

SB

201

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 291
 Title: An act authorizing the APA to trans-
 fer certain projects to public utilities
 Sponsor: Senate Rules Committee
 Requestor: Governor
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Power Authority

Program Category Affected: _____

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES			- 0 -			
200 TRAVEL						
300 CONTRACTUAL			NOT APPLICABLE			
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS			- 0 -			
OTHER			NOT APPLICABLE			
TOTAL						

POSITIONS:

FULL-TIME			- 0 -			
PART-TIME			NOT APPLICABLE			
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert D. Heath Phone: 276-0001
 Division: Alaska Power Authority Date: 4/12/85

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Sh-291

April 19, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill authorizing the Alaska Power Authority to transfer two completed transmission line projects that were originally financed through the power development fund. Rather than attempt to deal retroactively with the 1981 appropriations for the Port Lions transmission line and the Kobuk - Shungnak transmission line, the bill simply permits the power authority to transfer the projects.

AS 44.83.380 -- 44.83.425 require that the Alaska Power Authority own and operate projects constructed with money from the power development fund. That fund was originally intended to finance major retail generation, transmission, and distribution projects under the "energy program for Alaska." The power authority board and staff have determined that they have neither the financial nor staff resources to operate and maintain small projects that are often located in remote areas of the state. This bill will permit the authority to transfer ownership, management, and operation of these two projects to the local utilities.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

APR 30 1985

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

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

OFFICE OF THE ATTORNEY GENERAL

April 8, 1985

MEMORANDUM

TO: Honorable Bill Sheffield
Governor

FROM: *Norman C. Gorsuch*
Norman C. Gorsuch
Attorney General

RE: attached bill on transfer of
transmission line projects from the
power development fund
Our file: 377-182-85

Attached is a bill to authorize transfer of two completed transmission line projects (Port Lions and Kobuk - Shungnak) that were originally financed through the power development fund, a fund administered by the Alaska Power Authority. The bill was requested by the board of directors of the authority. We do not know the extent of review or approval it has received in your office.

Although the board originally asked for legislation permitting the transfer of three projects out of the "energy program for Alaska," our research indicates that the appropriation for the Delta agricultural project was never made to the power development fund. Consequently, that project is not within the energy program for Alaska and no legislation is necessary for transferring that project.

We understand that the transfer of these projects is intended to be a gift, not a sale, to the respective utilities. This grant of public property raises the question of whether a public purpose is being served, as required by art. IX, sec. 6, of the Alaska Constitution, which provides in part:

No tax shall be levied, or appropriation of public money made, or public property transferred, ... except for a public purpose.
[Emphasis added.]

We do not know many of the facts surrounding these proposed transfers, but, considering a number of Alaska Supreme Court decisions that have applied art. IX, sec. 6, it would appear that a grant of power transmission lines to communities such as these would indeed serve a public purpose. We have been told

Honorable Bill Sheffield
377-182-85

April 3, 1981
Page 2

that the local utilities to which these projects are intended to be transferred are owned by nonprofit corporations, but we do not know the basis for their selection, their demonstration of ability to operate and maintain the transmission lines, the nature or extent of the service they plan to provide, or the way in which these free transmission lines will affect the utilities' rate structures. The power authority will no doubt provide this sort of information as the bill works its way through your office and the legislature.

A draft transmittal letter to the legislature is also attached.

NCG:ANP:CEJ:cmh

cc w/enc.: Hon. Loren H. Lounsbury, Commissioner
Dept. of Commerce & Economic Development

Lee Murn, Chairman
Alaska Power Authority
Anchorage

Robert Heath, Executive Director
Alaska Power Authority
Anchorage

XC: Susan White

MEMORANDUM

State of Alaska

TO: Larry Crawford
Executive Director
Alaska Power Authority

DATE: July 18, 1984

FILE NO

TELEPHONE NO

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Transfer of APA
facilities -
July 9, 1984.

BY: *RAK*
Ross A. Kopperud
Assistant Attorney General
Transportation Section, Anchorage

RECEIVED

JUL 18 1984

ALASKA POWER AUTHORITY

The issue was raised in Eric Yould's memorandum to me of August 4, 1983, whether the APA had the authority to transfer the Cantwell Distribution System to Golden Valley Electric Association (GVEA) upon completion. Eric Yould's memo is attached for your convenience. By subsequent telephone calls and from APA staff, the question has been expanded to include whether the APA can dispose of other projects once they are completed.

I responded to this inquiry in the fall of 1983, although there is no memorandum confirming the advice given at that time. The advice given was that the APA could transfer these facilities away to other entities in keeping with the APA's purpose.

On July 6, 1984, I discussed the above advice which I had previously given to the APA with Carolyn Jones, assistant attorney general for the APA. Ms. Jones confirmed that this advice was consistent with her understanding of the APA's authority and further stated she had also given similar advice to the APA in her memorandum to you of May 30, 1984, referenced "Use and disbursement of appropriations". Ms. Jones's memorandum is also attached for your convenience.

The underlying rationale for my advice to the APA is as follows:

A.S. 44.83.070. Purpose of the Authority.

The purpose of the authority is to promote, develop and advance the general prosperity and economic welfare of the people of Alaska by providing a means of constructing, acquiring, financing and operating power production facilities limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, and solar energy and energy conservation facilities.

Under A.S. 44.83.080 entitled "Powers of the Authority", it states:

In furtherance of its corporate purpose, the authority has the following powers in addition to its other powers;

(7) to sell, lease as lessee or lessor, exchange, donate, convey ... real or personal property owned by it, or in which it has an interest, when in the judgment of the authority, the action is in furtherance of its corporate purpose.

. . . .

(14) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purpose and exercise the powers granted in this chapter.

(Emphasis added).

The above statutory references make it clear that the APA may donate or convey real or personal property in furtherance of its corporate purpose. The other statutory references make it clear that the purpose and authority of the APA is quite broad. It is my understanding that the APA has no staff or facilities to maintain and operate those facilities which it wants to transfer to public utilities. It would, I believe, be consistent with the APA's corporate purpose to transfer the facilities in issue to various utilities who can maintain and operate those facilities for the benefit of the people of Alaska.

In conclusion, absent legislation which would specifically rescript the APA's power to transfer its facilities to some other entity, it is my opinion that the APA may transfer its facilities to other entities so long as it is in keeping with the APA's corporate purpose.

If you should have any further questions on this issue, please call me at your convenience.

RK/dw



**STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS**

DEPARTMENT Commerce & Econ. Dev.	DIVISION Alaska Power Authority	BILL NUMBER HB 391	SPONSOR House Rules/by Governor
DEPARTMENT POSITION Support passage of HB 391.			
PREPARED BY Susan White, Special Assistant to the Executive Director	DATE	COMMISSIONER'S SIGNATURE 	DATE 5/1/85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Commerce and Economic Development Office of Energy	CONSTITUENT GROUP(S) AFFECTED BY BILL Kodiak Electric Association City of Kobuk
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL None

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
See attached.

ANALYSIS OF BILL/PROGRAM EFFECTS

Proposed projects transfer as specified in HB 391 would grant the Kobuk-Shungnak and Port Lions transmission lines to the City of Kobuk and Kodiak Electric Association. Transfer of these projects would remove them out of the Energy Program for Alaska and relinquish the State's responsibility to own, operate and maintain them.

If statutory authority is not provided for transfer of the Kobuk-Shungnak line, APA will work to develop an O&M agreement with AVEC (which operates the power plant at Shungnak) and the City of Kobuk and develop a set of fees to provide for O&M revenues to be returned to the State. Currently, APA is providing minimal maintenance twice a year to assure basic operational status of the line. Maintenance costs over the past two years have been approximately \$5,000 per year.

Although O&M funding for the Port Lions line is not budgeted in the APA's FY '86 operating budget, the FY '86 costs, if the project is retained by the APA, could potentially be absorbed within the existing budget (Terror Lake O&M agreement). If additional funding (program receipts) is, in fact, required, an RPL will be submitted to the LB&A Committee.

AMENDMENTS PROPOSED
No amendments.

2267W5185a

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

HB 391

BACKGROUND/LEGISLATIVE INTENT

The two transmission line projects recommended for transfer from the Power Authority to the appropriate utilities are the Kobuk-Shungnak and Port Lion's transmission lines. Appropriations to the Power Authority's Power Development Fund provided for the construction of these projects and include them in the Energy Program for Alaska. Power projects acquired or constructed as part of the Energy Program for Alaska may only be transferred through legislation.

The Kobuk-Shungnak transmission line was funded through two separate appropriations of \$345,000 (SLA 79, Ch. 80) and \$200,000 (SLA 81, Ch. 90). These appropriations were funded respectively to the Department of Commerce and Economic Development, Office of Energy and the Alaska Power Authority. The line is complete and has been operational since February 1982.

The Port Lion's transmission line was funded through three appropriation sources. (Please see attached Port Lion's funding summary). The Port Lion's line is complete and is ready to begin operation.

The Power Authority Board of Directors passed Resolution #1985-01 recommending transfer of the two projects, and requested legislation be introduced to effect the transfer. The Attorney General's Office has found the proposed transfer to be appropriate as the lines to be granted and transferred to the local utilities would serve the required public purpose.

PORT LION'S FUNDING SUMMARY

Total Construction Cost: \$1,639,481

Funding Sources:

Ch. 54, SLA 1980, page 3, line 9	\$ 93,812 (a)
Ch. 92, SLA 1981, page 12, line 6	1,400,000
Ch. 92, SLA 1981, page 12, line 9	145,669 (b)
	<u>\$1,639,481</u>

- (a) Balance of \$200,000 appropriation, remainder (\$106,188) was used by KEA to conduct feasibility study for a Port Lion's power project.
- (b) Revised program from Terror Lake allocation to Port Lion's allocation within the same appropriation.