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Referred: Resources and
Finance

1 IN THE SENATE

BY STIMSON

2 SENATE BILL NO. 332

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

9 * Section 1. AS 44.83.010 is amended to read:

10 Sec. 44.83.010. LEGISLATIVE FINDING AND POLICY. (a) The legis-
11 lature finds, determines and declares that

12 (1) there exist numerous potential hydroelectric and fossil
13 fuel gathering sites in the state;

14 (2) the establishment of energy [POWER] projects at these
15 sites is necessary to supply energy [POWER] at the lowest reasonable
16 cost to the state's municipal electric, rural electric, cooperative
17 electric, and private electric utilities, and regional electric authori-
18 ties, and thereby to the consumers of the state, as well as to supply
19 existing or future industrial needs;

20 (3) the achievement of the goals of lowest reasonable con-
21 sumer energy [POWER] costs and beneficial long-term economic growth and
22 of establishing, operating and developing energy [POWER] projects in
23 the state will be accelerated and facilitated by the creation of an
24 instrumentality of the state with powers to construct, acquire, finance,
25 and operate energy [POWER] projects.

26 (b) It is declared to be the policy of the state, in the interests
27 of promoting the general welfare of all the people of the state, and
28 public purposes, to reduce consumer energy [POWER] costs and otherwise
29 to encourage the long-term economic growth of the state, including the

1 development of its natural resources, through the establishment of
2 energy [POWER] projects by creating the public corporation with powers,
3 duties and functions as provided in this chapter.

4 * Sec. 2. AS 44.83.070 is amended to read:

5 Sec. 44.83.070. 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 energy [POWER] production
9 facilities limited to fossil fuel, wind power, tidal, geothermal,
10 hydroelectric, or solar energy production and [WASTE] energy conserva-
11 tion facilities.

12 * Sec. 3. AS 44.83.080(5) is amended to read:

13 (5) to acquire, whether by construction, purchase, gift or
14 lease, and to improve, equip, operate, and maintain energy [POWER]
15 projects;

16 * Sec. 4. AS 44.83.080(10) is amended to read:

17 (10) to enter into contracts with the United States or any
18 person and, subject to the laws of the United States and subject to
19 concurrence of the legislature, with a foreign country or its agencies,
20 for the financing, construction, acquisition, operation and maintenance
21 of all or any part of an energy [A POWER] project, either inside or
22 outside the state, and for the sale or transmission of energy [POWER]
23 from a project or any right to the capacity of it or for the security
24 of any bonds of the authority issued or to be issued for the project;

25 * Sec. 5. AS 44.83.080(11) is amended to read:

26 (11) to enter into contracts with any person and with the
27 United States, and, subject to the laws of the United States and subject
28 to the concurrence of the legislature, with a foreign country or its
29 agencies for the purchase, sale, exchange, transmission, or use of

1 energy [POWER] from a project, or any right to the capacity of it;

2 * Sec. 6. AS 44.83.080(12) is amended to read:

3 (12) to apply to the appropriate agencies of the state, the
4 United States and to a foreign country and any other proper agency for
5 the permits, licenses, or approvals as may be necessary, and to con-
6 struct, maintain and operate energy [POWER] projects in accordance with
7 the licenses or permits, and to obtain, hold and use the license and
8 permits in the same manner as any other person or operating unit;

9 * Sec. 7. AS 44.83.080(13) is amended to read:

10 (13) to perform reconnaissance studies, feasibility studies,
11 and engineering and design with respect to energy [POWER] projects;

12 * Sec. 8. AS 44.83.080(16) is amended to read:

13 (16) to recommend to the legislature

14 (A) the issuance of general obligation bonds of the
15 state to finance the construction of an energy [A POWER] project
16 if the authority first determines that the project cannot be
17 financed by revenue bonds of the authority at reasonable rates of
18 interest;

19 (B) the pledge of the credit of the state to guarantee
20 repayment of all or any portion of revenue bonds issued to assist
21 in construction of energy [POWER] projects;

22 (C) an appropriation from the general fund

23 (i) for debt service on bonds or other project
24 purposes; or

25 (ii) to reduce the amount of debt financing for the
26 project;

27 (D) an appropriation to the energy [POWER] project fund
28 for a power project;

29 (E) an appropriation of a part of the income of the

1 renewable resources investment fund for an energy [A POWER] pro-
2 ject;

3 (F) development of a project under financing arrange-
4 ments with other entities using leveraged leases or other financing
5 methods.

6 * Sec. 9. AS 44.83.090 is amended to read:

7 Sec. 44.83.090. ENERGY [POWER] CONTRACTS AND THE ALASKA PUBLIC
8 UTILITIES COMMISSION. (a) The authority shall, in addition to the
9 other methods which it may find advantageous, provide a method by which
10 municipal electric, rural electric, cooperative electric, or private
11 electric utilities and regional electric authorities, or other persons
12 authorized by law to engage in the distribution of energy [ELECTRICITY]
13 may secure a reasonable share of the energy [POWER] generated by a
14 project, or any interest in a project, or for any right to the energy
15 [POWER] and shall sell the energy [POWER] or cause the energy [POWER]
16 to be sold at the lowest reasonable prices which cover the full cost of
17 the energy [ELECTRICITY] or services, including capital and operating
18 costs, debt coverage as considered appropriate by the authority, and
19 other charges that may be authorized by this chapter. A contract for
20 the sale, transmission and distribution of energy [POWER] generated by
21 a project or any right to the capacity of it shall provide:

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

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

28 (3) for monitoring of the project by the authority or its
29 agents;

1 (4) for full and complete disclosure to the authority of all
2 factors of cost in the transmission and distribution of energy [POWER],
3 so that rates to any persons may be fixed initially in the contract and
4 may be adjusted from time to time on the basis of true cost data;

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

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

11 (7) for security for performance as the authority may con-
12 sider practicable and advisable, including provisions assuring the
13 continuance of the distribution and transmission of energy [POWER]
14 generated by a project and the use of its facilities for these purposes;
15 and

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

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

26 * Sec. 10. AS 44.83.110(a)(1)(B) is amended to read:

27 (B) the fixing and collection of rentals, charges, fees
28 or other consideration for, and the other terms to be incorporated
29 in, contracts with respect to a project or to energy [GENERATED

1 POWER];

2 * Sec. 11. AS 44.83.110(a)(1)(C) is amended to read:

3 (C) the assignment by the authority of its rights in
4 contracts with respect to a project or to energy [GENERATED POWER]
5 or in a mortgage or other security interest created with respect
6 to a project or energy [GENERATED POWER] to a trustee for the
7 benefit of bondholders;

8 * Sec. 12. AS 44.83.110(b) is amended to read:

9 (b) Notwithstanding any other provisions of this chapter, the
10 trust agreement shall contain a covenant by the authority that it will
11 at all times maintain rates, fees or charges sufficient to pay, and
12 that a contract entered into by the authority for the sale, transmission
13 or distribution of energy [POWER] shall contain rates, fees or charges
14 sufficient to pay the costs of operation and maintenance of the project,
15 the principal of and interest on bonds issued under the trust agreement
16 as the same severally become due and payable, to provide for debt
17 service coverage as considered necessary by the authority for the
18 marketing of its bonds and to provide for renewals, replacements and
19 improvements of the project, and to maintain reserves required by the
20 terms of the trust agreement.

21 * Sec. 13. AS 44.83.170 is amended to read:

22 Sec. 44.83.170. ENERGY [POWER] PROJECT FUND. (a) There is
23 established as a separate fund the energy [POWER] project fund which
24 shall be distinct from any other money or funds of the authority, and
25 which includes only money appropriated by the legislature.

26 (b) The authority may make loans from the energy [POWER] project
27 fund

28 (1) to electric utilities, regional electric authorities,
29 municipalities, cities, boroughs, regional and village corporations,

1 village councils, and nonprofit marketing cooperatives to pay the costs
2 of

3 (A) reconnaissance studies, feasibility studies, license
4 and permit applications, preconstruction engineering, and design
5 of energy [POWER] projects;

6 (B) constructing, equipping, modifying, improving, and
7 expanding small-scale energy [POWER] production facilities, conser-
8 vation facilities, bulk fuel storage facilities, and transmission
9 and distribution facilities, including energy production, transmis-
10 sion and distribution, and [WASTE] energy conservation facilities
11 which depend on fossil fuel, wind power, tidal, geothermal, bio-
12 mass, hydroelectric, solar or other non-nuclear energy sources;
13 and

14 (C) reconnaissance studies, preconstruction engineering,
15 design, construction, equipping, modification, and expansion of
16 potable water supply including surface storage and groundwater
17 sources and transmission of water from surface storage to existing
18 distribution systems;

19 (2) to a borrower for an energy [A POWER] project if

20 (A) the loan is entered into under a leveraged lease
21 financing arrangement;

22 (B) the party which will be responsible for the energy
23 [POWER] project is an electric utility, regional electric author-
24 ity, municipality, city, borough, regional or village corporation,
25 village council, or nonprofit marketing cooperative; and

26 (C) the borrower seeking the loan demonstrates to the
27 authority that the financing arrangement for the energy [POWER]
28 project will reduce project financing costs below costs of compar-
29 able public energy [POWER] projects.

1 (c) Before making a loan from the energy [POWER] project fund,
2 the authority shall, by regulation, specify

3 (1) standards for the eligibility of borrowers and the types
4 of projects to be financed with loans;

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

7 (3) collateral or other security required for loans;

8 (4) the terms and conditions of loans;

9 (5) criteria to establish financial feasibility and to
10 measure the amount of state assistance necessary for particular projects
11 to meet the financial feasibility criteria; and

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

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

16 (e) Repayment of the loans shall be secured in any manner which
17 the authority determines is feasible to assure prompt repayment under a
18 loan agreement entered into with the borrower. The authority may make
19 an unsecured loan from the energy [POWER] project fund to a borrower
20 regulated by the Alaska Public Utilities Commission under AS 42.05 if
21 the borrower has a substantial history of repaying long-term loans and
22 the capacity to repay the loan. Under a loan agreement, repayment may
23 be deferred for 10 years or until the project for which the loan is
24 made has achieved earnings from its operations sufficient to pay the
25 loan, whichever is earlier.

26 (f) Energy [POWER] projects are subject to the following limita-
27 tions on interest and specific restrictions:

28 (1) Energy [POWER] projects for which loans are outstanding
29 from the water resources revolving loan fund (AS 45.86) on July 13,

1 1978, may receive additional financing from the energy [POWER] project
2 fund; the additional financing, if granted,

3 (A) shall be granted for a term not exceeding 50 years;

4 (B) shall be granted at an interest rate of not less
5 than three or more than five percent a year on the unpaid balance;

6 (C) shall be conditioned on the repayment of loan
7 principal and interest to begin on the earlier of

8 (i) the date of the start of commercial operation
9 of the project; or

10 (ii) 10 years from the date the loan is granted.

11 (2) Loans for energy [POWER] projects

12 (A) shall be granted for a term not to exceed 50 years;

13 and

14 (B) shall be granted at an interest rate which is not
15 less than five percent and which is the lesser of

16 (i) a rate equal to the percentage which is the
17 average weekly yield of municipal bonds for the 12 months
18 preceding the date of the loan, as determined by the authority
19 from municipal bond yield rates reported in the 30-year
20 revenue bond index of the Weekly Bond Buyer; or

21 (ii) a rate determined by the authority which
22 allows the project to meet criteria of financial feasibility
23 established under AS 44.83.170(c).

24 (g) Loan repayments and interest earned by loans from the energy
25 [POWER] project fund shall be deposited in the state general fund.

26 (h) The legislature may forgive the repayment of a loan made from
27 the energy [POWER] project fund for a reconnaissance study or a feasi-
28 bility study when the authority finds that the energy [POWER] project
29 for which the loan was made is not feasible.

1 * Sec. 14. AS 44.83.177(a) is amended to read:

2 (a) To identify energy [POWER] project alternatives for a com-
3 munity or region, the authority shall, after consultation with other
4 state agencies and after review of information on alternative sources
5 of energy [POWER], complete a reconnaissance study for each proposed
6 new energy [POWER] project.

7 * Sec. 15. AS 44.83.177(b) is repealed and reenacted to read:

8 (b) A reconnaissance study shall

9 (1) identify the present and anticipated electrical and
10 thermal energy requirements of a community or region;

11 (2) survey all electrical and thermal energy sources avail-
12 able to the community or region and evaluate the relative economic
13 merits of alternative sources of power and heat, including energy
14 conservation;

15 (3) assess the effect of development of alternative sources
16 of power and heat on the environment so as to assure that there is no
17 adverse effect to the environment which would make the project inadvis-
18 able; and

19 (4) include public comment from residents of the community
20 and adjacent area.

21 * Sec. 16. AS 44.83.177(c)(2) is amended to read:

22 (2) standard criteria and measures for comparative analysis
23 of alternative energy [POWER] sources.

24 * Sec. 17. AS 44.83.179(c) is amended to read:

25 (c) For purposes of this section, an energy [A POWER] project is
26 approved if the reconnaissance study for the project has not been
27 disapproved by the division of budget and management within 30 days of
28 submission of the reconnaissance study for the project to it by the
29 authority.

1 * Sec. 18. AS 44.83.181(c)(7) is amended to read:

2 (7) a loan from the energy [POWER] project fund (AS 44.83.-
3 170(a)), or from the renewable resources investment fund (AS 37.11.-
4 050); or

5 * Sec. 19. AS 44.83.187(a)(1) is amended to read:

6 (1) requires an appropriation from the state general fund,
7 from the energy [POWER] project fund, or from the renewable resources
8 funds; or

9 * Sec. 20. AS 44.83.195 is amended to read:

10 Sec. 44.83.195. OPERATION OF PROJECTS. (a) When a project is
11 operated by the authority, the authority shall enter into one or more
12 contracts for the sale of electrical energy [POWER] from the project.
13 A contract entered into under this section shall meet all requirements
14 of AS 44.83.090.

15 (b) If, at the expiration of a contract entered into by the
16 authority under (a) of this section, revenues earned by the authority
17 under the contract exceed expenses of the authority for the project, an
18 amount equal to the excess shall be used by the authority to reduce
19 rates or improve services to consumers served by the energy [POWER]
20 project.

21 * Sec. 21. AS 44.83.230(4) is repealed and reenacted to read:

22 (4) "energy project" or "project" means a plant, works,
23 system, facility, water right, fuel deposit or source, and the real and
24 personal property including any interest in them or any right to the
25 capacity of them, necessary for the purposes of them, used or useful in

26 (A) electrical or thermal energy produced by fossil
27 fuel, wind power, tidal, geothermal, hydroelectric, solar energy,
28 or waste heat utilization;

29 (B) energy conservation; and

1 (C) the transmission, purchase, sale, exchange and
2 interchange of electrical or thermal energy;

3 * Sec. 22. AS 44.83.230(7) is amended to read:

4 (7) "reconnaissance study" means a study conducted for the
5 purpose of assessing the present and future electrical and thermal
6 energy [POWER] needs of an area under AS 44.83.177;

7 * Sec. 23. AS 44.83.230(8)(A) is amended to read:

8 (A) means a study conducted for the purpose of estab-
9 lishing the economic and environmental practicality of completing
10 a proposed energy [POWER] project under AS 44.83.181;

11 * Sec. 24. This Act takes effect immediately in accordance with AS 01.10.-
12 070(c).