

HB

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HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: January 14, 1994

FURTHER REFERRALS:

Date of Committee Action: 2/2/94

The FINANCE Committee considered:

HB 372

HOUSE BILL NO. 372

FOUR DAM POOL TRANSFER FUND

"An Act relating to the four dam pool transfer fund."

RECOMMENDATIONS:

[] the same title

be replaced with _____ [] a new title

[] have attached amendments(s)

do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

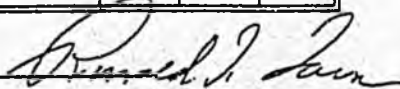
[] fiscal impact _____

[] fiscal note(s) _____

zero fiscal note C.R.A

[] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Ronald J. Larson	X	Tom Hoffm			
Tom Martin	X	Mike Hawke			
Paul Parnell	X	Ray Brown			
Ben Grossendorf	X				
Chris Thier	X				
Richard [unclear]	X				


 CHAIRMAN'S SIGNATURE

FISCAL NOTE

Division Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act Relating to the Four Dam Pool BRU: _____
Transfer Fund Component: _____
 Sponsor: House Rules Committee
 Requestor: Legislative Budget and Audit COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						

REVENUE FUND SOURCE: _____

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Remond Henderson Director Phone: 465-4708
 Division: Administrative Services Date: 1/31/94
 Approved by Commissioner: [Signature] Deputy Commissioner Date: 1/31/94
 Agency: Community & Regional Affairs

Back-up

Failed

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: HB 372

Page 1, line 6 after "fund":

Delete all material.

Insert: "to the general fund."

Alaska State Legislature

Senate Majority Leader
Chair, Judiciary Committee
Vice Chair, Community &
Regional Affairs

Member, State Affairs Committee
Committee on Committees
Western States Legislative Forestry Task Force
Legislative Council



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor

MEMORANDUM

TO: Representative Eileen MacLean, Co-Chair
Representative Ron Larson, Co-Chair
House Finance Committee

FROM: Senator Robin L. Taylor *RLT.*

DATE: 1/27/94

REF: House Bill 372

House Bill 372 was introduced by the House Rules Committee at the request of the Legislative Budget and Audit Committee after LBA approved a motion in November. That motion in essence reaffirmed the intent of the legislature to appropriate from the Four Dam Pool Transfer Fund to the Southeast Energy Fund.

The attached letter from the Department of Law analyzes the situation created by the apparently unintended failure of SB 126 to make the specific appropriations from the Four Dam Pool Transfer Fund to the funds authorized for such transfer by SB 106. The affected accounts include the Power Cost Equalization and Rural Electric Capitalization Fund, the Southeast Energy Fund and the Power Projects Fund.

My specific request of LBA to reaffirm legislative intent was to allow the Department of Law to authorize the transfer of funds from the Southeast Energy account to Ketchikan Public Utilities to allow KPU to proceed with the Tye Lake-Swan Lake Intertie. The attached memo from Thomas W. Stevenson highlights the health and safety concerns raised by any delay in the intertie project.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

House Finance

1/27/94

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The language in HB 372 will correct the ambiguities outlined in Mr. Baldwin's letter while still allowing the legislature dominion over the revenue stream.

If the legislature retains the current language in AS 42.45.050(b), the needed transfer from the Four Dam Pool account to the Southeast Energy account cannot be accomplished in the current fiscal year.

I believe the language of HB 372 to be a technical change in the original language of SB 106, in keeping with the acknowledged intent of the legislature.

The Department of Law has stated that adoption of this technical change will resolve the issue I raised with LBA. It will also establish the pattern of inter-fund transfers envisioned by SB 106 while preserving the legislature's discretion to appropriate.

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 3, 1994

Hon. Robin Taylor
Alaska State Senate
Room 30
State Capitol
Juneau, AK 99801-1182

Re: Ketchikan Public Utilities;
Swan Lake-Tyee Intertie grant

Dear Senator Taylor:

You have asked this office to review the statutes governing the financing of the Four Dam Pool Transfer Fund (AS 44.45.050) (the transfer fund) to determine whether a grant may be made from a subfund known as the Southeast Energy Fund (AS 42.45.040). At issue is whether money may be allocated from the transfer fund to the Southeast energy fund without an appropriation. If allocation can only be accomplished by appropriation, the Southeast energy fund does not have a sufficient balance to obligate for the purpose of making the grant. The fund will not have a sufficient balance until the legislature convenes and enacts an appropriation. You assert that the grantee urgently needs to obtain payment of the grant to begin work necessary to guarantee a stable source of electric power.

The grant was made to finance capital projects associated with the Swan Lake - Tyee intertie. It was authorized in an appropriation enacted in sec. 12, ch. 19, SLA 1993. The grant appropriation was made in an appropriations act that was enacted at the same time that the Four Dam Pool Transfer Fund was established in permanent law. See chs. 18 and 19, SLA 1993. The transfer fund serves as the depository for the repayments received under the terms of the four dam pool power sale agreement and loan agreement between the Alaska Energy Authority and the Department of Commerce and Economic Development. The repayment stream, which formerly was deposited in the power development revolving loan fund, is allocated under existing law to three subfunds created for the following purposes:

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295 465-6735

- 1) power cost equalization and rural electric projects;
- 2) power projects for utilities participating the Tye-Swan Lake intertie; and
- 3) state wide utility projects.

The balance of the power development revolving loan fund as of August 1993 was appropriated to the transfer fund. Sec. 10, ch. 19, SLA 1993.

The uncertainty about the balance of the Southeast energy fund arises because the legislature, while making appropriations to the transfer fund and from the Southeast energy fund, did not make provision for an appropriation from the transfer fund to the Southeast energy fund. Under one interpretation, it is possible that the statute requires an interfund transfer to be effected by appropriation. The wording of AS 42.45.050(b) is ambiguous. Subsection (b) reads as follows:

Subject to appropriation, the department shall transfer the balance of the four dam pool transfer fund each month in accordance with this subsection. Subject to appropriation [the department is required to transfer percentages of the balance of the transfer fund to three subfunds, including the Southeast energy fund].

AS 42.45.050(b) (emphasis added). The provision is ambiguous because it is not clear whether the words "subject to appropriation" are intended to

- 1) require an appropriation to effect the transfer; or
- 2) make it plain that the legislature may appropriate the allocated percentages for the specified purposes or any other lawful purpose if it so desires.

In a companion bill, the legislature apparently interpreted the meaning of the foregoing provision when it expressly appropriated the balance of the power development revolving loan fund to the transfer fund. Sec. 10, ch. 19, SLA 1993. In a separate section of the same bill, the legislature made a direct appropriation from the Southeast energy fund to Ketchikan Public Utilities. Sec. 12, ch. 19, SLA 1993. Section 12 reads as follows:

A sum equal to the amounts deposited in the Southeast energy fund (AS 42.45.040) beginning on the effective date of this Act and ending on June 30, 1994, is appropriated from the Southeast energy fund to the Department of Administration for payment as a grant under AS 37.05.316 to the

Ketchikan Public Utilities for expenses related to the power transmission intertie between Swan Lake and Tye Lake hydroelectric projects.

It should be presumed that the legislature intended to make an effective appropriation. The absence of an appropriation making the interfund transfers implies that an appropriation from the transfer fund to the Southeast energy fund is not required. The companion acts should be harmonized. This lends support to the conclusion that when the legislature provided that the transfer between funds was "subject to appropriation" it intended the interfund transfer to happen by operation of law. However, once capitalized, the subfund could not be spent without a second appropriation. There is also a strong indication that the words "subject to appropriation," are intended to preserve the legislature's discretion to appropriate the balance of a subfund at any time for another purpose as well.

The express mention of the appropriation requirement in AS 42.45.050(b) appears to be intended to make certain that the transfer fund arrangement will not violate the dedicated fund prohibition set out in article IX, section 7 of the Alaska Constitution. In theory, if the legislature is free to appropriate the revenue stream from the four dam pool for any lawful purpose, and in fact appropriates that revenue to the transfer fund, a dedicated fund has not been created. This follows because the legislature was freely able to exercise dominion over the revenue stream. It also follows that if the initial appropriation to the transfer fund satisfies the dedicated fund prohibition, then nothing inherent in the dedicated fund prohibition prevents further allocation for specific purposes by operation of general (nonappropriation) law. This leads to the conclusion that an intermediate appropriation to transfer a percentage to the Southeast energy fund is unnecessary. Absent a specific requirement for a secondary appropriation a subsequent appropriation from the Southeast energy fund would not be necessary to satisfy the dedicated fund prohibition.

The foregoing provides some evidence that the legislature did not intend the provisions of AS 42.45.050(b) to require an intermediate appropriation to transfer amounts from the transfer fund to the Southeast energy fund. In any case, AS 42.45.050 is ambiguous insofar as it applies to interfund transfers. We recommend that the legislature amend AS 42.45.050 to resolve the ambiguity by enacting an amendment that adopts the construction explained in this memorandum. In the meantime, the Department of Administration may award the grant to Ketchikan Public Utilities subject to termination and repayment if the legislature amends AS 42.45.050 before June 30, 1994 in a manner indicating that an interfund transfer may only be made by appropriation.

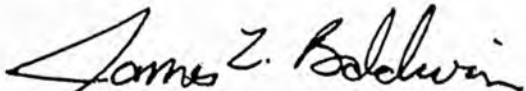
Hon. Robin Taylor
Alaska State Senate

January 3, 1994
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Please let us know if you need further assistance concerning this matter.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB:tg

cc: Shelby Stastny, Director, Office of Management & Budget
Cheryl Frasca, Deputy Chief of Staff, Office of the Governor
Hon. Nancy Usera, Commissioner, Department of Administration



KETCHIKAN PUBLIC UTILITIES

2830 TONGASS AVENUE

KETCHIKAN, ALASKA 99901

TELEPHONE 907-225-1888
FAX 907-225-1888

November 4, 1993

MUNICIPALLY OWNED
ELECTRIC TELEPHONE WATER

Chairman Randy Phillips
Legislative Budget and Audit
Anchorage AK

Dear Chairman Phillips:

The City of Ketchikan d/b/a Ketchikan Public Utilities has for many years pursued future electrical energy sources for the certificated service area it services in and around the Ketchikan area. The intertie between Swan Lake and Lake Tye was selected for the following reasons:

1. Because KPU is a member of the Four Dam Pool and with the return on the investment the State of Alaska and the purchasing utilities in the Four Dam Pool have made in the continuance of those facilities, it appeared only reasonable to use those four dams to their full capacity. Currently, the Tye Project is being utilized at less than 40% of its capability.
2. Is in not possible for KPU to fund the intertie for the following reasons:
 - A. KPU does not own the two hydroelectric facilities that would benefit from the interconnection.
 - B. KPU would have and does have only SECOND CALL on the surplus power available out of the Tye Hydroelectric facility.

For these two reasons, KPU cannot bond these projects.

3. The benefits to the Four Dam Pool members because of this intertie is that it will hold down the rates for the consumers throughout the state who get power out of the Four Dam Pool, because we will use the unused hydropower that is currently literally going over the dam at Tye.

The Ketchikan area is in need of electrical energy. This past summer we have had to run our diesels due to lack of water at Swan Lake. The Swan Lake facility has a revised capacity of 77,000,000 kWh of energy. The past two years KPU has used over 70,000,000 kWh of energy out of this facility. At the historical rate of energy use of 2-3% annually and allowing for the following new loads that will occur in the Ketchikan area, we will be out of power within 3-4 years:

Chairman Randy Phillips
November 4, 1993
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1. Civic Center
2. U.S. Forest Service Visitor Information Center
3. 30 new rooms at the Landing Hotel
4. Reopening of the Ketchikan Shipyard
5. U.S. Coast Guard expansion, housing and other facilities
6. Saky Sawmill that we currently don't serve.
7. Carr Fox's Expansion.
8. Proposed shopping center on 18 acres 1.2 miles north of City limits.

These loads in addition to the regular loads will put us over the top in usage of the Swan Lake Hydroelectric facility which is our only unused facility outside of diesel power. This past month when Ketchikan needed electric energy because of our low water conditions, the Tye Hydroelectric facility was spilling water.

The monies set forth in the Southeast Energy Fund in the name of Ketchikan Public Utilities, (approximately 4 to 4.5 million dollars) is to begin the environmental impact statement process which we believe will take about two to three years depending upon the public review process. It is estimated that the actual construction of the transmission line will take another 18 to 30 months depending upon site conditions.

Because Ketchikan is surrounded with national forests, our options are limited as to the availability of other electrical energy sources. Fossil fuels are not a good option. Hydroelectricity is a good source but the proposed Mahoney Lakes facility as brought forth by the Cape Fox/City of Saxman will take at least 7 years to develop. As they have planned the facility, it will not provide Ketchikan with more than "peaking power" which we have available already with our diesels and which will be available with the Intertie since the Tye project has an undeveloped third turbine pad already available to be put into place at Tye that will provide peaking power at one third the cost of the Mahoney Lakes facility.

The Ketchikan area will be in a health and safety trap if we are unable to proceed rapidly with this Intertie. We are not like the interior of Alaska in the railbelt. We have no interconnections with the outside world. We are truly an island for essential services. The area is being explored heavily by commercial firms for retail expansion and we will not be able to provide essential services to them.

The Swan Lake - Lake Tye Intertie will provide a short term solution to the electric power needs of Ketchikan. With this interconnection, we will be able to interchange and assist the power needs of Petersburg and Wrangell and they can assist us as well. This benefit is of tremendous value to Southern Alaska inasmuch as it can literally provide options to these communities to protect and serve the residents by future joint planning and assistance in emergencies.

Chairman Randy Phillips
November 4, 1993
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Your highest consideration in allowing us to begin the environmental impact statement process as soon as possible will start the clock running for us to get going on constructing this intertie. For all the reasons cited above and more I can list, we have put our total belief in the development of this intertie as being prudent for Ketchikan, for the Four Dam Pool, and to demonstrate to the State that its participation in the Four Dam Pool dams is being utilized to their full and complete benefit. Here is a program that is truly living up to its goals. We have no other options available to us.

Most sincerely,

KETCHIKAN PUBLIC UTILITIES



Thomas W. Stevenson, CPA *by TWR*
General Manager

TWS:nll

cc; Senator Robin Taylor
Representative Bill Williams

Department of Community and Regional Affairs

RPL #21-4-0091

Division of Energy
\$11,300,000 - Four Dam Pool Transfer Fund

The Department of Community and Regional Affairs requests authority to transfer \$11,300,000 in loan funds from the Four Dam Pool Transfer Fund, established in AS 42.45.050, into three "receiving funds," the Power Cost Equalization and Capitalization Fund, the Southeast Energy Fund, and the Power Project Fund.

Under the new section 42.45.050(a) authorized in Chapter 18 SLA 93, the Four Dam Pool Transfer Fund consists of repayments of principal and income that would have been deposited in the former Power Development Revolving Loan Fund. Further, section 42.45.050(b) states:

"Subject to appropriation, the department shall transfer the balance of the four dam pool transfer fund each month in accordance with this section. Subject to appropriation

- (1) 40 percent of the balance in the four dam pool transfer fund shall be transferred to the power cost equalization and rural electric capitalization fund to be used for power cost equalization and rural electric projects;
- (2) 40 percent of the balance in the four dam pool transfer fund shall be transferred to the Southeast energy fund to be used for power projects for utilities participating in the power transmission intertie between Swan Lake and Tyee Lake hydroelectric projects; and
- (3) 20 percent of the balance in the four dam pool transfer fund shall be transferred to the power project fund to be used for statewide utility projects." [Emphasis added]

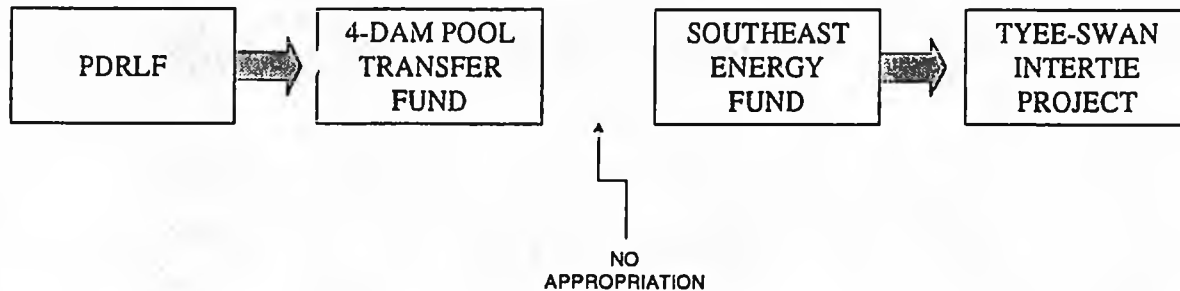
A visual display of the mechanics of how the transfers should flow are shown in Attachment A.

The following transfers are being requested under this revised program:

- \$4,520,000 to the Power Cost Equalization and Rural Electrification Fund for power cost equalization and rural electric projects per AS 42.45.100 (AS 42.45.050(b)(1)).
- \$4,520,000 to the Southeast energy fund for grants to utilities participating in the power transmission intertie between Swan Lake and Tyee Lake hydroelectric projects for power projects, repayment of loans, and bond payments. (AS 42.45.050(b)(2)). Section 12 of Chapter 19 SLA 93 would allow a sum equal to the amounts deposited in the Southeast Energy Fund (SEF) per AS 42.45.040 to be appropriated from the SEF to the Department of Administration for payment as a grant to the Ketchikan Public Utilities for expenses related to the power transmission intertie between the Swan Lake and Tyee Lake hydroelectric projects.
- \$2,260,000 to the Power Project Fund for statewide utility projects per AS 42.45.050(b)(3)

Department of Community and Regional Affairs

Through a drafting oversight, the transfer of funds from the Four Dam Pool Transfer Fund to the Southeast Energy Fund was not accomplished by the necessary appropriation. This situation is graphically represented as follows:



The purpose of this request is to authorize the transfer of funds through the RPL process rather than through remedial legislation to correct the drafting oversight.

The legislative Division of Legal Services has reviewed the question of whether it is within the Legislative Budget and Audit Committee's legal authority to correct the oversight through the RPL process. It is their opinion that "...the transfer of money from the Four Dam Pool Transfer Fund to the receiving fund should be considered an appropriation and, as such, can only be made by the legislature."

Legislative Fiscal Analyst Recommendation: It is recommended that the Legislative Budget and Audit Committee:

- recognize the problem of the drafting oversight, which requires remedial legislation;
- reaffirm the Legislature's resolve that the appropriations are for the purposes intended; and
- introduce or support remedial legislation to make the necessary appropriation from the Four Dam Pool Transfer Fund to the Southeast Energy Fund, and the other receiving funds.

Department of Community and Regional Affairs

