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Bullock
9/14/05

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE WILSON

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act authorizing the establishment of regional solid waste management authorities."

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

* Section 1. AS 29.35 is amended by adding new sections to read:

Article 10. Regional Solid Waste Management Authorities.

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

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

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

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

(b) One or more municipalities may join an authority established under (a)(1) or (2) of this section upon the adoption of substantially identical ordinances by the governing bodies of each affected municipality.

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

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

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

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

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

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

(b) If an authority ceases to exist, its assets shall be distributed to each municipality that participated in the authority in proportion to the municipality's contribution to the authority less any outstanding debt or obligation of that

municipality to the authority. Any obligation to bondholders then outstanding shall first be satisfied in full.

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

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

Sec. 29.35.820. Powers. If provided in the enabling ordinance, an authority may

(1) sue and be sued;

(2) have a seal and alter it;

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

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

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

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

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

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

(9) provide for security within the boundaries of the authority;

(10) enter into loan agreements for one or more projects on the terms

and conditions the authority considers advisable;

(11) acquire, manage, and operate projects the authority considers necessary or appropriate to serve the authority's purposes;

(12) assist private lenders to make loans to finance the costs of projects through loan commitments, short-term financing, or otherwise;

(13) charge fees or other forms of remuneration for the use or possession of projects under the agreements described in this section; other agreements relating to the projects, covenants, or representations made in bond documents relating to the projects; or regulations of the authority relating to the projects;

(14) exercise the powers of eminent domain and declaration of taking within its physical boundaries under AS 29.35.030 to acquire land or materials for authority purposes;

(15) regulate land use within the boundaries of the authority;

(16) defend and indemnify a current or former member of the board, employee, or agent of the authority against all costs, expenses, judgments, and liabilities, including attorney fees, incurred by or imposed on that person in connection with a civil or criminal action in which the person is involved because of the person's affiliation with the authority if the person acted in good faith on behalf of the authority and within the scope of the person's official duties and powers;

(17) purchase insurance to protect and hold harmless its employees, agents, and board members from an action, claim, or proceeding arising out of the performance of, purported performance of, or failure to perform in good faith, duties for the authority or arising out of employment with the authority and to hold them harmless from expenses connected with the defense, settlement, or monetary judgments from that action, claim, or proceeding; the purchase of insurance is subject to the discretion of the board; insurance purchased under this paragraph is not compensation to the insured person; and

(18) protect its assets, services, and employees by purchasing insurance or providing for certain self-insurance retentions; an authority may also maintain casualty, property, business interruption, marine, boiler and machinery,

pollution liability, and other insurance in amounts reasonably calculated to cover potential claims against the authority or a municipality for bodily injury, death or disability, and property damage that arises from or is related to authority operations and activities.

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

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

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

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

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

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

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

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

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

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

(e) All bonds issued under this section, regardless of form or character, are

negotiable instruments for all the purposes of AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code).

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

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

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

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

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

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

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

(1) the authority is not obligated to pay it or the interest on it except

from the revenue pledged for it; and

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 29.35.880. Continuation of collective bargaining agreements; application of AS 23.40.070 - 23.40.260. (a) A collective bargaining agreement for employees of the state or its political subdivisions who are transferred to an authority

under AS 29.35.800 - 29.35.925 remain in effect for the term of the agreement or one year, whichever is longer, and are binding on the authority unless the parties agree to the contrary before the agreement expires. A labor-management negotiation impasse declared after a transfer of employees under this subsection but before the negotiation of a new collective bargaining agreement shall be resolved as provided in the collective bargaining agreement or, if the collective bargaining agreement does not provide for a resolution, as provided in AS 23.40.070 - 23.40.260.

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

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

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

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

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

(2) the compensation of directors, if any;

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

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

(5) procedures for adopting regulations;

(6) procedures for adopting bylaws;

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

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

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

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

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

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

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

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

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

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

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

Sec. 29.35.920. Definitions. In AS 29.35.800 - 29.35.925, unless the context

otherwise requires.

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

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

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

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

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

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

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

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

Sec. 29.35.925. Short title. AS 29.35.800 - 29.35.925 may be cited as the Regional Solid Waste Management Authority Act.