

SCOMM

9:93

STATE OF ALASKA

OFFICE OF THE GOVERNOR

STATE POLICY DEVELOPMENT AND PLANNING

JAY S. HAMMOND, GOVERNOR

POUCH AD - JUNEAU 99811
PHONE 465-3512

August 23, 1977

The Honorable Clark Gruening
Representative
Alaska State Legislature
940 Tyonek
Anchorage, Alaska 99501

Dear Clark:

Tom Singer mentioned that you expressed an interest in the amendments to the Alaska Power Authority Act which were introduced by the Governor last session. For your information, I have enclosed a copy of the amendments and some of the backup materials which explain their introduction. Tom and I discussed the APA and these amendments at great length with individuals inside and outside the administration, including several commissioners, Arlon Tussing, Jim Rhode, and Ted Swick of White, Weld and Company.

If you have any questions about the amendments or the related materials, I would be glad to get together with you to discuss them.

Sincerely,



Dona K. Lehr
Economic Policy Analyst

Enclosure

MEMORANDUM

TO: [The Honorable Jay S. Hammond
Governor
Office of the Governor

DATE : March 2, 1977

FROM: Robert LeResche, Director
Policy Development and Planning
Office of the Governor

SUBJECT: Amendments to the
Alaska Power
Authority Act

At the time you signed the Alaska Power Authority Act, you asked me to propose amendments to repair areas of weakness of the Act. An extensive review process, involving several cabinet officials, has been carried out during the past several months. The amendments are now in the final drafting stages in the Department of Law.

Below, I will briefly explain the purpose and rationale of these proposed changes to the Act. Several of the revisions are a matter of clarification or consistency of wording and are of relatively minor importance. Other changes, however, seek to meet the substantive concerns (expressed in your June 30, 1976 letter of transmittal to the President of the Senate) regarding the responsiveness of the Authority to the people, and powers conferred to the Authority inconsistent with its expressed purpose.

Summary of Amendments:

Board Membership and Qualifications (Sections 2 and 3)

The existing legislation calls for a five person board consisting of four public members and the Commissioner of the Department of Commerce and Economic Development. These amendments expand the Board to seven members, including a chairman, to be appointed by the Governor, and an additional Commissioner. The purpose of this change is to expand the representativeness and breadth of perspectives on the board.

A decision on which Commissioner should be added has not been made. The pros and cons of the possible selections will be presented to the Governor at the meeting on this subject on March 7, at 2:00 p.m. in the Governor's Office.

Planning, Coordination and Review (Section 16)

The intent of this amendment, which adds new sections to the Act, is to increase accountability and public input. The Governor is charged with insuring the

substantive ends of policy coordination and policy review are met. Thus, all branches of State Government will have an opportunity to review and comment on any proposed power project with regard to their respective areas of responsibility - fiscal, environmental, community and regional development, etc. - before the project is submitted for an up-or-down vote by the Legislature. Further, these views and comments by all concerned agencies are to be forwarded to the Legislature along with the project proposal.

Further, by placing the responsibility for developing a long-term plan in the Division of Energy and Power Development (as opposed to in the Authority itself), the amendment reflects the belief in the validity of the concept which calls for "separating the planners and the builders."

Budget, Appropriations and Reports (Section 14)

This amendment clarifies the intention that the APA fall under the Executive Budget Act. Further, it is required that the Authority make an annual detailed report to the Legislature of the status of each of its projects. The purpose of this reporting is to inform the Legislature of cost overruns and other potential problems which may be encountered by the APA. Under Sec. 44.56.180 of the Act, there is no limit on bonding authority for completion of a project for which the Legislature has granted initial approval. It is not unknown for the government sponsors of a project, together with would-be contractors or their respective consulting engineers, to use unrealistically low cost estimates in order to get a project approved. Later, it turns out that "completion" of the project requires some multiple of the authorized figure. Incentive for such actions should be substantially reduced by this amendment which insures that the Legislature will be kept informed of project status.

Alternative methods of limiting the open-ended nature of the bonding authority (such as stated limits on cost overruns or legislative approval of additional bonding) were discussed. However, bond advisors indicated that the requirement to return to the political arena for authorization to bond in order to complete a project would make authority bonds unattractive to potential buyers - these buyers being unwilling to accept the risk of non-completion of projects.

Thus, this amendment is seen as a compromise which will discourage such cost overruns without hampering the authority's efforts to market bonds.

Payment in Lieu of Taxes (Section 11)

This amendment requires that projects make payments to the political subdivision in which they are located in amounts equal to the real and personal property taxes which would be due if the authority were a non-public corporation. This is consistent with the concept that facilities should "pay their own way" and with full cost pricing of power.

Power Project Revolving Loan Fund (Section 12)

This amendment is offered to insure that uniform and acceptable standards are established before any loans are made by the Power Project Revolving Loan Fund. It also establishes an amount over which loans must be approved by the Legislature. The existing Act lacks a clear statement of intent, criteria, standards, or control over the Fund. The amendment also seeks to integrate the Loan Fund with the other activities and responsibilities of the Authority, the long-term electric power development plan and State policy.

Bulk Industrial Users and Relationship of the APA with the APUC (Section 8)

Wording is inserted in Sec. 44.56.090 to allow industrial purchasers to contract directly with the Authority. This change is desirable because any industrial project outside of an existing utility distribution system will now be able to purchase power directly from the APA, rather than through a utility.

For clarity, a paragraph is added regarding the relationship between the APA and the APUC. Under this amendment, while the APUC would not have jurisdiction over the APA, the APUC would retain all existing jurisdictions over public utilities.

Further wording is inserted to assure that pricing policies cover full costs as defined in the chapter.

Gubernatorial Veto (Section 13)

This amendment changes the word "enactment" to "law," thus requiring gubernatorial approval on legislation authorizing projects. By requiring the signature or

veto of the Governor for power project proposals, this amendment establishes that after consideration by both the Legislature and the Governor, an approved project represents State policy.

Technologies (Section 4)

As it stands, the Act excludes all power generating technologies except fossil fuel and hydroelectric technologies. This amendment is offered to allow the market and the technical experts to determine which technologies are best suited for meeting Alaska's power needs.

Capital Reserve Fund Requirements (Section 10)

The Act contains an upper limit on the size of capital reserve funds equal to 10% of the principal of the issue for which the fund is established. This amendment increases the ability of the Authority to adjust to changing market conditions by eliminating this restriction. The Authority will set capital reserve fund requirements by resolution.

Bond Covenants (Section 17)

Under this amendment, a section of the Act dealing with bond covenants is repealed. The section contains provisions which are rightly contained in the bond covenants themselves, rather than in law and could limit future flexibility. Although the provisions were included in the Act to make Authority issues attractive to the bond market, bond advisors have indicated a preference in favor of repeal of this part of the Act.

Consistency and Clarification (Section 1, 5, 6, 7, 9, 15, and 17)

These amendments contain minor wording or other changes for purposes of clarification, style, or consistency with the other amendments as discussed above.

The amendments suggested here are quite extensive and vary substantially in their level of importance. However, I feel that the new sections dealing with planning, coordination, review and reporting to the Legislature (Sections 14 and 16 as discussed above) are particularly vital to the functioning of the Alaska Power Authority for the benefit of all Alaskans - present and future.

REL/DKL/ljs

cc: Distribution

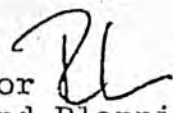
STATE OF ALASKA

MEMORANDUM

Bob

TO: The Honorable Jay S. Hammond
The Honorable Langhorne A. Motley
The Honorable Guy R. Martin
The Honorable Donald Harris
The Honorable Sterling Gallagher
The Honorable Avrum Gross
The Honorable Lee McAnerney
Kent Dawson

DATE: September 24, 1976

FROM: Bob LeResche, Director 
Policy Development and Planning
Office of the Governor

SUBJECT: Alaska Power Authority

This spring Governor Hammond signed SCS C SHB 779 as "creating the Alaska Power Authority." This was not an Administration bill, and many questions were raised at the time of its signing. Several of these were noted in the form of "serious reservation" in the Governor's letter of transmittal (attached).

At the time he signed the Act, Governor Hammond assigned me to review the general question of "Authorities" and to propose amendments to the Alaska Power Authority Act to repair areas of weakness.

Attached is our analysis, a description of rationales and alternatives for amendments, and fourteen draft amendments. The amendments accomplish two main types of purposes; an increase in public accountability of the Authority, and an increase in the Authority's ability to function in a business-like manner.

Please review this analysis and the draft amendments preparatory to a meeting at 9:00 a.m., Wednesday, October 20, in the House Finance Committee Room, Room 421, Alaska State Capitol. At this time, we will discuss them, make whatever changes are necessary, and establish where there are irreconcilable areas of difference. Then at 2:00 p.m. on Friday, October 22, we will meet in the Governor's Office and he will make the final decisions regarding what amendments we will support in the Legislature.

Thank you very much.

REL/ljs

Attachments

ALASKA POWER AUTHORITY ACT

ANALYSIS AND RECOMMENDATIONS

" Increasingly over the years, civic leaders, legislators, members of the executive branch of state governments, and the general public, have become anxious, even alarmed, over the fact that authorities created for specific limited purposes persisted long after those specific limited purposes had been accomplished, over the fact that autonomous authorities had branched out their functions far beyond any goals which might have been conceived for them at the time of their creation, and over the fact that all this had been going on with only limited, and in some cases, without any governmental supervision. "

- Report of the New Jersey Autonomous
Authorities Study Commission 1/11/72

June 30, 1976

The Honorable Chancy Croft
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

I have signed the following bill and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

SENATE COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 779
amended Senate
(creating Alaska Power Authority)
(Chapter 278, SLA 1976)

I want to express a serious reservation about this bill. More power is conferred to the Authority than is consistent with the expressed purpose of the Authority. For example, loans may be made from the Power Project Revolving Fund for natural gasline construction, filling of fuel storage facilities, and other projects not directly related to the "establishment of power projects." Conferring these powers and responsibilities to the Authority may not be consistent with the state's best interests because the public may not have adequate input into the decisions of the Authority. Like the Alaska State Housing Authority, this Authority is arguably too autonomous. Although the Authority is not directly under my control, I assure you that I will do all I can to encourage the Authority to be responsive to the people. That may require corrective legislation next session to accomplish that result.

Sincerely,

Jay S. Hammond
Governor

Introduction

On June 1, 1976, the Alaska Legislature passed House Bill 779, creating an Alaska Power Authority. The mandate of the Authority is to "reduce consumer power costs and otherwise encourage the long-term economic growth of the State...through the establishment of power projects...(AS 44.56.010.B)." To accomplish this task, the Authority is empowered to formulate, sell bonds for, construct and operate power projects, and sell the power which will be generated. The Authority is also entrusted with the management of a "Power Project Revolving Fund", which is to provide low interest loans to municipalities and public utilities for a variety of power projects and related developments. A background discussion of the nature of autonomous authorities is presented below, focussing on several problems which have afflicted other authorities and are not addressed in the Alaska Power Authority Act. Following this discussion, the problems are translated into specific amendments and alternatives for consideration by the Governor, the Cabinet and the Legislature.

Background

The basic concept behind autonomous authorities is the provision of a government service without recourse to taxation. This is achieved by creating a special government managed like a corporation, financed through private capital markets, and supported by revenues from the sale of the service. Most authorities are managed by an executive director responsible to a governing board or commission. In 1967 there were approximately 21,264 special governments in the U.S., although only 25 of them had debt outstandings over \$100 million. The popularity and flexibility of authorities is reflected in the variety of capital intensive public projects for which they have been created: ports, terminals, highways, bridges, tunnels, ferries, transit, schools, dorms, courthouses, administrative offices, dams, airports, hospitals, pollution control, parking, recreation, garbage disposal, steam heating, industrial exhibits, municipal theatres, war memorials, planetariums, and mineral springs.

Authorities offer a number of advantages to governments faced with major capital intensive requirements. They avoid the need to increase or compete for existing tax receipts, and they circumvent the widespread legal debt limitations imposed after the depressions of the late 1800's. Many believe them to operate more efficiently than normal government because of their corporate structure and single purpose. Because they are supposedly out of the political arena (electoral politics), decision-making tends to be more rapid and flexible, and the absence of electoral caprice encourages long-range planning. Finally, authorities are often interjurisdictional, taking advantage of economies of scale and solving regional problems.

Along with these evident and important benefits, a number of equally serious problems have developed as authorities have acquired a history. One of the major assumptions which is no longer tenable is that authorities operate outside of the political arena. According to one recent observer:

Neither personnel nor policies are usually subject to voter approval. This suggests an analogy to the insulation afforded appointed judges so that the objectivity of their decision-making will not be undetermined by the prospect of upcoming elections...

It may be true that depoliticization promotes efficient operations, but it is not clear that all authorities are truly depoliticized. The size and function of the authority is again relevant...And, it is impossible to keep multicounty authorities out of the public eye given the impact that their decisions... have on metropolitan life. Nor can they stay entirely clear of interest groups, such as labor unions, merchants' associations, and, in recent years, environmental organizations. Increasingly, the question becomes not whether authorities are involved in politics, but rather, how do they, and how should they, fit into the political decision-making process. - Michigan Law Review 6/73.

This long overdue recognition that authorities develop lobbies such as banks, construction firms and unions, and are highly political (not in terms of party politics, but in terms of public policy) should serve as a warning to those who would design an authority as if matters were otherwise.

Critics of authorities are also challenging a related assumption; that a closed, corporate (hierarchical) decision-making process is best suited for most authorities because of the highly technical decisions which they face. They point out that authorities make far-reaching decisions (public policy decisions) without clear public access to the decision-making process, particularly in the planning stage. Thus, segments of the citizenry who lack contacts with authority personnel or powerful lobbies are excluded from decisions with major policy implications. In effect:

Even if access to internal information about an authority is gained, the public usually has no means of input into an authority's decision-making process more direct than the election of State representatives.

The lack of representation of various segments of society on authority boards may aggravate the problem of accessibility...

In recognition of the problem of representation, the Boston Metropolitan Area Planning Council is required to have among its council members "sufficient representation of minority and low-income groups so as to substantially represent their viewpoints in the area to be served by the council." - Michigan Law Review 6/73.

It seems that in most cases it is not only minorities and the poor who are excluded from decision-making, but really anyone who does not work either for or with the authority.

In addition to the problems discussed above, there exists a structural contradiction which has created an enormous, and perhaps unresolvable, controversy over the role of authorities. The contradiction is best understood through an example. In the New York Metropolitan area, Governor Cahill of New Jersey sought to use the vast surplus of the Interstate Port of New York Authority (PA) to finance and probably subsidize mass transit for the region. Mr. Austin Tobin, the Executive Director of the PA, fought the idea because of his dependence on the marketability of PA bonds. He knew that the PA's activities were limited to highly visible and profitable projects which would reassure both existing and potential bondholders. As the fight became more bitter and involved more parties (including Governor Rockefeller), the real issues surfaced:

For underlying Cahill's drive is his firm belief that the PA has a broader role than it has been playing. "Tobin is running the PA as a business," he says, "but it is not a business. It is an authority wisely conceived to do things for people of our two states that business cannot do for them and that the two states cannot do for themselves. It was not conceived for the sole purpose of making money, but for rendering service."

Tobin repeats, however, that his mission is "the development of vitally important public port projects of the two states without recourse to taxation." He thus interprets this as limiting the PA to a "program of public works that must be self-supporting," otherwise, his revenue bonds would be "unsalable." And without restrictive bond covenants such as the ones built into the 1962 statute, the PA, in his view, would be out of business. - Business Week 4/3/76.

Thus:

In raising funds in the market to finance \$3 billion worth of port, bridge, and airport facilities that are vital to the region's trade and commerce, it (the PA) has had to be more responsive to the money market than to the needs of the public. It remains reluctant to jeopardize its vast and still growing empire for what it believes will be a frustrating and profitless attempt to put the railroads on their feet. - The Economist 5/5/73.

This struggle over the use and control of the PA surplus escalated into a major political and legal battle. In 1968, '69, and '70, the New Jersey Legislature established an Autonomous Authorities Study Commission to unravel the problems created by the state's fourteen different authorities. The conclusions and recommendations of this unique effort appear in Appendix A. One outcome of the battle occurred in 1974, when both state legislatures passed legislation negating a 1962 agreement whereby the PA was freed from having to undertake deficit rail transportation.

However, this agreement had been subsequently written into bond covenants, and it seemed that the governors and even the state legislatures had their hands tied. They could not alter the "rights and powers" of the PA if such alterations violated the terms of any bond covenants. What is worse, each new bond the PA has sold since 1962 extends the conditions under which the PA operates. Thus, it was estimated that this locked the PA into its existing agreements until after the turn of the century. Following the actions by the legislatures, the bondholders sued both states for breach of agreement. The uncertainty created by the suit has prevented the PA from floating any new bonds, and no funds have as yet gone into mass transit. The courts have found in favor of the states and the case is now on appeal before the U.S. Supreme Court.

The major issue which arises from this complex and destructive dispute is that authorities are public agencies making public policies and are responsible to state governors and legislatures. Yet, they also operate in the private capital markets and are responsible to their bondholders. Thus, several questions must be faced: A corporation is directly and continuously accountable to its stockholders; to whom is an authority similarly accountable? How has the Alaska Power Authority Act been designed to identify and implement State policies in areas affected by power development? How will the Authority's reserve funds and other cash balances be invested? And, who can insure that the Authority will serve the public first?

In creating an Alaska Power Authority, the Alaska Legislature has determined that an autonomous authority is the best means for encouraging low cost electrical power in the State. However, the Act, in its present form, ignores the issues raised in this paper by failing to incorporate various safeguards to insure broad participation in the planning and decision-making process of the Authority. During the past several years it has become clear that the creation and operation of insulated institutions whose activities are in effect public policy actually increases costs. As any utility in the lower 48 can testify, delays resulting from the adversarial situation created between interest groups, and the inevitable litigation, has become a major cost factor to the industry. The following amendments are designed to recognize the political nature of the Authority, broaden access to decision-making, establish greater control by elected officials over the activities of the Authority, and thereby facilitate the formulation, construction and operation of power projects in Alaska.

April 6, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill amending several provisions of the Alaska Power Authority Act. When I signed the Act (last legislature's SCS CSFB 779 am S, which became ch. 278 SLA 1976) I mentioned in my June 30, 1976 letter returning the Act to the legislature that I had serious reservations regarding the Act. The amendments proposed in the attached bill seek to achieve two major objectives: an increase in the public accountability and breadth of input to the authority, and an increase in the authority's ability to function in a business-like and efficient manner. A brief section-by-section analysis follows:

Section 1. This section amends AS 44.56.010(a)(3) to conform the legislative findings to the legislative statement of the purpose of the authority in AS 44.56.-070.

Sections 2 and 3. These amendments expand the board to include four ex officio and non-voting members, and provide that a chairman is to be appointed by the governor. The purpose of this change is to expand the representativeness and breadth of perspectives on the board.

Sections 4 and 8. As it stands, the present law excludes all power-generating technologies except fossil fuel and hydroelectric technologies. These amendments are offered to allow the market and the technical experts to determine which technologies are best suited for meeting Alaska's power needs.

Section 5. This section adds the authority to "maintain" power projects, and is suggested in the interest of certainty and uniform specificity.

Section 6. This section reflects appropriate wording changes given the definition of "person" in section 19, below.

Section 7. This section proposes stylistic changes for clarity.

Section 9. Wording is inserted in AS 44.56.090 to allow industrial purchasers to contract directly with the authority. This change is desirable because any industrial project outside of an existing utility distribution system would be able to purchase power directly from the authority, rather than through a utility.

For clarity, a subsection is added regarding the relationship between the authority and the Alaska Public Utilities Commission (APUC). Under this amendment, while the APUC would not have jurisdiction over the authority, the APUC would retain all existing jurisdiction over public utilities.

Further wording is inserted to assure that pricing policies cover full costs as defined in the chapter.

Section 10. This section adds clarification.

Section 11. This amendment eliminates the upper limit on the size of capital reserve funds, allowing the authority greater flexibility to adjust to changing market conditions.

Section 12. This section requires payment in place of taxes to local subdivisions.

Section 13. This amendment insures that uniform and acceptable standards are established before any loans are made by the Power Project Revolving Fund and seeks to integrate the fund with the other activities and responsibilities of the authority.

Sections 14 and 15. These sections provide gubernatorial review and approval of the executive-branch functions performed by the Alaska Power Authority. Proposals are to be reviewed by all affected agencies and the resultant views, comments, and findings forwarded to the legislature along with the project proposal. The attorney general's office is concerned about the constitutionality of the existing requirement that individual project proposals be submitted to the legislature for approval. I think it is important to insure that many perspectives and individuals have an opportunity to contribute to the decision-making process. However, to the extent that there may be a constitutional problem with the legislative-approval requirement, I urge your review of it. The amendments proposed in this bill do not change the legislative approval provision.

Section 16. This amendment clarifies the intention that the authority be subject to the Executive Budget Act. Further, it is required that the authority make an annual detailed report to the legislature of the status of each of its projects.

Section 17. A new section is added to increase the accountability of, and public input to, the authority. Also, a long-term electric development plan is to be the responsibility of the Department of Commerce and Economic Development.

Sections 18 and 19. These sections, respectively, make the changes in the technology wording consistent with sections 4 and 3 and add a definition of "person".

Section 20. This section repeals a provision for the sake of consistency, and repeals a subsection dealing with trust agreement covenants.

Sincerely,

Jay S. Hammond
Governor

Introduced: 4/6/77
Referred: Commerce and
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2  HOUSE BILL NO. 442

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Power Authority."

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

8 * Section 1. AS 44.56.010(a)(3) is amended to read:

9 (3) the achievement of the goals of lower consumer power
10 costs and long-term economic growth and of establishing, operating and
11 developing power projects in the state will be accelerated and facili-
12 tated by the creation of an instrumentality of the state with powers
13 to construct, acquire, finance, and [INCUR DEBT FOR CONSTRUCTING, AND
14 WITH POWERS TO] operate[,] power projects.

15 * Sec. 2. AS 44.56.030 is repealed and re-enacted to read:

16 Sec. 44.56.030. MEMBERSHIP OF THE AUTHORITY. (a) The authority
17 shall consist of the following directors:

18 (1) four directors at large to be appointed by the governor
19 for four-year terms, one of whom shall be appointed as chairman;

20 (2) the commissioner of commerce and economic development.

21 (b) The commissioners of community and regional affairs, natural
22 resources, public works, and revenue shall serve as non-voting members
23 of the board of directors of the authority.

24 * Sec. 3. AS 44.56 is amended by adding a new section to read:

25 Sec. 44.56.045. QUALIFICATIONS, POWERS, AND DUTIES OF OFFICERS
26 AND DIRECTORS. (a) The directors at large must be residents and
27 qualified voters of Alaska, shall comply with the requirements of AS
28 39.50 (conflict of interests), and shall be selected for their exper-
29 tise in industrial, corporate or other matters relevant to the autho-

1 rity. The four original directors at large have terms of one, two,
2 three, and four years, respectively. The directors at large, including
3 the chairman, serve at the pleasure of the governor.

4 (b) A vacancy in a directorship occurring other than by expira-
5 tion of a term shall be filled in the same manner as the original
6 appointment, but for the unexpired portion of the term only.

7 (c) The directors may elect other officers they consider desirable
8 The powers of the authority are vested in the directors. Three
9 directors constitute a quorum. Action may be taken and motions and
10 resolutions adopted by the authority at a meeting by the affirmative
11 vote of at least three members entitled to vote.

12 (d) The directors at large and the chairman serve without compen-
13 sation, but they are entitled to receive the same per diem and travel
14 allowances as provided by law for members of other boards and com-
15 missions.

16 (e) The authority shall employ a general manager who may, with
17 the approval of the authority, employ additional staff as necessary.
18 In addition to its staff of regular employees, the authority may
19 contract for and engage the services of legal and bond counsel, consul-
20 tants, experts, and financial and technical advisors the authority
21 considers necessary for the purpose of conducting studies, investiga-
22 tions, hearings, or other proceedings. The board of directors shall
23 establish the compensation of the general manager.

24 * Sec. 4. AS 44.56.070 is amended to read:

25 Sec. 44.56.070. PURPOSE OF THE AUTHORITY. The purpose of the
26 authority is to promote, develop and advance the general prosperity
27 and economic welfare of the people of Alaska by providing a means of
28 constructing, acquiring, financing and operating power [HYDROELECTRIC
29 AND FOSSIL FUEL GENERATING] projects employing any economically feasible

1 technology.

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

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

6 * Sec. 6. AS 44.56.080(8) is amended to read:

7 (8) to accept gifts, grants or loans from, and enter into
8 contracts or other transactions regarding them, with a public agency
9 or other person [FEDERAL AGENCY OR AN AGENCY OR INSTRUMENTALITY OF THE
10 STATE, MUNICIPALITY, PRIVATE ORGANIZATION OR OTHER SOURCE];

11 * Sec. 7. AS 44.56.080(11) is amended to read:

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

19 * Sec. 8. AS 44.56.080(13) is amended to read:

20 (13) to perform feasibility studies with respect to [HY-
21 DROELECTRICAL AND FOSSIL FUEL] power generating projects;

22 * Sec. 9. AS 44.56.090 is amended to read:

23 Sec. 44.56.090. POWER CONTRACTS AND THE ALASKA PUBLIC UTILITIES
24 COMMISSION. (a) The authority shall, in addition to other methods
25 which it may find advantageous, provide that municipal electric, rural
26 electric, cooperative electric, or private electric utilities and
27 regional electric authorities, [OR] other persons authorized by law to
28 engage in the distribution of electricity, or bulk industrial purchasers
29 of electricity outside the distribution area of any such utility or

1 authority [POWER] may secure a reasonable share of the power generated
2 by a project, or any interest in a project [IT], or for any right to
3 the power [CAPACITY OF IT] and shall, except for bulk industrial
4 purchasers, sell the power or cause the power to be sold at the lowest
5 practicable prices which cover the full cost of the electricity or
6 services, including capital and operating costs, debt coverage as
7 considered appropriate by the authority, and other charges that may be
8 authorized by this chapter [PRICES REPRESENTING COST OF GENERATION,
9 PLUS CAPITAL AND OPERATING CHARGES, PLUS A FAIR COST OF TRANSMISSION,
10 ALL AS DETERMINED BY THE DIRECTORS, AND SUBJECT TO CONDITIONS WHICH
11 ASSURE THE RESALE OF THE POWER TO RETAIL CONSUMERS AT THE LOWEST
12 POSSIBLE PRICE]. A contract for the sale, transmission and distribu-
13 tion of power generated by a project or any right to the capacity of
14 it shall provide

15 (1) for payment of the proportionate share of [ALL] operat-
16 ing and maintenance expenses of a project and costs of renewals,
17 replacements and improvements of it;

18 (2) for payment of the proportionate share of interest on
19 and amortization charges sufficient to retire bonds of the authority
20 issued for the project and reserves for them, plus a debt service
21 coverage factor as may be determined by the authority to be necessary
22 for the marketability of its bonds;

23 (3) for continuous control and operation of the project by
24 the authority or its agents;

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

29 (5) for periodic revisions of the services and rates to

1 persons on the basis of accurate cost data obtained by the accounting
2 methods and systems approved by the directors and in furtherance and
3 effectuation of the policy declared in this chapter;

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

6 (7) for security for performance as the authority may
7 consider practicable and advisable, including provisions assuring the
8 continuance of the distribution and transmission of power generated by
9 a project, the use of their facilities for these purposes, and the
10 continuance of an outlet and adequate market for the power generated
11 by the project;

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

14 [CONTRACTS TO SELL POWER ARE SUBJECT TO REVIEW BY THE ALASKA PUBLIC
15 UTILITIES COMMISSION.]

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

24 * Sec. 10. AS 44.56.110(a) is amended to read:

25 (a) In the discretion of the authority, an issue of bonds may be
26 secured by a trust indenture or trust agreement between the authority
27 and a corporate trustee (which may be a trust company, bank, or national
28 banking association, with corporate trust powers, located inside or
29 outside the state) or by a secured loan agreement or other instrument

1 or under a resolution giving powers to a corporate trustee by means of
2 which the authority may

3 (1) make and enter into any and all the covenants and
4 agreements with the trustee or the holders of the bonds which the
5 authority may determine to be necessary or desirable, including,
6 without limitation, covenants, provisions, limitations and agreements
7 as to

8 (A) the application, investment, deposit, use and
9 disposition of the proceeds of bonds of the authority or of money
10 or other property of the authority or in which it has an interest;

11 (B) the fixing and collection of rentals, charges,
12 fees or other consideration for, and the other terms to be incor-
13 porated in, contracts with respect to a project or to generated
14 power;

15 (C) the assignment by the authority of its rights in
16 contracts with respect to a project or to generated power or in
17 a mortgage or other security interest created with respect to a
18 project or generated power to a trustee for the benefit of
19 bondholders;

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

22 (E) the vesting in a trustee of rights, powers, duties,
23 funds or property in trust for the benefit of bondholders,
24 including, without limitation, the right to enforce payment,
25 performance, and all other rights of the authority or of the
26 bondholders, under a lease, power of contract, contract of sale,
27 mortgage, security agreement, or trust agreement with respect to
28 a project by injunction [MANDAMUS] or other proceeding or by
29 taking possession of by agent or otherwise and operating a project

1 and collecting rents or other consideration and applying the same
2 in accordance with the trust agreement;

3 (2) pledge, mortgage or assign money, leases, agreements,
4 property or other rights or assets of the authority either presently
5 in hand or to be received in the future, or both; and

6 (3) provide for any other matters of like or different
7 character which in any way affect the security or protection of the
8 bonds.

9 * Sec. 11. AS 44.56.110(d) is amended to read:

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

22 * Sec. 12. AS 44.56.150 is amended to read:

23 Sec. 44.56.150. TAX EXEMPTION. All property of the authority is
24 public property devoted to an essential public and governmental func-
25 tion and purpose and is exempt from all taxes of the state or a politi-
26 cal subdivision of the state; however, the authority shall make payments
27 in place of taxes in amounts equal to the real and personal property
28 taxes which would be assessed on its real and personal property by
29 each political subdivision in which its property is located to the

1 same extent as if that property were private property and the authority
2 were a non-public corporation. All bonds issued under this chapter
3 are issued by a body corporate and public of this state and for an
4 essential public and governmental purpose and the bonds and the
5 interest and income on and from the bonds and all income of the autho-
6 rity are exempt from taxation except for transfer, inheritance and
7 estate taxes.

8 * Sec. 13. AS 44.56.170 is repealed and re-enacted to read:

9 Sec. 44.56.170. FUND ESTABLISHED; LOANS. (a) There is estab-
10 lished as a separate fund the power project revolving fund which shall
11 be administered by the authority as a trust fund separate and distinct
12 from any other money or funds of the authority, and which shall be
13 composed of appropriated funds and interest earned on loans by the
14 fund.

15 (b) The authority may make loans from the fund to electric
16 utilities, cities, boroughs, village corporations, village councils,
17 and nonprofit marketing cooperatives to pay the costs of feasibility
18 studies, preconstruction engineering, design, and construction of
19 power projects.

20 (c) Before making any loans from the power project revolving
21 fund, the authority shall by regulation specify the standards for
22 those loans with respect to the following:

23 (1) criteria regarding the eligibility of borrowers and of
24 types of projects;

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

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

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

1 (d) Regulations proposed for adoption under this section shall
2 be submitted to the governor for his review and for review by other
3 appropriate agencies. The regulations shall be adopted if they are
4 shown to be consistent with the long-term electric power development
5 plan and with state policy and if they are approved by the governor.

*final
approval
by
legislature*

6 (e) Any loan made by the authority must be made according to the
7 standards, criteria, and procedures established by regulation under
8 this section, and must be consistent with the long-term electric power
9 development plan and state policy.

10 (f) Any single loan, or group of loans to a single borrower,
11 proposed to be made from the fund under this section exceeding
12 \$1,000,000 must be submitted to the governor ^{and legislature} for review and approval.

13 * Sec. 14. AS 44.56.180 is amended to read:

14 Sec. 44.56.180. PROPOSAL AND CONSTRUCTION OF PROJECTS. (a) The
15 authority shall submit a statement outlining the general design,
16 demonstration of financial feasibility, and maximum amount of bonds
17 estimated to be necessary for each new project to the governor and the
18 legislature [AND THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT],
19 together with a statement that the authority intends to design, acquire
20 and construct the project itself or that it intends that the project
21 be designed, acquired or constructed by the United States or another
22 person under agreement with the authority providing for ownership of
23 all or a portion of the project by the authority or of a right to the
24 capacity of it. If the governor approves the project upon making
25 specific findings under (b) of this section, and if the legislature
26 adopts a joint resolution approving the general design and maximum
27 amount of bonds, the authority shall, in accordance with the terms of
28 the joint resolution, (1) proceed to design, acquire and construct
29 the new project, or (2) agree with the United States or other person

for design, acquisition and construction of the project by the United States, for payments to the United States or other person for such design, acquisition and construction, reimbursement by the United States or other person in certain events, and otherwise on the terms and conditions as may be set out in such agreement. If the new project is to be designed, acquired and constructed by the authority, it shall be designed, acquired and constructed as a public work of the state except that public bidding shall not be required, if the authority so determines on projects in excess of \$50,000,000. For the purpose of this section a new project does not include an addition or modification to an existing project if the total cost of the addition or modification does not exceed \$1,000,000, to any repair or reconstruction of a project, or to any design, acquisition or construction necessary to complete a project for which bonds previously authorized by the legislature have been issued. Any such addition, modification, repair, reconstruction, design, acquisition or construction may be undertaken by the authority without any of the approvals necessary for a new project.

* Sec. 15. AS 44.56.180 is amended by adding new subsections to read:

(b) Any power project proposal requiring approval by the legislature under this chapter, together with supporting data, analyses, and findings of the authority, must be submitted to the governor for review as provided in this chapter at least 60 days before submission of these materials to the legislature. No project may be undertaken without the written approval of the governor in which writing the governor makes findings of fact regarding the items listed in this subsection and transmits those findings to the legislature:

(1) the consistency of the project or action with the long-term electric power development plan and with relevant state laws and

1 policies;

2 (2) the balance of benefits and costs to Alaska, including
3 environmental and social costs, and the ability of the project to
4 generate sufficient revenues to be self-supporting;

5 (3) whether a project which will physically impinge upon a
6 park, wildlife refuge, registered historic site, critical habitat area,
7 or state land classified for public recreation, has a feasible alter-
8 native project design or site;

9 (4) whether any alternative to the project or action which
10 would result in comparable volumes of power at a lower cost has been
11 rejected because the authority finds that social, cultural, or environ-
12 mental considerations justify rejection; and

13 (5) the way in which the authority's policies and its pro-
14 posed action affect the following policy areas:

15 (A) the use of power development, power pricing, and
16 marketing policies to achieve the social, economic, and energy
17 conservation goals of the state;

18 (B) policies concerning the allocation of state fossil
19 fuels, land, water resources, and other natural resources to power
20 development;

21 (C) facility siting policies and the conformity of
22 project proposals to federal, state, and local land use and
23 community development plans and policies;

24 (D) rural electrification policies as they affect
25 regional growth;

26 (E) reliability standards and quality-of-service
27 policies of the authority including reserve capacity levels and
28 back-up system capabilities;

29 (F) authority environmental policies to insure that

project proposals conform to state environmental policies; and

(G) any other policy matters relevant to the actions of the authority.

(c) Recognizing the crucial role of power demand estimates in analyses and project evaluations, any estimates or projections of future electrical power demands produced or used by the authority must be submitted to the governor for his review and the review of appropriate state agencies. No projection which is not approved by the governor may be used to justify and support a project proposal.

* Sec. 16. AS 44.56.210 is repealed and re-enacted to read:

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

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

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

Sec. 44.56.224. LONG-TERM PLAN. The Department of Commerce and Economic Development, assisted by the authority, shall prepare, and as appropriate revise, a long-term electrical power development plan for meeting projected electrical energy demand in Alaska at the lowest feasible cost, including environmental and social costs, consistent with acceptable standards of reliability. The plan must include, but is not limited to, considerations specified in sec. 180(b) of this chapter. In preparing and revising the plan, the department shall obtain and consider, through appropriate public input processes, the expertise and views of local governments, electrical utilities,

1 industry, labor, consumer, and environmental advocacy groups and other
2 interested members of the public. The plan and any revision of it
3 must be submitted to the governor for his review and for review by all
4 appropriate state agencies. The department shall adopt the plan if it
5 is shown to be consistent with state policy and if it is approved by
6 the governor.

7 * Sec. 18. AS 44.56.230(4) is amended to read:

8 (4) "power project" or "project" means a plant, works,
9 system, facility, water rights, fuel deposits or sources, and real
10 estate and personal property of any nature whatsoever, together with
11 all facilities and appurtenances related to them or necessary for the
12 purposes of them used or useful in the generation, by means of any
13 economically feasible technology, [WATER OR FOSSIL FUEL] of electric
14 power and the production, transmission, purchase, sale, exchange and
15 interchange of electric power, and shall include any interest in them,
16 whether divided or undivided, or any right to the capacity of them;

17 * Sec. 19. AS 44.56.230 is amended by adding a new paragraph to read:

18 (6) "person" includes a public agency in addition to the
19 entities set out in AS 01.10.060(7).

20 * Sec. 20. AS 44.56.050 and 44.56.110(b) are repealed.
21
22
23
24
25
26
27
28
29