

Offered: 6/20/83
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 168 (Resources)
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. The directors of the authority serve
17 without compensation, but they shall receive the same travel pay and
18 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 44.83.185(a) is amended to read:

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

15 * Sec. 7. AS 44.83 is amended by adding a new section to read:

16 Sec. 44.83.192. INSURANCE REQUIREMENTS IN CONSTRUCTION CON-
17 TRACTS. In requesting bids and awarding construction contracts under
18 this chapter the authority may not require a contractor to obtain
19 workers' compensation, general liability, or other required insurance
20 from a particular insurer, agent, or broker and may not agree to
21 provide insurance to a contractor who is awarded a construction con-
22 tract.

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

24 (a) When a project is operated by the authority, the authority
25 shall enter into one or more contracts for the sale of electrical
26 power, energy, transmission capacity, or service from the project.
27 Unless the contract is entered into under AS 44.83.380 - 44.83.425, a
28 [A] contract entered into under this section shall meet all require-
29 ments of AS 44.83.090.

1 * Sec. 9. AS 44.83.361(a)(2) is amended to read:

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

4 * Sec. 10. AS 44.83.361(c) is amended to read:

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

10 * Sec. 11. AS 44.83.361(d)(2)(B) is amended to read:

11 (B) payments on the unpaid balance of the principal of
12 the loan for each new consumer served by the electric service
13 extended with the loan proceeds [DURING THE PRECEDING YEAR FOR
14 WHICH THE LOAN WAS MADE]; payments on the unpaid balance of the
15 principal of the loan shall be made at a rate equal to the dif-
16 ference between the actual cost of making the service connection
17 to the consumers and the minimum investment per consumer required
18 of the utility before a loan is made under (b) of this section.

19 * Sec. 12. AS 44.83.361 is amended by adding a new subsection to read:

20 (f) In this section,

21 (1) "consumer" means a person, as defined in AS 01.10.-
22 060(7), or a governmental agency, if the person or governmental agency
23 requests and offers to pay for electrical service to a facility or
24 part of a facility; the authority shall consider a person who, or a
25 governmental agency that, offers to pay for electrical service to
26 several facilities to be a separate consumer for each facility, if
27 each facility is physically separate from another facility, other than
28 through electric service lines, and if the person or governmental
29 agency requests and offers to pay for electrical service to each

1 facility;

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

4 (3) "governmental agency" includes, with respect to the
5 state or federal government or a municipal government, a legislative
6 body, board of regents, administrative body, board, commission, com-
7 mittee, subcommittee, authority, council, agency, public corporation,
8 school board, department, division, bureau, or other subordinate unit,
9 whether advisory or otherwise, of the state, federal, or municipal
10 government.

11 * Sec. 13. AS 44.83.384(b)(1) is amended to read:

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

14 * Sec. 14. AS 44.83.384(c) is amended to read:

15 (c) Notwithstanding (b)(1) of this section and AS 44.83.396 -
16 44.83.398 [AS 44.83.394 - 44.83.398], the fund may be used by the
17 authority to provide money for the cost of a power project that is or
18 was either constructed or [AND] owned by the United States government
19 if the requirements of this subsection are met. The provisions of
20 AS 44.83.177 - 44.83.187 do not apply to a power project financed
21 under this subsection. The authority may use money in the fund for
22 the cost of a power project under this subsection if

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

24 (2) the division of budget and management in the Office of
25 the Governor reviews a feasibility study and a plan of finance for the
26 project and determines that the feasibility study complies with the
27 requirements for a feasibility study submitted under AS 44.83.181(b)
28 and that the plan of finance complies with the requirements for a plan
29 of finance submitted under AS 44.83.181(c); and

1 (3) the project meets the other requirements of this chap-
2 ter.

3 * Sec. 15. AS 44.83.386 is amended to read:

4 Sec. 44.83.386. INVESTMENT OF FUND. The Department of Revenue
5 shall invest the money in the fund in accordance with AS 37.10.070 and
6 37.10.075. The Department of Revenue shall provide money in the fund
7 to the authority only after costs have been [A COST FOR A PROJECT IS]
8 incurred or amounts in the fund have been otherwise obligated under
9 contracts for the acquisition and construction of a project. Amounts
10 that have been obligated, but for which costs have not yet been incur-
11 red, may be segregated by the Department of Revenue or transferred to
12 the authority only with the prior approval or agreement of the commis-
13 sioner of revenue. Interest received on money that is segregated or
14 transferred under this section must be deposited in the general fund.

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

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

19 * Sec. 17. AS 44.83.396(c) is amended to read:

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

29 * Sec. 18. AS 44.83.396(e) is amended to read:

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

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

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

8 * Sec. 19. AS 44.83.398(b)(2) is amended to read:

9 (2) If, by July 1, 1990 [1986], the legislature has not
10 appropriated at least \$3,500,000,000 [\$5,000,000,000] to the fund, in
11 addition to appropriations to the fund of interest earned on money in
12 the fund, the authority shall, beginning on that date, establish and
13 maintain a separate wholesale power rate applicable to each power
14 project that is acquired or constructed under the energy program for
15 Alaska. The wholesale power rate shall be computed by the authority
16 annually, or more frequently as may be necessary, and shall be the
17 greater of

18 (A) 10 percent of the amount the authority has in-
19 vested in the power project, including loans and grants made by
20 the state; or

21 (B) the rate that the authority estimates is necessary
22 to produce revenue sufficient to pay

23 (i) operation, maintenance, and equipment re-
24 placement costs of the power project;

25 (ii) the power project's proportionate share of
26 debt service on state loans and bonds for all power projects
27 in the energy program for Alaska, determined in accordance
28 with (g) of this section; and

29 (iii) safety inspections and investigations of the

1 power project by the authority.

2 * Sec. 20. 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 or otherwise
6 covenanted to secure bonds [IN ACCORDANCE WITH CONTRACTS WITH BOND-
7 HOLDERS].

8 * Sec. 21. AS 44.83.398(d)(2) is amended to read:

9 (2) may not be less than the rate charged residential
10 consumers unless the utility demonstrates that a lower rate for in-
11 dustrial consumers will result in a rate for residential consumers
12 that is lower than it would be if the industrial rate were not al-
13 lowed; notwithstanding the provisions of this paragraph, if a utility
14 is regulated by the Alaska Public Utilities Commission the rates for
15 all classes of consumers of that utility shall be determined by the
16 Alaska Public Utilities Commission.

17 * Sec. 22. AS 44.83.398(e) is repealed and reenacted to read:

18 (e) After determining the wholesale power rate for a power proj-
19 ect under the provisions of this section, the authority may adjust the
20 rate or change the rate provisions to insure that the revenue derived
21 from that power project and the aggregate revenues of the authority
22 will be adequate to comply with the rate covenants and other agree-
23 ments contained in any trust indenture or trust agreement entered into
24 by the authority for the security of the holders of bonds issued to
25 finance power projects in the Energy Program for Alaska.

26 * Sec. 23. AS 44.83.398(h) is amended to read:

27 (h) Notwithstanding (g) of this section, in the 1983 state fis-
28 cal year the proportionate share of debt service under (b) of this
29 section, expressed as a rate, for a power project for which a

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

24 * Sec. 24. 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. 25. AS 44.83.186, 44.83.195(b), 44.83.382(b)(2), and 44.83.394
29 are repealed.

1 * Sec. 26. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).