

Original sponsor: Rules Committee by
request of the Governor

Offered: 6/16/78
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 442

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 AS 44.56.030 is repealed and re-enacted to read: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 of the
2 authority is subject to the provisions of AS 39.25.

3 * Sec. 5. AS 44.56.070 is amended to read:

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

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

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

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

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

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

25 (8) to accept gifts, grants or loans from, and enter into
26 contracts or other transactions regarding them, with any person [A
27 FEDERAL AGENCY OR AN AGENCY OR INSTRUMENTALITY OF THE STATE, MUNICIPA-
28 LITY, PRIVATE ORGANIZATION OR OTHER SOURCE];

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

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

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

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

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

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

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

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

1 the full cost of the electricity or services, including capital and
2 operating costs, debt coverage as considered appropriate by the autho-
3 rity, and other charges that may be authorized by this chapter. A
4 contract for the sale, transmission and distribution of power generated
5 by a project or any right to the capacity of it shall provide:

6 (1) for payment of all operating and maintenance expenses of
7 a project and costs of renewals, replacements and improvements of it;

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

12 (3) for monitoring of the project by the authority or its
13 agents;

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

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

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

24 (7) for security for performance as the authority may consider
25 practicable and advisable, including provisions assuring the continuance
26 of the distribution and transmission of power generated by a project and
27 the use of its facilities for these purposes; and

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

1 (b) The authority is not subject to the jurisdiction of the Alaska
2 Public Utilities Commission. Nothing in this chapter grants the autho-
3 rity any jurisdiction over the services or rates of any public utility
4 or diminishes or otherwise alters the jurisdiction of the Alaska Public
5 Utilities Commission with respect to any public utility, including any
6 right the commission may have to review and approve or disapprove con-
7 tracts for the purchase of electricity by a public utility.

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

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

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

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

19 (C) the assignment by the authority of its rights in
20 contracts with respect to a project or to generated power or in a
21 mortgage or other security interest created with respect to a
22 project or generated power to a trustee for the benefit of bond-
23 holders;

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

26 (E) the vesting in a trustee of rights, powers, duties,
27 funds or property in trust for the benefit of bondholders, in-
28 cluding, without limitation, the right to enforce payment, perfor-
29 mance, and all other rights of the authority or of the bondholders,

1 under a lease, power of contract, contract of sale, mortgage,
2 security agreement, or trust agreement with respect to a project by
3 injunction [MANDAMUS] or other proceeding or by taking possession
4 of by agent or otherwise and operating a project and collecting
5 rents or other consideration and applying the same in accordance
6 with the trust agreement;

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

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

20 * Sec. 15. AS 44.56.150 is amended to read:

21 Sec. 44.56.150. TAX EXEMPTION. All property of the authority is
22 public property devoted to an essential public and governmental function
23 and purpose and is exempt from all taxes of the state or a political
24 subdivision of the state; however, the authority may make payments in
25 place of taxes in amounts equal to the real and personal property taxes
26 which would be assessed on its real and personal property by each poli-
27 tical subdivision in which its property is located to the same extent as
28 if that property were private property and the authority were a non-
29 public corporation. All bonds issued under this chapter are issued by a
body corporate and public of this state and for an essential public and

1 governmental purpose and the bonds and the interest and income on and
2 from the bonds and all income of the authority are exempt from taxation
3 except for transfer, inheritance and estate taxes.

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

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

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

14 (1) feasibility studies, preconstruction engineering, and
15 design of any power projects;

16 (2) constructing, equipping, modifying, and expanding small-
17 scale power production facilities or conservation facilities, limited to
18 fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar
19 energy production and waste energy conservation facilities; and

20 (3) reconnaissance studies, preconstruction engineering,
21 design, construction, equipping, modification, and expansion of potable
22 water supply including surface storage and groundwater sources and
23 transmission of water from surface storage to existing distribution
24 systems.

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

29 (1) criteria regarding the eligibility of borrowers and of

1 types of projects;

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

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

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

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

10 (e) Repayment of the loans shall be secured in such manner as the
11 authority determines is feasible to assure prompt repayment under a loan
12 agreement entered into with the borrower. The authority may forgive re-
13 payment of loans made for reconnaissance studies if the study shows that
14 a project is not feasible. Under a loan agreement, repayment may be
15 deferred for 10 years or until the project for which the loan is made
16 has achieved earnings from its operations sufficient to pay the loan,
17 whichever is earlier.

18 (f) Projects for which loans are outstanding from the water re-
19 sources revolving loan fund (AS 45.86) on the effective date of this Act
20 may receive additional funding from the power project revolving loan
21 fund for a term not exceeding 50 years and at an interest rate of not
22 less than three nor more than five per cent a year on the unpaid balance.
23 Repayment of loan principal and interest shall commence on the date of
24 commercial operation of the project funded by the loan or 10 years from
25 the date the loan is granted, whichever is earlier.

26 * Sec. 17. AS 44.56.180 is amended to read:

27 Sec. 44.56.180. ASSESSMENT, PROPOSAL, AND CONSTRUCTION OF PRO-
28 JECTS. (a) The authority shall, for each new project, determine the
29 most appropriate means by which to finance a project which may include,

1 but is not limited to,

2 (1) the issuance of revenue bonds;

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

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

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

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

20 (c) The authority shall submit a statement outlining the general
21 design, demonstration of financial feasibility, and maximum amount of
22 bonds and appropriations estimated to be necessary for each new project
23 to the governor and the legislature [AND THE COMMISSIONER OF COMMERCE
24 AND ECONOMIC DEVELOPMENT], together with a statement that the authority
25 intends to design, acquire, [AND] construct or finance the project
26 itself or that it intends that the project be designed, acquired, [OR]
27 constructed or financed by the United States or another person under
28 agreement with the authority which may provide [PROVIDING] for ownership
29 of all or a portion of the project by the authority or of a right to the

1 capacity of it. If the legislature adopts a joint resolution approving
2 the general design and maximum amount of bonds, the authority shall, in
3 accordance with the terms of the joint resolution, (1) proceed to de-
4 sign, acquire and construct the new project, or (2) agree with the
5 United States or other person for design, acquisition and construction
6 of the project by the United States, for payments to the United States
7 or other person for such design, acquisition and construction, reim-
8 bursement by the United States or other person in certain events, and
9 otherwise on the terms and conditions as may be set out in such agree-
10 ment.

11 (d) If the new project is to be designed, acquired and constructed
12 by the authority, it shall be designed, acquired and constructed as a
13 public work of the state [EXCEPT THAT PUBLIC BIDDING SHALL NOT BE RE-
14 QUIRED, IF THE AUTHORITY SO DETERMINES ON PROJECTS IN EXCESS OF
15 \$50,000,000]. For the purpose of this section a new project does not
16 include (1) an addition or modification to an existing project if the
17 total cost of the addition or modification does not exceed \$1,000,000;
18 (2) [, TO] any repair or reconstruction of a project; [,] or (3) [TO]
19 any design, acquisition or construction necessary to complete a project
20 for which bonds previously authorized by the legislature have been
21 issued. Any such addition, modification, repair, reconstruction, de-
22 sign, acquisition or construction may be undertaken by the authority
23 without any of the approvals necessary for a new project.

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

25 (e) Any power project proposal requiring approval by the legis-
26 lature under this chapter, except on projects with a complete reconnais-
27 sance study on the effective date of this Act, together with supporting
28 data, analyses, and findings of the authority, shall be submitted to the
29 governor for review. The governor shall make an evaluation of the

1 proposal which shall include, but not be limited to, an analysis of the
2 balance of benefits and costs to Alaska, including environmental and
3 social costs, and the ability of the project to generate sufficient
4 revenues to be self-supporting. The governor shall submit the results
5 of the evaluation, his recommendations, if any, and a statement as to
6 whether the project is consistent with the long-term plan to the legis-
7 lature.

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

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

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

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

18 Sec. 44.56.224. LONG-TERM PLAN. The Department of Commerce and
19 Economic Development, assisted by the authority, shall prepare, after
20 public hearings, and, as appropriate, revise a long-term electrical
21 power development plan for meeting projected electrical energy demand in
22 Alaska at the lowest reasonable cost, including environmental and social
23 costs, consistent with acceptable standards of reliability. The plan
24 must include, but is not limited to, considerations specified in sec.
25 180(e) of this chapter. The plan and any revision of it shall be sub-
26 mitted to the governor for his approval and shall be reviewed by all
27 appropriate state agencies. After approval by the governor the plan
28 shall be submitted to the legislature.

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

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

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

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

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

24 * Sec. 23. AS 44.56.050 is repealed.

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

1 * Sec. 25. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29