

Original sponsors: Duncan and Swanson

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1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 779

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 and fossil
14 fuel generating sites in the state;

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

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

25 (b) It is declared to be the policy of the state, in the interests
26 of promoting the general welfare of all the people of the state, and
27 public purposes, to reduce consumer power costs and otherwise to en-
28 courage the long-term economic growth of the state, including the
29 development of its natural resources, through the establishment of

1 power projects by creating the public corporation with powers, duties
2 and functions as provided in this chapter.

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

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

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

28 Sec. 44.56.050. STAFF. The authority shall employ an executive
29 director who may with the approval of the authority select and employ

1 additional staff as necessary. In addition to its staff of regular em-
2 ployees, the authority may contract for and engage the services of the
3 bond counsel, consultants, experts, and financial advisors the authority
4 considers necessary for the purpose of developing information, or con-
5 ducting studies, investigations, hearings, or other proceedings.

6 ARTICLE 2. PURPOSE AND POWERS.

7 Sec. 44.56.070. PURPOSE OF THE AUTHORITY. The purpose of the
8 authority is to promote, develop and advance the general prosperity and
9 economic welfare of the people of Alaska by providing a means of finan-
10 cing and operating hydroelectric and fossil fuel generating projects.

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

- 14 (1) to sue and be sued;
- 15 (2) to have a seal and alter it at pleasure;
- 16 (3) to make and alter bylaws for its organization and inter-
17 nal management;
- 18 (4) to make rules and regulations governing the exercise of
19 its corporate powers;
- 20 (5) to acquire, whether by construction, purchase, gift or
21 lease, and to improve, equip and operate power projects;
- 22 (6) to issue bonds to pay the cost of acquiring by construc-
23 tion, or improving and equipping, a power project and to secure payment
24 of the bonds as provided in this chapter;
- 25 (7) to sell, exchange, donate, convey or encumber in any
26 manner by mortgage or by creation of any other security interest, real
27 or personal property owned by it, or in which it has an interest, when,
28 in the judgment of the authority, the action is in furtherance of its
29 corporate purposes;

1 (8) to accept gifts, grants or loans from, and enter into
2 contracts or other transactions regarding them, with a federal agency or
3 an agency or instrumentality of the state, municipality, private organ-
4 ization or other source;

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

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

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

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

26 (13) to perform feasibility studies with respect to hydro-
27 electrical and fossil fuel power generating projects;

28 (14) to enter into contracts or agreements with respect to the
29 exercise of any of its powers, and do all things necessary or convenient

1 to carry out its corporate purposes and exercise the powers granted in
2 this chapter;

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

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

17 (1) for continuous control and operation of the project by
18 the authority;

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

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

27 (4) for the cancellation and termination of a contract upon
28 violation of its terms by the power distributor or company, or its
29 subsidiary or associate;

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

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

8 ARTICLE 3. FINANCIAL PROVISIONS.

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

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

29 (c) All bonds, regardless of form or character, shall be negotia-

1 ble instruments for all the purposes of the Uniform Commercial Code.

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

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

12 (1) make and enter into any and all the covenants and agree-
13 ments with the trustee or the holders of the bonds which the authority
14 may determine to be necessary or desirable, including, without limita-
15 tion, covenants, provisions, limitations and agreements as to

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

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

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

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

28 (E) the vesting in a trustee of rights, powers, duties,
29 funds or property in trust for the benefit of bondholders, includ-

1 ing, without limitation, the right to enforce payment, performance,
2 and all other rights of the authority or of the bondholders, under
3 a lease, contract of sale, mortgage, security agreement, or trust
4 agreement with respect to a project by mandamus or other proceeding
5 or by taking possession of by agent or otherwise and operating a
6 project and collecting rents or other consideration and applying
7 the same in accordance with the trust agreement;

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

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

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

23 (c) For the purpose of securing any one or more issues of its
24 bonds, the authority may establish one or more special funds, called
25 "capital reserve funds", and shall pay into those capital reserve funds
26 the proceeds of the sale of its bonds and any other money which may be
27 made available to the authority for the purposes of those funds from
28 any other source. All money held in a capital reserve fund, except as
29 provided in this section, shall be used as required, solely for (1) the

1 payment of the principal of, and interest on, bonds or of the sinking
2 fund payments with respect to those bonds, (2) the purchase or redemp-
3 tion of bonds, or (3) the payment of a redemption premium required to be
4 paid when those bonds are redeemed before maturity; however, money in a
5 fund may not be withdrawn from it at any time in an amount which would
6 reduce the amount of that fund to less than the capital reserve require-
7 ment set out in (2) of this subsection, except for the purpose of making,
8 with respect to those bonds, payment, when due, of principal, interest,
9 redemption premiums and the sinking fund payments for the payment of
10 which other money of the corporation is not available. Income or inter-
11 est earned by, or increment to, a capital reserve fund, due to the
12 investment of the fund or any other amounts in it, may be transferred by
13 the authority to other funds or accounts of the authority to the extent
14 that the transfer does not reduce the amount of the capital reserve fund
15 below the capital reserve fund requirement.

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

27 (e) In computing the amount of a capital reserve fund for the
28 purpose of this section, securities in which all or a portion of the
29 funds are invested shall be valued by some reasonable method established

1 by the authority by resolution. Valuation on a particular date shall
2 include the amount of any interest earned or accrued to that date.

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

11 (g) When the authority has created and established a capital
12 reserve fund, the commissioner of revenue may lend surplus money in the
13 general fund to the authority for deposit in a capital reserve fund in
14 an amount equal to the capital reserve fund requirement. The loans
15 shall be made on such terms and conditions as may be agreed upon by the
16 commissioner of revenue and the authority, including without limitation
17 terms and conditions providing that the loans need not be repaid until
18 the obligations of the authority secured and to be secured by the
19 capital reserve fund are no longer outstanding.

20 Sec. 44.62.120. VALIDITY OF PLEDGE. It is the intention of the
21 legislature that a pledge made in respect of bonds shall be valid and
22 binding from the time the pledge is made; that the money or property so
23 pledged and thereafter received by the authority shall immediately be
24 subject to the lien of the pledge without physical delivery or further
25 act; and that the lien of the pledge shall be valid and binding as
26 against all parties having claims of any kind in tort, contract or
27 otherwise against the authority irrespective of whether the parties have
28 notice. Neither the resolution, trust agreement nor any other instru-
29 ment by which a pledge is created need be recorded or filed under the

1 provisions of the Uniform Commercial Code to be valid, binding or effective
2 against the parties.

3 Sec. 44.62.130. NONLIABILITY ON BONDS. (a) Neither the members
4 of the authority nor a person executing the bonds is liable personally
5 on the bonds or is subject to personal liability or accountability by
6 reason of the issuance of the bonds.

7 (b) The bonds issued by the authority do not constitute an in-
8 debtedness or other liability of the state or of a political subdivision
9 of the state, except the authority, but shall be payable solely from the
10 income and receipts or other funds or property of the authority. The
11 authority may not pledge the faith or credit of the state or of a
12 political subdivision of the state, except the authority, to the payment
13 of a bond and the issuance of a bond by the authority does not directly
14 or indirectly or contingently obligate the state or a political sub-
15 division of the state to apply money from, or levy or pledge any form of
16 taxation whatever to the payment of the bond.

17 Sec. 44.62.140. PLEDGE OF THE STATE. The state pledges to and
18 agrees with the holders of bonds issued under this chapter and with the
19 federal agency which loans or contributes funds in respect to a project,
20 that the state will not limit or alter the rights and powers vested in
21 the authority by this chapter to fulfill the terms of a contract made by
22 the authority with the holders or federal agency, or in any way impair
23 the rights and remedies of the holders until the bonds, together with
24 the interest on them with interest on unpaid installments of interest,
25 and all costs and expenses in connection with an action or proceeding by
26 or on behalf of the holders, are fully met and discharged. The author-
27 ity is authorized to include this pledge and agreement of the state,
28 insofar as it refers to holders of bonds of the authority, in a contract
29 with the holders, and insofar as it relates to a federal agency, in a

1 contract with the federal agency.

2 Sec. 44.62.150. TAX EXEMPTION. All property of the authority is
3 public property devoted to an essential public and governmental function
4 and purpose and is exempt from all taxes of the state or a political
5 subdivision of the state. All bonds or notes issued under this chapter
6 are issued by a body corporate and public of this state and for an
7 essential public and governmental purpose and the bonds and notes, and
8 the interest and income on and from the bonds and notes, and all income
9 of the authority are exempt from taxation except for transfer, inheri-
10 tance and estate taxes.

11 Sec. 44.62.160. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The
12 bonds of the authority are securities in which all public officers and
13 bodies of the state and all municipalities and municipal subdivisions,
14 all insurance companies and associations and other persons carrying on
15 any insurance business, all banks, bankers, trust companies, savings
16 banks, savings associations, including savings and loan associations and
17 building and loan associations, investment companies and other persons
18 carrying on a banking business, all administrators, guardians, execu-
19 tors, trustees and other fiduciaries, and all other persons whatsoever
20 who are now or may hereafter be authorized to invest in bonds or other
21 obligations of the state, may properly and legally invest funds in-
22 cluding capital in their control or belonging to them. Notwithstanding
23 any other provisions of law, the bonds of the authority are also secur-
24 ities which may be deposited with and may be received by all public
25 officers and bodies of this state and all municipalities and municipal
26 subdivisions for any purpose for which the deposit of bonds or other
27 obligations of the state is now or may hereafter be authorized.

28 ARTICLE 4. POWER PROJECT REVOLVING FUND.

29 Sec. 44.62.170. FUND ESTABLISHED. (a) There is established as a

1 separate fund the power project revolving fund which shall be adminis-
2 tered by the authority as a trust fund separate and distinct from any
3 other money or funds of the authority.

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

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

13 (d) As used in this section an "eligible borrower" is a munici-
14 pality or public utility as defined in AS 42.05.701(2)(A).

15 ARTICLE 5. GENERAL PROVISIONS.

16 Sec. 44.62.180. CONSTRUCTION OF PROJECTS. The authority shall
17 submit a statement outlining the general design, demonstration of finan-
18 cial feasibility, and maximum amount of bonds estimated to be necessary
19 for each new project to the legislature and the commissioner of commerce
20 and economic development together with a statement that the authority
21 intends to design, acquire and construct the project itself or that it
22 intends that the project be designed, acquired or constructed by the
23 United States under agreement with the authority providing for ownership
24 of the project by the authority on completion. If the legislature
25 adopts a concurrent resolution approving the general design and maximum
26 amount of bonds, the authority shall, in accordance with the terms of
27 the concurrent resolution, (1) proceed to design, acquire and construct
28 the new project, or (2) agree with the United States for design, acqui-
29 sition and construction of the project by the United States, for pay-

1 ments to the United States for such design, acquisition and construc-
2 tion, reimbursement by the United States in certain events, and other-
3 wise on the terms and conditions as may be set out in such agreement.
4 If the new project is to be designed, acquired and constructed by the
5 authority, it shall be designed, acquired and constructed as a public
6 work of the state except that public bidding shall not be required, if
7 the authority so determines. For the purpose of this section a new
8 project does not include an addition or modification to an existing
9 project if the total cost of the addition or modification does not
10 exceed \$1,000,000 or to any repair of a project. An addition or modi-
11 fication or repair may be undertaken by the authority without any of the
12 approvals necessary for a new project.

13 Sec. 44.62.190. ANNUAL AUDIT. The authority shall have its finan-
14 cial records audited annually by a certified public accountant. The
15 legislative auditor may prescribe the form and content of the financial
16 records of the authority and shall have access to these records at any
17 time.

18 Sec. 44.62.200. ANNUAL REPORT. Before March 1 of each year, the
19 authority shall submit to the governor and the legislature a comprehen-
20 sive report describing operations, income and expenditures for the
21 preceding 12-month period.

22 Sec. 44.62.210. BUDGET AND APPROPRIATIONS. The authority shall
23 submit its annual budget to the legislature through the governor as
24 provided for state agencies by the Executive Budget Act (AS 37.07). It
25 may expend money directly appropriated by the legislature only as
26 authorized by the legislature.

27 Sec. 44.62.220. PUBLIC RECORDS; OPEN MEETINGS. The provisions of
28 AS 09.25.110 - 09.25.120 and AS 44.62.310 - 44.62.312 apply to the
29 authority. The authority shall publish a proposed agenda of its meet-

1 ings and afford the public an opportunity to be heard in accordance with
2 AS 44.62.312.

3 Sec. 44.62.230. DEFINITIONS. In this chapter, unless the context
4 requires otherwise,

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

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

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

12 (4) "power project" or "project" includes any and all real or
13 personal property or any interest in it including, without limitation,
14 dams, powerhouses, and transmission lines owned, used or operated, or
15 useful for operation, in the generation by means of water or fossil fuel
16 power, and the transmission of electrical power and also including
17 channels, locks, canals, and other navigational, reclamation, flood
18 control and fisheries facilities and environmental protective measures
19 as may be necessary or desirable in connection with it.

20 Sec. 44.62.240. SHORT TITLE. This chapter may be cited as the
21 Alaska Power Authority Act.
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