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Referred: Resources, State Affairs
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 168

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. The directors
11 shall elect one of their number as chairman and may elect other offi-
12 cers they determine desirable. The powers of the authority are vested
13 in the directors, and four directors of the authority constitute a
14 quorum. Action may be taken and motions and resolutions adopted by
15 the authority at a meeting by the affirmative vote of a majority of
16 the [AT LEAST THREE] directors present. The directors of the authori-
17 ty serve without compensation, but they shall receive the same travel
18 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 resolution of the authority
11 that is approved by a majority of the directors present who are not
12 barred from voting under this subsection is a valid action of the
13 authority for all purposes.

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

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

24 (1) appropriations to the power development fund for the
25 power project are insufficient to cover the cost of acquiring or con-
26 structing the power project; and

27 (2) the authority determines that the amount of interest
28 the authority will pay on its bonds is not more than alternative costs
29 of securing money from other sources, except for the general fund, to

1 pay for the acquisition or construction of the power project.

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

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

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

20 Sec. 44.83.120. VALIDITY OF PLEDGE. It is the intention of the
21 legislature that a pledge made in respect of bonds is considered
22 perfected and is [SHALL BE] valid and binding from the time the pledge
23 is made; that the money or property so pledged and thereafter received
24 by the authority shall immediately be subject to the lien of the
25 pledge without physical delivery or further act; and that the lien of
26 the pledge shall be valid and binding as against all parties having
27 claims of any kind in tort, contract or otherwise against the authori-
28 ty irrespective of whether the parties have notice. Neither the
29 resolution, trust agreement nor any other instrument by which a pledge

1 is created need be recorded or filed under the provisions of the
2 Uniform Commercial Code to be perfected or to be valid, binding or
3 effective against the parties.

4 * Sec. 6. AS 44.83.185(a) is amended to read:

5 (a) The authority shall submit a feasibility study and plan of
6 finance, including a cost estimate from an independent source, for a
7 proposed new project to the legislature. When the report of the divi-
8 sion of budget and management examining the feasibility study and plan
9 of finance is completed as required by AS 44.83.183, it shall be sub-
10 mitted to the legislature.

11 * Sec. 7. AS 44.83.195(a) is amended to read:

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

18 * Sec. 8. AS 44.83.361(a)(2) is amended to read:

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

21 * Sec. 9. AS 44.83.361(c) is amended to read:

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

27 * Sec. 10. AS 44.83.361(d)(2)(B) is amended to read:

28 (B) payments on the unpaid balance of the principal of
29 the loan for each new consumer served by the electric service

1 extended with the loan proceeds [DURING THE PRECEDING YEAR FOR
2 WHICH THE LOAN WAS MADE]; payments on the unpaid balance of the
3 principal of the loan shall be made at a rate equal to the dif-
4 ference between the actual cost of making the service connection
5 to the consumers and the minimum investment per consumer required
6 of the utility before a loan is made under (b) of this section.

7 * Sec. 11. AS 44.83.361 is amended by adding new subsections to read:

8 (f) In this section, "consumer" means a person, as defined in
9 AS 01.10.060(7), or a governmental agency if the person or government-
10 al agency requests and offers to pay for electrical service to a fa-
11 cility or part of a facility. The authority shall consider a person
12 or governmental agency which offers to pay for electrical service to
13 several facilities to be a separate consumer, as defined in this sec-
14 tion, for each facility if each facility is physically separate from
15 another facility, other than through electric service lines, and if
16 the person or governmental agency requests and offers to pay for elec-
17 trical service to each facility.

18 (g) In (f) of this section,

19 (1) "facility" means a structure capable of receiving and
20 using electrical energy;

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

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

29 (c) Notwithstanding (b)(1) of this section and AS 44.83.394 --

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

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

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

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

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

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

1 * Sec. 14. AS 44.83.394 is amended to read:

2 Sec. 44.83.394. REVENUE REQUIREMENTS. The authority may not use
3 money in the fund for a power project except in compliance with
4 AS 44.83.177 -- 44.83.187, and unless the authority determines that
5 the power project is economically feasible [AND THAT, AFTER CONSTRUC-
6 TION, OPERATION OF THE POWER PROJECT WILL BE ABLE TO PROVIDE REVENUE
7 SUFFICIENT TO RETURN ANNUALLY TO THE STATE FIVE PERCENT OF THE AMOUNT
8 THAT THE AUTHORITY HAS SPENT FROM THE FUND FOR THE POWER PROJECT].

9 * Sec. 15. AS 44.83.396(a) is amended to read:

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

13 * Sec. 16. AS 44.83.396(c) is amended to read:

14 (c) The authority shall enter into a contract or lease under
15 reasonable terms and conditions to permit the applicant utility to
16 operate the power project when the applicant utility is the only
17 wholesale power customer to be served directly by the power project
18 unless the authority determines a utility making application for a
19 contract or lease to operate a power project is not a qualified util-
20 ity or is not capable of operating that power project efficiently and
21 in a manner that is consistent with national standards for the indus-
22 try and agreements with bondholders.

23 * Sec. 17. AS 44.83.396(e) is amended to read:

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

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

28 (2) assure that the project is being operated efficiently
29 an' in a manner that is consistent with national standards for the

1 industry and agreements with bondholders.

2 * Sec. 18. AS 44.83.398(c) is amended to read:

3 (c) The authority shall transmit all the money that it receives
4 under (a) of this section to the commissioner of revenue for deposit
5 in the state general fund except for money it has pledged to secure
6 bonds or covenanted otherwise in order to secure bonds [IN ACCORDANCE
7 WITH CONTRACTS WITH BONDHOLDERS].

8 * Sec. 19. AS 44.83.398(e) is repealed and reenacted to read:

9 (e) After determining the wholesale power rate for a power proj-
10 ect in the manner otherwise provided by this section, the authority
11 may adjust the rate or change the rate provisions if necessary so that
12 the revenue derived from that power project and the aggregate revenues
13 of the authority will at all times be adequate to comply with the rate
14 covenants and other agreements contained in any trust indenture or
15 trust agreement entered into by the authority for the security of the
16 holders of bonds issued to finance power projects under the energy
17 program for Alaska.

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

19 (h) Notwithstanding (g) of this section, in the 1983 state fis-
20 cal year the proportionate share of debt service under (b) of this
21 section, expressed as a rate, for a power project for which a con-
22 struction contract has been awarded before the effective date of this
23 Act may not exceed the average debt service component of the wholesale
24 power rate for all power projects in the energy program for Alaska.
25 The limit imposed by this subsection shall be increased in the 1984
26 state fiscal year to four percent above the average debt service com-
27 ponent of the wholesale power rate for all power projects in the
28 energy program for Alaska and by an additional four percent above that
29 average in each succeeding state fiscal year. If application of this

1 subsection results in the production of insufficient revenue to pay
2 the total debt service for all projects in the energy program for
3 Alaska, a project that does not have its share of debt service limited
4 under this subsection shall be subject to a rate in addition to the
5 rate established under (b) of this section. The additional rate is
6 the rate that the authority estimates is necessary to produce revenue
7 that is sufficient to pay the difference between the total debt ser-
8 vice for all projects in the energy program for Alaska and the revenue
9 actually produced to pay that debt service, multiplied by a fraction
10 whose numerator is the total cost of the project and whose denominator
11 is the total cost of all of the projects that are subject to the
12 additional rate. In this subsection, "projects in the energy program
13 for Alaska" does not include an intertie that is authorized as a
14 separate project as described in (f) of this section.

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

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

19 * Sec. 22. AS 44.83.195(b), 44.83.382(b)(2), and 44.83.398(b)(2) are
20 repealed.

21 * Sec. 23. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).