

H

B

684

visions of AS of the Department ch 176 SLA

time it of Trans-Facilities] or the Resources, except ings, the ordinary s will follow the idings. 1961 Op.

t required by blished by P. ne purpose of manent Fund, Alaska Native

ons.

projects of the enter

ional obstacle to Alaska subject to d in this title. Atty Gen.

r appropria- tion autho- fiscal year for encumbrance) he fiscal year h the Depart- fiscal year. ch the appro- r's appropria- apsed; and (2) ars from the

Sec. 37.25.020. Unexpended balances of appropriation for capital projects. An appropriation made for a capital project is valid for the life of the project and the unexpended balance shall be carried forward to subsequent fiscal years. Between July 1 and August 31 of each fiscal year, a statement supporting the amount of the unexpended balance required to complete the projects for which the initial appropriation was made and the amount that may be lapsed shall be recorded with the Department of Administration. (§ 2 ch 113 SLA 1962)

Sec. 37.25.030 Appropriations for projects of the Alaska energy center. An appropriation to the Alaska Energy Center for a research, development, or demonstration project under AS 46.12.120(2) is valid for the duration of the project and the unexpended balance for the project shall be carried forward to subsequent fiscal years. (§ 6 ch 148 SLA 1980)

Chapter 30. Local Government Bonding.

Section

100. Prohibited bidding on bonds

Secs. 37.30.010 — 37.30.090. Anticipatory borrowing. [Repealed, § 1 ch 118 SLA 1972.]

Sec. 37.30.100. Prohibited bidding on bonds. (a) No person who provides financial programming or marketing assistance to a political subdivision of the state, whether home rule or otherwise, in connection with the issuance or sale of general obligation bonds, revenue bonds or bond anticipation notes of the political subdivision may bid on the bonds or notes if offered at public sale, or negotiate for their purchase if sold at private sale.

(b) The sale of general obligation, revenue bonds or bond anticipation notes of a political subdivision to a person prohibited from bidding on, or negotiating for the sale of bonds or notes under (a) of this section is against public policy and the sale is void.

(c) In this section "person" means an individual, firm, agent, factor, intermediary, partnership, corporation, association, bond house, stockbroker or bond broker. (§ 2 ch 102 SLA 1974)

7/2/87

DRAFT
Law

<u>Funding Information</u>	
General Fund	\$259,000,000
Other Funds	\$ -0-
	<hr/>
	\$259,000,000

1 IN THE HOUSE

BY THE RESOURCES
COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 684 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making special appropriations to the Alaska
7 Power Authority; and providing for an effective
8 date."
9

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

11 * Section 1. The sum of \$49,000,000 is appropriated from the general
12 fund to the Alaska Power Authority for the purpose of of rate stabilization
13 in accordance with the terms of power sales agreements and bond covenants
14 for the issuance of revenue bonds for the Lake Tyee, Swan Lake, Terror
15 Lake, and Solomon Gulch hydroelectric facilities.

16 * Sec. 2. The sum of \$200,000,000 is appropriated from the general fund
17 to the Alaska Power Authority power development fund for the purpose of
18 financing the Watana Dam phase of the Susitna hydroelectric project.

19 * Sec. 3. The sum of \$10,000,000 is appropriated from the general fund
20 to the power cost assistance fund established in AS 44.83.162.

21 * Sec. 4. The appropriations made in secs. 1 and 2 of this Act are for
22 one-year appropriations and do not lapse under AS 37.25.010.

23 * Sec. 5. Section 1 of this Act takes effect the day after all of the
24 power purchasers served by the Lake Tyee (City of Petersburg and City of
25 Wrangell), Swan Lake (City of Ketchikan), Terror Lake (Kodiak Electric
26 Association), and Solomon Gulch (Copper Valley Electric Association) hydro-
27 electric projects have entered into power sales agreements with the Alaska
28 Power Authority.

29 * Sec. 6. Sections 2 and 3 of this Act takes effect immediately in
accordance with AS 01.10.070(c).

FOR DISCUSSION:

Dzinich

BY

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to hydroelectric financing; and providing for an effective date."

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

* Section 1. AS 44.83 is amended by adding a new section to read:

Sec. 44.83.383. CONTINUING APPROPRIATION. The sum of \$200,000,000 is appropriated on July 1 of each fiscal year from the general fund to the Alaska Power Authority for deposit in the power development fund (AS 44.83.382) for the purpose of equity investment ~~construction~~

in and rate stabilization for the Susitna hydroelectric project.

Section 2. AS 44.83 is amended by adding a new section to read:

Sec. 44.83.384. CONTINUING APPROPRIATION. The sum of \$50,000,000 is appropriated on July 1 of each fiscal year from the general fund to the Alaska Power Authority for deposit in the power development fund (AS 44.83.382) for the purpose of equity investment in and rate stabilization for the Bradley Lake hydroelectric project.

Section 3. This Act takes effect July 1, 1984.

Sec. 4 AS 44.83.383 is repealed on June 30, 1991.

Sec. 5 AS 44.83.384 is repealed on June 30, 1988.

Sec. 6 Sections 1 and 2 of this Act make appropriations for capital projects and lapse in accordance with AS 37.25.020.

1

Funding Information

General Fund	\$487,200,000
Other Funds	-0-
	<u>\$487,200,000</u>

684 adopted 18-0
1 ye

adopted

SENATE AMENDMENT

BY Josephson-Ferguson-Fair

TO: SCS CSHB 684(Fin)

Delete all material, Page 1, lines 10-29; Page 2, lines 1-8; and insert following:

* Section 1. The sum of \$210,000,000 is appropriated from the general fund to the power development revolving loan fund established by AS 44.33.600, for loans to be made to the Alaska Power Authority.

* Sec. 2. The sum of \$21,700,000 is appropriated from the general fund to the Alaska Power Authority for deposit in the power cost equalization fund (AS 44.83.162).

* Sec. 3. The sum of \$200,000,000 is appropriated from the general fund to the Alaska Power Authority for deposit in the power development fund (AS 44.83.382) for the purpose of equity investment in, and rate stabilization for, the Susitna River hydroelectric project.

* Sec. 4. The sum of \$50,000,000 is appropriated from the general fund to the Alaska Power Authority for deposit in the power development fund (AS 44.83.382) for the purpose of equity investment in, and rate stabilization for, the Bradley Lake hydroelectric project.

* Sec. 5. The sum of \$5,500,000 is appropriated from the general fund to the Alaska Power Authority for the purpose of contracting with the City of Seward for the Seward to Davies Creek intertie and electrical system.

* Sec. 6. The appropriations made by this Act are considered capital projects or are otherwise not one-year appropriations and do not lapse under AS 37.25.010.

* Sec. 7. This Act takes effect July 1, 1984.

STATE OF ALASKA
THE LEGISLATURE

HOUSE OF REPRESENTATIVES
LEGISLATIVE AGENCY
1984

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 13, 1984

SUBJECT: Application of appropriation limit to HB 684

TO: Senator Bettye Fahrenkamp
Chairman
Senate Resources Committee

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have furnished us with a copy of a proposed change in HB 684 relating to the appropriation for the Watana phase of the Susitna Hydroelectric Project and asked whether in our opinion the total appropriation would be considered as part of the appropriation required to be under the appropriation limit established by sec. 16 art. IX Constitution of the State of Alaska for this year.

Although the question is close and there is no authoritative construction of the appropriation limit in my opinion the entire \$1,400,000,000 would be included in the limit for this year.

Under the proposed change \$1,400,000,000 is appropriated for the Watana phase of the Susitna Hydroelectric Project. The bill also provides a funding mechanism for the appropriation and specifies that not more than \$500,000,000 nor less than \$200,000,000 shall be deposited in the fund created by the bill annually. The bill does not however restrict the amount expended to those amounts.

It is clear that expenditure of the entire amount is not contemplated during the next fiscal year. Further as a practical matter it appears impossible for the entire amount to be expended since spending is limited to amounts appropriated by law and to revenue available by necessity. However, the constitutional limit is an appropriation limit, not a spending limit except that spending is limited by appropriations. As a matter of law, even with the proposed

Hutchens

HOUSE BILL 684

I. Amendments necessary to separate funding for Bradley and Watana, and to make the multiyear appropriations constitutional.

*Sec. 2. The sum of \$1,400,000,000 is appropriated from the general fund to the Alaska Power Authority power development fund for the purpose of equity investment in and rate stabilization for the Watana phase of the Susitna Hydroelectric Project. Beginning July 1, 1984, the commissioner of revenue shall make monthly deposits to the power development fund of the appropriation made by this Section. A monthly deposit shall be in an amount determined by the commissioner of revenue to be in excess of the general fund revenues necessary to finance state government operation for the month in which the deposit is made. Not more than \$500,000,000 nor less than \$200,000,000 shall be deposited to the power development fund in each fiscal year beginning with fiscal year 1985 and the entire amount shall be deposited no later than June 30, 1991.

*Sec. 3. The sum of \$200,000,000 is appropriated from the general fund to the Alaska Power Authority power development fund for the purpose of equity investment in and rate stabilization for the Bradley Lake Hydroelectric Project. This appropriation shall be deposited in the

power development fund at the rate of \$50,000,000 in each fiscal year beginning with fiscal year 1985 and ending with fiscal year 1988.

- II. Amendment necessary to clear up effective date problems on Watana appropriation.

Delete section 5 or amend it to read:

*Sec. 5. Section 2 of this Act takes effect immediately in accordance with AS 01.10.070 (c); however, these funds may not be expended until power sales agreements have been obtained by the Alaska Power Authority which provide for the sale of all firm power to be produced by the Watana project.

Senator Bettye Fahrenkamp
Page 2
April 13, 1984

change the entire amount is available for expenditure during the next fiscal year. Lack of available money to allow the expenditure is a factual limit. In my opinion therefore, even with the proposed change, the appropriation is "for a fiscal year" as that term is used in section 16.

As I have pointed out above the constitutional amendment is not clear on this question and I have found no authority which is helpful in construing the limit here. Any opinion therefore must be given with caution.

With that rather substantial caveat I would suggest that the appropriation limit would not apply to the total amount if the appropriation were limited. Possible language to be added at the end of sec. 2 would be:

"This appropriation is a continuing appropriation. The appropriation for a fiscal year during the period of the continuing appropriation may not exceed the balance available for expenditure of the amounts deposited in the power development fund under this section."

With language such as this it is my opinion that the amount \$500,000,000 which is the maximum amount deposited during the first fiscal year would be the amount of the appropriation for purpose of the appropriation limit for the next fiscal year.

BGB:ojb
J6/037

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 2, 1984

SUBJECT: Constitutional spending limit
in relation to HB 648 ⁶⁸⁴

TO: Senator Vic Fischer

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked a series of questions concerning the constitutional spending limit established by Sec. 16, Article IX, Constitution of the State of Alaska with specific reference to CSHB 684 (Fin) am. You indicated that a speedy response was essential and that a partial response would be acceptable if a comprehensive opinion cannot be completed immediately. All of the questions are complex matters of constitutional law and of procedure. This opinion will therefore be conclusionary and at best only a partial answer. I will follow this with a fuller opinion but I fear some of the questions cannot be adequately answered.

1. You have asked whether the total appropriation made in the bill would be considered as part of the appropriations required to be under the spending limit for this year. In my opinion it would.

It is clear that expenditure of the entire amount is not contemplated during the next fiscal year. However, the constitutional limit is an appropriation limit, not a spending limit except that spending is limited by appropriation. As a matter of law the entire amount is available for expenditure in the next fiscal year. In my opinion therefore the appropriation is "for a fiscal year" as that term is used in Section 16.

It could be argued that on the facts it is clear that the entire amount can not be spent during the fiscal year and therefore only the amount which will become available for expenditure should be considered as being within the

appropriation limit. In my opinion that position suffers from two substantial defects. First appropriations are authorizations to expend money up to a stated or ascertainable amount. That amount here is \$1,400,000,000. Second if this position is taken a determination of whether the limit is exceeded in a given year becomes an after the fact determination based on events which occur during the year. It would not be possible at this time to do more than estimate that amount.

Therefore in my opinion an appropriation for a multi-year program must be counted as within the appropriation limit for the year in which the appropriation could legally be expended regardless of whether it will be actually expended that year.

2. You have asked a series of questions which related to the procedures involved in applying the spending limit. The spending limit is computed by multiplying the base amount by cumulative change derived from federal indices as prescribed by law in population and inflation. No indices have been prescribed by law. In my opinion failure to prescribe the indices cannot prevent operation of the limit since otherwise the legislature could effectively nullify the constitution by inaction. There are several indices which could be considered applicable. The question of which index is appropriate is therefore a matter of judgment. Since the determination is essentially a factual question it would appear that a court would give some deference to a legislative judgment it considered reasonable.

If an appropriation is to be placed on the ballot as one exceeding the debt limit in my opinion the appropriation bill must require this and either identify or require to be identified the operation and maintenance cost. The procedure to identify the costs should be by general law. While in my opinion the question is close it would appear that lack of a general law would not invalidate placement of the question of exceeding the debt limit on the ballot if the law making the appropriation provides for identification of these costs and informing the voters of them.

The constitutional amendment and the law are silent on the question of which specific appropriations exceed the limit where the total limit is exceeded but no appropriations are identified as being in excess of the limit. While limited research has discovered no authority on the subject the

logical method would be that the appropriations would be considered in a time sequence, that is those appropriations which are adopted and signed before the limit is reached would be valid while those which come later would not be. This is unsatisfactory however since it does not take into account the priority among appropriations, the reasonable expectation of the legislature nor address the priority of items within a major appropriation bill when the total appropriation of that bill causes the limit to be exceeded. However I can think of no other test which is more satisfactory.

In my opinion the constitutional debt limit does not require this appropriation to be placed on the ballot since, as discussed above, if the debt limit is exceeded, it cannot be said as a matter of law that this is the appropriation which exceeded the limit unless the legislature identifies it as such.

You have asked whether if the limit is exceeded the governor has an obligation to veto appropriations down to the limit. In my opinion the governor does. The constitution is binding on both the governor and the legislature and just as the legislature has the constitutional obligation not to make appropriations which exceed the limit except as authorized the governor has the same obligation not to approve such appropriations.

The legislature has a plenary power of appropriation except as limited by the constitution. There is no balanced budget requirement in our constitution. The legislature therefore may make appropriations beyond the money available for a fiscal year. If this occurs the governor may direct the withholding of appropriations under AS 37.07.080(g)(1).

There is also no prohibition of on-going appropriations. This does not bind future legislatures since each legislature has full power to repeal any action taken by prior legislatures. I realize there is a certain constraint on future legislatures since they must act to repeal the continuing appropriation but in my opinion this does not cause a dedication of funds prohibited by Sec. 7 of Article IX of the constitution even as broadly as our court has interpreted the provision since the appropriation may at any time be altered by law and since no earmarking of revenue is involved.

Senator Vic Fischer

Page 4

April 2, 1984

In my opinion the Commissioner of Revenue would be bound by the requirement that monthly deposits be made to the fund. However it should be noted that earnings of the fund do not become part of the fund and any balance in the fund which has not been expended or obligated may be used for other purposes if that is provided by law.

The amount deposited is the lesser of \$200,000,000 or the amount the Commissioner of Revenue determines to be "in excess of the general fund revenue necessary to finance state government operations". That term is very broad and gives the commissioner wide latitude in determining the amount to be deposited. In my opinion a determination by the commissioner that certain costs are within or outside the term "state government operation" would be sustained unless the determination was clearly unreasonable.

EGB:ojb

J5/042

Senator Vic Fischer

Alaska State Legislature
1024 W. 6th Avenue, Suite 204C
Anchorage, Alaska 99501 (907) 278-3554
During Session • Pouch V • Juneau, Alaska 99811 (907) 465-4954



March 31, 1984

TO: Billy Berrier
Division of Legal Services
Legislative Affairs Agency

FROM: *W. for*
Senator Vic Fischer

RE: Request for legal opinion of attached appropriation (HB 684)

The House of Representatives recently passed HB 684, appropriating \$1.4 billion to the Alaska Power Authority for the purpose of funding the construction of the Susitna and Bradley Lake Hydroelectric Projects. I would like your legal opinion concerning the legality and constitutionality of such a multi-year appropriation and the applicability of the spending limit.

1. Can the legislature legally appropriate more money than is available in the fiscal year for which it is appropriating? Can we authorize an on-going appropriation that would require payments to be made from the revenues of subsequent years (restricting future legislatures)? Would the Commissioner of Revenue be legally bound to make such deposits as are ordered? How would "state government operation" be defined? What would happen if less than \$200 million were available in excess of that needed for state government operation in a given year, or if the entire amount were not appropriated by 1991?

2. Would the spending limit require that this \$1.4 billion appropriation be placed on the ballot? For application of the spending limit, would the total appropriation be considered an appropriation for the fiscal year, or would it be considered as being made in the fiscal year for a number of fiscal years? To place the appropriation on the ballot as one exceeding the spending limit, must legislation be passed specifying a public vote and providing for notification to voters of project o&m costs? If the legislature appropriates over the spending limit without specifying which projects are over the limit and providing for their consideration on a public ballot, is the governor required to veto down to the spending limit? If no law passes clearly defining the spending limit, what definition applies?

If you need further clarification on any of these questions, please contact my aide, Nancy Lord. Because prompt action on this bill is expected, I would appreciate a speedy response. A partial response would be acceptable if a comprehensive opinion cannot be completed immediately.

CSHB 684(Fin)am

Representative M. M. Miller objected.

Amendment No. 3 by Bussell and Bettisworth:

Page 1, lines 15-17:

Remove Sec. 2 and add new section:

"*Sec. 2. The sum of \$1,400,000,000 is appropriated from the general fund to the Alaska Power Authority power development fund for the purpose of funding the completion of the Watana Dam in the Susitna Hydroelectric Project and the Bradley Lake Power Project. Beginning July 1, 1984, the commissioner of revenue shall make monthly deposits to the power development fund of the appropriation made by this Section. A monthly deposit shall be in an amount determined by the commissioner of revenue to be in excess of the general fund revenues necessary to finance state government operation for the month in which the deposit is made. Not less than \$200,000,000 shall be deposited to the power development fund in each fiscal year beginning with fiscal year 1985 and the entire amount shall be deposited no later than June 30, 1991."

The Speaker lifted the call.

Representative Vaska placed a call of the House on CSHB 684(Fin)am.

Representative Vaska lifted the call.

Representative Hayes placed a call of the House and stated that the call had been satisfied.

The question being: "Shall CSHB 684(Fin)am be returned to second reading for the purpose of specific amendment?" The roll was taken with the following result:

CSHB 684(FIN)AM MOTION

Yeas: 21 Abood, Barnes, Bettisworth,
Bussell, Clocksin, Cowdery, Fritz,
Furnace, Hayes, Larson, Lindauer,
Malone, Martin, Miller, M.W.,
Pestinger, Ringstad, Shultz,
Szymanski, Tischer, Uehling, Ward

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 18, 1984

Honorable Arliss Sturgulewski
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: CS for HB 684 (Finance) am

Dear Senator Sturgulewski:

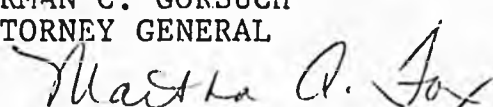
You have asked for our comments concerning the constitutionality of the appropriation of 1.4 billion dollars to the power development fund which is contained in section 2 of Committee Substitute for House Bill 684 (Finance) am.

In a memorandum of advice dated April 2, 1984, our office addressed the question whether the entire \$1.4 billion multi-year appropriation should be included with the other appropriations enacted for the fiscal year ending June 30, 1985, for the purpose of determining the spending limit for that fiscal year. 1984 Inf. Op. Att'y Gen. (April 2, 366-494-84). A copy of that memorandum is attached for your information. We concluded in the memorandum that, as worded in section 2, the entire \$1.4 billion must be included in the determination of the spending limit.

Another potential question is whether the appropriation may result in expenditures in excess of receipts to the state or in deficit financing. In 1981, we advised that an appropriation to the permanent fund, which contained language very similar to the \$1.4 billion appropriation, did not result in deficit financing. 1981 Inf. Op. Att'y Gen. (June 24, J77-159-81). It appears that the same reasoning would apply to the \$1.4 billion appropriation. A copy of that memorandum is also attached for your information.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL


By: Martha A. Fox
Assistant Attorney General

MAF/mg

MEMORANDUM

State of Alaska

TO: John Shively, Chief of Staff
Office of the Governor

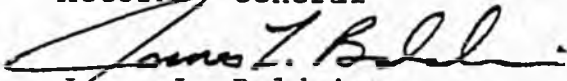
DATE: April 2, 1984

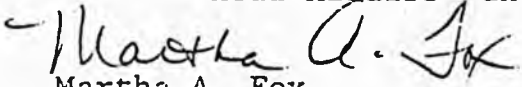
FILE NO: 366-494-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: HB 684, multi-year
appropriation; and
HB 589, Bradley Lake
and Susitna


By: James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau


Martha A. Fox
Assistant Attorney General
Commercial Section-Juneau

Amendments to HB 684, multi-year appropriation

You have requested our advice whether the entire \$1.4 billion multi-year appropriation added in the House of Representatives to HB 684 by floor amendment #3 would be included with the other appropriations enacted for the fiscal year ending June 30, 1985 for purposes of determining the spending limit (Alaska Const. art. IX, sec. 16) for that fiscal year. We believe that the entire appropriation must be included with other fiscal year 1985 appropriations if the spending limit has been exceeded. Our reasoning follows.

Your question raises the issue of how to interpret the words "appropriation ... made for a fiscal year" in article IX, section 16 of the Alaska Constitution. AS 37.25.020 provides "An appropriation made for a capital project is valid for the life of the project and the unexpended balance shall be carried forward to subsequent fiscal years." This provision recognizes that capital projects often span more than one fiscal year before completion. The balance of the appropriation remains available in subsequent fiscal years and is carried forward to those succeeding fiscal years. According to the Department of Administration, as of June 30, 1982, the total of all "carry forward" capital appropriations was: approximately \$1,591,000,000, and the total of all "carry forward" operating appropriations was \$1,862,000,000.

The free conference committee (FCC) which proposed the final version of the spending limit debated the intent of the limit concerning this issue. Transcript of the proceedings of the second free conference committee considering SJR 4, Eleventh Alaska State Legislature (a copy is on file with the Legislative Reference Library, Legislative Affairs Agency, Juneau) page 47-55

(hereafter "Transcript"). The FCC was aware that multi-year appropriations are made. During the deliberations of the FCC, there was an attempt by Representative Hugh Malone to amend the proposal so that a legislature could not appropriate for a fiscal year subsequent to the upcoming fiscal year. This amendment was not adopted. Senator Bill Ray observed that the intent of the amendment was to include only those appropriations which are expended during the fiscal year. According to Senator Ray, appropriations which remain unexpended at the end of a fiscal year should lapse. Transcript at 52. Representative Rick Halford interpreted the proposed amendment to make multi-year appropriations count against the limit each year because each succeeding legislature could amend or repeal these appropriations at will. During all of these discussions, no distinction was made between operating and capital appropriations. However, these comments probably referred only to multi-year operating appropriations. See Transcript at 65-66.

The debate on this issue discloses that the FCC was confused about the operation of carry forward appropriations. They formulated the \$2.5 billion base by taking the fiscal year 1982 appropriation total and reducing that amount by \$60 million. Transcript at 2-5. However, 1982 appropriations were made based on forecasts of anticipated surplus for that fiscal year, reduced by expected expenditures for "carry forward" appropriations. We assume, therefore, that the drafters did not intend to count carry forward appropriations in the limit established for each fiscal year.

We believe that a commonsense way to interpret the appropriation limit, which is supported by past practice, is to count appropriations that are available for expenditure in a fiscal year only against the limit for the first fiscal year during which they could be completely expended. This should be done even if an unexpended balance is carried forward into the next fiscal year. That balance must be considered obligated for the purposes of the appropriation limit. Unexpended balances of a prior year appropriation should not be counted with the current year appropriations in complying with the limit for the current year. If the legislature provides that an appropriation may not be expended until a later fiscal year, the appropriation should be counted only against the limit for that later fiscal year.

Amendments to HB 589 -- authorizing Bradley Lake and Susitna

During reconsideration of the vote on HB 589, the House of Representatives approved a floor amendment which removed the sections placing Bradley Lake and Watana Dam in the energy

program for Alaska for the purpose of receiving money from the power development fund. These sections were replaced by two sections authorizing Bradley Lake and the Watana phase of Susitna under AS 44.83.185(c) and other sections of the Alaska Power Authority (APA) statutes.

AS 44.83.185 provides that no money can be spent on final design work and construction of a project until it has been approved by the legislature. The wording of that section does not absolutely require completion of a feasibility study and plan of finance before legislative approval, however the intent of the general statutory scheme is to require completion of a feasibility study and plan of finance before money is spent on final design and construction.

Legislative approval at this point ignores the statutory procedures set up by the legislature to ensure that only economically and financially feasible projects will be approved and built. However, all expenditures of appropriated money after approval appear to be permissive, not mandatory. Therefore, the APA could keep to its adopted policy of not spending money on final design and construction until a final plan of finance is completed which incorporates agreements with purchasing utilities on cost of power.

Bradley Lake is also approved under AS 44.83.384(c). This subsection permits expenditures from the power development fund for a project which was constructed or owned by the United States if the Office of Management and Budget (OMB) reviews a feasibility study and plan of finance which comply with the requirements set out in other sections of the APA statutes. It is debatable whether Bradley Lake qualifies for approval under this subsection, however the effect is much the same as approval under AS 44.83.185(c).

The preliminary report on Susitna is also approved in accordance with AS 44.83.320(b). This report was submitted several years ago, I believe, but has never been approved. The effect of approval under this section is to authorize the entry into a contract for construction of the project within one year after approval of the preliminary report. Again, the language is permissive. The authority is not absolutely required to enter into a contract for construction. The provisions on the Susitna project, AS 44.83.300 -- 44.83.360, do not track well with the feasibility and finance plan provisions in other sections of the APA statutes. However, the Susitna provisions do appear to be in addition to, not in place of, the feasibility and finance plan requirements. The authority should be able to stick to its pol-

John Shively, Chief of Staff
Office of the Governor
366-494-84

April 2, 1984
Page #4

icy on expenditures for final design and construction in spite of legislative approval.

Specific construction costs for both Bradley Lake and Susitna are also authorized by the amendment. The cost for Bradley Lake is close to the cost given by the authority in HB 683, which was expressed in 1985 bid price dollars. The cost for the Watana Dam, \$1,500,000,000, is low. It is not clear from the statutes what the effect is of authorizing a project at a construction cost below the actual cost. Possibly the project would have to come back for further approval after it reached the approved limit.

The amendment suggested by Dave Hutchins authorizes both projects under AS 44.83.185. The effect would be basically the same as the amendment which was approved. Dave's cost of construction figure looks like it is probably much more realistic for Watana than the version which was approved.

JLB/NF/pjg

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K -- STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

June 24, 1981

Hon. M.E. Dankworth
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Dankworth:

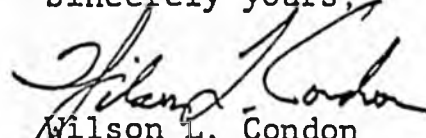
You have asked whether the appropriation of \$1.8 billion to the permanent fund may result in expenditures in excess of receipts to the state or in deficit financing.

The short answer is no.

First, the appropriation of \$1.8 billion is made subject to conditions which limit deposits from the appropriation to receipts which are in excess of the amount of money required each month to meet other costs to the state. Second, the total amount to be appropriated need not be deposited completely into the permanent fund until June 30, 1983. That allows for an additional fiscal year of receipts to the state to meet the expense of the appropriation. Under those conditions, it would be impossible for the appropriation to be in excess of receipts or to result in deficit financing.

The latest amendments to the bill were designed precisely to provide that no over-appropriation or deficit could occur and yet to permit the entire amount of the appropriation to be deposited into the permanent fund during fiscal year 1982 if the receipts to the state during the fiscal year permit that result.

Sincerely yours,


Wilson L. Condon
Attorney General

WLC:pjg

Original sponsor: Rules/Governor

Funding Information

General Fund	\$487,200,000
Other Funds	-0-
	<u>\$487,200,000</u>

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 684 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making special appropriations to the Alaska
7 Power Authority; and providing for an effective
8 date."

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

10 * Section 1. The sum of \$210,000,000 is appropriated from the general
11 fund to the power development revolving loan fund established by AS 44.33.-
12 600, for loans to be made to the Alaska Power Authority.

13 * Sec. 2. AS 44.83 is amended by adding new sections to read:

14 Sec. 44.83.165. CONTINUING APPROPRIATION FOR POWER COST EQUALI-
15 ZATION. The sum of \$21,700,000 is appropriated on July 1 of each
16 fiscal year from the general fund to the power cost equalization fund
17 (AS 44.83.162).

18 Sec. 44.83.410. CONTINUING APPROPRIATION FOR SUSITNA RIVER
19 →1991 HYDROELECTRIC PROJECT. The sum of \$200,000,000 is appropriated on
20 July 1 of each fiscal year from the general fund to the authority for
21 deposit in the power development fund (AS 44.83.382) for the purpose
22 of equity investment in, and rate stabilization for, the Susitna River
23 hydroelectric project.

24 Sec. 44.83.420. CONTINUING APPROPRIATION FOR BRADLEY LAKE HYDRO-
25 →1988 ELECTRIC PROJECT. The sum of \$50,000,000 is appropriated on July 1 of
26 each fiscal year from the general fund to the authority for deposit in
27 the power development fund (AS 44.83.382) for the purpose of equity
28 investment in, and rate stabilization for, the Bradley Lake hydroelec-
29 tric project.

1 * Sec. 3. The sum of \$5,500,000 is appropriated from the general fund
 2 to the Alaska Power Authority for the purpose of contracting with the City
 3 or Seward for the Seward to Davies Creek intertie and electrical system.

4 * Sec. 4. The appropriations made in secs. 1, 2 and 3 of this Act are
 5 not one-year appropriations and do not lapse under AS 37.25.010.

6 * Sec. 5. AS 44.83.410 is repealed June 30, 1991.

7 * Sec. 6. AS 44.83.420 is repealed June 30, 1988.

8 * Sec. 7. This Act takes effect July 1, 1984.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

ALASKA POWER AUTHORITY

334 WEST 5th AVENUE - ANCHORAGE, ALASKA 99501

Phone: (907) 277-7641
(907) 276-0001

March 8, 1984

The Honorable Arliss Sturgulewski
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

The Alaska Power Authority is attempting to accomplish several very important objectives in the take-out of the Swan, Tyee and Terror Project notes which total \$200 million. The stated objectives are:

- To avoid default;
- Establish a credit rating for the Power Authority of an "A" or better by both Moody's Investors Services and Standard and Poors;
- Move forward with the Energy Program for Alaska
- Solve the problem without a \$200 million state appropriation; and
- Prove that the State and the Power Authority can conduct their affairs in a businesslike manner.

In order to meet these objectives, the Power Authority must obtain approved Power Sales Agreements from the Four Dam Pool Participants and issue bonds in the near future. Funds must be available to take-out the notes as follows:

May, 1984	\$ 35,000,000
October, 1984	50,000,000
February, 1985	115,000,000
TOTAL	<u>\$200,000,000</u>

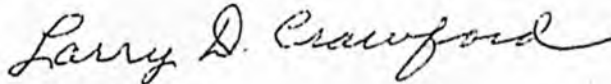
The amendment to House Bill No. 589 by the Labor and Commerce Committee requiring a Constitutional Amendment by a vote of the people in November 1984, would create additional problems for the Power Authority in the take-out of the notes. Problems that may be encountered by having to wait until early 1985 to market bond are:

- Payment on, or extension of, \$85 million in notes coming due in 1984;

- Provision for payment of \$115 million in notes next year if the election is unsuccessful;
- Provision for the sale of power from the Projects from now until after the election;
- Possible additional interest cost on the bonds due the anticipated general upward trend of the bond market from now until the end of the year; and
- Possible negative investor perception of Alaska and the Power Authority as the result of not solving problems in a timely manner.

All of the potential problems can become a reality in the event possible action is not taken at an early date. There are several steps which could be taken to eliminate or alleviate the potential impact on the Power Authority and bolster the credibility of the State on Wall Street. The most desirable would be the passage of House Bill No. 589 as originally drafted.

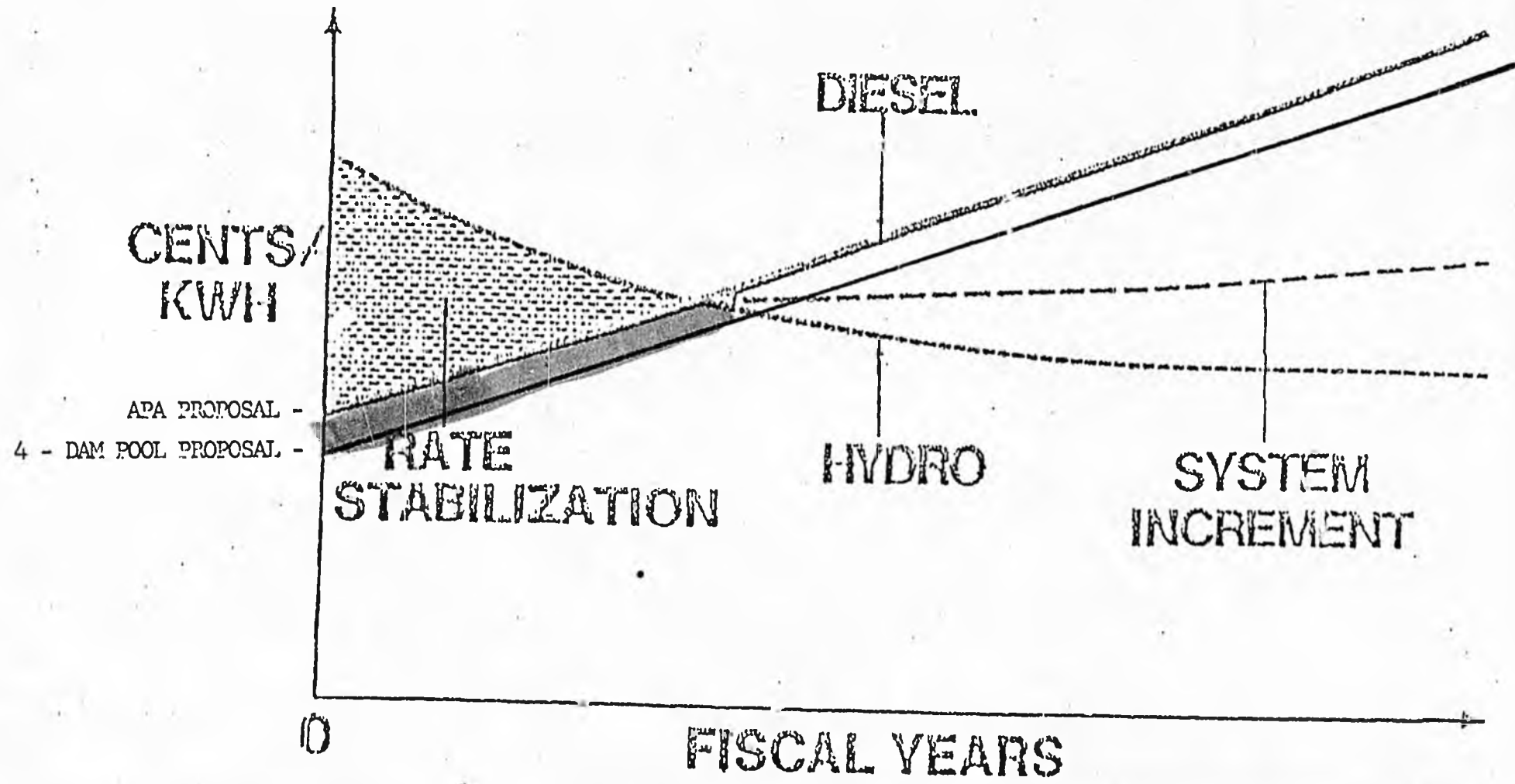
Sincerely,



Larry D. Crawford
Executive Director

WHB/LDC/lm

ALASKA POWER AUTHORITY COMPARATIVE COST OF POWER



3/16/84

REASONS FOR A HIGHER
RATE STABILIZATION FUND

A higher rate stabilization fund produced by an appropriation of \$48 million instead of \$35 million is justified for the following reasons:

1. The resultant rate (although still higher than rates originally projected) will more closely follow the anticipated rate when the projects were conceived and/or sold to the Alaska Power Authority.

2. The rates in the proposed program are set on the so-called diesel alternative (the line). The contracts will last for fifty (50) years and the rate fund will be for 8-10 years. Inherently, there will be some error just because of the long time projections involved.

3. Some of the utilities do not agree with the underlying assumptions (loads and financing costs) in setting the diesel alternative. By setting a rate during the rate stabilization period below the so-called diesel alternative line, such differences will be adequately considered.

4. The Four Dam Pool Concept is based on sharing the load growth of all the dams. It also requires the participating utilities to share some of the risk of the other participants' difficulties such as low load projections, defaults, low water years, and lesser than projected capacity. The higher rate fund will assist in diminishing the effect of these risks.

5. By choosing the diesel line, the participants will lose flexibility in dealing with inflation, etc. The assumption of this risk will be partially compensated for in using the proposed fund.

6. Notwithstanding the higher rate fund, there will be the same rate escalation along the diesel alternative line. Rate increases are not eliminated. They are stabilized.

7. By using this program (the Four Dam Pool Concept), two phenomena occur. First, the utility participants will never effectively get out of debt. Second, it will be difficult, if not impossible, to return the project to communities involved.

8. The program will allow for a reasonable system increment which should return an amount equal on a present value basis to approximately the amount of the rate stabilization fund.

9. The higher fund will be more consistent with the communities' ability to pay and reduce rate shock.

10. All the utilities in the fund are non-profit in character. The rate relief for which the fund is created will directly benefit the customers.

11. The higher rate fund will enhance the ability of the Four Dam Pool participants to plan load growth while giving some semblance of predictable and stable rates in the communities.

12. When negotiations started in earnest on a "Four Dam Pool Concept," the outlook was not favorable. The rate stabilization allows the energy program to work. It also reflects the fact that the utilities must provide alternative power sources, i.e. diesel, in the event of the inability of the hydro projects to produce power.

13. The increased rate stabilization fund allowed the participating utilities to compromise on 17 issues which were preventing final agreements. The direct benefit to the state is a package program which will provide creditable bond financing for the first APA issue. This will enhance the state's ability to bond and finance future hydro electric projects.

14. The diversity of the project locations should also enhance the creditworthiness of the financing, i.e., the sum of the whole is greater than its parts. This too will enhance the bond issue and enhance future bond issues.

Provided by Dave Nease, Kodiak Electric Assoc. 3/16/84

ALASKA POWER AUTHORITY
RATE STABILIZATION FUND REQUIREMENTS

3/15/84 10:29 P.M.

LOW LOAD SCENARIO WITH ADJUSTMENTS TO RATE STABILIZATION FUND

	COPPER VALLEY	KETCHIKAN	KODIAK	PETERSBURG	WRANGELL	TOTAL	PRESENT MONTH TO 7/1/84
1985	\$ 3,300,665	\$ 3,203,027	\$ 4,916,356	\$ 1,136,777	\$ 992,392	\$ 13,569,216	\$ 12,937,740
1986	3,021,458	3,067,923	5,482,576	1,317,958	811,363	13,701,777	11,876,484
1987	2,779,744	2,818,140	3,664,081	762,097	953,009	10,977,071	8,649,774
1988	2,535,490	2,581,145	3,163,500	657,760	911,488	9,849,784	7,055,898
1989	1,638,062	2,270,756	2,449,703	564,979	853,067	8,076,547	5,259,672
1990	1,655,498	1,909,925	1,660,663	519,827	759,087	6,515,101	3,857,104
1991	1,404,128	1,516,423	837,887	10,115	652,855	4,421,408	2,379,623
1992	1,112,790	1,034,600			455,763	2,603,173	1,273,673
1993	775,423	434,294			314,918	1,524,635	678,754
1994	437,237					437,237	176,802
1995	65,647				10,604	76,251	28,030
TOTALS	\$ 19,037,121	\$ 18,836,234	\$ 22,194,767	\$ 4,969,512	\$ 6,774,565	\$ 71,752,199	\$ 54,172,053
FROM BOND PROCEEDS							\$ 12,000,000
NET FROM STATE							\$ 42,172,053



List of attendees - SRC hearing on rate stabilization

Attendee	Organization	Phone Number
✓ ★ - Jim FILLINGAME	COPPER VALLEY ELECTRIC ASSN. Glennallen	822-3211
> ★ DAVE NEASE	KODIAK ELECT	486-3261
> ★ ^{Went 1st} RICK NEWLANDS	KETCHIKAN PUBLIC UTILITIES	225-3111 7330
TOM FRIESEN	CITY COUNCIL KTN	225-3146
> ★ - RICH UNDRKUFER	PETERSBURG CITY MANAGER	772-4511
Kathleen Dalton	Rep. Bettisworth's Office	465-4984
Marge Waring	OMB	5-3568
Neville Bowen	Rep Wendte	5-4949
★ ^{Went} ANDREW HAGE	ALASKA PUBLIC RADIO	772-3808
★ ^{Went} DONALD McDowell	COPPER VALLEY ATTY	276-1726
★ ^{Went} RICK LYON	OMB	465-3568
★ ^{Went} DON KUBLER	DCED	465-2500
★ ^{Went} ERNIE HAUGSTAD	K.P.U. GAMBIA BOROUGHS	784-4844
★ ^{Went} JOYCE RASLER	Thomas Boy Committee Petersburg	
	City Mgr. Wrangell	874-2381

Hutchens

HOUSE BILL 684

- I. Amendments necessary to separate funding for Bradley and Watana, and to make the multiyear appropriations constitutional.

*Sec. 2. The sum of \$1,400,000,000 is appropriated from the general fund to the Alaska Power Authority power development fund for the purpose of equity investment in and rate stabilization for the Watana phase of the Susitna Hydroelectric Project. Beginning July 1, 1984, the commissioner of revenue shall make monthly deposits to the power development fund of the appropriation made by this Section. A monthly deposit shall be in an amount determined by the commissioner of revenue to be in excess of the general fund revenues necessary to finance state government operation for the month in which the deposit is made. Not more than \$500,000,000 nor less than \$200,000,000 shall be deposited to the power development fund in each fiscal year beginning with fiscal year 1985 and the entire amount shall be deposited no later than June 30, 1991.

*Sec. 3. The sum of \$200,000,000 is appropriated from the general fund to the Alaska Power Authority power development fund for the purpose of equity investment in and rate stabilization for the Bradley Lake Hydroelectric Project. This appropriation shall be deposited in the

power development fund at the rate of \$50,000,000 in each fiscal year beginning with fiscal year 1985 and ending with fiscal year 1988.

- II. Amendment necessary to clear up effective date problems on Watana appropriation.

Delete section 5 or amend it to read:

*Sec. 5. Section 2 of this Act takes effect immediately in accordance with AS 01.10.070 (c); however, these funds may not be expended until power sales agreements have been obtained by the Alaska Power Authority which provide for the sale of all firm power to be produced by the Watana project.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

SCS CS HB 684 (Res)

AN ACT MAKING SPECIAL APPROPRIATIONS TO THE ALASKA POWER AUTHORITY.

- Sec. 1 \$49 million for rate stabilization for the 4-dam pool.
- Sec. 2 \$200 million to the APA power development fund for financing Watana.
- Sec. 3 \$10 million for power cost assistance.
- Sec. 4 Appropriations in sections 1 and 2 do not lapse.
- Sec. 5 Section 1 takes effect when 4-dam pool communities sign power sales agreements.
- Sec. 6 Sections 2 and 3 take effect immediately.

CHANGES FROM HOUSE PASSED VERSION:

Deletes the \$1.4 billion appropriation for Watana and Bradley Lake, which was to be deposited in monthly installments by June 1991, and appropriates \$200 million for Watana.

The appropriation to Watana is immediate; House version required that power sales agreements be signed first.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

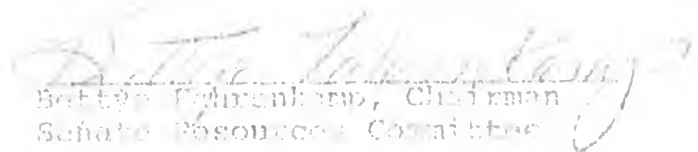
Senate

Committee on Resources

SENATE RESOURCES COMMITTEE
LETTER OF INTENT
FOR
SCS CSNB 684 (Resources)

SCS CSNB 684 (Finance) appropriates funds for construction and rate stabilization for the Bradley Lake hydroelectric project and the Susitna River hydroelectric project.

It is the intent of the legislature that the Alaska Power Authority spend no funds for construction or rate stabilization for either of these projects until power sales agreements have been signed by the utilities which will purchase power from the projects. Further, until compliance with the provisions of AS 44.83.183 and AS 44.83.185, which require submittal by the Alaska Power Authority of a feasibility study, plan of finance and an independent cost estimate, and submittal by the Office of Management and Budget of a review report recommending approval or disapproval, no funds shall be spent. It is the intent of the legislature that the report by the Office of Management and Budget be in a written form.


Bettye Fahrenkamp, Chairman
Senate Resources Committee