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168

## HOUSE LETTER OF INTENT

House CS for CS for Senate Bill No: 168 (Resources)

The Legislature, in enacting the Energy Program for Alaska, expressed its desire to provide the lowest reasonable power costs to consumers. To further achieve that end, it is the intent of the Legislature to take appropriate action to enhance the Alaska Power Authority's ability to obtain long-term bond financing at the lowest possible cost. It is for this purpose that we have amended the "Susitna equity clause."

Substantial equity has been invested in the Energy Program by the State of Alaska and declining state revenues will have an impact on the development of energy projects for other regions of the state. It is the intent of the Legislature that the balance of the financing needed for those projects under construction in the Program be raised by debt financing - thus reserving future revenues for future energy projects throughout the rest of the state. We support the intent of the Alaska Power Authority to go to the bond market in early 1984 for the necessary funds. However, in order to further facilitate the bonding capability of the Power Authority, it is imperative that utilities who will receive wholesale power from Solomon Gulch, Terror Lake, Tyee Lake and Swan Lake sign power sales contracts as soon as possible and no later than January 1, 1984. By taking this action, the utilities served will ensure long-term benefits to their consumers through stable power rates.

The Governor is requested to prepare a plan for providing the necessary equity for future projects in the Energy Program for Alaska. This plan must be constitutionally sound and provide for the proper administrative and Legislative approval for the various projects. This plan shall be submitted to the Legislature no later than January 15, 1984.

A M E N D M E N T

Offered in the HOUSE

BY:

To: HCS CSSB 168 (Res)

Page 9, line 22: following the word "with",  
insert the

Page 9, line 25: delete all material, and insert  
finance power projects in the Energy Program for Alaska.

COMMITTEE REPORT

HOUSE

FURTHER:

(11)

Date: 6/20/83

6/20/83

Mr. Speaker:

The Committee on FINANCE has had CSSB 168(R1s)

"An Act relating to the Alaska Power Authority; and providing for an effective date."

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with <sup>H</sup>CS for CSSB 168 (Fin)  same title  
 new title
- and recommends No recommendation
- ~~[ ]~~ AND attached ~~to~~ "Letter of Intent"  New Fiscal Note  
 Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING DO PASS

Terry Masten

R/B Pittsworth

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING OTHER RECOMMENDATIONS:

Do not Pass unless Section 21 Deleted

Mike Ross (No Rec)

Paul J. Hunt (No Rec)

Gene Spitzer (No Rec)

Gene Spitzer - Delete Sec. 21

Sam Postinger (no rec)

Jim Duncan (no rec)

Robert B. Oles (NO Rec)

Robert B. Oles

CHAIRMAN

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 21, 1983

SUBJECT: HCS CSSB 168 (Finance)

TO: Representative Albert P. Adams  
Chair, House Finance Committee

FROM: LHA Linn H. Asper  
Legislative Counsel

I have prepared a final draft of a Finance Committee substitute for the above bill, adding a section authorizing the Chester Lake project under AS 44.83.185(c) and amending the authorization for the Terror Lake project. These additions raise a problem with the title of the bill that you should be aware of. The title of the bill is "An Act relating to the Alaska Power Authority; and providing for an effective date." The state constitution (Article II, section 13) requires that

The subject of each bill shall be expressed in the title.

This rule is interpreted to mean that the title shall adequately describe the contents of the bill. I do not believe that an AS 44.83.185(c) authorization of a specific project or the amendment of a previous authorization is adequately described in the title, "An Act relating to the Alaska Power Authority". Normally I would suggest amending the title, but this is not possible under Rule 41(b) of the Uniform Rules of the Alaska State Legislature. In recent years the Alaska Supreme Court has interpreted Article II, section 13 very broadly in favor of the legislature. It may well be therefore, that the Finance Committee substitute would survive constitutional scrutiny, but I wanted you to be informed of the potential for a legal challenge to this version of the bill.

LHA:ljb  
25/009

STATE OF ALASKA  
FINAL STATEMENT OF FISCAL IMPACT

Bill No: SR 168 Date on Bill: \_\_\_\_\_  
 Title: "An Act relating to the Alaska Power Authority; and providing for .....  
 Sponsor: Rules Committee by request of the Governor  
 Requestor: \_\_\_\_\_

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86
Capital						
Operating						
Total			0	0	0	

b. Revenues:

Revenue						
---------	--	--	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. This statement has been reviewed by the OMB in the Office of the Governor. It may be considered to represent the policy of the Sheffield Administration and the final estimate of fiscal impact.

Prepared By: Eric Yould, Executive Director Phone: 277-7641

Division: Alaska Power Authority Date: \_\_\_\_\_

Approved by Commissioner: Richard A. Lyon  Date: \_\_\_\_\_

Department: Commerce and Economic Development

Reviewed by OMB:  Date: 3/3/82

Phone: 465-3568

5. Distribution:

- Original to Legislative Finance
- Copy to Department
- Copy to Sponsor
- Copy to Requestor

2/8/83

HOUSE RESOURCES COMMITTEE

JUN 20 1983

Anchorage

CHAMBER of COMMERCE

Crossroads of the Air World

June 16, 1983

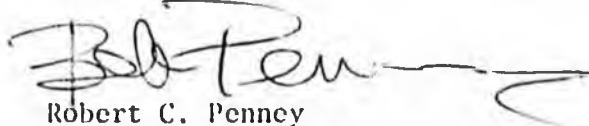
Honorable John Ringstad  
Chairman, Natural Resources  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear John:

This letter is to confirm that our committee has reviewed SB168 and do concur in the following change: "That the Susitna 'equity' clause be changed to 3 1/2 billion to be contributed by January 1, 1990."

We hope in the throws of the final days of the session that the \$25 million for the intertie and the \$33 million for Susitna stay in tact. We sincerely thank you and your committee for the hard work you put forward in this project this year -- we won't have a Susitna without supporters like yourself and your committee.

Sincerely yours,



Robert C. Penney  
Chairman  
Energy Committee

RCF/lw

Proposed amendment to SB 168

Page \_\_\_\_\_

Line \_\_\_\_\_

Insert a new section to read:

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

Sec. 44.83.192. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS. In requesting bids and awarding construction contracts under this chapter the authority may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker and may not agree to provide insurance to a contractor who is awarded a construction contract.

Renumber succeeding sections accordingly.

A M E N D M E N T

Offered in the SENATE

By Eliason

To: SB 168

4916  
4917

Page 4, after line 10: insert a new section to read:

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

Sec. 44.83.192. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS. In requesting bids and awarding construction contracts under this chapter the authority may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker and may not agree to provide insurance to a contractor who is awarded a construction contract."

Renumber succeeding sections accordingly.

SP 168/LCD

The Chemical Bank v. Washington Public Power Supply System case decided by the Washington Supreme Court on June 15, 1983 in which the court holds invalid power sales agreements supporting \$2.5 billion in public bonds will have a profoundly negative effect on public power financing. The court in the WPPSS case specifically said that the municipalities and the PUDs lacked statutory authority to enter into contracts with WPPSS which required the utilities to make payments regardless whether a project was completed and regardless of reduction or curtailment of project output. As well, the court stated that stepup provisions, i.e., provisions requiring payments on behalf of defaulting parties, were not authorized under Washington law.

In light of this decision, bond counsel deems it necessary that the authority of Alaska Power Authority to enter into power sales agreements with stepup and take-or-pay provisions must be absolutely clear. Bond counsel feel that such contracts are currently authorized by the statute; however, in order to make bonds secured by such contracts marketable, in light of the WPPSS case, it is felt necessary to further specify the contracting authority. It should be emphasized that this amendment does not authorize the APA to transfer to utilities the risk of non-completion of a project, as was attempted by WPPSS.

HCS CSSB 168 Res.

Add the following

AS 44.83.092. The Authority and any municipality or public or private entity operating an electric utility (herein called a "utility") may enter into a contract providing for or relating to the sale of electric energy by the Authority to the utility. The contract may provide, among other things, that the sum or sums so payable are operating expenses of the utility and are valid and binding obligations payable from the gross revenues of the utility and may provide for a single appropriation of the amounts payable for the term of the contract. The contract may provide, among other things, that the utility assume the obligations of a defaulting contracting party, that after completion of a project the utility is obligated to make payments notwithstanding the suspension or curtailment or the amount supplied of the power and energy of the project, and that payments under the contract are not subject to any reduction by offset or otherwise.

(2) If the division of budget and management determines that the Alaska Power Authority has completed both a reconnaissance study under AS 44.56.080(13) and a statement under AS 44.56.180(c),

(A) and that statement or the project for which it was prepared has been approved by the legislature under AS 44.56.180(c), the Alaska Power Authority may proceed with that project under AS 44.56.185 added by sec. 24 of this Act;

(B) and that statement or the project for which it was prepared has not been approved by the legislature under AS 44.56.180(c), the division of budget and management shall review the statement for compliance with the requirements of AS 44.56.183 added by sec. 24 of this Act before the statement is submitted under AS 44.56.185, added by sec. 24 of this Act, to the legislature; review by the division of budget and management may not unreasonably delay submission of the statement to the legislature;

(3) If a proposed new project has been approved by the legislature, or if money has been appropriated by the legislature for a proposed new project, and the Alaska Power Authority has not completed a reconnaissance study under AS 44.56.080(13) or a statement under AS 44.56.180(c), the project is subject to the provisions of AS 44.56.177 - 44.56.185.

\* Sec. 48. APPROVAL OF PENDING PROJECTS OF THE ALASKA POWER AUTHORITY.

(a) The Alaska Power Authority has submitted to the governor and the legislature a statement of its recommendations for financing certain power projects and a statement outlining the general design, demonstration of financial feasibility, and maximum amounts of revenue bonds and appropriations necessary for the projects, together with a statement of the design, acquisition, construction and financing of the projects by the authority or another person which satisfy the conditions of AS 44.56.180. The legislature has adopted joint resolutions approving the general design and maximum amount of

bonds to be issued for several of the projects and those actions are confirmed.

(b) Actions taken by the legislature before the effective date of this Act to approve the general design and maximum amount of bonds for power projects are confirmed and the Alaska Power Authority is authorized to issue its bonds for the following power projects in the maximum principal amount set out after each:

(1) Solomon Gulch, \$20,000,000;

(2) Terror Lake, \$120,000,000.

(c) The general design and maximum amount of bonds for power projects are approved and the Alaska Power Authority is authorized to issue its bonds for the following power projects in the maximum principal amount set out after each:

(1) Golden Valley Electric Association waste heat, \$110,000,000;

(2) Tyee Lake, \$70,000,000;

(3) Swan Lake, \$120,000,000;

(4) Glacier Highway Electric Association, \$800,000;

(5) Cordova Electric Cooperative, \$6,500,000;

(6) Matanuska Electric Association, \$2,500,000;

(7) Homer Electric Association, \$3,360,000;

(8) Naknek Electric Association, \$730,000;

(9) Lake Elva, \$15,000,000; and

(10) Black Bear Lake, \$30,000,000.

(d) The Alaska Power Authority is authorized to proceed with design and acquisition of right-of-way of the Anchorage-Fairbanks transmission Intertie. This project may be financed by revenue bonds issued by the authority, appropriations from the general fund, or other funding sources approved by the legislature.

\* Sec. 49. TRANSITION: WATER RESOURCES REVOLVING LOAN FUND. (a) The

A M E N D M E N T

Offered in the HOUSE

BY ZHAROFF

To: CSSB 168 (Rules)

Page 10, after line 9: insert a new section to read:

"\* Sec. 23. Section 48, ch. 83, SLA 1980 is amended by adding a new subsection to read:

(e) The authorization made by this section for the Terror Lake project includes authorization for the installation of a third generating unit at the project with whatever money may be made available for that purpose."

Renumber succeeding sections accordingly.

#1  
A M E N D M E N T

OFFERED IN THE HOUSE:

By: Ringstad

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

HCS CS SENATE BILL No. 168 (Finance)

PAGE: 2

LINE: after line 17

Page 2, after line 17, add a new section to read:

18 \* Sec. 3. AS 44.83 is amended by adding a new section to read:  
19       Sec. 44.83.092. AUTHORITY FOR MUNICIPALITIES AND UTILITIES TO  
20 ENTER INTO POWER SALES CONTRACTS. The authority and any municipality  
21 or public or private entity operating an electric utility, or a  
22 municipality or private entity and another municipality or private  
23 entity, may enter into a contract providing for or relating to the  
24 sale of electric power by the authority to the municipality or entity,  
25 or by the municipality or entity to another municipality or entity.  
26 The contract may provide  
27           (1) that the amounts payable under the contract are operat-  
28 ing expenses of the utility and are valid and binding obligations of  
29 the municipality or other entity payable from the gross revenues of  
1 the utility;  
2           (2) for one or more appropriations of the amounts payable  
3 under the contract;  
4           (3) for the municipality or other entity to assume the  
5 obligations of another contracting party in the event of a default by  
6 that party;  
7           (4) that after completion of a project the municipality or  
8 other entity is obligated to make payments notwithstanding a suspen-  
9 sion or reduction in the amount of the power supplied by the project;  
10 or  
11           (5) that payments under the contract are not subject to  
12 reduction by offset or otherwise.

## LETTER OF INTENT

It is the intent of the legislature that the language in AS 44.83.092 Authority for Municipalities and Utilities to Enter into Power Sales Contracts is permissive language for the local utilities to enter a power sales contract. This section addresses the essential components of a power sales contract and the legal authority to enter such contracts, not the requirement to enter such a contract or any of its provisions.

It is also understood by the legislature that in AS 44.83.092 (1) that the amounts payable under the contract may be operating expenses of the utility and the determination of this issue can only be found in the local utilities current financing documents.

## HCS CSSB 168 (Resources)

The effect of SB 168, by section, is as follows:

- Section 1. Clarifies the language of the statute by requiring that affirmative votes consist of the majority of the directors present.
- Section 2. Allows for meetings by electronic media. In the long run, this would decrease travel costs and time waste while allowing the APA Board to meet on short notice and despite climatic travel constraints.  
Prevents directors from voting on leases or contracts if they have a conflict of interest, but exempts directors who are customers of electric co-ops, and therefore, by definition, are part owners.
- Section 3. Essentially makes it permissive rather than mandatory for APA to issue bonds and further clarifies the language of the statute
- Section 4. Provides for consistency between statutes
- Section 5. Provides for conformity with other pertinent statutes
- Section 6. Provides for an independent cost estimate to be submitted with the feasibility study and a plan of finance. I believe that this section is redundant in view of 44.83.186, which requires an independent cost estimate after the legislature approves a project and allows for only a 7.5% increase before the project has to be recycled by the APA and reauthorized by the legislature. As a matter of policy, the APA has been obtaining independent cost estimates since last year and has hired an in-house estimator to provide further verification of cost estimates. The proposed procedure would further increase the cost of the studies especially since this section would apply to large and small projects equally.
- Section 7 Prohibits the use of wrap-up insurance requirements by the power authority. This provision was added in H. Resources.
- Section 8 Adds a requirement for sale contracts for transmission of electricity. The use of the term electrical power or energy is redundant. The section further clarifies that the contracts must be in compliance of AS 44.83.380 - 44.83.425 or AS 44.83.090.

Sections 9 & 10 Insure that AS 44.83.361 does not violate the Alaska Constitution as alleged in a pending lawsuit.

Sections 11 & 12 Clarify the provisions of existing statutes on the Rural Electrification Revolving Loan Fund program without making substantial changes to it.

Section 13 Makes a project's expenditures dependent on a finding that the project is economically feasible. This section removes the redundancy under current statute, preserving the intent to ensure economic feasibility while eliminating the criteria in two places in the statutes.

Section 14 Clarifies the existing statute on the use of the fund for federally owned projects.

Section 15 Modifies the existing statute to allow APA to market bonds.

Section 16 Provides for ownership of projects by the authority rather than the state and should make it easier to market bonds.

Section 17 Provides for use of national and industrial standards in the APA's determination of whether a utility is qualified to operate a power project owned by APA.

Section 18 & 20 Assure that power projects are operated in a manner consistent with the bonding agreements.

Section 19 Amends the Susitna "Equity" Clause from \$5 billion by July 1, 1986 to \$3.5 billion by July 1, 1990.

Section 21 Allows the authority to sell power at an industrial rate. This provision was added in H.Resources.

Section 22 Allows APA to adjust the wholesale power rates to meet bonding requirements while still complying with the statutes on rate setting.

Section 23 Clarifies that interties are not covered under the energy program for Alaska in the rate setting subsection. This clarifies the intent desired by the legislature when it passed HB9 last year.

Section 24 Clarifies the definition of debt service thereby making it easier to secure bonds.

Section 25

Repeal of AS 44.83.195(b) is necessary in order to align it with other rate making provisions of the statutes.

Repeal of AS 44.83.382(b) (2) is required because any unencumbered revenues must go into the general fund.

Repeal of AS 44.83.398(b) (2) is desirable for two reasons. First, in a pending lawsuit *Trustee of Alaska v. State*, the constitutionality of this section is being challenged. Second, this section could result in a substantial increase in APA wholesale rates if the legislature does not appropriate a total of \$5 billion by July 1, 1986, into the power development fund. Since it appears almost certain that this level of appropriation can not be achieved, APA is experiencing problems in negotiating power sales contracts. Since providing lowest reasonable cost energy is the mandated goal of the program, it makes sense to minimize uncertainty and maximize marketability.

Repeal of AS 44.83.186. An additional requirement of an independent cost estimate immediately following project approval would serve no useful purpose and would involve additional costs. (An independent cost estimate is already required prior to submittal to the legislature for approval.)

Section 26

Provides for an immediate effective date.