

Original sponsor: Rules Committee by  
request of the Governor

Offered: 5/11/78  
For Today's Calendar

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 442 (2d Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Power Authority; and  
7 providing for an effective date."

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

9 \* Section 1. AS 44.56.010(a)(2) and (3) are amended to read:

10 (2) the establishment of power projects at these sites is  
11 necessary to supply [LOWER COST] power at the lowest reasonable cost to  
12 the state's municipal electric, rural electric, cooperative electric,  
13 and private electric utilities, and regional electric authorities, and  
14 thereby to the consumers of the state, as well as to supply existing or  
15 future industrial needs;

16 (3) the achievement of the goals of lowest reasonable [LOWER]  
17 consumer power costs and beneficial long-term economic growth and of  
18 establishing, operating and developing power projects in the state will  
19 be accelerated and facilitated by the creation of an instrumentality of  
20 the state with powers to construct, acquire, finance, and [INCUR DEBT  
21 FOR CONSTRUCTING, AND WITH POWERS TO] operate[, ] power projects.

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 AS 44.56.030 is repealed and re-enacted to read:

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

25 (1) four directors at large to be appointed by the governor  
26 and confirmed by the legislature;

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

28 (b) The commissioners of community and regional affairs, natural  
29 resources, transportation and public facilities, and revenue shall have

1 the rights and privileges of directors except for the right to vote and  
2 may not be considered for purposes of quorum or voting.

3 \* Sec. 3. AS 44.56.040 is amended to read:

4 Sec. 44.56.040. OFFICERS AND QUORUM. The directors shall elect  
5 one of the directors at large [PUBLIC MEMBERS] as chairman and other  
6 officers they determine desirable. The powers of the authority are  
7 vested in the directors, and three directors of the authority constitute  
8 a quorum. Action may be taken and motions and resolutions adopted by  
9 the authority at a meeting by the affirmative vote of at least three  
10 directors. The directors of the authority serve without compensation,  
11 but they shall receive the same travel pay and per diem as provided by  
12 law for board members.

13 \* Sec. 4. AS 44.56 is amended by adding a new section to read:

14 Sec. 44.56.045. QUALIFICATIONS, POWERS, AND DUTIES OF OFFICERS AND  
15 DIRECTORS. (a) The directors at large must be residents and qualified  
16 voters of Alaska and shall comply with the requirements of AS 39.50  
17 (conflict of interests). The directors at large shall serve four-year  
18 terms. The four original directors at large have terms of one, two,  
19 three, and four years, respectively.

20 (b) A vacancy in a directorship occurring other than by expiration  
21 of a term shall be filled in the same manner as the original appoint-  
22 ment, but for the unexpired portion of the term only.

23 (c) The authority shall employ an executive director who may, with  
24 the approval of the authority, employ additional staff as necessary. In  
25 addition to its staff of regular employees, the authority may contract  
26 for and engage the services of legal and bond counsel, consultants,  
27 experts, and financial and technical advisors the authority considers  
28 necessary for the purpose of conducting studies, investigations, hear-  
29 ings, or other proceedings. The board of directors shall establish the

1 compensation of the executive director. The executive director and  
2 other personnel of the authority are exempt from the provisions of AS  
3 39.25.

4 \* Sec. 5. AS 44.56.070 is amended to read:

5 Sec. 44.56.070. PURPOSE OF THE AUTHORITY. The purpose of the  
6 authority is to promote, develop and advance the general prosperity and  
7 economic welfare of the people of Alaska by providing a means of con-  
8 structing, acquiring, financing and operating power production facil-  
9 ities limited to fossil fuel, wind power, tidal, geothermal, hydro-  
10 electric, or solar energy production and waste energy conservation  
11 facilities [HYDROELECTRIC AND FOSSIL FUEL GENERATING PROJECTS].

12 \* Sec. 6. AS 44.56.080(5) is amended to read:

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

16 \* Sec. 7. AS 44.56.080(6) is amended to read:

17 (6) to issue bonds to carry out any of its corporate purposes  
18 and powers, including the acquisition or construction of a project to be  
19 owned or leased, as lessor or lessee, by the authority, or by another  
20 person, or the acquisition of any interest in a project [IT] or any  
21 right to capacity of a project [IT], the establishment or increase of  
22 reserves to secure or to pay the bonds or interest on them, and the  
23 payment of all other costs or expenses of the authority incident to and  
24 necessary or convenient to carry out its corporate purposes and powers;

25 \* Sec. 8. 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 any person [A  
28 FEDERAL AGENCY OR AN AGENCY OR INSTRUMENTALITY OF THE STATE, MUNICIPA-  
29 LITY, PRIVATE ORGANIZATION OR OTHER SOURCE];

1 \* Sec. 9. AS 44.56.080(10) is amended to read:

2 (10) to enter into contracts with the United States or any  
3 person and, subject to the laws of the United States and subject to  
4 concurrence of the legislature, with a foreign country or its agencies,  
5 for the financing, construction, acquisition, operation and maintenance  
6 of all or any part of a power project, either inside or outside the  
7 state, and for the sale or transmission of power from a project or any  
8 right to the capacity of it or for the security of any bonds of the  
9 authority issued or to be issued for the project;

10 \* Sec. 10. AS 44.56.080(11) is amended to read:

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

18 \* Sec. 11. AS 44.56.080(13) is amended to read:

19 (13) to perform reconnaissance studies with respect to [HY-  
20 DROELECTRICAL AND FOSSIL FUEL] power [GENERATING] projects;

21 \* Sec. 12. AS 44.56.090 is repealed and re-enacted to read:

22 Sec. 44.56.090. POWER CONTRACTS AND THE ALASKA PUBLIC UTILITIES  
23 COMMISSION. (a) The authority shall, in addition to the other methods  
24 which it may find advantageous, provide a method by which municipal  
25 electric, rural electric, cooperative electric, or private electric  
26 utilities and regional electric authorities, or other persons authorized  
27 by law to engage in the distribution of electricity may secure a  
28 reasonable share of the power generated by a project, or any interest in  
29 a project, or for any right to the power and shall sell the power or

1 cause the power to be sold at the lowest reasonable prices which cover  
2 the full cost of the electricity or services, including capital and  
3 operating costs, debt coverage as considered appropriate by the autho-  
4 rity, and other charges that may be authorized by this chapter. A  
5 contract for the sale, transmission and distribution of power generated  
6 by a project or any right to the capacity of it shall provide for full  
7 and complete disclosure to the authority of all factors of cost in the  
8 transmission and distribution of power.

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

16 \* Sec. 13. AS 44.56.110(a)(1) is amended to read:

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

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

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

27 (C) the assignment by the authority of its rights in  
28 contracts with respect to a project or to generated power or in a  
29 mortgage or other security interest created with respect to a

1 project or generated power to a trustee for the benefit of bond-  
2 holders;

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

5 (E) the vesting in a trustee of rights, powers, duties,  
6 funds or property in trust for the benefit of bondholders, in-  
7 cluding, without limitation, the right to enforce payment, perfor-  
8 mance, and all other rights of the authority or of the bondholders,  
9 under a lease, power of contract, contract of sale, mortgage,  
10 security agreement, or trust agreement with respect to a project by  
11 injunction [MANDAMUS] or other proceeding or by taking possession  
12 of by agent or otherwise and operating a project and collecting  
13 rents or other consideration and applying the same in accordance  
14 with the trust agreement;

15 \* Sec. 14. AS 44.56.110(d) is amended to read:

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 an amount [A PER CENT, NOT EX-  
19 CEEDING 10 PER CENT OF THE PRINCIPAL AMOUNT OF ALL OF THOSE BONDS SE-  
20 CURED BY THAT CAPITAL RESERVE FUND THEN TO BE ISSUED AND THEN OUT-  
21 STANDING IN ACCORDANCE WITH THEIR TERMS,] as may be established by  
22 resolution of the authority (called the "capital reserve fund require-  
23 ment"), unless the authority, at the time of issuance of the obliga-  
24 tions, deposits in the capital reserve fund from the proceeds of the  
25 obligations to be issued or from other sources, an amount which, to-  
26 gether with the amount then in the fund, will not be less than the  
27 capital reserve fund requirement.

28 \* Sec. 15. AS 44.56.150 is amended to read:

29 Sec. 44.56.150. TAX EXEMPTION. All property of the authority is

1 public property devoted to an essential public and governmental function  
2 and purpose and is exempt from all taxes of the state or a political  
3 subdivision of the state; however, the authority may make payments in  
4 place of taxes in amounts equal to the real and personal property taxes  
5 which would be assessed on its real and personal property by each poli-  
6 tical subdivision in which its property is located to the same extent as  
7 if that property were private property and the authority were a non-  
8 public corporation. All bonds issued under this chapter are issued by a  
9 body corporate and public of this state and for an essential public and  
10 governmental purpose and the bonds and the interest and income on and  
11 from the bonds and all income of the authority are exempt from taxation  
12 except for transfer, inheritance and estate taxes.

13 \* Sec. 16. AS 44.56.170 is repealed and re-enacted to read:

14 Sec. 44.56.170. FUND ESTABLISHED; LOANS. (a) There is estab-  
15 lished as a separate fund the power project revolving fund which shall  
16 be administered by the authority as a trust fund separate and distinct  
17 from any other money or funds of the authority, and which shall be com-  
18 posed of appropriated funds and interest earned on loans by the fund.

19 (b) The authority may make loans from the fund to electric utili-  
20 ties, regional electric authorities, cities, boroughs, regional and  
21 village corporations, village councils, and nonprofit marketing coopera-  
22 tives to pay the costs of

23 (1) reconnaissance studies, preconstruction engineering, and  
24 design of any power projects;

25 (2) constructing, equipping, modifying, and expanding small-  
26 scale power production facilities or conservation facilities, limited to  
27 fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar  
28 energy production and waste energy conservation facilities; and

29 (3) reconnaissance studies, preconstruction engineering,

1 design, construction, equipping, modification, and expansion of potable  
2 water supply including surface storage and groundwater sources and  
3 transmission of water from surface storage to existing distribution  
4 systems.

5 (c) Before making any loans, except loans made under (f) of this  
6 section, from the power project revolving fund, the authority shall by  
7 regulation specify the standards for those loans with respect to the  
8 following:

9 (1) criteria regarding the eligibility of borrowers and of  
10 types of projects;

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

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

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

16 (d) Any loan made by the authority must be made according to the  
17 standards, criteria, and procedures established by regulation under this  
18 section.

19 (e) Repayment of the loans shall be secured in such manner as the  
20 authority determines is feasible to assure repayment under a loan agree-  
21 ment entered into with the borrower. Under a loan agreement, repayment  
22 may be deferred until the project for which a loan is made has achieved  
23 earnings from its operations sufficient to pay the loan.

24 (f) Projects for which loans are outstanding from the water re-  
25 sources revolving loan fund (AS 45.86) on the effective date of this Act  
26 may receive additional funding from the power project revolving loan  
27 fund for a term not exceeding 50 years and at an interest rate of not  
28 less than three nor more than five per cent per year on the unpaid  
29 balance. Repayment of loan principal and interest shall commence on the

1 date of commercial operation of the project funded by the loan or 10  
2 years from the date the loan is granted, whichever is earlier.

3 \* Sec. 17. AS 44.56.180 is amended to read:

4 Sec. 44.56.180. ASSESSMENT, PROPOSAL, AND CONSTRUCTION OF PRO-  
5 JECTS. (a) The authority shall, for each new project, determine the  
6 most appropriate means by which to finance a project which may include,  
7 but is not limited to,

8 (1) the issuance of revenue bonds;

9 (2) a guarantee of indebtedness by the Alaska Permanent Fund  
10 Corporation in accordance with AS 37.13.200;

11 (3) an appropriation from the general fund; or

12 (4) any combination of (1), (2), and (3) of this subsection.

13 (b) Upon completion of the reconnaissance study, the authority  
14 shall submit to the governor and the legislature a statement of its  
15 recommendations for financing each new project. The financing plan may  
16 include a recommendation for a guarantee of indebtedness or a general  
17 fund appropriation only when necessary to supplement private financing  
18 in order to make a project financially feasible. If the recommended  
19 financing for the project includes a guarantee of indebtedness by the  
20 permanent fund or an appropriation from the general fund, the legisla-  
21 ture must first give its approval by joint resolution before the  
22 authority may proceed with the engineering or design phase of the pro-  
23 ject. The legislative approval required in this subsection may not be  
24 considered the approval required under AS 37.13.230 for granting of a  
25 permanent fund guarantee.

26 (c) The authority shall submit a statement outlining the general  
27 design, demonstration of financial feasibility, and maximum amount of  
28 bonds and appropriations estimated to be necessary for each new project  
29 for which the maximum estimated total cost is \$50,000,000 or greater

1 to the governor and the legislature [AND THE COMMISSIONER OF COMMERCE  
2 AND ECONOMIC DEVELOPMENT], together with a statement that the authority  
3 intends to design, acquire, [AND] construct or finance the project  
4 itself or that it intends that the project be designed, acquired, [OR]  
5 constructed or financed by the United States or another person under  
6 agreement with the authority which may provide [PROVIDING] for ownership  
7 of all or a portion of the project by the authority or of a right to the  
8 capacity of it. If the legislature adopts a joint resolution approving  
9 the general design and maximum amount of bonds, the authority shall, in  
10 accordance with the terms of the joint resolution, (1) proceed to de-  
11 sign, acquire and construct the new project, or (2) agree with the  
12 United States or other person for design, acquisition and construction  
13 of the project by the United States, for payments to the United States  
14 or other person for such design, acquisition and construction, reimburse-  
15 ment by the United States or other person in certain events, and other-  
16 wise on the terms and conditions as may be set out in such agreement.

17 (d) If the new project is to be designed, acquired and constructed  
18 by the authority, it shall be designed, acquired and constructed as a  
19 public work of the state [EXCEPT THAT PUBLIC BIDDING SHALL NOT BE RE-  
20 QUIRED, IF THE AUTHORITY SO DETERMINES ON PROJECTS IN EXCESS OF  
21 \$50,000,000]. For the purpose of this section a new project does not  
22 include (1) an addition or modification to an existing project if the  
23 total cost of the addition or modification does not exceed \$1,000,000;  
24 (2) [, TO] any repair or reconstruction of a project; [,] or (3) [TO]  
25 any design, acquisition or construction necessary to complete a project  
26 for which bonds previously authorized by the legislature have been  
27 issued. Any such addition, modification, repair, reconstruction, de-  
28 sign, acquisition or construction may be undertaken by the authority  
29 without any of the approvals necessary for a new project.

1 \* Sec. 18. AS 44.56.180 is amended by adding a new subsection to read:

2 (e) Any power project proposal requiring approval by the legis-  
3 lature under this chapter, except on projects with a complete reconnais-  
4 sance study on the effective date of this Act, together with supporting  
5 data, analyses, and findings of the authority, shall be submitted to the  
6 governor for review. The governor shall make an evaluation of the  
7 proposal which shall include, but not be limited to, an analysis of the  
8 balance of benefits and costs to Alaska, including environmental and  
9 social costs, and the ability of the project to generate sufficient  
10 revenues to be self-supporting. The governor shall submit the results  
11 of the evaluation, his recommendations, if any, and a statement as to  
12 whether the project is consistent with the long-term plan to the legis-  
13 lature.

14 \* Sec. 19. AS 44.56.210 is repealed and re-enacted to read:

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

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

23 \* Sec. 20. AS 44.56 is amended by adding a new section to read:

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

1 must include, but is not limited to, considerations specified in sec.  
2 180(e) of this chapter. The plan and any revision of it shall be sub-  
3 mitted to the governor for his approval and shall be reviewed by all  
4 appropriate state agencies. After approval by the governor the plan  
5 shall be submitted to the legislature.

6 \* Sec. 21. AS 44.56.230(4) is amended to read:

7 (4) "power project" or "project" means a plant, works, sys-  
8 tem, facility, water rights, fuel deposits or sources, and real estate  
9 and personal property of any nature whatsoever, together with all faci-  
10 lities and appurtenances related to them or necessary for the purposes  
11 of them used or useful in power production limited to fossil fuel, wind  
12 power, tidal, geothermal, hydroelectric, or solar energy production and  
13 waste energy conservation [THE GENERATION BY MEANS OF WATER OR FOSSIL  
14 FUEL OF ELECTRIC POWER] and the [PRODUCTION,] transmission, purchase,  
15 sale, exchange and interchange of [ELECTRIC] power, and shall include  
16 any interest in them, whether divided or undivided, or any right to the  
17 capacity of them; [.]

18 \* Sec. 22. AS 44.56.230 is amended by adding new paragraphs to read:

19 (6) "person" includes a public agency in addition to the en-  
20 tities set out in AS 01.10.060(7);

21 (7) "reconnaissance study" means a study conducted for the  
22 purpose of establishing, with reasonable certainty, the economic merit  
23 of developing a certain project and includes, without relying on costly  
24 data collection, an environmental assessment so as to insure that no  
25 adverse environmental impacts exist of such magnitude as to render the  
26 project inadvisable, an assessment of a community's present economy and  
27 power needs, an estimate of the community's future economy and power  
28 needs, a determination of alternative energy costs, and an estimate of  
29 the project cost.

1           \* Sec. 23. AS 44.56.050 is repealed.

2           \* Sec. 24. The requirements of AS 44.56.180(e), enacted in sec. 18 of  
3 this Act, do not apply to any project which the authority has determined to  
4 finance and in which it will not maintain an ownership interest upon comple-  
5 tion and for which the Tenth Legislature has adopted a joint resolution of  
6 approval.

7           \* Sec. 25. This Act takes effect immediately in accordance with AS 01.-  
8 10.070(c).

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