



# LAWS OF ALASKA

1976

Source

SCS CSHB 779 am S

Chapter No.

278

## AN ACT

Creating the Alaska Power Authority.

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

\* Section 1. AS 44 is amended by adding a new chapter to read:

CHAPTER 56. ALASKA POWER AUTHORITY.

ARTICLE 1. CREATION AND ORGANIZATION.

Sec. 44.56.010. LEGISLATIVE FINDING AND POLICY. (a)  
The legislature finds, determines and declares that

(1) there exist numerous potential hydroelectric and fossil fuel generating sites in the state;

(2) the establishment of power projects at these sites is necessary to supply lower cost power to the state's municipal electric, rural electric, cooperative electric, and private electric utilities, and regional electric authorities, and thereby to the consumers of the state, as well as to supply existing or future industrial needs;

(3) the achievement of the goals of lower consumer power costs and long-term economic growth and of establishing, operating and developing power projects in the state will be accelerated and facilitated by the creation of an instrumentality of the state with powers to incur debt for constructing, and with powers to operate, power projects.

(b) It is declared to be the policy of the state, in the interests of promoting the general welfare of all the people of the state, and public purposes, to reduce consumer

power costs and otherwise to encourage the long-term economic growth of the state, including the development of its natural resources, through the establishment of power projects by creating the public corporation with powers, duties and functions as provided in this chapter.

Sec. 44.56.020. CREATION OF AUTHORITY. There is created the Alaska Power Authority. The authority is a public corporation of the state in the Department of Commerce and Economic Development but with separate and independent legal existence.

Sec. 44.56.030. MEMBERSHIP OF THE AUTHORITY. The authority consists of the commissioner of commerce and economic development and four public members appointed by the governor. The appointment of each director other than the commissioner of commerce and economic development is subject to confirmation by the legislature. The directors must be residents of the state and qualified voters at the time of appointment and shall comply with the requirements of AS 39.50 (conflict of interest). The term of office of each director appointed by the governor is four years except that the directors first appointed shall have terms of one, two, three, and four years, respectively. A vacancy in a directorship occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

Sec. 44.56.040. OFFICERS AND QUORUM. The directors shall elect one of the public members as chairman and other officers they determine desirable. The powers of the authority are vested in the directors, and three directors of the authority constitute a quorum. Action may be taken and motions and resolutions adopted by the authority at a meeting by the affirmative vote of at least three directors. The directors of the authority serve without compensation, but they shall receive the same travel pay and per diem as provided by law for board members.

Sec. 44.56.050. STAFF. The authority shall employ an executive director who may with the approval of the authority select and employ additional staff as necessary. In addition to its staff of regular employees, the authority may contract for and engage the services of the bond counsel, consultants, experts, and financial advisors the authority considers necessary for the purpose of developing information, or conducting studies, investigations, hearings, or other proceedings. The director is subject to confirmation by the legislature.

## ARTICLE 2. PURPOSE AND POWERS.

Sec. 44.56.070. PURPOSE OF THE AUTHORITY. The purpose of the authority is to promote, develop and advance the general prosperity and economic welfare of the people of Alaska by providing a means of constructing, acquiring, financing and operating hydroelectric and fossil fuel generating projects.

Sec. 44.56.080. POWERS OF THE AUTHORITY. In furtherance of its corporate purposes, the authority has the following powers in addition to its other powers:

and to obtain, hold and use the licenses and permits in the same manner as any other person or operating unit;

(13) to perform feasibility studies with respect to hydroelectrical and fossil fuel power generating projects;

(14) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purposes and exercise the powers granted in this chapter;

(15) to exercise the power of eminent domain in accordance with AS 09.55.250 - 09.55.410.

Sec. 44.56.090. POWER CONTRACTS. The authority shall, in addition to other methods which it may find advantageous, provide that municipal electric, rural electric, cooperative electric, or private electric utilities and regional electric authorities or other persons authorized by law to engage in the distribution of power may secure a reasonable share of the power generated by a project, or any interest in it, or for any right to the capacity of it and shall sell the power or cause the power to be sold at prices representing cost of generation, plus capital and operating charges, plus a fair cost of transmission, all as determined by the directors, and subject to conditions which assure the resale of the power to retail consumers at the lowest possible price. A contract for the sale, transmission and distribution of power generated by a project or any right to the capacity of it shall provide

(1) for payment of all operating and maintenance expenses of a project and costs of renewals, replacements and improvements of it;

(2) for interest on and amortization charges sufficient to retire bonds of the authority issued for the project and reserves for them, plus a debt service coverage factor as may be determined by the authority to be necessary for the marketability of its bonds;

(3) for continuous control and operation of the project by the authority or its agents;

(4) for full and complete disclosure to the authority of all factors of cost in the transmission and distribution of power, so that rates to any persons may be fixed initially in the contract and may be adjusted from time to time on the basis of true cost data;

(5) for periodic revisions of the service and rates to persons on the basis of accurate cost data obtained by the accounting methods and systems approved by the directors and in furtherance and effectuation of the policy declared in this chapter;

(6) for the cancellation and termination of a contract upon violation of its terms by any person;

(7) for security for performance as the authority may consider practicable and advisable, including provisions assuring the continuance of the distribution and transmission

- (1) to sue and be sued;
- (2) to have a seal and alter it at pleasure;
- (3) to make and alter bylaws for its organization and internal management;
- (4) to make rules and regulations governing the exercise of its corporate powers;
- (5) to acquire, whether by construction, purchase, gift or lease, and to improve, equip and operate power projects;
- (6) to issue bonds to carry out any of its corporate purposes and powers, including the acquisition or construction of a project to be owned or leased, as lessor or lessee, by the authority, or the acquisition of any interest in it or any right to capacity of it, the establishment or increase of reserves to secure or to pay the bonds or interest on them, and the payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers;
- (7) to sell, lease as lessor or lessee, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the authority, the action is in furtherance of its corporate purposes;
- (8) to accept gifts, grants or loans from, and enter into contracts or other transactions regarding them, with a federal agency or an agency or instrumentality of the state, municipality, private organization or other source;
- (9) to deposit or invest its funds, subject to agreements with bondholders;
- (10) to enter into contracts with the United States or any person and, subject to the laws of the United States and subject to concurrence of the legislature, with a foreign country or its agencies, for the construction, acquisition, operation and maintenance of all or any part of a power project, either inside or outside the state, and for the sale or transmission of power from a project or any right to the capacity of it or for the security of any bonds of the authority issued or to be issued for the project;
- (11) to enter into contracts for the purchase, sale, exchange, transmission, or use of power generated by a project, or any right to the capacity of it with any person and with the United States, and, subject to the laws of the United States and subject to the concurrence of the legislature, with a foreign country or its agencies;
- (12) to apply to the appropriate agencies of the state, the United States and to a foreign country and any other proper agency for the permits, licenses, or approvals as may be necessary, and to construct, maintain and operate power projects in accordance with the licenses or permits,

of power generated by a project, the use of their facilities for these purposes, and the continuance of an outlet and adequate market for the power generated by the project;

(8) other terms not inconsistent with the provisions and policy of this chapter as the authority may consider advisable. Contracts to sell power are subject to review by the Alaska Public Utilities Commission.

### ARTICLE 3. FINANCIAL PROVISIONS.

Sec. 44.56.100. BONDS OF THE AUTHORITY. (a) The authority may borrow money and may issue bonds, including but not limited to bonds on which the principal and interest are payable (1) exclusively from the income and receipts or other money derived from the project financed with the proceeds of the bonds; (2) exclusively from the income and receipts or other money derived from designated projects whether or not they are financed in whole or in part with the proceeds of the bonds; (3) from its income and receipts or other assets generally, or a designated part or parts of them; or (4) from one or more revenue-producing contracts including a contract providing for the security of the bonds made by the authority with any person. The authority may issue bonds to pay, fund or refund the principal of, or interest or redemption premiums on, bonds issued by it, whether or not the bonds or interest to be funded or refunded have become due.

(b) Bonds shall be authorized by resolution of the authority, and shall be dated and shall mature as the resolution may provide, except that no bond may mature more than 50 years from the date of its issue. Bonds shall bear interest at the 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 places, and be subject to the terms of redemption which the resolution or a subsequent resolution may provide.

(c) All bonds, regardless of form or character, shall be negotiable instruments for all the purposes of the Uniform Commercial Code.

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

### Sec. 44.56.110. TRUST INDENTURES AND TRUST AGREEMENTS.

(a) In the discretion of the authority, an issue of bonds may be secured by a trust indenture or trust agreement between the authority and a corporate trustee (which may be a trust company, bank, or national banking association, with corporate trust powers, located inside or outside the state) or by a secured loan agreement or other instrument or under a resolution giving powers to a corporate trustee by means of which the authority may

(1) make and enter into any and all the covenants and agreements with the trustee or the holders of the bonds which the authority may determine to be necessary or desirable, including, without limitation, covenants, provisions, limitations and agreements as to

(A) the application, investment, deposit, use and disposition of the proceeds of bonds of the authority or of money or other property of the authority or in which it has an interest;

(B) the fixing and collection of rentals, charges, fees or other consideration for, and the other terms to be incorporated in, contracts with respect to a project;

(C) the assignment by the authority of its rights in contracts with respect to a project or in a mortgage or other security interest created with respect to a project to a trustee for the benefit of bondholders;

(D) the terms and conditions upon which additional bonds of the authority may be issued;

(E) the vesting in a trustee of rights, powers, duties, funds or property in trust for the benefit of bondholders, including, without limitation, the right to enforce payment, performance, and all other rights of the authority or of the bondholders, under a lease, power of contract, contract of sale, mortgage, security agreement, or trust agreement with respect to a project by mandamus or other proceeding or by taking possession of by agent or otherwise and operating a project and collecting rents or other consideration and applying the same in accordance with the trust agreement;

(2) pledge, mortgage or assign money, leases, agreements, property or other rights or assets of the authority either presently in hand or to be received in the future, or both; and

(3) provide for any other matters of like or different character which in any way affect the security or protection of the bonds.

(b) Notwithstanding any other provisions of this chapter, the trust agreement shall contain a covenant by the authority that it will at all times maintain rates, fees or charges sufficient to pay, and that a contract entered into by the authority for the sale, transmission or distribution of power shall contain rates, fees or charges sufficient to pay the costs of operation and maintenance of the project, the principal of and interest on bonds issued under the trust agreement as the same severally become due and payable, to provide for debt service coverage as considered necessary by the authority for the marketing of its bonds and to provide for renewals, replacements and improvements of the project, and to maintain reserves required by the terms of the trust agreement.

(c) For the purpose of securing any one or more issues of its bonds, the authority may establish one or more special funds, called "capital reserve funds", and shall pay into those capital reserve funds the proceeds of the sale of its bonds and any other money which may be made available to the authority for the purposes of those funds from any other source. The funds shall be established only if the authority determines that the establishment would enhance the

marketability of the bonds. All money held in a capital reserve fund, except as provided in this section, shall be used as required, solely for (1) the payment of the principal of, and interest on, bonds or of the sinking fund payments with respect to those bonds, (2) the purchase or redemption of bonds, or (3) the payment of a redemption premium required to be paid when those bonds are redeemed before maturity; however, money in a fund may not be withdrawn from it at any time in an amount which would reduce the amount of that fund to less than the capital reserve requirement set out in (2) of this subsection, except for the purpose of making, with respect to those bonds, payment, when due, of principal, interest, redemption premiums and the sinking fund payments for the payment of which other money of the authority is not available. Income or interest earned by, or increment to, a capital reserve fund, due to the investment of the fund or any other amounts in it, may be transferred by the authority to other funds or accounts of the authority to the extent that the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

(d) If the authority decides to issue bonds secured by such a capital reserve fund, the bonds may not be issued if the amount in the capital reserve fund is less than such a per cent, not exceeding 10 per cent of the principal amount of all of those bonds secured by that capital reserve fund then to be issued and then outstanding in accordance with their terms, as may be established by resolution of the authority (called the "capital reserve fund requirement"), unless the authority, at the time of issuance of the obligations, deposits in the capital reserve fund from the proceeds of the obligations to be issued or from other sources, an amount which, together with the amount then in the fund, will not be less than the capital reserve fund requirement.

(e) In computing the amount of a capital reserve fund for the purpose of this section, securities in which all or a portion of the funds are invested shall be valued by some reasonable method established by the authority by resolution. Valuation on a particular date shall include the amount of any interest earned or accrued to that date.

(f) The chairman of the authority shall annually, no later than January 2, make and deliver to the governor and the legislature his certificate stating the sum, if any, required to restore any capital reserve fund to the capital reserve fund requirement. The legislature may appropriate such a sum, and all sums appropriated during the then current fiscal year by the legislature for such restoration shall be deposited by the authority in the proper capital reserve fund. Nothing in this section creates a debt or liability of the state.

(g) When the authority has created and established a capital reserve fund, the commissioner of revenue may lend surplus money in the general fund to the authority for deposit in a capital reserve fund in an amount equal to the capital reserve fund requirement. The loans shall be made on such terms and conditions as may be agreed upon by the commissioner of revenue and the authority, including without

limitation terms and conditions providing that the loans need not be repaid until the obligations of the authority secured and to be secured by the capital reserve fund are no longer outstanding.

Sec. 44.56.120. VALIDITY OF PLEDGE. It is the intention of the legislature that a pledge made in respect of bonds shall be valid and binding from the time the pledge is made; that the money or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act; and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether the parties have notice. Neither the resolution, trust agreement nor any other instrument by which a pledge is created need be recorded or filed under the provisions of the Uniform Commercial Code to be valid; binding or effective against the parties.

Sec. 44.56.130. NONLIABILITY ON BONDS. (a) Neither the members of the authority nor a person executing the bonds is liable personally on the bonds or is subject to personal liability or accountability by reason of the issuance of the bonds.

(b) The bonds issued by the authority do not constitute an indebtedness or other liability of the state or of a political subdivision of the state, except the authority, but shall be payable solely from the income and receipts or other funds or property of the authority. The authority may not pledge the faith or credit of the state or of a political subdivision of the state, except the authority, to the payment of a bond and the issuance of a bond by the authority does not directly or indirectly or contingently obligate the state or a political subdivision of the state to apply money from, or levy or pledge any form of taxation whatever to the payment of the bond.

Sec. 44.56.140. PLEDGE OF THE STATE. The state pledges to and agrees with the holders of bonds issued under this chapter and with the federal agency which loans or contributes funds in respect to a project, that the state will not limit or alter the rights and powers vested in the authority by this chapter to fulfill the terms of a contract made by the authority with the holders or federal agency, or in any way impair the rights and remedies of the holders until the bonds, together with the interest on them with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, insofar as it refers to holders of bonds of the authority, in a contract with the holders, and insofar as it relates to a federal agency, in a contract with the federal agency.

Sec. 44.56.150. TAX EXEMPTION. All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes of the state or a political subdivision of the state. All bonds issued under this chapter are issued by a body

corporate and public of this state and for an essential public and governmental purpose and the bonds and the interest and income on and from the bonds and all income of the authority are exempt from taxation except for transfer, inheritance and estate taxes.

Sec. 44.56.160. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The bonds of the authority are securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on any insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the authority are also securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

#### ARTICLE 4. POWER PROJECT REVOLVING FUND.

Sec. 44.56.170. FUND ESTABLISHED. (a) There is established as a separate fund the power project revolving fund which shall be administered by the authority as a trust fund separate and distinct from any other money or funds of the authority.

(b) The authority may make loans from the fund, at such interest rate or rates as it determines, to eligible borrowers to pay the costs of feasibility studies, pre-construction engineering, design and construction of hydroelectric and fossil fuel power projects.

(c) The authority may make loans from the funds, at such interest rates as it determines, to cities, boroughs, village corporations, village councils and nonprofit marketing cooperatives for purposes of constructing, equipping, and the initial filling of fuel storage facilities, and for other energy requirements, including but not limited to electrical utilities, geothermal, solar, hydroelectric, or windpower energy production, or for natural gas line construction.

(d) Repayment of the loans shall be secured in such manner as the authority determines is feasible to assure repayment under a loan agreement entered into with the borrower. Under a loan agreement repayment may be deferred until the project with respect to which a loan is made has achieved earnings from its operations sufficient to pay the loan.

(e) As used in this section an "eligible borrower" is a municipality or public utility as defined in AS 42.05.701-(2)(A).

ARTICLE 5. GENERAL PROVISIONS.

Sec. 44.56.180. CONSTRUCTION OF PROJECTS. The authority shall submit a statement outlining the general design, demonstration of financial feasibility, and maximum amount of bonds estimated to be necessary for each new project to the legislature and the commissioner of commerce and economic development, together with a statement that the authority intends to design, acquire and construct the project itself or that it intends that the project be designed, acquired or constructed by the United States or another person under agreement with the authority providing for ownership of all or a portion of the project by the authority or of a right to the capacity of it. If the legislature adopts a joint resolution approving the general design and maximum amount of bonds, the authority shall, in accordance with the terms of the joint resolution, (1) proceed to design, acquire and construct the new project, or (2) agree with the United States or other person for design, acquisition and construction of the project by the United States, for payments to the United States or other person for such design, acquisition and construction, reimbursement by the United States or other person in certain events, and otherwise on the terms and conditions as may be set out in such agreement. If the new project is to be designed, acquired and constructed by the authority, it shall be designed, acquired and constructed as a public work of the state except that public bidding shall not be required, if the authority so determines on projects in excess of \$50,000,000. For the purpose of this section a new project does not include an addition or modification to an existing project if the total cost of the addition or modification does not exceed \$1,000,000, to any repair or reconstruction of a project, or to any design, acquisition or construction necessary to complete a project for which bonds previously authorized by the legislature have been issued. Any such addition, modification, repair, reconstruction, design, acquisition or construction may be undertaken by the authority without any of the approvals necessary for a new project.

Sec. 44.56.190. ANNUAL AUDIT. The authority shall have its financial records audited annually by a certified public accountant. The legislative auditor may prescribe the form and content of the financial records of the authority and shall have access to these records at any time.

Sec. 44.56.200. ANNUAL REPORT. Before March 1 of each year, the authority shall submit to the governor and the legislature a comprehensive report describing operations, income and expenditures for the preceding 12-month period.

Sec. 44.56.210. BUDGET AND APPROPRIATIONS. The authority shall submit its annual budget to the legislature through the governor as provided for state agencies by the Executive Budget Act (AS 37.07). It may expend money directly appropriated by the legislature only as authorized by the legislature.

Sec. 44.56.220. PUBLIC RECORDS; OPEN MEETINGS. The provisions of AS 09.25.110 - 09.25.120 and AS 44.62.310 - 44.62.312 apply to the authority. The authority shall

publish : proposed agenda of its meetings and afford the public an opportunity to be heard in accordance with AS 44.-62.312.

Sec. 44.56.230. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "authority" means the Alaska Power Authority established by this chapter;

(2) "bonds" means bonds, notes, or other obligations of the authority issued under this chapter;

(3) "power" includes any and all electrical energy generated, distributed, bought or sold for purposes of lighting, heating, power and every other useful purpose;

(4) "power project" or "project" means a plant, works, system, facility, water rights, fuel deposits or sources, and real estate and personal property of any nature whatsoever, together with all facilities and appurtenances related to them or necessary for the purposes of them used or useful in the generation by means of water or fossil fuel of electric power and the production, transmission, purchase, sale, exchange and interchange of electric power, and shall include any interest in them, whether divided or undivided, or any right to the capacity of them.

(5) "public agency" means any city or other municipal corporation, political subdivision, governmental unit, or public corporation created by or under the laws of this state or of another state of the United States, and any state or the United States, and any person, board or other body declared by the laws of any state or the United States to be a department, agency, or instrumentality of them.

Sec. 44.56.240. SHORT TITLE. This chapter may be cited as the Alaska Power Authority Act.