAS, the revised legislative proposal changes the concept of "tenure" to professional competence as a basis for granting and maintaining continuing employment status; and

WHEREAS, the proposal focuses on a strong supervision and evaluation process which provides for input from parents, students, and community; and

WHEREAS, the proposal increases the time a teacher remains on probationary status from two years to three years and requires that teachers, regardless of the length of their experience, be systematically evaluated under written evaluation plans developed through public participation and then adopted at the local level; and


WHEREAS, the proposal provides, in general, for more public information and involvement in collective bargaining; and

WHEREAS, the proposal provides for the development of locally determined, appropriate and streamlined procedures to address key issues such as layoff, recall, and dismissal;

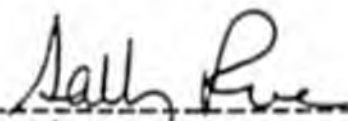
NOW THEREFORE BE IT RESOLVED that the Juneau School District Board of Education supports the Governor's legislative proposal for professional excellence.

ADOPTED in regular session held this 17th day of October, 1995.

Attest:



Clerk



President

SB

2017

Revision Date: _____ Dept. Affected: Revenue
 Title: Clean Water Fund Bonds BRU: Revenue Operations
 Component: Treasury
 Sponsor: Rules Committee
 Requestor: Governor COMPONENT SERIAL NO. 121

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Polish						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Postal Health						
Other						
TOTAL	00	00	00	00	00	00

Estimate of any current year (1996) cost \$ 00

POSITIONS:

FULL TIME						
PART TIME						
TEMPORARY						

ANALYSIS (Attach a separate page if necessary)

All cost of issuance, administration, and debt service on the bonds will be paid from the Alaska Clean Water Fund. The proceeds of the bond issue will be deposited in the Clean Water Fund, thereby increasing the money available for loans to municipalities. There is no estimated fiscal impact on other State funds.

Prepared by: Ross Wynn (Signature) Amount: 255,700
 Division: Treasury Division Date: February 28, 1996
 Approved by Commissioner: William Condon (Signature) Date: February 28, 1996
 Agency: Department of Revenue

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FISCAL NOTE

No. 3

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. _____
Bill Version: CS SB 2076 RA
(C) Publish Date: 3-6-96

Revision Date: _____
Title: _____
Sponsor: _____
Requestor: _____

Department Affected: Environmental Conservation
BRU: Facility Construction & Operation
Component: Facility Construction & Operation

COMPONENT SERIAL NO.

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/AMTA	0.0	0.0	0.0	0.0	0.0	0.0
Alaska Clean Water Fund	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ _____

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)

- Projected bond costs have not yet been determined. Please see attached explanations.

The department supports this bill that authorizes the sale of revenue bonds to be used by the Alaska Clean Water Fund to fund construction of public wastewater systems, nonpoint source water pollution control projects, including solid waste management systems, and estuary conservation and management projects.

Prepared by: Larry Jones
Division: Director, Division of Administrative Services

Phone: 465-5010
Date: 2/28/96

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: 3/2/96

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Alaska Clean Water Fund - Bond Sales / Reasons why costs can not be determined:

The proceeds from the sale of bonds is to supplement available loan funds. Therefore, bonds will only be sold if the demand for construction loans exceeds the amount available in the Alaska Clean Water Fund (ACWF). However, the sale will have to be timed to allow a certain amount of the ACWF to be held as collateral for the bonds sold. Further considerations in the timing of the sale of bonds includes several financial issues such as rebate as it applies to selling bonds.

The department is working closely with the State Bond Committee, the Bond Committee's bond counsel and financial advisors to ensure all of these concerns are adequately addressed and that a bond sale only occurs when it is advantageous to the state. Consequently, the costs related to the sale of the bonds is unknown at this time. Finally, costs associated with the sale of bonds are usually paid from the proceeds of the bond sale.

FISCAL NOTE

No. 2

Bill Version: SB 207

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. (S) Publish Date: 1/8/96

Revision Date: _____
Title: Clean Water Fund Bonds
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Environmental Conservation
BRU: Facility Construction & Operation
Component: Facility Construction & Operation

COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	00	00	00	00	00	00
TRAVEL	00	00	00	00	00	00
CONTRACTUAL	00	00	00	00	00	00
SUPPLIES	00	00	00	00	00	00
EQUIPMENT	00	00	00	00	00	00
LAND&STRUCTURES	00	00	00	00	00	00
GRANTS,CLAIMS	00	00	00	00	00	00
MISCELLANEOUS	00	00	00	00	00	00
TOTAL OPERATING	00	00	00	00	00	00

CAPITAL EXPENDITURES	00	00	00	00	00	00
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CHANGE IN REVENUES ()	00	00	00	00	00	00
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FUND SOURCE

1992 Federal Receipts	00	00	00	00	00	00
1993 GF Match	00	00	00	00	00	00
1994 GF	00	00	00	00	00	00
1995 GF-Program Receipt	00	00	00	00	00	00
1996 GF-MHTW	00	00	00	00	00	00
Alaska Clean Water Fund	00	00	00	00	00	00
TOTAL	00	00	00	00	00	00

Estimate of any current year (FY97) cost: \$ _____

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)

- Projected bond costs have not yet been determined. Please see attached explanations.

The department supports this bill that authorizes the sale of revenue bonds to be used by the Alaska Clean Water Fund to fund construction of public wastewater systems, nonpoint source water pollution control projects, including solid waste management systems, and estuary conservation and management projects.

Prepared by Larry Jones
Division Director, Division of Administrative Services

Phone 465-5010
Date 1/2/96

Approved by Commissioner [Signature]
Agency Department of Environmental Conservation

Date 1/4/96

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Alaska Clean Water Fund - Bond Sales - Reasons why costs can not be determined:

The proceeds from the sale of bonds is to supplement available loan funds. Therefore, bonds will only be sold if the demand for construction loans exceeds the amount available in the Alaska Clean Water Fund (ACWF). However, the sale will have to be timed to allow a certain amount of the ACWF to be held as collateral for the bonds sold. Further considerations in the timing of the sale of bonds includes several financial issues such as rebate as it applies to selling bonds.

The department is working closely with the State Bond Committee, the Bond Committee's bond counsel and financial advisors to ensure all of these concerns are adequately addressed and that a bond sale only occurs when it is advantageous to the state. Consequently, the costs related to the sale of the bonds is unknown at this time. Finally, costs associated with the sale of bonds are usually paid from the proceeds of the bond sale.

STATE OF ALASKA
1996 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date	Dept. Affected	Revenue
Title: <u>Clean Water Fund Bonds</u>	BRU	Revenue Operations
Sponsor: <u>Rules Committee</u>	Component	Treasury Management
Requestor: <u>Governor</u>	COMPONENT SERIAL NO. _____	

Expenditures/Revenues (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS/CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00

CAPITAL	00	00	00	00	00	00
---------	----	----	----	----	----	----

REVENUE FUND SOURCE						
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FUNDING (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1006 GF MMTIA						
Other						
TOTAL	00	00	00	00	00	00

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

Estimate of current (FY 96) impact: _____

ANALYSIS (attach a separate page if necessary)

All costs of issuance, administration, and debt service on the bonds will be paid from the Alaska Clean Water fund. The proceeds of the bond issue will be deposited in the Clean Water fund, thereby increasing the money available for loans to municipalities. There is no estimated fiscal impact on other State funds.

Prepared by: <u>Forrest R. Brown</u>	Phone: <u>465 3750</u>
Division: <u>Treasury Management</u>	Date: <u>1/3/96</u>
Approved by, Committee: <u>[Signature]</u>	Date: <u>1/1/96</u>
Agency: <u>Department of Revenue</u>	



PRESTON GATES & ELLIS
ATTORNEYS

January 18, 1996

Ms. Michele Brown
Acting Commissioner
Department of Environmental Conservation
State of Alaska

The State Bond Committee
c/o Mr. Forrest Browne, Debt Manager
Treasury Division, Department of Revenue
State of Alaska

Re: Leveraging the Clean Water Act Revolving Fund Loan Program

Dear Ms. Brown and Members of the Committee:

We have been requested to evaluate the Alaska Clean Water Fund ("ACWF") revolving fund loan program for the purpose of making recommendations as to how the program can be structured to accommodate and provide for the sale of bonds ("Bonds"), the proceeds of which would be reinvested in the program. In so doing, we have been asked to consider the legal issues such a program may raise and to analyze the different options available for achieving such a program. We have also been requested to confirm that any format we propose complies with federal law requirements for the issuance of bonds the interest on which may be excluded from federal income tax. Concern has also been expressed that it comply with federal law relating to the federal Clean Water Act.

Finally, we were asked to assist in drafting necessary implementing legislation. Such legislation has been prepared through the efforts of the Department of Law, the Department of Environmental Conservation, the staff of the State Bond Committee, the financial advisor to the State Bond Committee and this firm. This legislation has been introduced in the Legislature as Senate Bill No. 207 and House Bill No. 401 (herein together, the "Bill").

In undertaking this task, we have reviewed the constitution and statutes of the State of Alaska relating to the ACWF (a state revolving fund or "SRF" under federal law) and have reviewed federal law relating to tax exemption of state and local governmental obligations and the Clean Water Act. We have reviewed relevant court decisions and opinions of the attorney general of the state, information relating to the operation of the revolving loan program and have met and

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Ms. Michele Brown
The State Bond Committee
January 18, 1996
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had discussions with staff members of the State Bond Committee, the Department of Environmental Conservation ("DEC") and the Department of Law.

We respond as follows:

SUMMARY OF CONCLUSIONS

We believe that the Bonds may be issued by the State Bond Committee as provided in the Bill, without violation of Article IX, Section 8, of the State Constitution requiring an election approving the issuance of bonds. We also believe that under the Bill the program can be structured to allow leveraging of the ACWF by the issuance of Bonds, with the commitment of funds necessary to such a structure without violation of Article IX, Section 7, of the State Constitution restricting the dedication of revenues of the state. Finally, under the Bill, such a financing program can be structured to allow the Bonds to be issued on a tax-exempt basis. These conclusions are, of course, dependent on the final language of the legislation adopted, and the ultimate terms and provisions of the financing plan as adopted by the State Bond Committee.

LEGAL ANALYSIS

Regardless of the administrative structure chosen to implement a program of leveraging the ACWF by the issuance of bonds, there are two fundamental legal issues which must be addressed. They are the questions of (1) whether or not a vote of the people is required for the issuance of such bonds and (2) whether or not the issuance of such bonds can be structured in such a way as to comply with the constitutional prohibition against dedication or earmarking of revenues of the State.

One important point should be made before discussing the legal issues. In order for a bond counsel to be able to give an opinion approving an issue of bonds, he or she must be able to say that no reasonable argument can be made against the validity of such bonds. This is a strict standard and is sometimes difficult to meet even if one thinks that a court would be likely to uphold validity on a particular issue. The following discussion is the result of our effort to evaluate each issue in the light of the "no reasonable argument" standard.

Issuing State Bonds Without an Election

Article IX, Section 8, of the State Constitution provides as follows:

"No state debt shall be contracted unless authorized by law for capital improvements . . . and ratified by a majority of the qualified voters of the State who vote on the question "

Section 11 of Article IX provides:

"The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation . . . when the only security is the revenues of the enterprise or corporation."

Thus, Article IX, Section 8, requires that State bonds be issued only for capital purposes and only with an approving vote of the electorate. These restrictions are removed with respect to the issuance of revenue bonds issued by "a public enterprise or public corporation of the State . . . when the only security is the revenues of the enterprise or corporation." Although the Bill proceeds would not be used for capital facilities belonging to the state and no election is contemplated, these restrictions do not apply if one of the above exceptions can be invoked.

One approach would be to create or use a separate public corporation for the purpose of leveraging the revolving fund program. The Bonds can also be issued directly by the State, as contemplated by the Bill, through the State Bond Committee which now administers the issuance of other State debt, if to do so constitutes "the issuance of revenue bonds by a public enterprise . . . of the State . . . , when the only security is the revenues of the enterprise. . . ." There is little law on the subject of whether or not such a loan program can constitute a "public enterprise" for purposes of meeting the revenue bond exception to public vote requirements. Many cases recognize the validity of issuing such bonds for a public improvement, such as a utility system or an airport which generates revenue sufficient to secure the bonds. There is authority that the issuance of bonds primarily for reinvestment to make a profit (arbitrage bonds) is not a valid public purpose. See State v. City of Orlando, 576 So. 2d 1315, 1317 (Fla. 1991). Such arbitrage schemes are, however, quite different from the program contemplated here--the loaning of money to municipalities for clean water related public improvements. Under present federal law and DEC practice, such loans cannot bear interest at a rate greater than the Bonds so it is unlikely a profit could be made. We believe that the leveraging of the revolving fund program through the issuance of Bonds should be considered by the courts to be a public enterprise. While there seems to have been little litigation on this point, the existence of other similar State revolving fund programs financed in part by the issuance of revenue bonds, as well as the existence of a number of general purpose bond banks and industrial development authorities in Alaska and nationally, gives credence to the "public enterprise" characterization of such a program as being within the custom and practice nationally in municipal finance.

The proceedings of the Alaska Constitutional Convention further support the characterization of the Bonds as the revenue bonds of a public enterprise of the State. The minutes of the convention record the following exchange:

"HELLENTHAL: . . . In Section 11 where the Committee deals with the non-applicability of the restrictions on debt, in the case of revenue bonds issued by public corporations of the state, first; public enterprises of the state, second; and

thirdly, any political subdivision. Does the committee mean by that language that any political subdivision can issue revenue bonds either through a public corporation or through a public enterprise, or directly, like the City of Anchorage did with its Eklutna project; and in the event that they choose to issue them directly without employing the device of the public corporation, with those bonds being exempt from the restrictions applicable to debt?

NERLAND: That was the intention of the Committee, Mr. Hellenthal."

This language makes clear the intent of the drafters that bonds to fund a public enterprise may be issued directly by the State without employing the device of a public corporation.

Case law defines "enterprise" broadly. "Enterprise" is not restricted to a scheme for making money but includes any object that is consistent with the interests of society and may engage the attention of men and invite their cooperation." under the holding in Maxwell vs. Akin, 89 F. 178, 180 C.C.C.D. Ore. 1898. Case law interpreting "enterprise," as it appears in federal statutes, does so very broadly. See Marshall v. McAlester Corp., 438 F. Supp. 1005, 1012 (E.D. Okla. 1977) ("enterprise" under the Fair Labor Standards Act).

Based on the foregoing, it appears that characterizing the revolving loan program as a public enterprise of the State should successfully bring into play the exceptions of Article IX, Section 11. Care should still be taken however in actually implementing the legislation to avoid the implication that the Bonds are, in any way, secured by the general funds or revenue of the State. To this end, it may be necessary to segregate in separate accounts the money paid into the fund out of general State funds and other ACWF moneys such as grants or loan repayments, to make clear that only federal grants, loan repayments and earnings thereon secure the Bonds, to create reserves that secure the Bonds only out of "revenues of the enterprise" and to make whatever other provisions are necessary to clarify the applicability of the revenue bond concept.

Dedicated Funds

In order to structure, in conjunction with the ACWF, a revenue bond financing vehicle, it is necessary to provide for, or authorize the issuing agency to provide for, the pledging or dedication of the revenue stream and other moneys which are to secure and pay the Bonds. The Bill does this. This is usually not a problem for a state or municipality. However, Alaska is subject to the requirements of Article IX, Section 7, of the State Constitution which provides:

"The proceeds of any state tax or license shall not be dedicated to any special purpose, except . . . when required by the federal government for state participation in federal programs."

The following questions are raised: May the State dedicate loan repayments (principal and interest) under the ACWF revolving fund program to be deposited in the ACWF? May the State pledge to the payment and security of the Bonds the loan repayments (principal and interest), federal grants received, State matching money and interest earned on ACWF money? May reserve funds or accounts be created out of funds other than revenue of the revolving fund loan program and pledged to secure and pay Bonds?

Dedications Required By Federal Law

In order to continue to qualify for participation in the federal funding program established by the Clean Water Act, implementing state legislation must be consistent with the Clean Water Act and relevant federal regulations. The proceeds of state bonds secured by the state revolving fund (the ACWF) are required to be paid into such fund. (33 U.S.C.A. Section 1383 (d)(4)) Repayment of loans out of a SRF must also be paid into the fund. (33 U.S.C.A. Section 1383(d)(1)(D)) Federal capitalization grants and state matching moneys are also required to be paid into the SRF. (33 U.S.C.A. Section 1382 (b) (1), (2)) Although there does not appear to be federal legislation specifically mandating the retention of interest earnings in the SRF, the regulations state that "SRF balances must be available in perpetuity and must be used solely to provide loans and other authorized forms of financial assistance" to assist communities in maintaining water quality. 40 CFR Section 35.3115 (1994) The Initial Guidance for State Revolving Funds contains similar language referring to "All funds within the SRF," as does 33 U.S.C.A. Section 1383 (c).

Thus it appears that federal legislation mandates that all of the major sources of money in the ACWF be deposited in that Fund and that moneys in the Fund may not be withdrawn except to be applied to provide financial assistance to local governments or state agencies for the purposes specified in the Act. One of the methods of giving financial assistance is to use such moneys to pay and secure bonds issued to provide funds for the same purposes. While federal law does not mandate that moneys in the SRF be used only for so securing bonds, as opposed to other authorized means of assisting communities, the discretion that Article IX, Section 7, intended to permanently vest in the legislature with respect to state revenues is almost totally eclipsed by these requirements of federal law which are "required . . . for state participation in" this federal program. Also, the case of State v. Alex, 646 P.2d 203, 209 (Alaska 1982) indicates that once moneys are in a given fund, Art. IX, Section 7, does not preclude their dedication to secure revenue bonds to which they relate. Thus, we believe that, as authorized by the Bill, the dedication of revenue sources in the Alaska Clean Water Act to the ACWF and the proposed dedication of money in the ACWF (other than state matching money or, possibly, the portion of loan repayments representing the loan of state matching money) to pay and secure bonds meet the requirements of Article IX, Section 7.

Tax Analysis

Under the Bill, a program may be structured in which tax-exempt bonds are issued by the State to acquire tax-exempt obligations of local governmental units. The debt obligations issued by the local governmental units must be tax-exempt governmental obligations and may not be tax-exempt private activity bonds. Care must be taken to ensure that the underlying projects do not have private business users in excess of that permitted by the Internal Revenue Code (the "Code") and that any private business management contracts for the facility meet the IRS guidelines in effect at the time the State bonds are issued.

The Code generally treats bonds as taxable "arbitrage bonds" if the bond proceeds are used to acquire "investment property" that has a yield that is materially higher than the bond yield. The term "investment property" includes securities (such as the obligations issued by local governmental units) but excludes from this treatment tax-exempt obligations that are not private activity bonds. Also, it is unlikely that any of the local obligations acquired would bear interest at a higher rate than the Bonds.

It is important that there be more projects to be financed than the non-bond resources available from the State and the federal government. Internal Revenue Service regulations generally prohibit the State from issuing more bonds, issuing bonds earlier, or allowing them to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes for which the bonds are issued. A review of the DEC projection in this regard indicates that this issue should not pose a problem. The State's goal in the program is to leverage additional borrowed money into more project financing. It is important to demonstrate that additional projects may be financed (and financed sooner) than could be financed if the State were just to use the state and federal resources available to demonstrate that the State is not issuing more bonds than are necessary or issuing them earlier than necessary.

Programs such as this usually require that debt service reserves be established to secure the bonds. If money derived from the State funds or from the federal government are pledged to secure the State bonds, that money will be subject to the Code rules relating to bonds and may be subject to the arbitrage rebate requirements if invested in excess of the bond yield.

The bond proceeds generally may be invested at yields in excess of the bond yield for a period of three years by the local governmental units. While the bond proceeds are held by the State and before they are used to acquire the local governmental unit obligations, the IRS regulations allow for a six-month investment period for State bond proceeds. This six-month temporary period is subtracted from the three-year period available to the local governmental units. In addition, there is a three-month temporary investment period for repayments that are expected to be recycled into purchase of new local obligations.

Ms. Michele Brown
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The Code also contains specific requirements for "pooled financing bonds." In general, the State must reasonably expect that as of the close of the three-year temporary investment period, at least 95% of the net bond proceeds will have been used to acquire the local governmental unit obligations. In addition, the payment of legal and underwriting costs associated with the issuance of the bonds may not be contingent and at least 95% of such costs must be paid not later than 180 days after the State bond issuance.

We hope that the forgoing is of assistance. Please call with any questions or comments

Very truly yours,

PRESTON GATES & ELLIS

By


Forrest W. Walls

FWW/wp

cc: Ms Marie Sansone
Mr. Butch White
Mr. Chester Johnson
Mr. Mike Burns
Mr. Lee Sharp
Mr. Bill Mantle
Ms. Cynthia Weed

FWW09F.DOC

LEVERAGING THE CLEAN WATER FUND

FEDERAL CAPITALIZATION GRANTS
STATE APPROPRIATIONS



loans

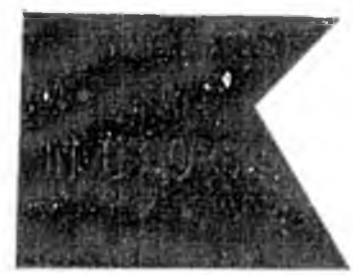
repayments



bond proceeds

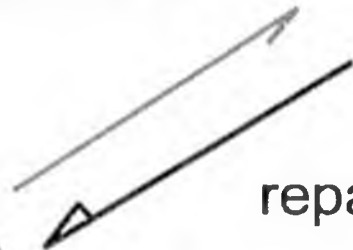


1 bond issuance costs
2 annual bond payments

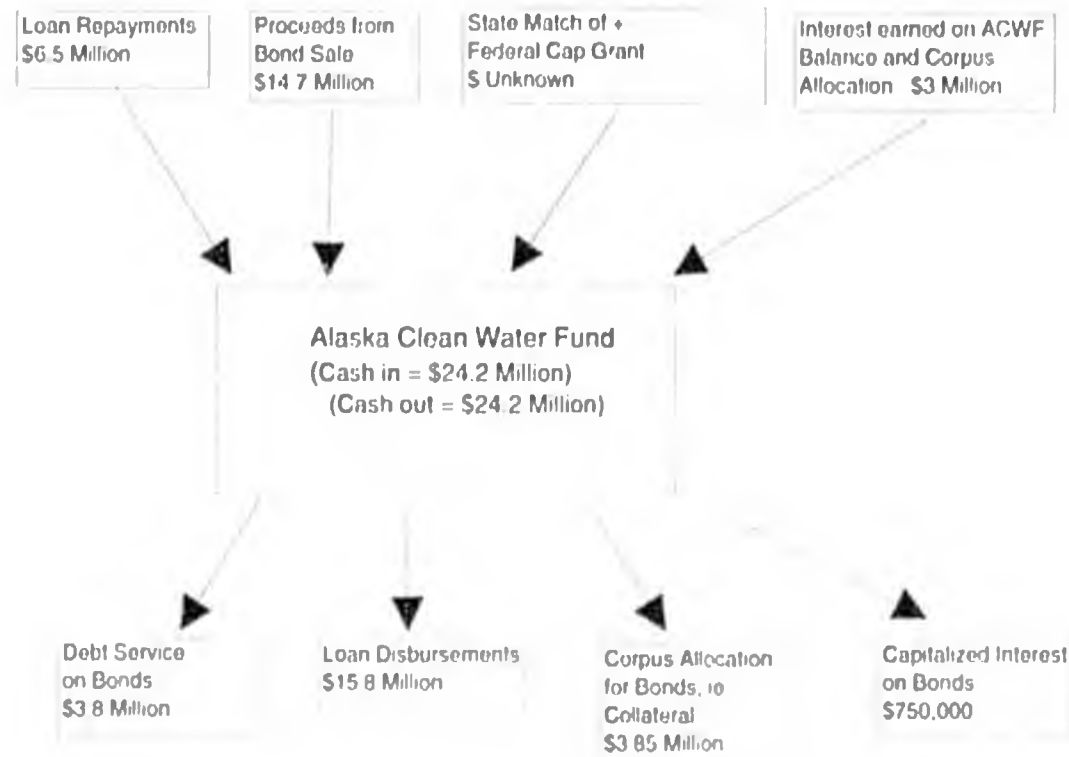


1 issue bonds

2 annual bond payments



PROJECTED YEARLY CASH FLOW OF ACWF
(AVERAGE FY 97 - FY 05)



Averages used from spreadsheets prepared by GFA and DEC

Prepared by FCO

LEVERAGING THE CLEAN WATER FUND

The upper part of the accompanying chart demonstrates how the Alaska Clean Water Fund (ACWF) currently operates:

- Federal capitalization grants & State appropriations (20% of federal grant amount) are deposited into the ACWF.
- ADEC administers the ACWF, providing loans to fund sanitation projects.
- Repayment of loan principal and interest is deposited into the ACWF to provide the basis for funding more community projects.
- Department of Revenue maintains the ACWF account and invests the unobligated balance, with the earnings also deposited into the ACWF.

The bottom portion of the chart illustrates the effects of leveraging on management of the ACWF:

- The ACWF balance will be pledged as collateral for revenue bonds. Costs of bond issuance are moved from the ACWF to the Bond Redemption Fund (BRF).
- The BRF will pass these funds to the State Bond Committee (SBC) who will then issue the bonds and sell them to investors.
- Bond proceeds from investors will be deposited into the ACWF. The proceeds will fund additional loans for projects. The loan repayments will produce the bond principle and interest payments.
- The SBC and the Trustee will make bond principle and interest payments from the ACWF and the BRF.

**SENATE BILL 207
HOUSE BILL 401**

DEPARTMENT OF ENVIRONMENTAL CONSERVATION BILL SUMMARY

This bill will authorize the State Bond Committee to issue and sell State revenue bonds to provide funds for the Department of Environmental Conservation (DEC) to offer low-interest loans to municipalities. The municipalities would use these funds to finance the construction of public wastewater treatment systems, solid waste management systems, nonpoint source water pollution control projects and estuary conservation and management projects. DEC already operates the Alaska clean water fund, a revolving loan program that is funded by federal grants and State appropriations. The demand for these subsidized loans has been growing with the increase in federal requirements placed upon the local communities and the concurrent reduction in State revenues in the last few years. It is estimated that the demand for loans will exhaust the available supply of funds by the summer of 1998.

One solution to this problem is to leverage the Alaska clean water fund, that is, to increase the amount of money available to finance water pollution control projects by using the fund as collateral to secure State-issued revenue bonds. Programs similar to this proposal are currently in place in 21 states. Communities collect user fees for their sewerage and solid waste projects to provide the money to make their annual loan payments to the Department. Under this leveraging concept, the annual loan repayments would be used to pay back the bond investors. Nationwide, in the six years of operation of the clean water loan funds, there has never been a loan default. With such an excellent repayment history, the program risk is very small. A sizable corpus of money in the fund would provide extra security for the bonds and would also result in lower program costs which could be passed onto the municipalities. If this bill could be enacted this session, an adequate amount would be available in the corpus to accomplish this. Delays in passage will reduce the amount available to leverage and minimize the effectiveness of the legislation.

This type of bond sales program has been previously authorized to the State bond committee. In fact, this legislation is patterned after the statute created for the International Airport bond sales done by the committee for the Department of Transportation. The State bond committee has the expertise to properly conduct a bond sales issue. DEC has the expertise to properly run the clean water fund program. This legislation provides a simple, efficient method to assist the incorporated communities of the State by ensuring that low-cost loans for essential projects will be available well into the future, while reducing the demand for general-funded capital projects.

LOAN SPECIFIC INFORMATION

Community Served	Project Name	Project Number	Loan Amount	Agreement Date	Interest Rate	Amortization Period
Loans made during FY 90						
Anchorage	Eagle River	127011	\$7,759,380	10/31/89	4.65%	20 years
Homer	STP	409011	\$4,750,000	9/5/89	4.80%	20 years
Kachemak City	STP	451011	\$450,000	7/25/89	4.54%	20 years
Loans made during FY 91						
Anchorage	Campbell Creek	12702	\$2,238,607	12/17/90	4.84%	20 years
Nome	STP	627011	\$788,421	4/19/91	4.56%	20 years
Loans made during FY 92						
Anchorage	Eagle River Inc.	127011	\$3,000,000	9/6/91	4.65%	20 years
Cordova	Sewer Rehab	261011	\$735,310	9/24/91	4.42%	20 years
Anchorage	Campbell Creek II	127031	\$453,141	6/30/92	4.31%	20 years
Nome	Icy View	627021	\$2,000,000	6/30/92	4.31%	20 years
Seward	Lowell Point	769011	\$924,000	6/30/92	4.31%	20 years
Loans made during FY 93						
Seward	Dairy Hill	769021	\$40,000	11/23/92	4.75%	20 years
Juneau	Hell Press	445011	\$255,501	10/9/92	4.64%	15 years
Juneau	Back Loop Sewer	445021	\$1,620,500	2/2/93	4.56%	10 years
Anchorage	Pl. Woronzof	127041	\$2,443,128	4/26/93	4.24%	20 years
Juneau	Channel Drive	445031	\$536,000	6/7/93	4.23%	10 years
Loans made during FY 94						
Sitka	181	783011	\$2,000,000	8/17/93	4.04%	20 years
Juneau	Goat Hill	445041	\$166,000	12/23/93	4.05%	10 years
Bristol Bay	Leader Creek	183011	\$2,235,321	3/1/94	4.11%	20 years
Loans made during FY 95						
Craig	Wastewater	265011	\$1,000,000	9/14/94	4.45%	20 years
Anchorage	Regional Landfill	127051	\$10,062,000	12/2/94	4.74%	20 years
Anchorage	Gridwood Wastewater	127061	\$2,500,000	4/24/95	4.17%	20 years
Loans made during FY 96						
Nome	Solid Waste	627031	\$2,000,000	7/19/95	3.99%	20 years
Anchorage	Eagle River TID	127071	\$2,500,000	10/30/95	3.86%	20 years
Anchorage	Miscellaneous Projects	127081	\$3,015,000	1/12/96	3.74%	20 years

Alaska Clean Water Fund

Project List

July 6, 1995

Municipality	Project Title	Score	Amount	Cumulative
Projects to be Funded from Existing EPA Capitalization Grant				
Statewide	Planning and Design		\$614,287	\$614,287
Anchorage	Merrill Field Leachate Collection System		\$4,875,000	\$5,489,287
Yakutat	Wastewater Treatment Plant	85	\$200,000	\$5,689,287
Bristol Bay	King Salmon, Phase II	67	\$4,769,413	\$10,458,700
Klawock	STP Upgrade and Int.	46	\$1,500,000	\$11,958,700

Alaska Clean Water Fund

Project List

July 6, 1995

Municipality	Project Title	Score	Amount	Cumulative
Projects Seeking Funding from FFY 96/97 Capitalization Grant				
DEC	Administrative Costs		\$578,240	\$578,240
Juneau	Goat Hill Sewer Phase II	73	\$770,000	\$1,348,240
Kodiak	Wastewater Treatment Plant Project	70	\$4,880,500	\$6,228,740
Bristol Bay Borough	Borough Landfill Expansion	69	\$285,000	\$6,513,740
Homer	East Trunk-STP to Lake Street	67	\$626,000	\$7,139,740
Bristol Bay Borough	King Salmon Sewer Phase III	67	\$1,576,265	\$8,716,005
Anchorage	Middle Fish Creek Trunk	65	\$3,000,000	\$11,716,005

**Alaska Clean Water Fund
Project Planning List
July 6, 1995**

Municipality	Project Title	Score	Amount	Cumulative
Craig	Wastewater Plant Reconstruction	66	\$4,000,000	\$4,000,000
Unalaska	Solid Waste Facility, Phase I	66	\$3,500,000	\$7,500,000
Anchorage	C-5-7 Trunk R&R	65	\$3,000,000	\$10,500,000
Nome Joint Utility	Wooden Utilidor Upgrade	63	\$2,000,000	\$12,500,000
Valdez	Robe River Subdivision Sewer Interceptor	54	\$5,024,900	\$17,524,900
Petersburg	Scow Bay Sewer Extension, Final Phase	54	\$2,064,000	\$19,588,900
Petersburg	Sludge De-watering Facility	53	\$1,115,000	\$20,703,900
Fairbanks	Wastewater Sludge Disposal	47	\$9,500,000	\$30,203,900
North Slope	Anaktuvuk Pass Sewer	47	\$3,000,000	\$33,203,900
North Slope	Point Hope Sewer Project	47	\$3,000,000	\$36,203,900
North Slope	Point Lay Sewer Project	47	\$3,000,000	\$39,203,900
North Slope	Wainwright Sewer Project	47	\$3,000,000	\$42,203,900
Fairbanks	Ft. Wainwright Interceptor Rehabilitation	47	\$800,000	\$43,003,900
Unalaska	Wastewater Secondary Treatment	46	\$9,000,000	\$52,003,900
Unalaska	Primary Wastewater Treatment Facility	46	\$7,500,000	\$59,503,900
Anchorage	Pt. Woronzof Incinerator	42	\$6,000,000	\$65,503,900
Dillingham	Northeastern Townsite Sewer	37	\$898,976	\$66,402,876
Dillingham	Area 5 Phase I & II	37	\$1,390,505	\$67,793,381
Dillingham	Area 4 Phase I & II	34	\$2,011,280	\$69,804,661
Sand Point	Harbor Sewer Extension	34	\$300,000	\$70,104,661
Fairbanks	Van Horn & South Cushman Sewer	33	\$900,000	\$71,004,661
North Pole	Highway Park/Badger-Hurst Sewer	29	\$2,850,000	\$73,854,661
Fairbanks	International Industrial Ave. Sewer, Ext.	29	\$850,000	\$74,704,661
Fairbanks	E.M. Jones Sewer Extension, Phase I	29	\$2,600,000	\$77,304,661
Fairbanks	Industrial Park Sewer Ext.	29	\$850,000	\$78,154,661

March 12, 1996

**SENATE BILL 207
SECTIONAL ANALYSIS**

(Reflects changes made by Senate C&RA Committee)

Introduction

Senate Bill 207 will authorize the state bond committee (committee), which consists of the commissioners of the Departments of Administration, Commerce and Economic Development, and Revenue, to issue and sell state revenue bonds to fund public wastewater treatment systems, solid waste management systems, nonpoint source water pollution projects, and estuary conservation management projects. The bill authorizes the Department of Environmental Conservation (DEC) to use the Alaska clean water fund (fund), a revolving loan fund, as security for the payment of the principal and interest on the bonds, provided the bond proceeds are deposited in the fund.

The Alaska clean water fund and the proposed bond program are designed to comply with requirements for participation in a federal matching grant program under the Clean Water Act and, therefore, do not present any problem under the dedicated funds prohibition of the State Constitution.

By using the Alaska clean water fund as security for the bonds, the state will be able to leverage or increase the amount of money in the fund that is available to municipalities and other qualified entities for water pollution control projects.

Section 1. Section 1 of the bill recognizes that the proposed bond program is an appropriate use of the public credit, and that it will serve a public purpose by allowing public water pollution control projects to be financed and constructed much sooner than would otherwise be possible. This statement of the policies and purposes underlying the bill will also reflect the legislature's intent that the bonds to be issued are revenue bonds.

Section 2.

This section of the bill will create a new article, article 3A, in Title 37, the public finance title of the Alaska Statutes.

Sec. 37.15.560. BOND AUTHORIZATION - Authorizes the state bond committee to issue and sell revenue bonds to raise money to be deposited in the Alaska clean water fund. This section characterizes the Alaska clean water fund as a public enterprise of the state and the proposed bonds as revenue bonds. Under the Alaska Constitution, state-issued revenue bonds do not require voter approval. This section authorizes the committee to enter into agreements and perform those functions that are normally required to accomplish the task of issuing and selling bonds. The committee may not issue more than \$15,000,000 in revenue bonds during a fiscal year, excluding refunding bonds. The total amount of revenue bonds outstanding at any one time may not exceed \$150,000,000, including principal and interest owed on the bonds.

Sec. 37.15.565. BOND REDEMPTION FUND - A bond redemption fund is established. This is a standard financing 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 principal and interest payments and any premium redemptions on the bonds. The state bond committee will be responsible for administering the bond redemption fund, and may invest the proceeds of the bond redemption fund according to the 'prudent investor' standards established in AS 37.10.070, providing the earnings on these investments are retained in the bond redemption fund.

Sec. 37.15.570. BOND TERMS - The state bond committee may issue, sell, or redeem the bonds as to achieve the greatest advantage for the State. The committee can make decisions based upon the market conditions, and does not require approval of another agency to execute these decisions. The committee will decide the level of security required from the Alaska clean water fund and the portion of the fund that will

provide this collateral security. The committee may appoint a trustee to perform all necessary functions. The committee must give due regard to the continued funding of projects under the Alaska clean water fund, including applicable state and federal requirements. Any such decisions made by the committee and expressed in a bond resolution are conclusively deemed to comply with the requirements of the legislation pertaining to the bond program.

Sec. 37.15.573. BOND RESOLUTION - The committee must adopt a bond resolution to issue bonds. The resolution will contain those terms and conditions necessary to identify and define the bonds and the bond sales process.

Sec. 37.15.575. STATE AID INTERCEPT - This section 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 this fund. This paragraph is included in the legislation to enhance investor confidence in the program, improve the bond rating, and ultimately, lower program costs.

Sec. 37.15.580. PLEDGE OF THE STATE - This provision recognizes that the state may not alter the terms and conditions of a bond resolution by subsequent executive or legislative action.

Sec. 37.15.583. ENFORCEMENT BY BONDOWNER - To resolve any disagreements between the bondowners and the committee, 10 percent or more of the bondowners of any series or issue can bring suit in state superior court in Juneau. The ten percent threshold was selected to discourage frivolous litigation.

Sec. 37.15.585. AMOUNTS REQUIRED FOR PAYMENTS - Each year the committee will inform the commissioners of the departments of Environmental Conservation and Revenue of the amounts needed to pay for the bonds. The notice will be given at this time so that the departments will be able to incorporate these numbers into their financial planning for the current and next fiscal years.

Sec. 37.15.587. PURPOSES AND SUFFICIENCY OF REVENUE - Bond proceeds will be used to build projects that are eligible

under the clean water fund program. The committee will not issue bonds unless there is enough security available in the fund to make it prudent to issue the bonds.

Sec. 37.15.590. REFUNDING - If it is in the best interests of the State, the committee may refund all or some of the bonds. The committee will follow the defined procedures to conduct the refunding process. The committee may appoint a trustee to conduct this process. The trustee may invest funds in short-term federal instruments until the refunding proceeds are needed.

Sec. 37.15.595. BONDS AS LEGAL INVESTMENTS - The bonds are legal investments and can be traded and sold between institutions and persons. The State may accept them as security for the State and Municipal debts.

Sec. 37.15.603. REGULATIONS - The committee can adopt regulations to implement this program.

Sec. 37.15.605. Definitions - This section contains the definitions applicable to the bond program.

Section 3 - 12. Sections 3 - 12 of the bill amend AS 46.03.032, the statute that establishes the Alaska clean water fund.

Section 3. AS 46.03.032(a) - The Alaska clean water fund statute is amended to allow the fund to receive money from the sale of bonds and this money may be placed in a special account of the fund.

Section 4. AS 46.03.032(b) - The DEC will administer the fund consistent with the state and federal requirements applicable to the fund and with the requirements of the bond legislation.

Section 5. AS 46.03.032(c) - This section makes a technical correction in the citation of the Clean Water Act, to follow the proper citation form and to refer to the Clean Water Act as

amended.

Section 6. AS 46.03.032(d) - This section reorganizes the existing statute into a more understandable form. It also authorizes use of the fund to secure state-issued bonds, and authorized use of the fund to pay the principal and interest on the bonds and the costs of issuing and administering the bonds. The proceeds of the bond sale must be deposited into the fund.

Section 7. AS 46.03.032(f) - This section also reorganizes the existing statute into a more logical format and allows DEC to spend the money from the fund to carry out the bond program.

Section 8. AS 46.03.032(g) - The existing statute is amended to allow other qualified entities to receive loans from the fund. Currently, only municipalities may do this. Allowing DEC to make loans to other qualified entities will provide a tool to enable these organizations to cooperatively address environmental problems. Also, the section is amended to make it clear that the potential borrowers will demonstrate their credit-worthiness prior to loan commitment.

Section 9. AS 46.03.032(i) - This section amends the existing statute to accommodate the references to the bond issuance program. Some technical changes are also made to reference AS 46.06.021, the solid waste statute that establishes project priorities, rather than repeat them in full in the Alaska clean water fund statute.

Section 10. AS 46.03.032(k) - In addition to the reports the department already prepares for the program, DEC will prepare reports necessary for the committee.

Section 11. AS 46.03.032(o) - The definitions section includes one technical change in the terminology used to refer to solid waste management projects and adds a new definition for the term

"other qualified entity."

Section 12. **AS 46.03.032(p)** - This new subsection provides that any inconsistencies between any regulations adopted by the state bond committee under Title 37 and those adopted by DEC under Title 46 involving the Alaska clean water fund program will be resolved in favor of the Title 37 regulations.

Section 13. Clarifies that the portion of this legislation that is entitled ENFORCEMENT BY BONDOWNER would affect a change in Civil Procedure 3 and require all actions to be filed in Superior Court in Juneau.

Section 14. Recognizes that in order for all actions to be filed in Superior Court in Juneau, the second part of the paragraph that is entitled ENFORCEMENT BY BONDOWNER must receive a two-thirds majority vote of each house; otherwise that portion will not take effect.

Government Finance Associates, Inc.

71 Broadway, Suite 1301
New York, New York, 10006
(212) 809-5700
FAX (212) 809-6317

January 19, 1996

TO: MIKE BURNS
BUTCH WHITE
MARIE SANSONE
FORREST BROWNE

FROM: GOVERNMENT FINANCE ASSOCIATES, INC.

SUBJECT: ELIMINATION OF STATE INTERCEPT, EFFECT ON
ALASKA'S PROPOSED SRF FINANCING PROGRAM

We have been asked to evaluate the impact of removing the state intercept from the proposed SRF leveraging and bonding structure. In this connection, it is necessary to review the effects on both the underlying credit features and the projected financing costs for the program. In order to appropriately respond to this subject, background material should be presented, as follows.

DESIRED RATING: Generally speaking, as a result primarily of (i) the large cash infusions from the Federal and state governments, (ii) provisions of the local loan repayment arrangements, and (iii) the state creation and oversight, SRF's have been highly rated. For example, as indicated in the attachment, of the 25 active leveraged state SRFs, sixteen are rated double-A or better, without taking into account bond insurance. The other nine are rated single-A, or they are assigned insured ratings. Because of the high credit standing of these structures, only a few have chosen to be insured, since any rating in the double-A or higher categories makes bond insurance unnecessary. In most cases, insured bonds trade no better than a weak double-A. Additionally, double-A ratings, on an uninsured basis, give a borrower substantially greater flexibility, as a result of the lower cost of capital that the rating affords and the reduced number of restrictions that apply to uninsured debt. Taking these factors into consideration, combined with the inherent strengths of the Alaska SRF, we recommend that the State establish a goal of achieving no less than an uninsured rating of double-A.

USE OF STATE INTERCEPT: As shown in the attachment, of the sixteen active leveraged SRFs rated double-A or better, half of them use the state intercept of local aid to provide underlying security. The state intercept mechanism has been employed for numerous purposes over the years. In the 1970's, for example, states that created bond banks to reduce the cost of capital for localities often applied the state intercept to help secure the bonds that were sold by the respective state bond banks. As a policy matter, the rating agencies have concerns about the pooling of local credits, with disparate credit

Government Finance Associates, Inc.

standing, in the absence of some generic, extra credit support. State intercepts have often been used to address these rating agency misgivings about local credit pools and to "homogenize" the various credits within the pools. On occasion, state "moral obligation" pledges have been invoked for this purpose, but Moody's, in particular, gives little weight to the concept after "moral obligation" agencies in New York State had very serious credit problems in the 1970's, including a default on certain notes by one "moral obligation" agency. The state intercept is a well-established and favorably accepted credit device.

DIFFERENCE IN COST OF CAPITAL BETWEEN "A" AND DOUBLE "A" SRF'S:

In our opinion, if the State does not make special arrangements, as discussed further below, to compensate for the loss of the state intercept, it is highly likely that a rating of single-A will be given to the State's SRF, as opposed to the more desirable double-A. If this development occurs, then the Alaska SRF will experience a more costly interest expense on the bonds it sells in the credit markets. We estimate that the current difference in interest costs between a single-A and double-A credit, over twenty years, on \$10 million is equal to \$271,000 in gross dollars. Compounding this difference over several years of SRF issuances, for \$100 million, it would amount to \$2.3 million over twenty years.

It should be noted that we are currently experiencing low interest rates. In a higher interest rate environment, this difference between single-A and double-A credits could be (and has been) as great as 50 basis points. In that situation, the difference in capital costs between a single A and double A could aggregate as much as \$70 million over twenty years. One could argue that the difference could be reduced through bond insurance, which is correct, but it is relevant to emphasize the following in this respect. First, bond insurance is rather expensive, often as much as one-half of one percent of total debt service. Second, bond insurers frequently require programmatic restrictions that even the rating agencies do not mandate.

ALTERNATIVES TO STATE INTERCEPT. As discussed above and as more fully exhibited in the enclosures, there are options for Alaska in achieving a double-A rating for the leveraged SRF over and above the use of the state intercept. The alternatives tend to fall into three categories. First, as demonstrated by the Arkansas, Colorado, and Minnesota programs, a supplemental reserve could be created that further secures the cash flow through excess revenues and unreleased fund balance. Second, overcollateralization of financed loans could also be accomplished through lower ratios of SRF debt to the program's fund balance and other unreserved monies; Missouri, Pennsylvania and Texas have followed this course. Third, other programs, such as Arizona and Nevada, have applied high general obligation bond ratings to secure the SRF debt; Arizona apparently issues uninsured debt only for high rated localities, such as Phoenix, and Nevada SRF debt is further secured by the State's general obligation pledge. Based on our understanding of the desire for flexibility in the Alaska program, we do not think that the third option is realistic for the Alaska context.

Government Finance Associates, Inc.

CONCLUSION: The state intercept mechanism is a common feature for many, highly rated SRF structures. If the State wishes to eliminate the state intercept but still achieve a double-A rating, on an uninsured basis, for its leveraged SRF program, it will be necessary for operational adjustments to be made by the State. These adjustments could include, but would not necessarily be limited to, the establishment of supplemental reserve funds and significant overcollateralization of assets (lower debt to equity ratios). In effect, the Alaska program would be required to limit its flexibility in certain respects. The State will need to balance these additional restrictions and effect on the SRF's future programmatic flexibility against any perceived disadvantages of the use of a state intercept.

As a final comment, we would like to emphasize that in the absence of substantial reasons to the contrary, the use of the state intercept, as a result of its frequent use for other states that have received a double-A rating, will facilitate discussions with rating agencies and will be met with an historically favorable acceptance by the credit markets. These factors should result in a lower cost of capital for the Alaska SRF. We suggest that if Alaska desires to eliminate the state intercept, we should first discuss its elimination with the rating agencies to determine the replacement security feature that the agencies would possibly require in order for Alaska to achieve a double-A rating. Of course, if Alaska is satisfied with the single-A rating, then it becomes a matter of the additional cost of capital that would be incurred through the elimination of the state intercept.

STATE REVOLVING FUNDS

Issuer	RATINGS			State Intercept
	Moody's	S & P	Fitch	
Alabama Water Pollution Control Authority	NR	NR	NR	No
Wastewater Management Authority of Arizona	Aa	AA+	NR	No
Arkansas Development Finance Authority	NR	AA	NR	No
Colorado Water Resources and Power Development Authority	Aa	AA/AA+	NR	No
State of Connecticut	Aa	AA+	AA	Yes
Indiana Bond Bank	NR	A	NR	Yes
Iowa Finance Authority	NR	A	NR	No
Kansas Development Finance Authority	Aa1	AA+	NR	Yes
Kentucky Infrastructure Authority	A	A	NR	No
Maine Municipal Bond Bank	NR	A-	NR	No
Maryland Water Quality Financing Administration	Aa	AA	AA-	Yes
Massachusetts Water Pollution Abatement Trust	Aa1/Aa	AAA/AA-A+	AA+/AA	Yes
Michigan Municipal Bond Authority	Aa	AA	NR	Yes
Minnesota Public Facilities Authority	Aa	AAA	NR	No
Missouri State Environmental Improvement And Resources Authority	Aa1/Aa	NR	NR	No
New Jersey Wastewater Treatment Trust	Aa	AA	NR	Yes
State of Nevada	Aa	AA	NR	No
New York State Environmental Facilities Corporation	Aaa/Aa	AAA/AA-	AAA/AA	Yes
North Dakota Municipal Bond Bank	A1	NR	NR	No
Ohio Water Development Authority	A	A	NR	No
Pennsylvania Infrastructure Investment Authority	NR	AA	NR	No
Rhode Island Clean Water Finance Agency	NR	NR	NR	No
South Dakota Conservancy District	A	NR	NR	No
Texas Water Development Board	Aa	AAA	NR	No
State of Wisconsin	Aa	AA	AA-	Yes

STATES THAT HAVE NO STATE INTERCEPT

Alabama	No uninsured ratings.
Arizona	Uninsured ratings are only for Phoenix, whose double-A general obligation ratings flow to the ratings on Arizona's SRF bonds.
Arkansas	Double-A Standard and Poor's rating; without state intercept, State is required to use supplemental reserve fund, which is utilized if earnings fall below required coverage.
Colorado	Double-A from both Moody's Investors Service and Standard & Poor's; without state intercept, State is required to use supplemental reserve fund, which is utilized if earnings fall below required coverage.
Iowa	Rated only single-A by Standard & Poor's.
Kentucky	Rated only single-A by both Moody's Investors Service and Standard & Poor's.
Maine	Rated only "A-" by Standard & Poor's; enjoys state moral obligation.
Minnesota	Similar to both Arkansas and Colorado, Minnesota has a supplemental reserve, but the debt is also secured by moral obligation pledge.
Missouri	Reserve fund equals 70% of outstanding loans, as opposed to lower conventional reserve fund levels for most other programs.
Nevada	Backed by State's general obligation pledge.
North Dakota	Rated "A:" by Moody's Investors Service.
Ohio	Rated only single-A by both Moody's Investors Service and Standard & Poor's.
Pennsylvania	Double-A Standard & Poor's rating; overcollateralization with over one-half of the program funds coming from the State of Pennsylvania.
Rhode Island	No uninsured ratings.
South Dakota	Rated only single-A by Moody's Investors Service.
Texas	Substantial overcollateralization; expectation that debt service coverage on pool will rise to over 8.0 times during the life of the bonds.

MEMORANDUM

State of Alaska
Department of Law

Mark Hickey
Commissioner
Department of Transportation
and Public Facilities

DATE April 19, 1989
FILE NO 661-89-0392
TEL NO 276-3550
SUBJECT Permitted uses of
the IARF

Virginia A. Rusch *VR*
Assistant Attorney General
Transportation, Anchorage

You have requested advice from this office regarding use and authority to appropriate from the International Airports Revenue Fund (IARF). The specific questions we answer are:

1. Does the bond resolution prohibit use of the IARF for general government purposes, including

- a) international tourism promotion?
- b) rural airports?
- c) other general government purposes?

2. If the bond resolution or the airport operating agreement prohibit use of IARF money for any of the above purposes, do they unconstitutionally restrict the authority of the executive to prepare a budget and of the legislature to appropriate funds?

A. SUMMARY

The conclusion we reach is that presently permissible uses of the IARF are limited to costs directly relating to the Fairbanks and Anchorage International Airports, a category which we believe could include some tourist promotion activities geared to produce direct revenue benefits for these airports, but probably not a general tourist promotion appropriation, or expenditures for rural airports or general government. The bond resolution itself may leave the door open for statutory amendments that would permit additional uses by specific appropriation, but any such amendment could violate federal grant conditions, the Alaska constitutional prohibition on dedicated funds, and the current airline operating agreements, and could be detrimental to bond ratings.

We also conclude that bond resolution restrictions on uses of the IARF are not unconstitutional restrictions on the budgeting and appropriation powers. The operating agreement provisions, standing alone, might improperly restrict the

legislature's authority. However, as part of a revenue use structure consistent with AS 37.15.430 and the bond resolution, we believe the IARF uses required in the operating agreements are not invalid.

B. LEGAL RESTRICTIONS ON IARF USE

In providing an answer to this question, we consider various legal restrictions applicable to use of IARF funds. These restrictions include the authorizing statute and constitutional restrictions, contractual obligations in the bond resolution and the operating agreements, and federal airport grant conditions.

The IARF was created as part of legislation permitting the airports 1/ to issue revenue bonds. AS 37.15.410 - 37.15.550. AS 37.15.430 established the IARF as an enterprise fund, and also specifies six purposes 2/ for which money in the fund may be used.

1/ "Airports" is defined as the Anchorage and Fairbanks International Airports in both the statute (AS 37.15.550(1)) and the bond resolution (Section 1.01(o)).

2/ AS 37.15.430 provides:

Revenue Fund. (a) There is established an enterprise fund known as the "International Airports Revenue Fund," into which shall be paid all revenue, fees, charges, and rentals derived by the state from the ownership, lease, use, and operation of the airports and all of the facilities and improvements of them and facilities and improvements used in connection with them. The revenue, charges, fees, and rentals may not include the proceeds of any state tax or license. The money in the revenue fund may only be used for the purpose of

(1) paying or securing the payment of the principal of and interest on the bonds and of and on any other revenue bonds issued by authorization of the legislature to provide money to acquire, equip, construct, and install additions and improvements to, and extensions of facilities for,
(footnote continued)

In a previous opinion, this office examined the question of whether the IARF might be an unconstitutional dedicated fund in violation of article IX, section 7, of the Alaska Constitution. 1982 Op. Att'y Gen. No. 13 (Nov. 30). That opinion concluded that the IARF was not in violation of the dedicated funds prohibition because there is an implied exception

for revenue derived from bond issues and for revenue derived from facilities constructed with bond proceeds at least to the extent that it is necessary to satisfy the debt obligation or maintain the facility so that it continues to generate revenues for that purpose. To the extent that revenues are dedicated for purposes which are not related to satisfying the debt or maintaining

(footnote continued)

the airports, and to be payable out of the revenue fund;

(2) paying the normal and necessary costs of maintaining and operating the airports and all of the improvements and facilities of them;

(3) paying the costs of renewals, replacements, and extraordinary repair to the airports and all of the improvements and facilities of them;

(4) redeeming before their fixed maturities any and all revenue bonds issued for the purposes of the airports;

(5) providing money to acquire, construct and install necessary additions and improvements to and extensions of and facilities for the airports and all of their facilities; and

(6) providing money to pay any and all other costs relating to the ownership, use and operation of the airports.

(b) The investment of money in the revenue fund may be made in the manner that the committee may determine. The interest earned upon or any profits derived from the sale of this investment shall be deposited in and become a part of the revenue fund.

the facility, we believe that dedication would violate [the constitutional prohibition].

Id. at 25-26.

The airport revenue bonds are issued under the authority of the State Bond Committee for the State of Alaska, Bond Resolution 68-4 and supplements. Article V of Resolution 68-4 3/ pledges revenues, requires their segregation in the

3/ Section 5 provides in pertinent part:

Section 5.01. Pledge of Revenues; Revenue Fund. All of the Revenues are hereby irrevocably pledged to the punctual payment of the principal of and interest on the bonds, and Revenues shall not be used for any other purpose while any of the Bonds remain outstanding; except that out of Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by Section 5.02. Said pledge shall constitute a first lien on the Revenues for the payment of the Bonds in accordance with the terms thereof. .

All revenues shall be deposited in the special fund created by the Act and known as the "International Airports Revenue Fund" (herein called the "Revenue Fund"), which shall be completely segregated and set apart from all other funds of the State and shall be maintained by the State so long as any of the Bonds are outstanding. All moneys at any time deposited in the Revenue Fund shall be held in trust for the benefit of the holders from time to time of Bonds and the coupons appertaining thereto, and shall be disbursed, allocated and applied solely for the uses and purposes set forth in Section 5.02.

Section 5.02. Allocation of Moneys in Revenue Fund. [This section first provides that moneys in the revenue fund shall be applied in order to a) the International Airport Revenue Bond Redemption Fund, including accounts designated as the Interest Fund, the Retirement Fund, and the Bond Reserve Fund, and b) the Repair and
(footnote continued)

IARF, and sets out the order of application and purposes for which IARF funds may be used. The bond resolution and supplements create a contractual obligation between the state and the holders of the bonds, and courts have held that states may not limit or alter the rights of the bondholders until the bonds are paid. 81A C.J.S. States § 262 (1977); U. S. Trust Co. v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505 (1977).

(footnote continued)

Replacement Reserve Account. The section then sets out specific purposes for surplus funds.]

c) Surplus Revenues; Any moneys remaining in the Revenue Fund on the fifth business day of any month, after the requirements of the foregoing subsections a) and b) have been satisfied, may be used for any of the following purposes--

1) to pay the normal and necessary costs of maintaining and operating the Airports and all of the improvements and facilities thereof;

2) to pay the costs of renewals, replacements and extraordinary repairs to the Airports and any of the improvements and facilities thereof;

3) to redeem bonds prior to maturity in accordance with Article IV;

4) to purchase Bonds at prices not exceeding their par value or then current redemption price, whichever is greater, plus accrued interest, which Bonds shall be cancelled;

5) to acquire, construct or install necessary additions or improvements to, extensions of or facilities for the Airports;

6) to pay any and all other costs relating to the ownership, use and operation of the Airports, or

7) for any other purpose permitted by the Act as it is then in effect, including any amendments thereto which may hereafter be adopted.

The airport has also entered contracts known as the Airline Operating Agreement and Terminal Building Lease. The operating agreements commit the state to a methodology for computing charges including terminal fees and landing fees at the airports. Part of the commitment is to apply IARF money to various mandatory accounts, and then to apply any surplus to reduce the cost-based fees charged to airlines. This obligation is set out in Section 8.02(7). 4/

Finally, federal airport grant conditions are an important consideration in answering your questions. 49 U.S.C.A. § 2210 (1989) 5/ requires, as a condition of receiving federal

4/ Section 8.02(7) provides:

a. To a Prepaid Airline Revenue Account, an annual minimum deposit of \$1 million and any amount remaining in the Revenue Account at the end of the Fiscal Year after all amounts have been deposited into all of the funds and accounts described in this Section.

b. The Prepaid Airline Revenue Account is the account into which annual Airport System revenue is recorded after all other required fund or account balances are satisfied. Unless 67 percent of the Signatory Airlines agree to an alternate use for the account, the amount in the Prepaid Airline Revenue Account at the beginning of each Fiscal Year must be transferred to the Revenue Account and used to calculate the Airport System landing fee requirement in the succeeding Fiscal Year as described in Section 7.03.C.4.

5/ provides: The pertinent part of 49 U.S.C.A. § 2210 (1989)

(a) Sponsorship

As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter, the Secretary shall receive assurances, in writing, satisfactory to the Secretary, that --

(footnote continued)

airport improvement grants, that the sponsor of a grant application make assurances to the Secretary (of the United States Department of Transportation) that all airport revenues will be used for capital or operating costs of the airport or facilities directly and substantially related to air transportation. See Indianapolis Airport v. American Airlines, Inc., 733 F.2d 1262 (7th Cir. 1984), in which the court discusses how airport fees must be set, but takes for granted that all airport revenues must be used for airport purposes.

C. DISCUSSION

a. Permissible Uses

Because the first five IARF uses specified in the statute and the bond resolution are nearly identical and very specific, the sixth use and subsection (c)(7) of the bond resolution are the keys to an examination of what the IARF may be used for.

The sixth use, set out in subsection (c)(6) of the bond resolution and AS 37.15.430(a)(6), allows use of the IARF for costs "relating to the ownership, use and operation of the Airports." This catchall language is open to interpretation, and we have found no authorities to guide the precise drawing of the line. However, we conclude that general government costs, except to the extent they may represent costs of services provided to the airports, would not be included within that description. The same is true for costs of other airports in the state.

Promotion of international tourism could be allowed by subsection (c)(6), depending on the particular nature of the promotion activities. For example, we would think that any funds

(footnote continued)

(12) all revenues generated by the airport, if it is a public airport, and any local taxes on aviation fuel (other than taxes in effect on December 30, 1987), will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property; . . .

expended in particular efforts to attract additional airlines or expand services of present carriers to the Fairbanks and Anchorage airports by promoting tourism would be considered related. General advertising of the state's attractions, without some rational connection and benefit to the airports however, would probably be an impermissible diversion of the IARF.

Subsection (c)(7) of the bond resolution apparently opens the door to allow the legislature to add permissible purposes by amending AS 37.15.430. This provision adopts by reference any other purpose set out or adopted in the future by statute. Although there are currently no other purposes stated in the statute, an appropriation from the IARF for any purpose might theoretically be made if the legislature first amended AS 37.15.430 to add that purpose.

But an amendment adding other purposes to AS 37.15.430 could have very problematic consequences. Bondholders might challenge the amendment as an impairment of their security under U.S. Trust Co. v. New Jersey and related caselaw. (In light of the bond resolution's specific acknowledgement that other purposes could be added to the statute, we think such a challenge would fail, but the rating of the bonds could be affected.) Another potential problem is that an amendment to AS 37.15.430 permitting a use of the fund not related to satisfying the debt or maintaining the facility could raise legal questions concerning the validity of the segregation of the IARF from other assets of the state treasury. See p. 3, supra.

Yet another serious concern is the likelihood that authorizing use of the IARF for purposes other than those related to the airport would violate the conditions of federal grants under 49 U.S.C.A. § 2210 (1988).

It may also be helpful to compare these conclusions with advice this office has previously provided to the legislature on a similar question about a different fund. 1985 Inf. Op. Att'y Gen. (Apr. 24; 366-463-85). There we answered the inquiry of House Finance Chairman Al Adams regarding the legislature's ability to appropriate AHFC's funds. Our advice was that the legislature could appropriate unspent portions of previous appropriations in the AHFC fund. We also advised that other funds could be appropriated in the absence of any contractual promises or obligations to third parties to use or segregate the funds. We believe that just such contractual or third party obligations, including the obligations of the bond resolution, the operating agreements, and the federal grant conditions, would prevent appropriations of IARF funds.

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Mark Hickey
Commissioner
661-89-0392

April 19, 1989
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b. Restraint on Constitutional Authority

In answer to your second question, we conclude that the bond resolution and the operating agreement are not unconstitutional in that they limit the discretion of the governor and the legislature in budgeting and appropriating funds of the IARF.

As discussed supra, p. 3, we believe that bond proceeds and the revenue derived from facilities constructed from those funds are exempt from the prohibition against dedicated funds. In addition, article IX, section 11, of the Alaska Constitution 6/ makes it clear that revenue bond financing of state facilities is intended to be used in the state. We think that the reasoning in the opinion cited above and the constitutional recognition of revenue bonds is sufficient basis to conclude that the bond resolution's restrictions that limit discretion in budgeting and appropriation of the IARF are constitutional.

To the extent that the operating agreements restrict budgeting or appropriation of IARF money by contractually agreeing to other uses, such provisions may have a "tendency" to limit the legislature's discretion. On this basis, without much explanation, the Alaska Supreme Court held in Alaska Energy Center v. Zerbetz, 708 P.2d 1270 (Alaska 1985), that contract provisions limiting the legislature's control were invalid. We interpret Zerbetz to mean that a revenue bonding authority cannot arbitrarily contract to remove assets and revenue from the legislature's reach. Any activity of that nature would upset the sound public policy envisioned by the framers of the Constitution, and the resulting contract would be void.

6/ Section 11 provides:

Exceptions. The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation. The restrictions do not apply to indebtedness to be paid from special assessments on the benefitted property, not do they apply to refunding indebtedness of the State or its political subdivisions.

Mark Hickey
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We think, therefore, that the operating agreements, if they stood alone, might be questionable. However, since the operating agreements apparently comply with federal requirements, commit funds to purposes allowable under the other legal restrictions discussed here, and carry out airport management authority under AS 02.15.020 and AS 02.15.090, we believe they do not unconstitutionally restrict the budgeting or appropriation authority.

VAR:mmm

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 9, 1996

SUBJECT: Revenue bonds for wastewater systems (SB 207)

TO: Senator Robin Taylor
Senate Judiciary Committee

FROM: Tamara Brandt Cook
Director *TBC*

Senate Bill 207 introduced by the Governor has been referred to your committee. The bill authorizes the state bond committee to issue revenue bonds as part of "the Alaska clean water fund revolving loan fund program (AS 46.03.032), a public enterprise of the state." (See bill section 2) I have a concern that, despite this recitation, the court might find that this bill violates Art. IX, sec. 8 of the state constitution. That section provides in full:

STATE DEBT. No state debt shall be contracted unless authorized by law for capital improvements or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.

There is a constitutional basis for the formation of a public corporation with the power to issue bonds. Article IX, sec. 11 of the state constitution states in part, "The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation." The Alaska Supreme Court has specifically recognized that the bonds of public corporations fall under this provision and are not debts of the state. (Walker v. Alaska State Meg. Ass'n, 415 P.2d 245 (Alaska 1966); DeArmond v. Alaska State Dev. Corp., 376 P.2d 717 (Alaska 1962))

Obviously, the state bond committee is not a public corporation, so the question presented in this bill is whether the court will agree that a state fund is a "public enterprise" or whether the court will find that the phrase refers to something with an independent legal existence from the state, in the nature of a public corporation or authority.

Senator Robin Taylor

March 9, 1996

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The attorney general has expressed the position that the prohibition on the contracting of state debt applies only to indebtedness secured by the full faith and credit of the state, but the court has not specifically held that it applies only to general obligation as opposed to revenue and other bonds. The court has considered the scope of Art. IX, sec. 9, which contains language very similar to sec. 8, but applies to municipalities rather than to the state. (Chefomak v. Hooper Bay Construction Co., 758 P.2d 1266 (Alaska 1988)) That case left open the question of what types of debt, in addition to general obligation bonds, might be subject to the constitutional restriction in incurring debt. The court stated:

Thus, we think it clear that the framers of our constitution intended section 9 to restrict a municipality's ability to voluntarily borrow funds or issue bonds. (Page 1269, emphasis added)

We conclude that the restrictions on contracting debt contained in article IX, sec. 9 are applicable only where a political subdivision has endeavored to borrow money via the issuance of bonds or other paper indebtedness. (Page 1270, emphasis added)

It is possible that the court would find that revenue bonds as well as general obligation bonds are prohibited debts of the state under Art. IX, sec. 8. If so, it is at least open to question whether the court will agree that a public fund is a "public enterprise" of the state with the authority to issue revenue bonds under Art. IX, sec. 11.

TBC:glc:lmb

96-060.lmb

CS FOR SENATE BILL NO. 207(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the issuance and sale of revenue bonds to fund public
2 wastewater systems, nonpoint source water pollution control projects, including
3 solid waste management systems, and estuary conservation and management
4 projects; authorizing the use of the Alaska clean water fund to pay and secure
5 the bonds and to pay costs related to issuance and administration of the bonds;
6 authorizing certain measures to secure payment of the bonds; and amending
7 Rule 3, Alaska Rules of Civil Procedure."

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

9 * Section 1. POLICY AND PURPOSES. The legislature finds that the expenditures,
10 transfers, and applications of money, and the use of the public credit through the issuance of
11 revenue bonds, as authorized by this Act, will serve a public purpose by allowing the
12 financing of needed public water quality improvements substantially sooner than would
13 otherwise be possible. It is the intent of the legislature in enacting this Act to establish a

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

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

5 ARTICLE 3A. ALASKA CLEAN WATER FUND BONDS.

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

17 (b) The state bond committee may not issue more than \$15,000,000 in revenue
18 bonds during a fiscal year, excluding refunding bonds. The total amount of revenue
19 bonds outstanding at any one time may not exceed \$150,000,000, including principal
20 and interest owed on the bonds.

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

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

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

29 Sec. 37.15.565. BOND REDEMPTION FUND. (a) There is established a
30 special fund of the state, known as the "Alaska clean water fund revenue bond
31 redemption fund," which is a trust fund for paying and securing the payment of the

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

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

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

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

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

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

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

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

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

31 (f) A bond resolution may provide that the bonds issued must contain a recital

1 that they are issued under AS 37.15.560 - 37.15.605 and AS 46.03.032, and a bond
2 containing the recital is conclusively considered to be valid and to have been issued
3 in conformity with AS 37.15.560 - 37.15.605 and AS 46.03.032.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 37.15.603. REGULATIONS. The committee may adopt regulations
27 necessary to implement the provisions of AS 37.15.560 - 37.15.605.

28 Sec. 37.15.605. DEFINITIONS. In AS 37.15.560 - 37.15.605,

29 (1) "bond redemption fund" means the Alaska clean water fund revenue
30 bond redemption fund established in AS 37.15.565;

31 (2) "bond resolution" means the resolution or resolutions adopted by

1 the committee under AS 37.15.573 authorizing the issuance of bonds;

2 (3) "bonds" means the Alaska clean water fund revenue bonds
3 authorized in AS 37.15.560 - 37.15.605;

4 (4) "commissioner of revenue" means the principal executive officer
5 of the Department of Revenue as provided in AS 44.25.010, or a successor;

6 (5) "commissioner of environmental conservation" means the principal
7 executive officer of the Department of Environmental Conservation as provided in
8 AS 44.46.010, or a successor;

9 (6) "committee" means the state bond committee created in
10 AS 37.15.110 or any other committee, body, department, or officer of the state that
11 succeeds to the rights, powers, duties, and obligations of the state bond committee by
12 lawful act of the legislature;

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

20 * Sec. 3. AS 46.03.032(a) is amended to read:

21 (a) There is established as a separate fund the Alaska clean water fund, which
22 is distinct from any other money or fund in the treasury, and which consists of money
23 appropriated by the legislature to meet federal matching requirements, federal
24 capitalization grants, loan repayments, interest received from loan repayments, [AND]
25 interest received from investment of money in the Alaska clean water fund, and the
26 proceeds and accrued interest received from the sale of revenue bonds issued
27 under AS 37.15.560 - 37.15.605 and secured by the Alaska clean water fund.
28 Separate accounts may be created in the Alaska clean water fund. The accounts
29 may be combined for purposes of investment.

30 * Sec. 4. AS 46.03.032(b) is amended to read:

31 (b) The department shall administer the Alaska clean water fund consistent

1 with the requirements of this section and AS 37.15.560 - 37.15.605.

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

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

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

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

9 (1) for the following categories of projects:

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

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

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

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

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

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

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

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

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

30 (f) The department

31 (1) may spend money from the Alaska clean water fund to pay the