

HB 182
Sectional Analysis

Section 1. (Page 1, line 10 – page 12, line 20) Section 1 creates and empowers the Greater Railbelt Energy and Transmission Corporation (“corporation”) within AS 42.50. The corporation has the primary public purpose, and corporate powers, to provide Greater Railbelt electric utilities with adequate, reliable, safe, and stable wholesale electric power and transmission services, at the lowest feasible long-term cost. The corporation will plan for the financing, and acquisition or construction of electric power generation and transmission assets or services necessary to serve the Railbelt.

The corporation is similar in corporate form to the Commercial Fishing and Agriculture Bank (AS 44.81 – “CFAB”). Both are statutory corporations that are not public corporations of the state or otherwise agencies of state government. However, CFAB and the corporation differ in governance structure. CFAB is structured and operated as a cooperative corporation, and is governed by a board of directors with two directors appointed by the governor and the remaining five to seven directors elected by members. In contrast, the corporation is a non-profit corporation, governed by a board of directors composed of up to 12 persons selected by the Greater Railbelt electric utilities, and one public member appointed by the governor. Members of the corporation are the ratepayers of individual Greater Railbelt electric utilities, with member governance exercised, and member benefits received, solely through the member’s electric utility. The Greater Railbelt electric utilities thereby collectively retain control over their future electric power generation and transmission needs, and can exercise that control through the corporation.

Specific sections of AS 42.50 within section 1 of the bill include:

AS 42.50.010. (Page 1, line 12 – page 2, line 23) Establishes the corporation as a non-profit corporation, and describes the purposes of the corporation, including to plan for and take actions necessary to provide the Railbelt with adequate, reliable, safe, and stable electric power at the lowest feasible cost. The section clarifies that the corporation is exempt from certain statutes applicable to other corporations. The section further clarifies that the corporation may not be considered to be or constitute the state, state government, or a political subdivision so that statutes applicable to such entities (*e.g.* the Executive Budget Act or the Procurement Code) will not apply to the corporation. Finally, the section declares that the exercise of powers by the corporation is considered to be for a public purpose, which will make the corporation more readily eligible for state financial assistance.

AS 42.50.020. (Page 2 line 24 – page 3 line 17) Establishes provisions for the board of directors to govern the corporation. The governor will appoint one director, and each Greater Railbelt electric utilities will have two representative directors, for a total of up to 13 directors.

AS 42.50.030. (Page 3 line 18 – page 4 line 26) Establishes rules related to noticing and conducting meetings of the board of directors, including requiring public meetings, and establishing rules and criteria for executive sessions of the board.

AS 42.50.040. (Page 4 line 27 – page 5 line 7) Establishes provisions for the corporation to hire employees, including a chief executive officer. Declares that employees of the corporation are not employees of the state and are not considered to be employees of a public organization for purposes of the Public Employees' Retirement System of Alaska (AS 39.35).

AS 42.50.050. (Page 5 lines 8 - 12) Establishes that ratepayers of the individual Greater Railbelt electric utilities are the members of the corporation, and provides that members are represented by, and receive benefits solely through, their respective electric utility.

AS 42.50.060. (Page 5 lines 13 - 16) Authorizes the corporation's board to adopt bylaws, and requires that bylaws be consistent with AS 42.50 and other laws applicable to the corporation.

AS 42.50.070. (Page 5 lines 17 - 21) Authorizes the corporation to indemnify, or purchase insurance on behalf of, directors, officers and employees.

AS 42.50.100. (Page 5 line 22 – page 7 line 24) Authorizes the corporation to exercise enumerated general powers that will enable the corporation to fulfill its corporate purposes to plan for and take actions necessary to provide the Railbelt with adequate, reliable, safe, and stable electric power at the lowest feasible cost. These general powers include enabling the corporation to plan for, finance, construct or acquire electric power generation and transmission facilities or services, fuel supplies and fuel storage facilities, and other facilities necessary or convenient to accomplish the corporation's purposes. The corporation may work with the state regarding energy planning, and with the Greater Railbelt electric utilities regarding their energy needs. The corporation may exercise eminent domain to acquire necessary land interests using statutory authority available to electric utilities. And, the corporation may create subsidiary corporations, including non-profit subsidiary corporations under AS 10.20, if that creates better opportunities to finance, construct or acquire necessary facilities, assets or services.

AS 42.50.110. (Page 7 lines 25 – 30) Establishes that the corporation has all the powers and duties of a regulated electric utility, except the corporation is not required to obtain a certificate of public convenience and necessity, and the corporation may not make retail sales of electric power.

AS 42.50.120, AS 42.50.130, and AS 42.50.140. (Page 7 line 31 – page 9 line 5) Three sections, collectively, impose a framework for the corporation to plan for future electric power generation and transmission needs for the Greater Railbelt region service territory. **AS 42.50.120** imposes a duty on corporation to adopt, regularly review, and update an integrated resources plan. The corporation in this plan will analyze the anticipated future electric power needs of the Greater Railbelt electric utilities, and select electric generation and transmission projects that will best meet those future needs. **AS 42.50.130** imposes a duty on corporation to adopt, regularly review, and update a long-range capital improvement plan. The corporation in this plan, and building upon the integrated resources plan, will identify anticipated capital improvement projects and otherwise describe how the corporation intends to accomplish its corporate purposes over the following 10 years. **AS 42.50.140** imposes duty on corporation to adopt, regularly review, and update a long-range capital management plan. The corporation in this plan, and building upon both the integrated resources plan and the long-range capital improvement plan, will describe the corporation's plans for financing capital improvement projects and other fiscal needs over the following 10 years. Each of these sections also require the corporation to make these plans available on the Internet to Greater Railbelt electric utilities, members of the corporation, the governor, the legislature, and the public.

AS 42.50.150. (Page 9 lines 6 – 14) The state pledges to any lender to the corporation that the state will not limit or alter the rights of the corporation to fulfill terms of contracts, or impair remedies available to the lender. Without this pledge, concerns about the corporation repaying debt might arise, which might make lenders unwilling to provide debt financing to the corporation.

AS 42.50.160. (Page 9 line 15 – 21) Authorizes the corporation to acquire long-term fuel supplies to ensure electric power generation facilities can continue to operate without fuel related interruptions. The corporation may acquire fuel supplies in conjunction with other persons who acquire fuel for other purposes, including purposes unrelated to electric power. Cook Inlet gas supplies may not be plentiful in the future. The acquisition of fuel supplies in conjunction with other users of fuel may offer economic advantages to the corporation.

AS 42.50.170. (Page 9 line 22 - 24) Establishes that the corporation's real and personal property, assets, income, and receipts are exempt from state and local taxes and special assessments. This tax exemption is revenue neutral to state and local governments. The Greater Railbelt electric utilities are comprised of municipal and cooperative electric utilities. Municipal electric utilities do not pay taxes. Cooperative electric utilities are exempt from state and local taxes, and instead pay an electric cooperative tax on retail sales of electricity. Only Greater Railbelt electric utilities will sell electricity at retail because the corporation may not make retail electric power sales (AS 42.50.110(b)). Electric cooperatives will pay the electric cooperative tax on all electric power obtained from the corporation, so state and local governments will not lose tax revenues as a result of this tax exemption.

AS 42.50.200. (Page 9 line 25 – page 10 line 2) Obligates the corporation to publish an annual report, which report must include audited financial statements and other information requested by the legislature.

AS 42.50.210. (Page 10 lines 3 - 29) Establishes rights of Greater Railbelt electric utilities, members of the corporation, and the public to inspect books and records of the corporation, and describes books and records that the corporation may withhold from inspection.

AS 42.50.170. (Page 10 line 30 – page 11 line 22) Establishes provisions for audits and examinations of the corporation. The section authorizes the legislative auditor to cause the corporation to be audited, and establishes processes that will apply. The section also requires an annual audit of the corporation by an independent outside auditor.

AS 42.50.900. (Page 11 line 23 – page 12 line 20) Defines certain terms used in AS 42.50.

Sections 2-7, and section 12. (Page 12 lines 21 – 26, and page 17 line 13 – page 18 line 14) Sections 2 – 7, and 12 provide a mechanism to remove from participation in the corporation individual Greater Railbelt electric utilities that do not desire to participate in the corporation. To continue participation in the corporation, a Greater Railbelt electric utility must deliver to the Alaska Energy Authority by July 31, 2010, an acceptable letter of intent under which the utility commits to enter a phased commitment agreement among the Alaska Energy Authority, the corporation, and the utility. These sections, effectively, enable individual Greater Railbelt electric utilities to elect to opt out of the corporation.

Sections 2 - 7 of the bill (page 12 lines 21 – 26) repeal from the definition of “Greater Railbelt electric utilities” under AS 42.50.900(5), individually listed

Greater Railbelt electric utilities. For example, section 2 would repeal AS 42.50.900(5)(A) which lists “Homer Electric Association, Inc.” within the definition of “Greater Railbelt electric utilities. Sections 3 – 7 would repeal other portions of AS 42.50.900(5) which list other electric utilities. If a utility is removed from the definition of “Greater Railbelt electric utilities, the utility would no longer be empowered to participate in the corporation. For example, removal of a utility from the definition would eliminate that utility’s right to have two directors on the board (*see* AS 42.50.020(a)(1) – page 2 lines 26 - 29).

Subsection 12(a) (page 17 lines 13 – 28) makes the repeal of the individual portions of AS 42.50.900(5) effective if the respective individual utility does not deliver to the Alaska Energy Authority an adequate letter of intent. Subsection 12 (c) (page 17 line 31 – page 18 line 2) requires the executive director of the Alaska Energy Authority to notify the lieutenant governor and revisor of statutes if any of the conditions are met. Subsection 12(d) (page 18 lines 3 - 14) defines terms used in section 12 of the bill.

Section 8. (Page 12 line 27 – page 15 line 2) Section 8 establishes obligations on the corporation to organize and, jointly with the Alaska Energy Authority, develop by January 19, 2010 a transition and finance plan to enable the corporation to become an all requirements supplier of electric power and transmission services to Greater Railbelt electric utilities. The section recognizes the reality that no new entity can immediately fulfill the goals set for the corporation. Existing electric power generation and transmission assets and services owned and operated by Greater Railbelt electric utilities and the state must be integrated into the corporation, together with anticipated new assets and services. Only under a phased transition can the corporation acquire necessary assets and services to enable it to become the supplier of electric power generation and transmission services to Greater Railbelt electric utilities.

The finance plan will identify how any new assets, or upgrades to existing assets, can be financed. The corporation will also identify how best the State of Alaska can assist in this financing, whether it be through cash capitalization, credit, or both. Any assistance provided by the State will have to be approved by the Legislature. In the short term, this could amount to hundreds of millions of dollars. In the long term, it could exceed a billion dollars. The Energy Team at the Alaska Energy Authority will work with the corporation on this finance plan, while at the same time work with members of the Legislature to determine the optimum means to finance investments all across Alaska.

Under subsection 8(a) (page 12 line 29 – page 14 line 9), the corporation must organize and jointly with the Alaska Energy Authority, develop a transition and finance plan. The plan must include or address several components. The plan

must include a phased commitment agreement that identifies commitments by the state, corporation and utilities to enable the corporation to achieve its corporate purposes, and a commitment by utilities to obtain electric power and transmission services from the corporation. The plan must address financing for necessary new projects, and include provisions to ensure that the creation and transition not negatively effect the ability of the corporation and utilities to finance necessary Railbelt electric power generation and transmission assets and services. Such provisions include ensuring the repayment of existing and new debt. The plan must address the corporation's acquisition of assets. The plan may propose statutory changes to improve the ability of the corporation to achieve its purposes.

Under subsection 8(b) (page 14 lines 10 – 23), the corporation must annually report on progress towards implementing the transition and finance plan.

Subsection 8(c) (page 14 line 24 – page 15 line 2), defines certain terms used in section 8 of the bill.

Section 9. (Page 15 line 3 – page 16 line 7) Section 9 requires the corporation to report to the governor and legislature with proposed statutory changes regarding the scope of regulation by the Regulatory Commission of Alaska over the corporation.

Subsection 9(a) (page 15 lines 7 – 29) identifies principles that the corporation must include in its proposed legislation. Rates must be based upon the reasonable costs of the corporation, and be adequate to cover financing covenants. A single, system wide rate must be established for Greater Railbelt electric utilities that become all requirements purchasers. The scope of review by the Regulatory Commission of Alaska must be established, and a simplified process for determining rates and revenue requirements must be proposed.

Nothing in section 9 obligates the legislature to take any particular action in response to the legislation to be proposed by the corporation. If the legislature takes no further action regarding the scope of regulation by the Regulatory Commission of Alaska over the corporation, under AS 42.50.110 to be enacted in section 1 of the bill (page 7 lines 25 – 30), the corporation would remain subject to full regulation by the Regulatory Commission of Alaska, excepting that the corporation would not need to obtain a certificate of convenience and public necessity under AS 42.05.221.

Subsection 9(b) (page 15 line 30 – page 16 line 7) defines certain terms used in section 9 of the bill.

Section 10. (Page 16 line 8 – page 17 line 10) Section 10 authorizes the Alaska Energy Authority to convey the Bradley Lake Hydroelectric Project and the Alaska Intertie to the corporation.

Bradley Lake Hydroelectric Project is a storage hydro electric power project located near Homer, Alaska. The project has a peak capacity of 126 MW, with significant water storage held behind a rock fill dam. Bradley Lake is an important part of the Railbelt operating power portfolio, providing 5-10% of the annual Railbelt electric power needs at the lowest Railbelt wide generation cost. Under the power sales agreement, 100 percent of the project's capacity and energy has been sold to Railbelt utilities, including: Chugach Electric Association, Inc. (30.4%); Municipality of Anchorage d/b/a Municipal Light and Power Utility (25.9%); Golden Valley Electric Association, Inc. (16.9%); Matanuska Electric Association, Inc. (through Alaska Electric Generation and Transmission Cooperative, Inc.) (13.8%); Homer Electric Association, Inc. (through Alaska Electric and Energy Cooperative, Inc.) (12.0%); and City of Seward, Electric Utility Department (1.0%).

The Alaska Intertie is a 170 mile long electrical transmission line that stretches from Healy River to Willow, and under agreements authorizing the use of Matanuska Electric Association owned transmission lines, extends an additional approximately 25 miles to the Teeland Substation near Knik. An ongoing extension project will extend the Alaska Energy Authority owned line from Willow to the Chugach Electric Association transmission system. This extension will become a part of the project. The Alaska Intertie connects the southern Railbelt Utilities electrically with Golden Valley Electric Association that serves communities to the north of the Alaska Range. Designed to move power in both directions, the intertie has been used chiefly to convey inexpensive electrical energy produced by Chugach Electric and Municipal Light and Power northward to become a part of the GVEA energy portfolio. Recently, power flows have flowed from GVEA south to the Chugach system, when Chugach lacked access to sufficient natural gas to carry the Chugach system load.

Subsection 10(a) (page 16 lines 10 – 23) authorizes the conveyances and clarifies that the Alaska Energy Authority may take other actions before actual conveyances. The Alaska Energy Authority may contract to allow the corporation to operate and maintain the project. Such a contract would provide the corporation with some level of control over the assets prior to actual conveyance. The Alaska Energy Authority may also contract and agree to convey the projects in the future after bonds or debt are paid, refinanced, or defeased, or after approvals are obtained. This provision provides the same flexibility the corporation will require in planning for acquiring assets under the transition and finance plan to be developed in section 8 of the bill. The corporation will need to review and address

all contractual, regulatory, or other restrictions on the transfer of assets into the corporation. With respect to the Bradley Lake hydroelectric project, this will include review of covenants related to outstanding bonds, and transfer of the FERC license. The flexibility provided in subsection 10(a) and the transition and finance plan under section 8 may enable the corporation to integrate facilities and assets into corporation's operations without first obtaining ownership.

The conveyances of the Bradley Lake hydroelectric project and the Alaska Intertie will be subject to, and will not eliminate, existing contractual rights of various Greater Railbelt electric utilities. For example, the power generated by the Bradley Lake hydroelectric project is already sold to the utilities under a power sales agreement. The right to use the Alaska Intertie is subject to provisions of the Alaska Intertie Agreement. However, the Alaska Intertie Agreement is scheduled to terminate in October 2010, and has been subject of renegotiations between the Alaska Energy Authority and Greater Railbelt electric utilities that participate in the project. The Alaska Energy Authority anticipates that the parties will address as part of the transition and finance plan, whether negotiations with the utilities regarding the agreement should be completed by the corporation rather than the Alaska Energy Authority.

Subsection 10(b) (page 16 line 24 – page 17 line 10) defines certain terms used in section 10 of the bill.

Sections 11 and 12. (Page 17 line 11 – page 18 line 14) Sections 11 and 12 provide for the contingent repeal of section 10 of the bill which authorizes the Alaska Energy Authority to convey the Bradley Lake Hydroelectric Project and the Alaska Intertie to the corporation. That repeal will take effect if none of the Greater Railbelt electric utilities choose to participate in the corporation by delivering to the Alaska Energy Authority an acceptable letter of intent by July 31, 2010..

Section 11 (page 17 lines 11 – 12) repeals section 10 of the bill.

Subsection 12(b) (page 17 lines 29 – 30) makes section 11 take effect if none of the Greater Railbelt electric utilities deliver to the Alaska Energy Authority by July 31, 2010, an acceptable letter of intent under which the utility commits to enter a phased commitment agreement among the Alaska Energy Authority, the corporation, and the utility.

Subsection 12 (c) (page 17 in 31 – page 18 line 2) requires the executive director of the Alaska Energy Authority to notify the lieutenant governor and revisor of statutes if the conditions of subsection 12(b) are met.

Subsection 12(d) (page 18 lines 3 – 14) defines certain terms used in section 12 of the bill.

Section 13. (Page 18 line 15) Section 13 gives the bill an immediate effective date.