

HOUSE BILL NO. 390

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CRAWFORD

Introduced: 2/23/10

Referred: House Special Committee on Energy, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to power projects of the Alaska Energy Authority; and establishing**
2 **and relating to the power project development fund."**

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

4 *** Section 1.** AS 44.83.070 is amended to read:

5 **Sec. 44.83.070. Purpose of the authority.** The purpose of the authority is to
6 promote, develop, and advance the general prosperity and economic welfare of the
7 people of the state by providing a means of constructing, acquiring, financing, and
8 operating power projects and facilities that recover and use waste energy and by
9 carrying out the powers and duties assigned to it under AS 42.45.

10 *** Sec. 2.** AS 44.83.080 is amended to read:

11 **Sec. 44.83.080. Powers of the authority.** In furtherance of its corporate
12 purposes, the authority has the following powers in addition to its other powers:

- 13 (1) to sue and be sued;
- 14 (2) to have a seal and alter it at pleasure;

1 (3) to make and alter bylaws for its organization and internal
2 management;

3 (4) to adopt regulations governing the exercise of its corporate powers;

4 (5) to **acquire, whether by construction, purchase, gift, or lease,**
5 **and to** improve, equip, operate, and maintain power projects and bulk fuel, waste
6 energy, energy conservation, energy efficiency, and alternative energy facilities and
7 equipment;

8 (6) to issue bonds to carry out any of its corporate purposes and
9 powers, including **the acquisition or construction of a project to be owned or**
10 **leased, as lessor or lessee, by the authority, or by another person or the**
11 **acquisition of any interest in a project or any right to capacity of a project,** the
12 establishment or increase of reserves to secure or to pay the bonds or interest on them,
13 and the payment of all other costs or expenses of the authority incident to and
14 necessary or convenient to carry out its corporate purposes and powers;

15 (7) to sell, lease as lessor or lessee, exchange, donate, convey, or
16 encumber in any manner by mortgage or by creation of any other security interest, real
17 or personal property owned by it, or in which it has an interest, when, in the judgment
18 of the authority, the action is in furtherance of its corporate purposes;

19 (8) to accept gifts, grants, or loans from, and enter into contracts or
20 other transactions regarding them, with any person;

21 (9) to deposit or invest its funds, subject to agreements with
22 bondholders;

23 (10) to enter into contracts with the United States or any person and,
24 subject to the laws of the United States and subject to concurrence of the legislature,
25 with a foreign country or its agencies, for the construction, **acquisition,** financing,
26 operation, and maintenance of all or any part of a power project or bulk fuel, waste
27 energy, energy conservation, energy efficiency, or alternative energy facilities or
28 equipment, either inside or outside the state, and for the sale or transmission of power
29 from a project or any right to the capacity of it or for the security of any bonds of the
30 authority issued or to be issued for the project;

31 (11) to enter into contracts with any person and with the United States,

1 and, subject to the laws of the United States and subject to the concurrence of the
 2 legislature, with a foreign country or its agencies for the purchase, sale, exchange,
 3 transmission, or use of power from a project, or any right to the capacity of it;

4 (12) to apply to the appropriate agencies of the state, the United States,
 5 and a foreign country and any other proper agency for the permits, licenses, or
 6 approvals as may be necessary, to **construct**, maintain, and operate power projects in
 7 accordance with the licenses or permits, and to obtain, hold, and use the licenses and
 8 permits in the same manner as any other person or operating unit;

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

12 (14) to recommend to the legislature

13 (A) the pledge of the credit of the state to guarantee repayment
 14 of all or any portion of revenue bonds issued to assist in construction of power
 15 projects;

16 (B) an appropriation from the general fund

17 (i) for debt service on bonds or other project purposes;

18 or

19 (ii) to reduce the amount of debt financing for the
 20 project;

21 **(C) the issuance of general obligation bonds of the state to**
 22 **finance the construction of a power project if the authority first**
 23 **determines that the project cannot be financed by revenue bonds of the**
 24 **authority at reasonable rates of interest;**

25 **(D) an appropriation to the power project development**
 26 **fund;**

27 **(E) development of a project under financing arrangements**
 28 **with other entities using leveraged leases or other financing methods;**

29 **(F) an appropriation for a power project acquired or**
 30 **constructed using a loan from the power project development fund;**

31 (15) to carry out the powers and duties assigned to it under AS 42.45;

1 (16) to make grants or loans to any person and enter into contracts or
 2 other transactions regarding the grants or loans;

3 **(17) to perform reconnaissance studies, feasibility studies, and**
 4 **engineering and design with respect to power projects.**

5 * **Sec. 3.** AS 44.83 is amended by adding new sections to read:

6 **Article 5A. Power Project Development.**

7 **Sec. 44.83.700. Power project development fund.** (a) The power project
 8 development fund is established in the authority as a revolving fund consisting of

9 (1) appropriations to the fund;

10 (2) the proceeds of bonds issued by the authority to finance a project;

11 (3) repayments of loans made from the fund;

12 (4) income from investment of money in the fund.

13 (b) After completion of a final plan of finance and approval of a project under
 14 AS 44.83.706, the authority may use money from the fund for the purpose of financing
 15 the project, including

16 (1) the cost or a portion of the cost of final design, acquisition, and
 17 construction of the project;

18 (2) defeasance or payment of bonds or notes of the authority issued for
 19 the project;

20 (3) the establishment of a reserve fund for renewals and replacements
 21 for the operation of the completed project; and

22 (4) any other project-related expenses.

23 (c) Repayment of a debt incurred by the authority for acquisition or
 24 construction of a project under this section must be made with the proceeds from the
 25 sale of power from the project.

26 **Sec. 44.83.702. Financing plan.** (a) A financing plan for a proposed project
 27 must include the terms that the authority's board of directors determines to be
 28 appropriate. In establishing the terms, including provision for a return to the state of an
 29 amount in excess of the amount needed to construct and operate the project, the board
 30 of directors shall consider the revenue that the authority could reasonably derive from
 31 the sale of power from the project based on

1 (1) the estimated costs, at the time the power sales agreement is
2 initially negotiated or renegotiated, of alternative sources of energy generation for
3 utilities purchasing power from the project;

4 (2) the effect of the financing terms on the wholesale power costs to all
5 utilities purchasing power from the project;

6 (3) the long-term benefits to consumers and communities of stable
7 wholesale power costs;

8 (4) increasing repayment, not to exceed five years, of debt service
9 payment a kilowatt-hour gradually over the initial periods of a bond repayment
10 schedule to the extent necessary to avoid significant rate increases to the consumer;

11 (5) the existing excess capacity of power projects; and

12 (6) the effects of increased capacity use, inflation, and alternative
13 energy production costs over the life of the project.

14 (b) The repayment schedule for bonds issued by the authority to finance a
15 project may not exceed 50 years.

16 **Sec. 44.83.704. Rate reopener.** A power sales agreement for the sale of power
17 from a project financed from the fund may include among its provisions an agreed
18 schedule of wholesale power rates, but must include a provision for a rate reopener at
19 least every 15 years.

20 **Sec. 44.83.706. Submission to the legislature.** (a) The authority shall submit a
21 feasibility study and plan of finance, including a cost estimate from an independent
22 source, for a proposed new project to the legislature. All proposed projects are subject
23 to legislative approval. The legislature may approve a proposed project only by
24 enacting law that authorizes the project and approves a construction cost for that
25 project. For purposes of this subsection, "feasibility study" has the meaning given in
26 AS 42.45.990.

27 (b) The authority may not proceed with work on the engineering or design
28 phase of a proposed project until the legislature approves the proposed project.
29 However, the authority may proceed with the engineering or design work necessary to
30 meet the requirements for submission of a license application for the proposed project
31 to the Federal Energy Regulatory Commission without obtaining legislative approval

1 of the proposed project.

2 **Sec. 44.83.708. Project construction.** If a project is to be designed, acquired,
3 and constructed by the authority, it is designed, acquired, and constructed as a public
4 work of the state. For the purpose of this section, a project does not include

5 (1) an addition or modification to an existing project unless the total
6 cost of the addition or modification exceeds \$10,000,000;

7 (2) repair or reconstruction of a project; or

8 (3) design, acquisition, or construction necessary to complete a project
9 for which bonds have been issued.

10 **Sec. 44.83.710. Sale of power from power project.** (a) The authority shall
11 sell power produced from projects acquired or constructed by the authority. The
12 authority shall establish a wholesale power rate structure applicable to sales of power
13 to the customers of a project. The authority shall establish and maintain a separate
14 wholesale power rate applicable to each power project that it has acquired or
15 constructed. The authority shall transmit all the money that it receives under this
16 subsection to the commissioner of revenue for deposit in the state general fund except
17 for money it has pledged or otherwise covenanted to secure bonds and except as
18 provided in AS 44.83.700(b).

19 (b) After determining the wholesale power rate for a power project under the
20 provisions of this section, the authority may adjust the rate or change the rate
21 provisions to insure that the revenue derived from that power project and the aggregate
22 revenues of the authority will be adequate to comply with the rate covenants and other
23 agreements contained in any trust indenture or trust agreement entered into by the
24 authority for the security of the holders of bonds issued to finance the power project.
25 The authority may agree with a purchaser of power to limit rate increases caused by
26 debt service payable by the authority on subsequent projects.

27 **Sec. 44.83.750. Definitions.** For purposes of AS 44.83.700 - 44.83.750,

28 (1) "fund" means the power project development fund;

29 (2) "project" means a power project that generates more than 50
30 megawatts of power for which the authority will issue its revenue bonds for costs of
31 construction under AS 44.83.700 - 44.83.750.