SB

168

SIGN-IN SHEET

Name (please print)	Address	Representing	yes or no TESTIFY (?)	Phone #
Sterling Gallagher	9026 Rosedale St	John Nuvee[illegible]	yes	586-16[illegible]
LAURA DAVIS	Pouch K Juneau	Dept of Law	No	465-3600
RONALD RIPPLE	Pouch D Juneau	Dept. of Commerce	Yes	465-2019
		586		
Ginny Chitwood	AK Mun. League	1325		
Nancy Ford	4955			

HOUSE RULES COMMITTEE

HEARING DATE:

Kurt Dzinich 3114

HCS CSSB 168 Res.

Add the following

AS 44.83.092. Authority for Municipalities and Utilities to Enter into Power Sales Contracts. The Authority and any municipality or public or private entity operating an electric utility may enter into a contract providing for or relating to the sale of electric power by the Authority to the municipality or such entity. The contract may provide, ~~among other things,~~

(1) that the amounts payable under the contract are operating expenses of the utility and are valid and binding obligations of the municipality or other entity payable from the gross revenues of the utility;

(2) for one or more appropriations of the amounts payable under the contract;

(3) for the municipality or other entity to assume the obligations of another contracting party in the event of a default by that party;

(4) that after completion of a project the municipality or other entity is obligated to make payments notwithstanding a suspension or reduction in the amount of the power supplied by the project; or

(5) that payments under the contract are not subject to reduction by offset or otherwise.

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 noncompletion of a project, as was attempted by WPPSS.

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 wasted 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 marketabiiity.

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.

finance added Chester Lake & Jenor Lake

RULES COMMITTEE MEETING
AGENDA

JUNE 23, 1983

HCSCSSB 168(Fin) "An Act relating to the Alaska Power Authority; and providing for an effective date."

OPENING REMARKS FOR CSSB 168:

This bill makes a number of changes to the Alaska Power Authority statutes, most of them fairly technical, although necessary, dealing with the Authority's ability to market bonds. The bill also changes the "Susitna equity" clause from $5 billion by 1986 to $3.5 billion by 1990. The Finance Committee substitute adds authorization for the Chester Lake and Terror Lake projects.

Rules is hearing the bill today because of a court decision just handed down in the State of Washington dealing with contracts between utilities and a power authority. In light of this decision, bond counsel feels that amendments are necessary in our statutes this year. Amendments have been incorporated into a draft Rules Committee Substitute, and appear as Section 3, beginning on page 2, line 18.

AVAILABLE TO TESTIFY:

Sterling Gallagher
Laura Davis, attorney general's office
Ron Ripple, Department of Commerce and Economic Development

(Jack: Someone on the committee or Ron Ripple is likely to question what is now Section 23 of the bill, regarding giving industrial consumers a lower rate than residential consumers. This provision was added in House Resources and appears quite controversial; the Senate probably won't buy off on the bill because of it.)

SB 168 (Alaska Power Authority)

Delete Section 2~~1~~ 2 (providing for industial rates)

Reasons:

1. It's highly controversial and doesn't further the purpose of the bill, which is to assist the APA in selling revenue bonds for existing hydro projects. It's unwise to endanger the bill's passage.

This amendment was rejected by the Senate; it's inclusion will send the bill to conference committee, which may take more time than we have. Without section 21, the Senate will likely concur with the House changes. Failure to pass the bill this session will require a special session, or will prevent the marketing of bonds this fall and will, as a result, harm the APA's bond rating (which will in turn make it more difficult and more expensive to finance future projects).

2. It's a complex policy decision that has not had legislative scrutiny, that the APA is studying and wants time to make recommendations on, and that is not necessary this year.

This amendment was not proposed until late in the session and has not had careful consideration. It's contrary to existing law and policy, which should not be changed casually.

The legislature has a history of making major changes to the APA statutes at the last minute of the session, changes that have caused numerous problems for the state energy program and its financing. APA financial advisors have stated that the bond market watches these actions and reacts negatively when the legislature makes sudden policy changes. This image of "flakiness" has already hurt us.

The APA is already actively considering this issue and would like the chance to complete their study and make recommendations to the legislature. The Senate, in its letter of intent, has directed the APA to do this.

There's no need to act on this amendment this year. The industry most often mentioned as being a candidate for "dump rate" power is the Borax Quartz Hill mine will not be making its development decisions for another year. There may be alternative, and cheaper, methods of meeting their energy needs; the whole range of choices is being considered by the APA and utilities.

3. There are specific problems with the "dump rates" section.

It conflicts with current state policy that the large amount of state money that's being put into the energy program is to benefit residential Alaskans, not industry (which, it should be noted, will receive large subsidies from hydro projects even without the dump rates). Alaska's situation is different from elsewhere in the country where dump rates are common, because nowhere else does the state pay the

capital costs of the projects. If, in fact, a case can be made that allowing dump rates in particular cases would aid residential consumers, then the legislature could consider changing the policy.

Because the issue hasn't been studied, we don't know what the effect would be on individual project rates, on classes of consumers, or on the energy program as a whole. No analysis has been presented.

The "notwithstanding" portion of the language says that for utilities regulated by the APUC, there would be no requirement that residential users would have to benefit from the lower "dump rates." Because APUC statutes mandate their consideration of "cost of service," the APUC generally approves cheaper rates for larger users. In effect, for those utilities regulated by the APUC, the second part of the amendment negates the first part.

There is no provision for residential users to have "first claim" on power or that industrial use be on an interruptible basis. Should an industry be sold a block of what is initially excess power and the demand in the residential and commercial sectors grows, there would not be enough power to meet all demands. Residential users would then bear the burden of paying for additional power sources while industry reaped the benefits of the state-funded project.

The disincentive to overbuilding projects and having surplus power would be removed, as justification could be made to build projects larger than demand requires based on an assumption that industry would develop to make use of the excess power. Aside from arguments about the merits of industrial growth, the result would be that the state would have to pay more for larger projects, and this is something that we cannot afford.

Prepared by:
Nancy Lord
Aide to Sen. V. Fischer

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