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1 IN THE HOUSE

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2 *SCS CS* HOUSE BILL NO. 779 *ams*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska Power Authority."

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

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

9 CHAPTER 56. ALASKA POWER AUTHORITY.

10 ARTICLE 1. CREATION AND ORGANIZATION.

11 Sec. 44.56.010. LEGISLATIVE FINDING AND POLICY. (a) The legis-  
12 lature finds, determines and declares that

13 (1) there exist numerous potential hydroelectric sites in  
14 the state;

15 (2) the establishment of hydroelectric projects at these  
16 sites is necessary to supply lower cost power to the state's municipal  
17 electric, rural electric, cooperative electric, and private electric  
18 utilities, and regional electric authorities, and thereby to the con-  
19 sumers of the state, as well as to supply existing or future industrial  
20 needs;

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

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

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1 encourage the long-term economic growth of the state, including the  
2 development of its natural resources, through the establishment of  
3 hydroelectric projects by creating the public corporation with powers,  
4 duties and functions as provided in this chapter.

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

9 Sec. 44.56.030. MEMBERSHIP OF THE AUTHORITY. The authority con-  
10 sists of the commissioner of commerce and economic development and  
11 four public members appointed by the governor. The appointment of each  
12 director other than the commissioner of commerce and economic develop-  
13 ment is subject to confirmation by the legislature. The directors must  
14 be residents of the state and qualified voters at the time of appoint-  
15 ment and shall comply with the requirements of AS 39.50 (conflict of  
16 interest). The term of office of each director appointed by the gover-  
17 nor is four years except that the directors first appointed shall have  
18 terms of one, two, three, and four years, respectively. The directors  
19 serve at the pleasure of the governor. A vacancy in a directorship  
20 occurring other than by expiration of term shall be filled in the same  
21 manner as the original appointment but for the unexpired term only.

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

1           Sec. 44.56.050. STAFF. The authority shall employ an executive  
2 director who may with the approval of the authority select and employ  
3 additional staff as necessary. Employees and agents of the authority  
4 other than legal counsel and the executive director are in the classi-  
5 fied service under AS 39.25. In addition to its staff of regular  
6 employees, the authority may contract for and engage the services of  
7 the bond counsel, consultants, experts, and financial advisors the  
8 authority considers necessary for the purpose of developing information,  
9 or conducting studies, investigations, hearings, or other proceedings.

10           ARTICLE 2. PURPOSE AND POWERS.

11           Sec. 44.56.070. PURPOSE OF THE AUTHORITY. The purpose of the  
12 authority is to promote, develop and advance the general prosperity and  
13 economic welfare of the people of Alaska by providing a means of  
14 financing and operating hydroelectric projects.

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

- 18                   (1) to sue and be sued;
- 19                   (2) to have a seal and alter it at pleasure;
- 20                   (3) to make and alter bylaws for its organization and  
21 internal management;
- 22                   (4) to make rules and regulations governing the exercise of  
23 its corporate powers;
- 24                   (5) to acquire, whether by construction, purchase, gift or  
25 lease, and to improve, equip and operate hydroelectric projects;
- 26                   (6) to issue bonds to pay the cost of acquiring by construc-  
27 tion, or improving and equipping, a hydroelectric project and to secure  
28 payment of the bonds as provided in this chapter;
- 29                   (7) to sell, exchange, donate, convey or encumber in any

1 manner by mortgage or by creation of any other security interest, real  
2 or personal property owned by it, or in which it has an interest, when,  
3 in the judgment of the authority, the action is in furtherance of its  
4 corporate purposes;

5 (8) to accept gifts, grants or loans from, and enter into  
6 contracts or other transactions regarding them, with a federal agency  
7 or an agency or instrumentality of the state, municipality, private  
8 organization or other source;

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

11 (10) to enter into contracts with the United States or any of  
12 its agencies or with any political subdivision of this state, and sub-  
13 ject to the laws of the United States and subject to concurrence of  
14 the legislature, with a foreign country or its agencies, for the con-  
15 struction, acquisition, operation and maintenance of all or any part  
16 of a hydroelectric project, either inside or outside the state, and for  
17 the marketing of the power produced from it;

18 (11) to enter into contracts for the purchase, sale, exchange,  
19 transmission, or use of power or falling water with any person, firm  
20 or corporation, and with the United States or any of its agencies,  
21 with any political subdivision of this state, and subject to the laws  
22 of the United States and subject to the concurrence of the legislature,  
23 with a foreign country or its agencies;

24 (12) to apply to the appropriate agencies of the state, the  
25 United States and to a foreign country and any other proper agency for  
26 the permits, licenses, or approvals as may be necessary, and to con-  
27 struct, maintain and operate hydroelectric projects in accordance with  
28 the licenses or permits, and to obtain, hold and use the licenses and  
29 permits in the same manner as any other person or operating unit;

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

5 (14) to exercise the power of eminent domain in accordance  
6 with AS 09.55.250 - 09.55.460.

7 Sec. 44.62.090. POWER CONTRACTS. The authority shall, in addi-  
8 tion to other methods which it may find advantageous, provide that  
9 municipal electric, rural electric, cooperative electric, or private  
10 electric utilities and regional electric authorities authorized by law  
11 to engage in the distribution of electric power may secure a reasonable  
12 share of the power generated by a project, and shall sell the power or  
13 cause the power to be sold at prices representing cost of generation,  
14 plus capital and operating charges, plus a fair cost of transmission,  
15 all as determined by the directors, and subject to conditions which  
16 assure the resale of the power to domestic and rural consumers at the  
17 lowest possible price. A contract for the sale, transmission and  
18 distribution of power generated by a project shall provide

19 (1) for continuous control and operation of the project by  
20 the authority;

21 (2) for full and complete disclosure to the authority of  
22 all factors of cost in the transmission and distribution of power, so  
23 that rates to consumers may be fixed initially in the contract and may  
24 be adjusted from time to time on the basis of true cost data;

25 (3) for periodic revisions of the service and rates to con-  
26 sumers on the basis of accurate cost data obtained by the accounting  
27 methods and systems approved by the directors and in furtherance and  
28 effectuation of the policy declared in this paragraph;

29 (4) for the cancellation and termination of a contract upon

1 violation of its terms by the power distributor or company, or its  
2 subsidiary or associate;

3 (5) for such security for performance as the authority may  
4 consider practicable and advisable, including provisions assuring the  
5 continuance of service by the power distributors or companies, the use  
6 of their facilities for the service, and the continuance of an outlet  
7 and adequate market for the power generated by the project;

8 (6) other terms not inconsistent with the provisions and  
9 policy of this chapter as the authority may consider advisable.

10 ARTICLE 3. FINANCIAL PROVISIONS.

11 Sec. 44.62.100. BONDS OF THE AUTHORITY. (a) The authority may  
12 borrow money and may issue bonds, including but not limited to bonds  
13 on which the principal and interest are payable (1) exclusively from  
14 the income and receipts or other money derived from the project finan-  
15 ced with the proceeds of the bonds; (2) exclusively from the income  
16 and receipts or other money derived from designated projects whether  
17 or not they are financed in whole or in part with the proceeds of the  
18 bonds; or (3) from its income and receipts or other assets generally,  
19 or a designated part or parts of them. The authority may issue bonds  
20 to pay, fund or refund the principal of, or interest or redemption  
21 premiums on, bonds issued by it, whether or not the bonds or interest  
22 to be funded or refunded have become due.

23 (b) Bonds shall be authorized by resolution of the authority,  
24 and shall be dated and shall mature as the resolution may provide,  
25 except that no bond may mature more than 50 years from the date of its  
26 issue. Bonds shall bear interest at the rates, be in the denominations,  
27 be in the form, either coupon or registered, carry the registration  
28 privileges, be executed in the manner, be payable in the medium of  
29 payment, at the places, and be subject to the terms of redemption

1 which the resolution or a subsequent resolution may provide.

2 (c) All bonds, regardless of form or character, shall be negotia-  
3 ble instruments for all the purposes of the Uniform Commercial Code.

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

7 Sec. 44.62.110. TRUST INDENTURES AND TRUST AGREEMENTS. (a) In  
8 the discretion of the authority, an issue of bonds may be secured by a  
9 trust indenture or trust agreement between the authority and a cor-  
10 porate trustee (which may be a trust company, bank, or national banking  
11 association, with corporate trust powers, located inside or outside  
12 the state) or by a secured loan agreement or other instrument or under  
13 a resolution giving powers to a corporate trustee by means of which  
14 the authority may

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

20 (A) the application, investment, deposit, use and dis-  
21 position of the proceeds of bonds of the authority or of money or  
22 other property of the authority or in which it has an interest;

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

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

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

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

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

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

18 (b) Notwithstanding any other provisions of this chapter, the  
19 trust agreement shall contain a covenant by the authority that it will  
20 at all times maintain rates, fees or charges sufficient to pay, and  
21 that a contract entered into by the authority for the sale, trans-  
22 mission or distribution of power shall contain rates, fees or charges  
23 sufficient to pay the costs of operation and maintenance of the project,  
24 the principal of and interest on bonds issued under the trust agreement  
25 as the same severally become due and payable, and to maintain reserves  
26 required by the terms of the trust agreement.

27 Sec. 44.62.120. VALIDITY OF PLEDGE. It is the intention of the  
28 legislature that a pledge made in respect of bonds shall be valid and  
29 binding from the time the pledge is made; that the money or property

1 so pledged and thereafter received by the authority shall immediately  
2 be subject to the lien of the pledge without physical delivery or further  
3 act; and that the lien of the pledge shall be valid and binding as against  
4 all parties having claims of any kind in tort, contract or otherwise  
5 against the authority irrespective of whether the parties have notice.  
6 Neither the resolution, trust agreement nor any other instrument by  
7 which a pledge is created need be recorded or filed under the provisions  
8 of the Uniform Commercial Code to be valid, binding or effective  
9 against the parties.

10 Sec. 44.62.130. NONLIABILITY ON BONDS. (a) Neither the members  
11 of the authority nor a person executing the bonds is liable personally  
12 on the bonds or is subject to personal liability or accountability by  
13 reason of the issuance of the bonds.

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

24 Sec. 44.62.140. PLEDGE OF THE STATE. The state pledges to and  
25 agrees with the holders of bonds issued under this chapter and with  
26 the federal agency which loans or contributes funds in respect to a  
27 project, that the state will not limit or alter the rights and powers  
28 vested in the authority by this chapter to fulfill the terms of a  
29 contract made by the authority with the holders or federal agency, or

1 in any way impair the rights and remedies of the holders until the  
2 bonds, together with the interest on them with interest on unpaid  
3 installments of interest, and all costs and expenses in connection  
4 with an action or proceeding by or on behalf of the holders, are fully  
5 met and discharged. The authority is authorized to include this  
6 pledge and agreement of the state, insofar as it refers to holders of  
7 bonds of the authority, in a contract with the holders, and insofar as  
8 it relates to a federal agency, in a contract with the federal agency.

9 Sec. 44.62.150. TAX EXEMPTION. All property of the authority is  
10 public property devoted to an essential public and governmental function  
11 and purpose and is exempt from all taxes of the state or a political  
12 subdivision of the state. All bonds or notes issued under this chapter  
13 are issued by a body corporate and public of this state and for an essen-  
14 tial public and governmental purpose and the bonds and notes, and the  
15 interest and income on and from the bonds and notes, and all income of  
16 the authority are exempt from taxation except for transfer, inheritance  
17 and estate taxes.

18 Sec. 44.62.160. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The  
19 bonds of the authority are securities in which all public officers and  
20 bodies of the state and all municipalities and municipal subdivisions,  
21 all insurance companies and associations and other persons carrying on  
22 any insurance business, all banks, bankers, trust companies, savings  
23 banks, savings associations, including savings and loan associations  
24 and building and loan associations, investment companies and other  
25 persons carrying on a banking business, all administrators, guardians,  
26 executors, trustees and other fiduciaries, and all other persons what-  
27 soever who are now or may hereafter be authorized to invest in bonds  
28 or other obligations of the state, may properly and legally invest  
29 funds including capital in their control or belonging to them. Not-

1 withstanding any other provisions of law, the bonds of the authority are  
2 also securities which may be deposited with and may be received by all  
3 public officers and bodies of this state and all municipalities and  
4 municipal subdivisions for any purpose for which the deposit of bonds  
5 or other obligations of the state is now or may hereafter be authorized.

6 ARTICLE 4. GENERAL PROVISIONS.

7 Sec. 44.62.170. CONSTRUCTION OF PROJECTS. (a) The authority  
8 shall submit the general design, demonstration of financial feasi-  
9 bility, and maximum amount of bonds estimated to be necessary for each  
10 new project to the commissioner of commerce and economic development  
11 for approval. If the commissioner approves, he shall submit the general  
12 design, demonstration of financial feasibility, and maximum amount of  
13 bonds estimated to be necessary to the legislature with a request for  
14 approval by concurrent resolution. If the legislature adopts a con-  
15 current resolution approving the design and maximum amount of bonds,  
16 the commissioner shall proceed to design, acquire and construct the new  
17 project on behalf of the authority in accordance with the agreement  
18 with the authority hereinafter referred to. The new project shall be  
19 designed, acquired and constructed by the authority as a public work  
20 of the state except that public bidding shall not be required, if the  
21 authority so determines. For the purpose of this section a new project  
22 does not include an addition or modification to an existing project  
23 if the total cost of the addition or modification does not exceed  
24 \$1,000,000 or to any repair of a project. Such an addition or modifica-  
25 tion or repair may be undertaken by the authority without any of the  
26 approvals necessary for a new project.

27 (b) The authority may exercise all rights to acquire and condemn  
28 property for a project including, without limitation, acquisition by  
29 declaration of taking.

1           Sec. 44.62.180. ANNUAL AUDIT. The authority shall have its  
2 financial records audited annually by a certified public accountant.  
3 The legislative auditor may prescribe the form and content of the  
4 financial records of the authority and shall have access to these  
5 records at any time.

6           Sec. 44.62.190. ANNUAL REPORT. Before March 1 of each year, the  
7 authority shall submit to the governor and the legislature a comprehen-  
8 sive report, in a form prescribed by the governor, describing opera-  
9 tions, income and expenditures for the preceding 12-month period.

10          Sec. 44.62.200. BUDGET AND APPROPRIATIONS. The authority shall  
11 submit its annual budget to the legislature through the governor as  
12 provided for state agencies by the Executive Budget Act (AS 37.07). It  
13 may expend money only as authorized in the budget approved by the legis-  
14 lature.

15          Sec. 44.62.210. PUBLIC RECORDS; OPEN MEETINGS. The provisions  
16 of AS 09.25.110 - 09.25.120 and AS 44.62.310 - 44.62.312 apply to the  
17 authority. The authority shall publish a proposed agenda of its  
18 meetings and afford the public an opportunity to be heard in complying  
19 with AS 44.62.312.

20          Sec. 44.62.220. DEFINITIONS. In this chapter, unless the context  
21 requires otherwise,

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

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

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

29           (4) "hydroelectric project" or "project" includes any and

1 all real or personal property or any interest in it including, without  
2 limitation, dams, powerhouses, and transmission lines owned, used or  
3 operated, or useful for operation, in the generation by means of water  
4 power, and the transmission of electrical power and also including  
5 channels, locks, canals, and other navigational, reclamation, flood  
6 control and fisheries facilities and environmental protective devices  
7 as may be necessary or desirable in connection with it.

8 Sec. 44.62.230. SHORT TITLE. This chapter may be cited as the  
9 Alaska Power Authority Act.

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