

Original sponsor: Rules Committee by
request of the Governor

Offered: 5/5/77
Referred: Finance

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2

CS FOR HOUSE BILL NO. 442

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:

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

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(3) the achievement of the goals of lower consumer power

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costs and beneficial long-term economic growth and of establishing,

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operating and developing power projects in the state will be accelerated

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and facilitated by the creation of an instrumentality of the state with

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powers to construct, acquire, finance, and [INCUR DEBT FOR CONSTRUCTING,

14

AND WITH POWERS TO] operate[,] power projects.

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 AS 44.56.030 is repealed and re-enacted to read:

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Sec. 44.56.030. MEMBERSHIP OF THE AUTHORITY. (a) The authority

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shall consist of the following directors:

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(1) four directors at large to be appointed by the governor

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for four-year terms;

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(2) the commissioner of commerce and economic development.

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(b) The commissioners of community and regional affairs, natural

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resources, transportation and public facilities, and revenue shall serve

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as nonvoting members of the board of directors of the authority.

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

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Sec. 44.56.045. QUALIFICATIONS, POWERS, AND DUTIES OF OFFICERS

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AND DIRECTORS. (a) The directors at large must be residents and

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qualified voters of Alaska, shall comply with the requirements of AS

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39.50 (conflict of interests), and shall be selected for their expertise

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relevant to the authority. The four original directors at large have

1 terms of one, two, three, and four years, respectively.

2 (b) A vacancy in a directorship occurring other than by expiration
3 of a term shall be filled in the same manner as the original appointment,
4 but for the unexpired portion of the term only.

5 (c) The authority shall employ a general manager who may, with
6 the approval of the authority, employ additional staff as necessary.
7 In addition to its staff of regular employees, the authority may con-
8 tract for and engage the services of legal and bond counsel, consul-
9 tants, experts, and financial and technical advisors the authority
10 considers necessary for the purpose of conducting studies, investiga-
11 tions, hearings, or other proceedings. The board of directors shall
12 establish the compensation of the general manager. The general manager
13 and other personnel of the authority are exempt from the provisions of
14 AS 39.25.

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

16 Sec. 44.56.070. PURPOSE OF THE AUTHORITY. The purpose of the
17 authority is to promote, develop and advance the general prosperity
18 and economic welfare of the people of Alaska by providing a means of
19 constructing, acquiring, financing and operating power [HYDROELECTRIC
20 AND FOSSIL FUEL GENERATING] projects employing any feasible technology.

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

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

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

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

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

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

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

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

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

13 Sec. 44.56.090. POWER CONTRACTS AND THE ALASKA PUBLIC UTILITIES
14 COMMISSION. (a) The authority shall, in addition to other methods
15 which it may find advantageous, provide that municipal electric, rural
16 electric, cooperative electric, or private electric utilities and
17 regional electric authorities, [OR] other persons authorized by law to
18 engage in the distribution of electricity, or bulk industrial purchasers
19 of electricity outside the distribution area of any such utility or
20 authority [POWER] may secure a reasonable share of the power generated
21 by a project, or any interest in a project [IT], or for any right to
22 the power [CAPACITY OF IT] and shall, except for bulk industrial
23 purchasers, sell the power or cause the power to be sold at the lowest
24 practicable prices which cover the full cost of the electricity or
25 services, including capital and operating costs, debt coverage as
26 considered appropriate by the authority, and other charges that may be
27 authorized by this chapter [PRICES REPRESENTING COST OF GENERATION,
28 PLUS CAPITAL AND OPERATING CHARGES, PLUS A FAIR COST OF TRANSMISSION,
29 ALL AS DETERMINED BY THE DIRECTORS, AND SUBJECT TO CONDITIONS WHICH

1 ASSURE THE RESALE OF THE POWER TO RETAIL CONSUMERS AT THE LOWEST
2 POSSIBLE PRICE]. A contract for the sale, transmission and distribu-
3 tion of power generated by a project or any right to the capacity of
4 it shall provide

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

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

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

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

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

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

25 (7) for security for performance as the authority may
26 consider practicable and advisable, including provisions assuring the
27 continuance of the distribution and transmission of power generated by
28 a project, the use of their facilities for these purposes, and the
29 continuance of an outlet and adequate market for the power generated

1 by the project;

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

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

6 (b) The authority is not subject to the jurisdiction of the
7 Alaska Public Utilities Commission. Nothing in this chapter grants
8 the authority any jurisdiction over the services or rates of any
9 public utility or diminishes or otherwise alters the jurisdiction of
10 the Alaska Public Utilities Commission with respect to any public
11 utility, including any right the commission may have to review and
12 approve or disapprove contracts for the purchase of electricity by a
13 public utility.

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

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

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

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

1 (B) the fixing and collection of rentals, charges,
2 fees or other consideration for, and the other terms to be incor-
3 porated in, contracts with respect to a project or to generated
4 power;

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

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

12 (E) the vesting in a trustee of rights, powers, duties,
13 funds or property in trust for the benefit of bondholders,
14 including, without limitation, the right to enforce payment,
15 performance, and all other rights of the authority or of the
16 bondholders, under a lease, power of contract, contract of sale,
17 mortgage, security agreement, or trust agreement with respect to
18 a project by injunction [MANDAMUS] or other proceeding or by
19 taking possession of by agent or otherwise and operating a project
20 and collecting rents or other consideration and applying the same
21 in accordance with the trust agreement;

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

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

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

29 (d) If the authority decides to issue bonds secured by such a

1 capital reserve fund, the bonds may not be issued if the amount in the
2 capital reserve fund is less than such an amount [A PER CENT, NOT
3 EXCEEDING 10 PER CENT OF THE PRINCIPAL AMOUNT OF ALL OF THOSE BONDS
4 SECURED BY THAT CAPITAL RESERVE FUND THEN TO BE ISSUED AND THEN OUT-
5 STANDING IN ACCORDANCE WITH THEIR TERMS,] as may be established by
6 resolution of the authority (called the "capital reserve fund require-
7 ment"), unless the authority, at the time of issuance of the obliga-
8 tions, deposits in the capital reserve fund from the proceeds of the
9 obligations to be issued or from other sources, an amount which,
10 together with the amount then in the fund, will not be less than the
11 capital reserve fund requirement.

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

13 Sec. 44.56.150. TAX EXEMPTION. All property of the authority is
14 public property devoted to an essential public and governmental func-
15 tion and purpose and is exempt from all taxes of the state or a politi-
16 cal subdivision of the state; however, the authority shall make payments
17 in place of taxes in amounts equal to the real and personal property
18 taxes which would be assessed on its real and personal property by
19 each political subdivision in which its property is located to the
20 same extent as if that property were private property and the authority
21 were a non-public corporation. All bonds issued under this chapter
22 are issued by a body corporate and public of this state and for an
23 essential public and governmental purpose and the bonds and the
24 interest and income on and from the bonds and all income of the autho-
25 rity are exempt from taxation except for transfer, inheritance and
26 estate taxes.

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

28 Sec. 44.56.170. FUND ESTABLISHED; LOANS. (a) There is estab-
29 lished as a separate fund the power project revolving fund which shall

1 be administered by the authority as a trust fund separate and distinct
2 from any other money or funds of the authority, and which shall be com-
3 posed of appropriated funds and interest earned on loans by the fund.

4 (b) The authority may make loans from the fund to electric
5 utilities, cities, boroughs, village corporations, village councils,
6 and nonprofit marketing cooperatives to pay the costs of feasibility
7 studies, preconstruction engineering, design, construction, equipping,
8 modification and expansion of power projects and for other energy re-
9 quirements or conservation including but not limited to geothermal,
10 solar, hydroelectric or wind power energy production, and waste energy
11 conservation.

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

15 (1) criteria regarding the eligibility of borrowers and of
16 types of projects;

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

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

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

22 (d) Regulations proposed for adoption under this section shall
23 be submitted to the governor for his review and for review by other
24 appropriate agencies.

25 (e) Any loan made by the authority must be made according to the
26 standards, criteria, and procedures established by regulation under
27 this section.

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

29 Sec. 44.56.180. PROPOSAL AND CONSTRUCTION OF PROJECTS. (a) The

1 authority shall submit a statement outlining the general design,
2 demonstration of financial feasibility, and maximum amount of bonds
3 estimated to be necessary for each new project to the governor and the
4 legislature [AND THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT],
5 together with a statement that the authority intends to design, acquire
6 and construct the project itself or that it intends that the project
7 be designed, acquired or constructed by the United States or another
8 person under agreement with the authority providing for ownership of
9 all or a portion of the project by the authority or of a right to the
10 capacity of it. If the legislature adopts a joint resolution approving
11 the general design and maximum amount of bonds, the authority shall, in
12 accordance with the terms of the joint resolution, (1) proceed to
13 design, acquire and construct the new project, or (2) agree with the
14 United States or other person for design, acquisition and construction
15 of the project by the United States, for payments to the United States
16 or other person for such design, acquisition and construction, reimburse-
17 ment by the United States or other person in certain events, and other-
18 wise on the terms and conditions as may be set out in such agreement.
19 If the new project is to be designed, acquired and constructed by the
20 authority, it shall be designed, acquired and constructed as a public
21 work of the state except that public bidding shall not be required, if
22 the authority so determines on projects in excess of \$50,000,000. For
23 the purpose of this section a new project does not include an addition
24 or modification to an existing project if the total cost of the addition
25 or modification does not exceed \$1,000,000, to any repair or reconstruc-
26 tion of a project, or to any design, acquisition or construction neces-
27 sary to complete a project for which bonds previously authorized by the
28 legislature have been issued. Any such addition, modification, repair,
29 reconstruction, design, acquisition or construction may be undertaken by

1 the authority without any of the approvals necessary for a new project.

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

3 (b) Any power project proposal requiring approval by the legis-
4 lature under this chapter, together with supporting data, analyses,
5 and findings of the authority, must be submitted to the governor for
6 review as provided in this chapter. The proposal shall contain find-
7 ings of fact by the authority regarding the following items:

8 (1) the consistency of the project or action with the long-
9 term electric power development plan and with relevant state laws and
10 policies;

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

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

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

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

24 (A) the use of power development, power pricing, and
25 marketing policies to achieve the social, economic, and energy
26 conservation goals of the state;

27 (B) policies concerning the allocation of state fossil
28 fuels, land, water resources, and other natural resources to power
29 development;

1 (C) facility siting policies and the conformity of
2 project proposals to federal, state, and local land use and
3 community development plans and policies;

4 (D) rural electrification policies as they affect
5 regional growth;

6 (E) reliability standards and quality-of-service
7 policies of the authority including reserve capacity levels and
8 back-up system capabilities;

9 (F) authority environmental policies to insure that
10 project proposals conform to state environmental policies; and

11 (G) any other policy matters relevant to the actions of
12 the authority.

13 (c) Recognizing the crucial role of power demand estimates in
14 analyses and project evaluations, any estimates or projections of
15 future electrical power demands produced or used by the authority must
16 be submitted to the governor for his review and the review of appro-
17 priate state agencies.

18 * Sec. 16. AS 44.56.210 is amended by adding a new subsection to read:

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

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

25 Sec. 44.56.224. LONG-TERM PLAN. The Department of Commerce and
26 Economic Development, assisted by the authority, shall prepare, and as
27 appropriate revise, a long-term electrical power development plan for
28 meeting projected electrical energy demand in Alaska at the lowest
29 feasible cost, including environmental and social costs, consistent

1 with acceptable standards of reliability. The plan must include, but
2 is not limited to, considerations specified in sec. 180(b) of this
3 chapter. In preparing and revising the plan, the department shall
4 obtain and consider, through appropriate public input processes, the
5 expertise and views of local governments, electrical utilities, industry,
6 labor, consumer, and environmental advocacy groups and other interested
7 members of the public. The plan and any revision of it must be sub-
8 mitted to the governor for his review and for review by all appropriate
9 state agencies. The department shall adopt the plan if it is shown to
10 be consistent with state policy and if it is approved by the governor.
11 The plan shall be submitted to the legislature for information immediately
12 following adoption.

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

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

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

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

26 * Sec. 20. AS 44.56.050 is repealed.
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