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Referred: Labor & Commerce,
Resources and Finance

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2

HOUSE BILL NO. 386

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST 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 44.83.040 is amended to read:

10 Sec. 44.83.040. OFFICERS; MEETINGS; [AND] QUORUM. (a) The
11 directors shall elect one of their number as chairman and may elect
12 other officers they determine desirable. The powers of the authority
13 are vested in the directors, and four directors of the authority con-
14 stitute a quorum. Action may be taken and motions and resolutions
15 adopted by the authority at a meeting by the affirmative vote of a
16 majority of the [AT LEAST THREE] directors present. The directors of
17 the authority serve without compensation, but they shall receive the
18 same travel pay and per diem as provided by law for board members.

19 * Sec. 2. AS 44.83.040 is amended by adding new subsections to read:

20 (b) The board may meet and transact business by an electronic
21 medium if

22 (1) public notice of the time and locations where the meet-
23 ing will be held by an electronic medium has been given in the same
24 manner as if the meeting were held in a single location;

25 (2) participants and members of the public in attendance
26 can hear and have the same right to participate in the meeting as if
27 the meeting were conducted in person; and

28 (3) copies of pertinent reference materials, statutes, reg-
29 ulations, and audio-visual materials are reasonably available to

1 participants and to the public.

2 (c) A meeting by an electronic medium as provided in this sec-
3 tion has the same legal effect as a meeting in person.

4 (d) A director of the authority may not vote on a resolution of
5 the authority relating to a lease or contract to be entered into by
6 the authority under this chapter if the director is a party to the
7 lease or contract or has a direct ownership or equity interest in a
8 firm, partnership, corporation, or association that is a party to the
9 contract or lease. When abstaining from voting, the director must
10 disclose the reason for the abstention. A director who is a member of
11 an electric cooperative that is organized under or subject to the
12 Electric and Telephone Cooperative Act (AS 10.25) may vote on a reso-
13 lution relating to a contract or lease to which that cooperative is a
14 party. The director shall disclose the cooperative membership at the
15 time of voting. A resolution of the authority that is approved by a
16 majority of the directors present who are not barred from voting under
17 this subsection is a valid action of the authority for all purposes.

18 * Sec. 3. AS 44.83.105 is amended to read:

19 Sec. 44.83.105. BONDS FOR POWER PROJECTS UNDER THE ENERGY PRO-
20 GRAM FOR ALASKA. The authority may [SHALL] borrow money and [SHALL]
21 issue its bonds for the acquisition or construction of power projects
22 to be acquired or constructed under the energy program for Alaska.
23 The [ON WHICH THE] principal of and interest on the bonds are payable
24 from money derived from the sale of wholesale power from power proj-
25 ects financed under AS 44.83.380 - 44.83.425 from the power develop-
26 ment fund or from a source referred to in AS 44.83.100 as the author-
27 ity determines. The bonds may be issued if

28 (1) appropriations to the power development fund for the
29 power project are insufficient to cover the cost of acquiring or

1 constructing the power project; and

2 (2) the authority determines that the amount of interest
3 the authority will pay on its bonds is not more than alternative costs
4 of securing money from other sources, except for the general fund, to
5 pay for the acquisition or construction of the power project.

6 * Sec. 4. AS 44.83.110(b) is amended to read:

7 (b) Notwithstanding any other provisions of this chapter, the
8 trust indenture, trust agreement, secured loan agreement, or other
9 instrument or the resolution constituting a contract with bondholders
10 shall contain a covenant by the authority that it will at all times
11 maintain rates, fees or charges sufficient to pay, and that a contract
12 entered into by the authority for the sale, transmission or distribu-
13 tion of power shall contain rates, fees or charges sufficient to pay
14 the costs of operation and maintenance of the project, the principal
15 of and interest on bonds issued under the trust agreement as the same
16 severally become due and payable, to provide for debt service coverage
17 as considered necessary by the authority for the marketing of its
18 bonds and to provide for renewals, replacements and improvements of
19 the project, and to maintain reserves required by the terms of the
20 trust agreement. This subsection does not require a covenant that
21 varies from a covenant entered into in accordance with the provisions
22 of AS 44.83.380 - 44.83.425.

23 * Sec. 5. AS 44.83.120 is amended to read:

24 Sec. 44.83.120. VALIDITY OF PLEDGE. It is the intention of the
25 legislature that a pledge made in respect of bonds is considered
26 perfected and is [SHALL BE] valid and binding from the time the pledge
27 is made; that the money or property so pledged and thereafter received
28 by the authority shall immediately be subject to the lien of the
29 pledge without physical delivery or further act; and that the lien of

1 the pledge shall be valid and binding as against all parties having
2 claims of any kind in tort, contract or otherwise against the authori-
3 ty irrespective of whether the parties have notice. Neither the
4 resolution, trust agreement nor any other instrument by which a pledge
5 is created need be recorded or filed under the provisions of the
6 Uniform Commercial Code to be perfected or to be valid, binding or
7 effective against the parties.

8 * Sec. 6. AS 44.83.195(a) is amended to read:

9 (a) When a project is operated by the authority, the authority
10 shall enter into one or more contracts for the sale of electrical
11 power, energy, transmission capacity, or service from the project.
12 Unless the contract is entered into under AS 44.83.380 - 44.83.425, a
13 [A] contract entered into under this section shall meet all require-
14 ments of AS 44.83.090.

15 * Sec. 7. AS 44.83.361(a)(2) is amended to read:

16 (2) principal [AND INTEREST] payments on loans made under
17 this section.

18 * Sec. 8. AS 44.83.361(c) is amended to read:

19 (c) A loan from the rural electrification revolving loan fund
20 shall bear an annual rate of interest of two percent of the unpaid
21 balance of the loan. Interest received on a loan made under this sec-
22 tion must be transferred monthly to the commissioner of revenue for
23 deposit in the general fund.

24 * Sec. 9. AS 44.83.361(d)(2)(B) is amended to read:

25 (B) payments on the unpaid balance of the principal of
26 the loan for each new consumer served by the electric service
27 extended with the loan proceeds [DURING THE PRECEDING YEAR FOR
28 WHICH THE LOAN WAS MADE]; payments on the unpaid balance of the
29 principal of the loan shall be made at a rate equal to the

1 difference between the actual cost of making the service connec-
2 tion to the consumers and the minimum investment per consumer
3 required of the utility before a loan is made under (b) of this
4 section.

5 * Sec. 10. AS 44.83.361 is amended by adding a new subsection to read:

6 (f) In this section,

7 (1) "consumer" means a person, as defined in AS 01.10.-
8 060(7), or a governmental agency, if the person or governmental agency
9 requests and offers to pay for electrical service to a facility or
10 part of a facility; the authority shall consider a person who, or a
11 governmental agency that, offers to pay for electrical service to
12 several facilities to be a separate consumer for each facility, if
13 each facility is physically separate from another facility, other than
14 through electric service lines, and if the person or governmental
15 agency requests and offers to pay for electrical service to each
16 facility;

17 (2) "facility" means a structure capable of receiving and
18 using electrical energy; and

19 (3) "governmental agency" includes, with respect to the
20 state or federal government or a municipal government, a legislative
21 body, board of regents, administrative body, board, commission, com-
22 mittee, subcommittee, authority, council, agency, public corporation,
23 school board, department, division, bureau, or other subordinate unit,
24 whether advisory or otherwise, of the state, federal, or municipal
25 government.

26 * Sec. 11. AS 44.83.384(b)(1) is amended to read:

27 (1) is economically feasible [MEETS THE REVENUE REQUIRE-
28 MENTS OF AS 44.83.394]; and

29 * Sec. 12. AS 44.83.384(c) is amended to read:

1 (c) Notwithstanding (b)(1) of this section and AS 44.83.396 -
2 44.83.398 [AS 44.83.394 - 44.83.398], the fund may be used by the
3 authority to provide money for the cost of a power project that is or
4 was either constructed or [AND] owned by the United States government
5 if the requirements of this subsection are met. The provisions of
6 AS 44.83.177 - 44.83.187 do not apply to a power project financed
7 under this subsection. The authority may use money in the fund for
8 the cost of a power project under this subsection if

9 (1) the legislature enacts a law approving the project;

10 (2) the division of budget and management in the Office of
11 the Governor reviews a feasibility study and a plan of finance for the
12 project and determines that the feasibility study complies with the
13 requirements for a feasibility study submitted under AS 44.83.181(b)
14 and that the plan of finance complies with the requirements for a plan
15 of finance submitted under AS 44.83.181(c); and

16 (3) the project meets the other requirements of this chap-
17 ter.

18 * Sec. 13. AS 44.83.386 is amended to read:

19 Sec. 44.83.386. INVESTMENT OF FUND. The Department of Revenue
20 shall invest the money in the fund in accordance with AS 37.10.070 and
21 37.10.075. The Department of Revenue shall provide money in the fund
22 to the authority only after costs have been [A COST FOR A PROJECT IS]
23 incurred or amounts in the fund have been otherwise obligated under
24 contracts for the acquisition and construction of a project. Amounts
25 that have been obligated, but for which costs have not yet been incur-
26 red, may be segregated by the Department of Revenue or transferred to
27 the authority only with the prior approval or agreement of the commis-
28 sioner of revenue. Interest received on money that is segregated or
29 transferred under this section must be deposited in the general fund.

1 * Sec. 14. AS 44.83.396(a) is amended to read:

2 (a) A power project that is acquired or constructed as part of
3 the energy program for Alaska is owned, [BY THE STATE] and shall be
4 administered, by the authority.

5 * Sec. 15. AS 44.83.396(c) is amended to read:

6 (c) The authority shall enter into a contract or lease under
7 reasonable terms and conditions to permit the applicant utility to
8 operate the power project when the applicant utility is the only
9 wholesale power customer to be served directly by the power project
10 unless the authority determines a utility making application for a
11 contract or lease to operate a power project is not a qualified util-
12 ity or is not capable of operating that power project efficiently and
13 in a manner that is consistent with national standards for the indus-
14 try and with agreements with bondholders.

15 * Sec. 16. AS 44.83.396(e) is amended to read:

16 (e) When the authority permits a power project to be operated by
17 a qualified utility under a contract or lease, the authority shall

18 (1) review and approve the annual budget for the operation
19 and maintenance of the power project; and

20 (2) assure that the project is being operated efficiently
21 and in a manner that is consistent with national standards for the
22 industry and agreements with bondholders.

23 * Sec. 17. AS 44.83.398(c) is amended to read:

24 (c) The authority shall transmit all the money that it receives
25 under (a) of this section to the commissioner of revenue for deposit
26 in the state general fund except for money it has pledged or otherwise
27 covenanted to secure bonds [IN ACCORDANCE WITH CONTRACTS WITH BOND-
28 HOLDERS].

29 * Sec. 18. AS 44.83.398(e) is repealed and reenacted to read:

1 (e) After determining the wholesale power rate for a power pro-
2 ject under the provisions of this section, the authority may adjust
3 the rate or change the rate provisions to insure that the revenue
4 derived from that power project and the aggregate revenues of the
5 authority will be adequate to comply with rate covenants and other
6 agreements contained in any trust indenture or trust agreement entered
7 into by the authority for the security of the holders of bonds issued
8 to finance the power project.

9 * Sec. 19. AS 44.83.398(g) is amended to read:

10 (g) For the purposes of (b)(1)(B) [AND (b)(2)(B)(ii)] of this
11 section, a power project's proportionate share of debt service on
12 state loans and bonds for all power projects in the energy program for
13 Alaska is equal to the state's investment in the power project divided
14 by the state's investment in all power projects in the energy program
15 for Alaska and multiplied by the debt service on state loans and bonds
16 for all power projects in the energy program for Alaska. In this
17 subsection

18 (1) "state's investment in the power project" includes all
19 state money invested in a power project, including loans, grants, and
20 proceeds from bonds, less the principal repayments on the project's
21 proportionate share of debt service on state loans and bonds;

22 (2) "state's investment in all power projects in the energy
23 program for Alaska" includes all state money invested in the power
24 projects, other than interties, in the energy program for Alaska,
25 including loans, grants, and proceeds from bonds, less the principal
26 repayments on bonds and state loans issued for the power projects.

27 * Sec. 20. AS 44.83.398(h) is amended to read:

28 (h) Notwithstanding (g) of this section, in the 1983 state fis-
29 cal year the proportionate share of debt service under (b) of this

1 section, expressed as a rate, for a power project for which a con-
2 struction contract has been awarded before the effective date of this
3 Act may not exceed the average debt service component of the wholesale
4 power rate for all power projects in the energy program for Alaska.
5 The limit imposed by this subsection shall be increased in the 1984
6 state fiscal year to four percent above the average debt service com-
7 ponent of the wholesale power rate for all power projects in the
8 energy program for Alaska and by an additional four percent above that
9 average in each succeeding state fiscal year. If application of this
10 subsection results in the production of insufficient revenue to pay
11 the total debt service for all projects in the energy program for
12 Alaska, a project that does not have its share of debt service limited
13 under this subsection shall be subject to a rate in addition to the
14 rate established under (b) of this section. The additional rate is
15 the rate that the authority estimates is necessary to produce revenue
16 that is sufficient to pay the difference between the total debt ser-
17 vice for all projects in the energy program for Alaska and the revenue
18 actually produced to pay that debt service, multiplied by a fraction
19 whose numerator is the total cost of the project and whose denominator
20 is the total cost of all of the projects that are subject to the
21 additional rate. In this subsection, "projects in the energy program
22 for Alaska" does not include an intertie that is authorized as a
23 separate project as described in (f) of this section.

24 * Sec. 21. AS 44.83.425(2) is amended to read:

25 (2) "debt service" means the amounts covenanted with re-
26 spect to, or pledged to pay, bonds under a trust agreement securing
27 [CASH FLOW NECESSARY TO SECURE] bonds;

28 * Sec. 22. AS 44.83.186, 44.83.195(b), 44.83.382(b)(2), 44.83.394 and
29 44.83.398(b)(2) are repealed.

1 * Sec. 23. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).