

Introduced: 4/6/77
Referred: Commerce and
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SCS CS HOUSE BILL NO. 442 (24 Fin)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

8 * Section 1. AS 44.56.010(a)(3) is amended to read:

9 (3) the achievement of the goals of lower consumer power
10 costs and long-term economic growth and of establishing, operating and
11 developing power projects in the state will be accelerated and facili-
12 tated by the creation of an instrumentality of the state with powers
13 to construct, acquire, finance, and [INCUR DEBT FOR CONSTRUCTING, AND
14 WITH POWERS TO] operate[,] power projects.

15 * Sec. 2. AS 44.56.030 is repealed and re-enacted to read:

16 Sec. 44.56.030. MEMBERSHIP OF THE AUTHORITY. (a) The authority
17 shall consist of the following directors:

18 (1) four directors at large to be appointed by the governor
19 for four-year terms, one of whom shall be appointed as chairman;

20 (2) the commissioner of commerce and economic development.

21 (b) The commissioners of community and regional affairs, natural
22 resources, public works, and revenue shall serve as non-voting members
23 of the board of directors of the authority.

24 * Sec. 3. AS 44.56 is amended by adding a new section to read:

25 Sec. 44.56.045. QUALIFICATIONS, POWERS, AND DUTIES OF OFFICERS
26 AND DIRECTORS. (a) The directors at large must be residents and
27 qualified voters of Alaska, shall comply with the requirements of AS
28 39.50 (conflict of interests), and shall be selected for their exper-
29 tise in industrial, corporate or other matters relevant to the autho-

1 rity. The four original directors at large have terms of one, two,
2 three, and four years, respectively. The directors at large, including
3 the chairman, serve at the pleasure of the governor.

4 (b) A vacancy in a directorship occurring other than by expira-
5 tion of a term shall be filled in the same manner as the original
6 appointment, but for the unexpired portion of the term only.

7 (c) The directors may elect other officers they consider desirable
8 The powers of the authority are vested in the directors. Three
9 directors constitute a quorum. Action may be taken and motions and
10 resolutions adopted by the authority at a meeting by the affirmative
11 vote of at least three members entitled to vote.

12 (d) The directors at large and the chairman serve without compen-
13 sation, but they are entitled to receive the same per diem and travel
14 allowances as provided by law for members of other boards and com-
15 missions.

16 (e) The authority shall employ a general manager who may, with
17 the approval of the authority, employ additional staff as necessary.
18 In addition to its staff of regular employees, the authority may
19 contract for and engage the services of legal and bond counsel, consul-
20 tants, experts, and financial and technical advisors the authority
21 considers necessary for the purpose of conducting studies, investiga-
22 tions, hearings, or other proceedings. The board of directors shall
23 establish the compensation of the general manager.

24 * Sec. 4. AS 44.56.070 is amended to read:

25 Sec. 44.56.070. PURPOSE OF THE AUTHORITY. The purpose of the
26 authority is to promote, develop and advance the general prosperity
27 and economic welfare of the people of Alaska by providing a means of
28 constructing, acquiring, financing and operating power [HYDROELECTRIC
29 AND FOSSIL FUEL GENERATING] projects employing any economically feasible

1 technology.

2 * Sec. 5. AS 44.56.080(5) is amended to read:

3 (5) to acquire, whether by construction, purchase, gift or
4 lease, and to improve, equip, [AND] operate, and maintain power pro-
5 jects;

6 * Sec. 6. AS 44.56.080(8) is amended to read:

7 (8) to accept gifts, grants or loans from, and enter into
8 contracts or other transactions regarding them, with a public agency
9 or other person [FEDERAL AGENCY OR AN AGENCY OR INSTRUMENTALITY OF THE
10 STATE, MUNICIPALITY, PRIVATE ORGANIZATION OR OTHER SOURCE];

11 * Sec. 7. AS 44.56.080(11) is amended to read:

12 (11) to enter into contracts [FOR THE PURCHASE, SALE,
13 EXCHANGE, TRANSMISSION, OR USE OF POWER GENERATED BY A PROJECT, OR ANY
14 RIGHT TO THE CAPACITY OF IT] with any person and with the United
15 States, and, subject to the laws of the United States and subject to
16 the concurrence of the legislature, with a foreign country or its
17 agencies for the purchase, sale, exchange, transmission, or use of
18 power from a project, or any right to capacity of it;

19 * Sec. 8. AS 44.56.080(13) is amended to read:

20 (13) to perform feasibility studies with respect to [HY-
21 DROELECTRICAL AND FOSSIL FUEL] power generating projects;

22 * Sec. 9. AS 44.56.090 is amended to read:

23 Sec. 44.56.090. POWER CONTRACTS AND THE ALASKA PUBLIC UTILITIES
24 COMMISSION. (a) The authority shall, in addition to other methods
25 which it may find advantageous, provide that municipal electric, rural
26 electric, cooperative electric, or private electric utilities and
27 regional electric authorities, [OR] other persons authorized by law to
28 engage in the distribution of electricity, or bulk industrial purchasers
29 of electricity outside the distribution area of any such utility or

1 authority [POWER] may secure a reasonable share of the power generated
2 by a project, or any interest in a project [IT], or for any right to
3 the power [CAPACITY OF IT] and shall, except for bulk industrial
4 purchasers, sell the power or cause the power to be sold at the lowest
5 practicable prices which cover the full cost of the electricity or
6 services, including capital and operating costs, debt coverage as
7 considered appropriate by the authority, and other charges that may be
8 authorized by this chapter [PRICES REPRESENTING COST OF GENERATION,
9 PLUS CAPITAL AND OPERATING CHARGES, PLUS A FAIR COST OF TRANSMISSION,
10 ALL AS DETERMINED BY THE DIRECTORS, AND SUBJECT TO CONDITIONS WHICH
11 ASSURE THE RESALE OF THE POWER TO RETAIL CONSUMERS AT THE LOWEST
12 POSSIBLE PRICE]. A contract for the sale, transmission and distribu-
13 tion of power generated by a project or any right to the capacity of
14 it shall provide

15 (1) for payment of the proportionate share of [ALL] operat-
16 ing and maintenance expenses of a project and costs of renewals,
17 replacements and improvements of it;

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

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

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

29 (5) for periodic revisions of the services and rates to

1 persons on the basis of accurate cost data obtained by the accounting
2 methods and systems approved by the directors and in furtherance and
3 effectuation of the policy declared in this chapter;

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

6 (7) for security for performance as the authority may
7 consider practicable and advisable, including provisions assuring the
8 continuance of the distribution and transmission of power generated by
9 a project, the use of their facilities for these purposes, and the
10 continuance of an outlet and adequate market for the power generated
11 by the project;

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

14 [CONTRACTS TO SELL POWER ARE SUBJECT TO REVIEW BY THE ALASKA PUBLIC
15 UTILITIES COMMISSION.]

16 (b) The authority is not subject to the jurisdiction of the
17 Alaska Public Utilities Commission. Nothing in this chapter grants
18 the authority any jurisdiction over the services or rates of any
19 public utility or diminishes or otherwise alters the jurisdiction of
20 the Alaska Public Utilities Commission with respect to any public
21 utility, including any right the commission may have to review and
22 approve or disapprove contracts for the purchase of electricity by a
23 public utility.

24 * Sec. 10. AS 44.56.110(a) is amended to read:

25 (a) In the discretion of the authority, an issue of bonds may be
26 secured by a trust indenture or trust agreement between the authority
27 and a corporate trustee (which may be a trust company, bank, or national
28 banking association, with corporate trust powers, located inside or
29 outside the state) or by a secured loan agreement or other instrument

1 or under a resolution giving powers to a corporate trustee by means of
2 which the authority may

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

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

11 (B) the fixing and collection of rentals, charges,
12 fees or other consideration for, and the other terms to be incor-
13 porated in, contracts with respect to a project or to generated
14 power;

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

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

22 (E) the vesting in a trustee of rights, powers, duties,
23 funds or property in trust for the benefit of bondholders,
24 including, without limitation, the right to enforce payment,
25 performance, and all other rights of the authority or of the
26 bondholders, under a lease, power of contract, contract of sale,
27 mortgage, security agreement, or trust agreement with respect to
28 a project by injunction [MANDAMUS] or other proceeding or by
29 taking possession of by agent or otherwise and operating a project

1 and collecting rents or other consideration and applying the same
2 in accordance with the trust agreement;

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

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

9 * Sec. 11. AS 44.56.110(d) is amended to read:

10 (d) If the authority decides to issue bonds secured by such a
11 capital reserve fund, the bonds may not be issued if the amount in the
12 capital reserve fund is less than such an amount [A PER CENT, NOT
13 EXCEEDING 10 PER CENT OF THE PRINCIPAL AMOUNT OF ALL OF THOSE BONDS
14 SECURED BY THAT CAPITAL RESERVE FUND THEN TO BE ISSUED AND THEN OUT-
15 STANDING IN ACCORDANCE WITH THEIR TERMS,] as may be established by
16 resolution of the authority (called the "capital reserve fund require-
17 ment"), unless the authority, at the time of issuance of the obliga-
18 tions, deposits in the capital reserve fund from the proceeds of the
19 obligations to be issued or from other sources, an amount which,
20 together with the amount then in the fund, will not be less than the
21 capital reserve fund requirement.

22 * Sec. 12. AS 44.56.150 is amended to read:

23 Sec. 44.56.150. TAX EXEMPTION. All property of the authority is
24 public property devoted to an essential public and governmental func-
25 tion and purpose and is exempt from all taxes of the state or a politi-
26 cal subdivision of the state; however, the authority shall make payments
27 in place of taxes in amounts equal to the real and personal property
28 taxes which would be assessed on its real and personal property by
29 each political subdivision in which its property is located to the

1 same extent as if that property were private property and the authority
2 were a non-public corporation. All bonds issued under this chapter
3 are issued by a body corporate and public of this state and for an
4 essential public and governmental purpose and the bonds and the
5 interest and income on and from the bonds and all income of the autho-
6 rity are exempt from taxation except for transfer, inheritance and
7 estate taxes.

8 * Sec. 13. AS 44.56.170 is repealed and re-enacted to read:

9 Sec. 44.56.170. FUND ESTABLISHED; LOANS. (a) There is estab-
10 lished as a separate fund the power project revolving fund which shall
11 be administered by the authority as a trust fund separate and distinct
12 from any other money or funds of the authority, and which shall be
13 composed of appropriated funds and interest earned on loans by the
14 fund.

15 (b) The authority may make loans from the fund to electric
16 utilities, cities, boroughs, village corporations, village councils,
17 and nonprofit marketing cooperatives to pay the costs of feasibility
18 studies, preconstruction engineering, design, and construction of
19 power projects.

20 (c) Before making any loans from the power project revolving
21 fund, the authority shall by regulation specify the standards for
22 those loans with respect to the following:

23 (1) criteria regarding the eligibility of borrowers and of
24 types of projects;

25 (2) standards regarding the technical and economic viability
26 and revenue self-sufficiency of eligible projects;

27 (3) interest rates and other terms and conditions, and col-
28 lateral or any other security required for loans; and

29 (4) other relevant criteria, standards, or procedures.

1 (d) Regulations proposed for adoption under this section shall
2 be submitted to the governor for his review and for review by other
3 appropriate agencies. The regulations shall be adopted if they are
4 shown to be consistent with the long-term electric power development
5 plan and with state policy and if they are approved by the governor.

6 (e) Any loan made by the authority must be made according to the
7 standards, criteria, and procedures established by regulation under
8 this section, and must be consistent with the long-term electric power
9 development plan and state policy.

10 (f) Any single loan, or group of loans to a single borrower,
11 proposed to be made from the fund under this section exceeding
12 \$1,000,000 must be submitted to the governor for review and approval.

13 * Sec. 14. AS 44.56.180 is amended to read:

14 Sec. 44.56.180. PROPOSAL AND CONSTRUCTION OF PROJECTS. (a) The
15 authority shall submit a statement outlining the general design,
16 demonstration of financial feasibility, and maximum amount of bonds
17 estimated to be necessary for each new project to the governor and the
18 legislature [AND THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT],
19 together with a statement that the authority intends to design, acquire
20 and construct the project itself or that it intends that the project
21 be designed, acquired or constructed by the United States or another
22 person under agreement with the authority providing for ownership of
23 all or a portion of the project by the authority or of a right to the
24 capacity of it. If the governor approves the project upon making
25 specific findings under (b) of this section, and if the legislature
26 adopts a joint resolution approving the general design and maximum
27 amount of bonds, the authority shall, in accordance with the terms of
28 the joint resolution, (1) proceed to design, acquire and construct
29 the new project, or (2) agree with the United States or other person

1 for design, acquisition and construction of the project by the United
2 States, for payments to the United States or other person for such
3 design, acquisition and construction, reimbursement by the United
4 States or other person in certain events, and otherwise on the terms
5 and conditions as may be set out in such agreement. If the new project
6 is to be designed, acquired and constructed by the authority, it shall
7 be designed, acquired and constructed as a public work of the state
8 except that public bidding shall not be required, if the authority so
9 determines on projects in excess of \$50,000,000. For the purpose of
10 this section a new project does not include an addition or modification
11 to an existing project if the total cost of the addition or modification
12 does not exceed \$1,000,000, to any repair or reconstruction of a
13 project, or to any design, acquisition or construction necessary to
14 complete a project for which bonds previously authorized by the legis-
15 lature have been issued. Any such addition, modification, repair,
16 reconstruction, design, acquisition or construction may be undertaken
17 by the authority without any of the approvals necessary for a new
18 project.

19 * Sec. 15. AS 44.56.180 is amended by adding new subsections to read:

20 (b) Any power project proposal requiring approval by the legis-
21 lature under this chapter, together with supporting data, analyses,
22 and findings of the authority, must be submitted to the governor for
23 review as provided in this chapter at least 60 days before submission
24 of these materials to the legislature. No project may be undertaken
25 without the written approval of the governor in which writing the
26 governor makes findings of fact regarding the items listed in this
27 subsection and transmits those findings to the legislature:

28 (1) the consistency of the project or action with the long-
29 term electric power development plan and with relevant state laws and

1 policies;

2 (2) the balance of benefits and costs to Alaska, including
3 environmental and social costs, and the ability of the project to
4 generate sufficient revenues to be self-supporting;

5 (3) whether a project which will physically impinge upon a
6 park, wildlife refuge, registered historic site, critical habitat area,
7 or state land classified for public recreation, has a feasible alter-
8 native project design or site;

9 (4) whether any alternative to the project or action which
10 would result in comparable volumes of power at a lower cost has been
11 rejected because the authority finds that social, cultural, or environ-
12 mental considerations justify rejection; and

13 (5) the way in which the authority's policies and its pro-
14 posed action affect the following policy areas:

15 (A) the use of power development, power pricing, and
16 marketing policies to achieve the social, economic, and energy
17 conservation goals of the state;

18 (B) policies concerning the allocation of state fossil
19 fuels, land, water resources, and other natural resources to power
20 development;

21 (C) facility siting policies and the conformity of
22 project proposals to federal, state, and local land use and
23 community development plans and policies;

24 (D) rural electrification policies as they affect
25 regional growth;

26 (E) reliability standards and quality-of-service
27 policies of the authority including reserve capacity levels and
28 back-up system capabilities;

29 (F) authority environmental policies to insure that

1 project proposals conform to state environmental policies; and

2 (G) any other policy matters relevant to the actions of
3 the authority.

4 (c) Recognizing the crucial role of power demand estimates in
5 analyses and project evaluations, any estimates or projections of
6 future electrical power demands produced or used by the authority must
7 be submitted to the governor for his review and the review of appro-
8 priate state agencies. No projection which is not approved by the
9 governor may be used to justify and support a project proposal.

10 * Sec. 16. AS 44.56.210 is repealed and re-enacted to read:

11 Sec. 44.56.210. APPROPRIATIONS AND REPORTS. (a) Notwithstanding
12 any other provision in this chapter, the authority is subject to the
13 provisions of the Executive Budget Act (AS 37.07).

14 (b) The authority shall, by the 15th day of each regular legis-
15 lative session, present to the legislature a report detailing project
16 status, original costs and projected costs, particularly highlighting
17 any costs in excess of the original cost estimates submitted for each
18 project when that project was originally approved by the legislature.

19 * Sec. 17. AS 44.56 is amended by adding a new section to read:

20 Sec. 44.56.224. LONG-TERM PLAN. The Department of Commerce and
21 Economic Development, assisted by the authority, shall prepare, and as
22 appropriate revise, a long-term electrical power development plan for
23 meeting projected electrical energy demand in Alaska at the lowest
24 feasible cost, including environmental and social costs, consistent
25 with acceptable standards of reliability. The plan must include, but
26 is not limited to, considerations specified in sec. 180(b) of this
27 chapter. In preparing and revising the plan, the department shall
28 obtain and consider, through appropriate public input processes, the
29 expertise and views of local governments, electrical utilities,

1 industry, labor, consumer, and environmental advocacy groups and other
2 interested members of the public. The plan and any revision of it
3 must be submitted to the governor for his review and for review by all
4 appropriate state agencies. The department shall adopt the plan if it
5 is shown to be consistent with state policy and if it is approved by
6 the governor.

7 * Sec. 18. AS 44.56.230(4) is amended to read:

8 (4) "power project" or "project" means a plant, works,
9 system, facility, water rights, fuel deposits or sources, and real
10 estate and personal property of any nature whatsoever, together with
11 all facilities and appurtenances related to them or necessary for the
12 purposes of them used or useful in the generation, by means of any
13 economically feasible technology, [WATER OR FOSSIL FUEL] of electric
14 power and the production, transmission, purchase, sale, exchange and
15 interchange of electric power, and shall include any interest in them,
16 whether divided or undivided, or any right to the capacity of them;

17 * Sec. 19. AS 44.56.230 is amended by adding a new paragraph to read:

18 (6) "person" includes a public agency in addition to the
19 entities set out in AS 01.10.060(7).

20 * Sec. 20. AS 44.56.050 and 44.56.110(b) are repealed.
21
22
23
24
25
26
27
28
29