

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

995 SCCMM44: HOUSE POWER ALTERNATIVES STUDY COMM. 1979-80

ALASKA POWER AUTHORITY

RECOMMENDED

CHANGES TO HB 953

1. In the title: Strike "hydroelectric"; insert "power".
2. Add a new section at the beginning of the bill to amend AS 44.56.080(a)(13) by adding "feasibility studies, engineering and design" following "reconnaissance studies" and preceding "with".
3. Section 1, (.080(a)(16)(A)): Delete all of subparagraph (A) after "project" on page 1, line 15; insert a comma followed by "provided that the authority has first determined that the project cannot be financed with revenue bonds of the authority at reasonable rates of interest". It is desirable also to strike the words "renewable energy" where they appear in this and subsequent sections or, alternatively, to define the term in AS 44.56.230.
4. Section 1, (.080(a)(17)): Add the following new paragraph and change the word "paragraph" on line 10, page 1 to the plural:

(17) To develop a project under financing agreements with other entities using leveraged leases or other financing methods.
5. Section 2, (.170(b)(1)(A)): Change to read:

(A) reconnaissance studies, feasibility studies, license and permit applications, preconstruction engineering, and design of any power projects;

6. Section 2, (.170(b)(2)): Change the language of lines 10-13 on page 2 to read:

(2) to a person for a hydroelectric power project if (A) the loan is entered into under financing agreements using leveraged leases or other financing methods; (B) the financing agreement permits the issuance of bonds for the power project the interest on which is exempt from taxation under the Internal Revenue Code; and (C) the...

7. Section 3, (.170(e)): Change AS 42.06 on line 24, page 2 to read "AS 42.05".

8. Sections 4 and 5, (.180): Delete sections 4 and 5 of HB 953 and substitute the following:

(a) The authority may undertake a reconnaissance study for each proposed new project and shall undertake a feasibility study and plan of finance for each proposed project if such undertaking is indicated by the reconnaissance study under standard criteria which it has adopted.

(b) The feasibility study and plan of finance shall include recommendations of the most appropriate means to finance a project which may include, but need not be limited to

(1) the issuance of revenue bonds,

(2) the guarantee of indebtedness by the Alaska Permanent Fund Corporation,

(3) the issuance of general obligation bonds of the state or bonds of the authority guaranteed by the state,

(4) an appropriation from the general fund to pay debt service on bonds or for other project purposes,

(5) a loan from the general fund,

(6) financing arrangements with other entities using leveraged leases or other financing methods, or

(7) any combination authorized by this subsection.

(c) The authority shall submit the feasibility study and plan of finance for each new project to the governor and the legislature. In the event the recommendations of the authority as incorporated in the plan of finance include a guarantee of indebtedness by the Alaska Permanent Fund Corporation, an appropriation from the general fund, the issuance of general obligation bonds of the state or of bonds of the authority guaranteed by the state, or in the event the project will have a capacity in excess of 25 megawatts, the authority may not proceed with the engineering or design phase of the project until the legislature has given its approval by law.

(d) The authority may design, acquire, construct or finance the project itself or it may agree with the United States or other person for design, acquisition and construction of the project by the United States or other person, for payments to the United States or other person for such design, acquisition and construction, reimbursement by the United States or other person in certain events, and otherwise on the terms and conditions as may be set out in such agreement, but the authority may not issue any bonds except after 90 days notification of its intent to issue bonds given to the governor and the legislature while the legislature is in session. Such notification shall include the assumptions under which the authority has determined the environmental and economic feasibility of the project.

9. Add a new section which will redesignate the existing AS 44.56.180(d) as subsection (e) and will strike the words "previously authorized by the legislature" on lines 7 and 8 of the

subsection. This new section of HB 953 should also redesignate existing AS 44.56.180(e) as subsection (f).

10. Section 6, (.185(3)): Delete paragraph (3) which begins on line 29, page 4.

11. Add a new section to change the reference at line 7 of existing AS 44.56.224 from \$180(e) to "\$180(f)".

12. Add a new section to define "renewable energy power project" if the term is to be used rather than "power project". The language should preferably come from NCSL.

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AREA CODE 907
276-6401

March 17, 1980

Hon. Bill Miles
Co-Chairman/Resources Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Ability of Alaska Power Authority to Issue Revenue Bonds in
Light of State v. A.L.I.V.E. Voluntary (No. 2022, February 19,
1980) - Our File No. 3610.

Dear Representative Miles:

On March 14, 1980 during a drafting session in regard to HB 953 we indicated to you that we had advised the Alaska Power Authority that in view of the recent Alaska Supreme Court decision in the A.L.I.V.E. Voluntary case referenced above the Authority could not now issue any of its revenue bonds even though previously approved by resolution. At the conclusion of that discussion we agreed to reiterate that opinion in the form of a letter to you, enclosing a bill which we believe will remedy the problem. Eric Yould has also requested that we communicate this information to Representative Gardiner with whom he has also discussed the matter.

The Alaska Power Authority Act in AS 44.56.180(c) provides that the Authority may not design, acquire and construct a new project, nor may it issue its bonds in that regard unless the Legislature has adopted "a joint resolution approving the general design and maximum amount of bonds". In addition, AS 44.56.180(b) requires prior approval of the Legislature by joint resolution before the Authority may proceed with the engineering or design phase of power projects the financing of which will include a guarantee of indebtedness by the permanent fund or an appropriation from the general fund. An occasion to utilize the latter of these approval processes where a project will be "subsidized" has not yet been presented. However, the Legislature has previously passed AS 44.56.180(c) joint resolutions approving the issuance of bonds in regard to three projects and joint resolutions approving an additional eight projects are now pending. In addition, HB 953 as introduced on March 11, 1980 would provide that the Legislature by concurrent resolution may prevent the Authority from proceeding beyond the completion of a reconnaissance study in regard to a new power project.

The Supreme Court of the State of Alaska in the A.L.I.V.E. Voluntary decision recently held that the Legislature may not annul a

regulation of an agency or department of the State by adopting a concurrent resolution which so provides. Holding that this method of proceeding violates Article II of the Alaska Constitution, the Court indicated that while the Legislature may express its views and desires (i.e., recommend or act in an advisory capacity) by resolution, when it expected to speak with the force and effect of law (i.e., exercise its legislative power) it must follow the constitutional safeguards which surround enactment of a bill. As Justice Matthews stated in writing the A.L.I.V.E. Voluntary decision,

"Of course, when the legislature wishes to act in an advisory capacity it may act by resolution. However, when it means to take action having a binding effect on those outside the legislature it may do so only by following the enactment procedures. Other state courts have so held with virtual unanimity."
[Slip Opinion at pp. 10, 11]

In view of the Court's decision and after an analysis of the language of the decision, including that quoted just above, we have advised the Alaska Power Authority that, under the present language of the Alaska Power Authority Act which provides for legislative approval of Authority bond issues by joint resolution, it may not issue bonds which have been approved by resolution.

Further, we have advised the Authority that, in our opinion, the approval by resolution provisions of the Act are not severable so that the Authority may not go forward in the absence of legislative approval which meets the mandate of the Alaska Constitution as interpreted by the Supreme Court in A.L.I.V.E. Voluntary. Faced with such a situation we believe that a court would hold that the Legislature clearly had in mind a process involving approval by the Legislature prior to the issuance of bonds and that, therefore, the court would hold that the bonds could not be issued until the process was lawfully completed, or the approval requirement modified by the Legislature.

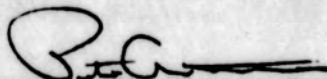
In view of the doubtful constitutionality of the use of a joint resolution to approve the bonds of the Authority, we have drafted legislation in the form of a bill which would allow the Authority to issue its bonds to finance the projects heretofore approved or expected to be

Hon. Bill Miles
March 17, 1980
Page 3

approved this Session by joint resolution. A copy of that bill is attached.

Very truly yours,

WOHLFORTH & FLINT

By 
Pete Argetsinger

PA:jr

cc: Hon. Terry Gardiner
Mr. Eric P. Yould

IN THE

BY

_____ BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Power Authority and approving the general design and maximum amount of bonds for power projects."

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

* Section 1. All action taken by the legislature prior to the effective date of this act to approve the general design and maximum amount of bonds for power projects are confirmed and the authority is authorized to issue its bonds for such projects in the maximum principal amount as follows:

- (1) Solomon Gulch, \$20,000,000;
- (2) Terror Lake, \$120,000,000
- (3) Golden Valley Electric Association Waste Heat,
\$110,000,00;
- (4) Tyee Lake, \$70,000,000;
- (5) Swan Lake, \$120,000,000;
- (6) Glacier Highway Electric Association, \$800,000;
- (7) Cordova Electric Cooperative, \$6,500,000;
- (8) Matanuska Electric Association, \$2,500,000;
- (9) Homer Electric Association, \$3,360,000; and
- (10) Naknek Electric Association, \$730,000.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

EXHIBIT IV.4

PROPOSED HYDROELECTRIC PROJECTS

<u>NAME</u>	<u>ESTIMATED 1980 COST OF CONSTRUCTION (\$ MILLIONS)</u>	<u>FIRM CAPACITY (MEGAWATTS)</u>	<u>FIRM ENERGY (MKWH)</u>	<u>EARLIEST FINISH</u>	<u>STATUS</u>
Green Lake	40.0	13.5	44.5	1981	Construction
Grant Lake	12.0	1.5	12.0	1984	Feasibility
~~Ream~~ Solomon Gulch	35.0	1.2	56.0	1982	In construction
○ Swan Lake	60.0	18.0	66.0	1983	At financing stage
Terror Lake 500,000	70.0	15.0	125.0	1984	Feasibility - Possible Environmental Problems
-51- Ernie Lake Tyee	40.0	8.9	75.0	1984	License Applied for
ⓑ Power Creek	18.0	5.0	20.0	1985	Feasibility
Gunnuk Creek	7.1	0.75	3.4	1985	Feasibility
Black Bear Creek	13.0	5.0	22.0	1985	Feasibility
Gartina Creek	4.8	0.45	2.2	1985	Feasibility
Thayer Creek	5.4	0.21	1.0	1985	Feasibility
Mennonite Creek	1.0	0.2	1.8	1984	Feasibility
✓ Larson Bay 200,000	2.2	1.0	2.7	1985	Feasibility
✓ Old Harbor 200,000	3.3	1.2	2.6	1985	Feasibility
Haines/Skagway	20.0	7.0	21.0	1986	Feasibility
✓ Lake Elva 15 mil	10.0	1.5	8.5	1984	Feasibility
✓ Tazamina Lake 400,000	58.0	30.0	90.0	1986	Feasibility
✓ Kisaralik River 400,000	100.0	36.0	159.0	1986	Feasibility
Bradley Lake	160.0	70.0	320.0	1987	Phase I Studies
Susitna	2,600.0	1,400.0	6,100.0	1990	Feasibility

Source: Alaska Power Authority

AVEC village hydro study

Goldmill

AVEC

Villages with best hydro potential

		Est. cost.	Energy Capacity
Best project - *	Ambler	2.7 - 3.5 mil	370 - 740 kw
	Elie	.9 - 1.3	125 - 245
	Goodnews Bay	1.3 - 1.6	85 - 175
	Grayling	3.2 - 4.4	230 - 460
	Kaltag	1.8 - 2.4	155 - 305
	Kiana	2.4 - 3.0	235 - 460
Best project - *	Scammon Bay	.9	285
	Shungnak	5.0 - 7.7	1200 - 2500
	Togiak	1.0 - 1.2	30 - 60
	Old Harbor	2.2	1200
	Aktavik	1.1	105

5000000
m3
m3
m3

Villages studied, but no economical hydro potential

Kalskag/Lower Kalskag
Mekoryuk
New Stuyahok
Tanunak
Toksook Bay
Wales

~~Stuyahok~~
Cambridge

Villages without hydro potential

Yukon-Kuskokwim Delta Area
Alakanuk
Chevak
Eek
Emmoanak
Hooper Bay
Kasigluk
Nunapitchuk
Quinhagak

Lower Yukon River Area

Anvik
Holy Cross
Huslia
Marshall (Fortuna Ledge)
Mountain Village
Nulato
Pilot Station
Pitkas Point-St. Mary's
Shageluk

Norton Sound Area

Koyuk
Shaktoolik
St. Michael
Stebbins

Kotzebue Sound Area

Kivalina
Noatak
Noorvik
Shishmaref
Selawik
Buckland (potential AVEC village)
Deering (potential AVEC village)

NO

Ouzinkie (Kodiak Island)

Red Devil

Lime Village

Chinoth baluk

Crooked Creek

Stoney River

Steel route

Takotna

TANANA

Suuongna

White Mountain (for low head hydro)

Environmental Data Collection
(Wind/solar)
50 - 100 sites

Est 150,000

Total - amount
23,000,000

Est. 500,000

Wind Power Projects

Hogper Bay AVEC 10 15 kw units 750,000

Portage Ck. ?

Platinum 271,000

Wales AVEC est. 250,000

Sheldon Pt 225,000

~~King Cove~~
~~Chukotka~~

Unalakleet

Sand Pt.

Wood burning Heat & electrical generation demo

Nantok School 300,000

Hoonah THREA 500,000

Waste Heat

NEA & Egegik 250,000

Nushagak Electric 250,000

Bethel

Geothermal

Kotzebue

?

UnAlaska study

500,000

Coal

North west study

Low BTU generator AVEC
Demo Project

125,000

Single wire ground return

Kobuk - Shungnak
Bethel

Tidal Power / Pumped Storage

Angoon

500,000

maybe
Asotins

around 500,000

MARK —
PLS REVIEW
THIS w/JIM

SMALL-SCALE HYDROELECTRIC POLICY REPORT FOR ALASKA:
PRELIMINARY LEGISLATIVE
OPTIONS AND RECOMMENDATIONS

Prepared for the Alaska
Joint Special Committee on
Renewable Energy Policy

Energy Program-Small-Scale Hydroelectric Project
National Conference of State Legislatures
1405 Curtis St. Suite 2300
Denver, Colorado 80202
303/623-6600

November 1979

ACKNOWLEDGEMENT

The NCSL Small-Scale Hydroelectric Policy Project would like to acknowledge the assistance of Woody Angst, Department of Environmental Conservation; Roger Kemppel, Esq.; Brian Petrie, Water Management Section of Department of Natural Resources; and David Denig-Chakroff, Division of Research and Development of Department of Natural Resources.

The Financing section of this report was prepared by the Energy Law Institute of the Franklin Pierce Law Center under a subcontract with NCSL to provide support services to the Small-Scale Hydro Technical Assistance Program. Special thanks is given to Peter Brown, Donnie Pope and William H. Wilson of FPLC.

Alaska Policy Report

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I. Introduction

The National Conference of State Legislatures (NCSL) Small-Scale Hydroelectric Policy Project is working with the Alaska Legislature in a review of small-scale hydro policy issues. Project activities were initiated in August, 1979 with a staff visit to Juneau to brief the Joint Special Committee on Renewable Energy Policy about the Small-Hydro Technical Assistance Program and to conduct in-state field research. Following this meeting, the staff assisted the committee in conducting a meeting in Anchorage on September 13, 1979 to identify the issues the committee would consider. Persons from a diverse range of backgrounds and interests participated in this meeting.

On September 14, 1979, the committee and NCSL staff agreed to a workplan outlining the issues that would be studied and laying a future course of action for committee meetings. A copy of the workplan is attached to this document.

This policy report represents the initial research requested by the committee on issues identified in the state workplan. The policy options and recommendations are intended to serve as a base for the formal development of legislative policy on these issues through their discussion.

II. WATER LAW

Introduction

Four issues were identified in the State Workplan for analysis by NCSL: the potential impact of "grandfathered" riparian rights; the potential impact of federal "reserved water rights"; stream-flow maintenance; and integrated water management. The following describes the results of NCSL research on these policy concerns.

Riparian Rights

The 1966 Water Use Act¹ recognized the validity of certain existing water uses,² including riparian³ mining claims. To the extent that such unrecorded "grandfather" rights exist, concern has been expressed regarding potential constraints on small-scale hydro development. It appears, however, that the problem may be administratively resolved under existing statutory authority.

The Water Use Act included a provision⁴ that claimants to existing water rights must file a declaration of appropriation within a finite filing period. The proposed Water Management Regulations⁵ set out such filing schedules. Claims not filed within the specified periods are extinguished.⁶ Thus, a mechanism has been proposed which will allow determination of the extent of "grandfather" water rights, thereby removing an area of uncertainty regarding small-scale hydro development.

Federal Reserved Water Rights

Concern has also been expressed over the extent to which Indian⁷ and other federal⁸ "reserved water rights" might impact small-scale hydro, especially with regard to maintenance of streamflows. Water reservations pursuant to the creation of a federal enclave (e.g., a national monument) do not extend to stream flow maintenance for general environmental and aesthetic purposes.⁹ Moreover, such claims are subject to state court jurisdiction¹⁰ via the McCarren Amendment.¹¹

The situation is less clear with regard to Indian water claims. Reserved Indian water rights (Winters Doctrine) also are subject to state court adjudication,¹² but Alaskan Native¹³ water rights may be "aboriginal" rather than "reserved" (i.e., pursuant to the establishment of a treaty reservation). However, federal land withdrawal pursuant to the Alaska Native Claims Settlement Act of 1971, may be an analogous situation.

These matters have been litigated in Alaska.¹⁴ The Alaska Superior Court for the Third Judicial District found that there has been no Congressional recognition of aboriginal title in Alaska¹⁵ and that in any case, the Winters Doctrine "does apply to...water held by Alaska Natives under aboriginal title...¹⁶ Thus, it appears

that Alaskan Native water claims will be subject to state court adjudication and quantification, thereby ameliorating the expressed concern regarding small-scale hydro development.

It should be noted in this regard that there is no reason to anticipate frequent conflicts between small-scale hydro developers and Alaskan Native Corporations (ANC's). Given the lack of a power transmission grid in Alaska, it is not likely that small-scale hydro developers will seek to develop remote sites adjacent to ANC's in order to transmit the power elsewhere. In fact, ANC's will be the likely beneficiaries of nearby small-scale hydro projects, which may often be developed as a joint venture. Thus, the potential for conflict over water rights may not be very significant.

Stream Flow Maintenance

The Department of Natural Resources, through its Division of Forest, Land and Water Management has the authority to attach conditions to water rights permits.¹⁷ Under the proposed regulations, such conditions may include a reservation of stream flow¹⁸ at specific points or stretches for specific periods or throughout the year. Such reservations are made in the public interest, including for the protection of fish and wildlife.

HB118, introduced in the last session, would have allowed stream flow reservations independent of water rights applications, as well as providing guidance with regard to a hierarchy of uses and cost-benefit analysis. Such legislation has general support from the Water Management Section and should be reconsidered during the upcoming session.

Integrated Water Management

There are numerous agencies in Alaska with an interest in water management, including planning, construction and permitting agencies. The Departments of Fish and Game, Natural Resources and Environmental Conservation have reached a cooperative agreement regarding their respective authorities (attached). Such inter-agency consolidation and cooperation should be pursued in the comprehensive review of water policy scheduled to begin in July, 1980. NCSL stands ready to assist in this effort and to submit recommendations to implement its conclusions.

Water management planning in Alaska has suffered from inconsistent funding. The Water Resources Board has recommended a shift to capital improvement funding. Its resolution is attached for legislative consideration. In addition, there exists a huge backlog of water applications waiting to be processed. Adequacy of funding and staff to reduce this backlog is of primary importance in order to facilitate efficient water and energy development in Alaska.

ADDENDUM

In regard to conditioning water permits in order to maintain stream flow, the power to continue such conditions upon the granting of a certificate of appropriation is unclear. According to the Water Use Act (§ 46.15.120), a certificate will be granted if the appropriation has been perfected in accordance with the permit conditions and may contain such "information" as may be prescribed by regulation.

HB 186, proposed during the 1979 session, would clarify this situation by amending the Water Use Act (§ 46.15.120) to explicitly authorize the attachment of conditions to certificates of appropriation. This legislation has the general support of the Water Management Section and should be reconsidered during the 1980 session.

FOOTNOTES

¹46.15 AS

²46.15.060 AS

³Riparian water rights are derived from ownership of land immediately adjacent to a source of water

⁴46.15.135 AS

⁵11 AAC 93 (1979) - proposed

⁶11 AAC 93.020

⁷Winters v. US 207 US 564 (1908)

⁸Arizona v. California 373 US 564 (1962); Cappaert v. US 426 US 128 (1976)

⁹US v. New Mexico 564 P. 2d 615 (1977) aff'd 438 US 696 (1978)
It should be noted that the decision in this case related to a National Forest established pursuant to the 1897 Organic Act. A different result may be reached regarding National Forests established subsequent to the 1966 Multiple Use Sustained Yield Act.

¹⁰US v. District Court for Eagle County 401 US 520 (1971)

¹¹43 USC 666

¹²Colorado River Conservation District v. US 424 US 800 (1977)

¹³including Eskimos, Aleuts and Indians

¹⁴Paug-Vik, Inc. v. LeResche No. 77-17158; Superior Court of Alaska, 3rd District (1979)

¹⁵id., Conclusion of Law #20; see also Tee-Hit-Ton Indians v. US 348 US 272 (1954)

¹⁶id., Conclusion of Law #25

¹⁷46.15.100 AS

¹⁸11 AAC 93.120 (b)(1)

III. ENVIRONMENT PERMITS

Introduction

A hydroelectric developer in Alaska must obtain a number of state permits before he can commence construction of a project. (A list of applicable permits is included in Appendix A.) These permits are issued by several departments, including the Department of Natural Resources (DNR), Department of Environmental Conservation (DEC), Department of Fish and Game (DF&G), and Department of Transportation and Public Facilities (DOTPF).

Alaska has made great progress in streamlining the state licensing procedure via passage of the Environmental Procedures Coordination Act in 1977. This report discusses that system and specifies some legislation options for improvements of the system.

This report must be read against the background of possible federal pre-emption under the Federal Power Act. Although the U.S. Supreme Court has held the Act to be superior to state procedures, the Federal Energy Regulatory Commission (FERC) has adopted a policy that small-scale hydroelectric developers should comply with state licensing requirements prior to obtaining a federal license. Thus, Alaska's regulatory policies remain relevant to small-scale hydro.

Environmental Procedures Coordination Act (AS 46.35.010 et seq)

The Environmental Procedures Coordination Act (EPCA) sets forth the goal of streamlining the licensing procedures for any project requiring one or more of the permits listed in AS 46.35.200. The procedure establishes the DEC as the lead coordinating agency. A developer submits a master application to DEC, which the department then circulates among appropriate state agencies. Any agency asserting licensing jurisdiction must indicate which permits will be required. The DEC then transmits the relevant applications to the developer. When each permit application is completed by the developer, the DEC will transmit that application to the appropriate agency.

After all permit applications are complete, the DEC will publish notice in a newspaper concerning the project. Information from the public will be received via letter or public hearing. Federal and local government agencies may participate at the public hearing. Within 90 days following the hearing, all agencies must complete their determinations and the DEC will send the developer one document indicating the final decision of each agency.

Should the decision be negative, the developer may request an adjudicatory hearing. If the commissioner of the DEC finds that reasonable issues of fact or law are raised, the hearing will be scheduled, moderated by a hearing officer. At the hearing, the commissioner (or his designee) for each agency which rendered final

decision will review the subject matter applicable to that agency. The commissioner (or designee) may affirm or modify the prior decision. Should the developer remain unsatisfied, he may appeal to the superior court.

EPCA states that although all the permits may be granted, a final decision will be withheld if the developer does not possess the necessary land and water rights. Also, a final decision will be withheld if local government officials do not certify that the project conforms with local ordinances or comprehensive plans (or that such ordinances or plans are not applicable).

Present activities to improve EPCA

In order to improve EPCA, the DEC has compiled Directory of Permits for the state, giving a brief description of the criteria for issuance and subject matter for each permit. This Directory includes more than the list of permits in EPCA, and is an attempt to produce a comprehensive compilation of all state, federal and local permits. The most recent update to the Directory will be available in November, 1979.

The Department of Commerce and Economic Development (DC&ED) is in the process of preparing a Procedures Manual which will include a set of master lists of necessary permits, dependant upon type of project. The manual will also include a description of the necessary procedures relevant to application for a particular permit.

Lastly, the DEC has prepared a set of master lists of necessary permits which is used by DEC. As each project proceeds, the DEC maintains a record of necessary permits, and supplements each list with information furnished by the developer.

Legislative Options and Initiatives

As a result of the NCSL and Joint Committee on Small-Scale Hydro sponsored public workshop, as well as subsequent NCSL field research, several problem areas and possible options regarding EPCA have been identified, including:

1. Does the list of permits contained in EPCA provide a complete set of applicable permits for the small-scale hydro (SSH) developer?

The coordination role of the DEC is limited by statute to those permits specifically included in the EPCA, as well as any additional permits designated by the commissioner. However, it appears that some permits listed in the EPCA are no longer applicable, while other permits not listed are of importance. One approach would be to give the DEC the authority to coordinate "...all permits contained in the Directory

of Permits..." Such a mandate should direct all state agencies to enter the coordinated process. It should be remembered that additional staffing and funding may be required to insure DEC effectiveness.

One consideration regarding inclusion of agencies is whether the Public Utilities Commission should be included in the EPCA process. Primarily, the permits included in EPCA relate to environmental concerns, while the PUC is concerned with the development of Alaska's utility system. The legislature should examine whether it considers the respective policy considerations for these subject areas sufficiently similar to warrant inclusion of the PUC in EPCA. Also, the legislature should consider whether convenience to the developer in the case of small-scale hydro would be fostered by inclusion or exclusion.

2. Would pre-application meetings facilitate the licensing process?

The DEC has informally conducted pre-application meetings between a developer and applicable state agencies before a master application is submitted. This meeting tends to promote communication between the developer and agencies and allows the agencies to express concerns or reservations at an early stage. The legislature may wish to consider whether or not to formally require such a service to be available.

3. Are there conflicts and ambiguities between the EPCA and other statutes?

There are a number of areas where the procedures of the EPCA conflict with other statutes, generating unnecessary confusion. For instance, the notice requirements of some permits are dissimilar from those of EPCA, in terms of time limits, number of publications, proper paper for publication, and financial responsibility for publication (developer or agency). Also, some legislative mandates to the agencies require inter-agency determinations regarding some permits, but these are not provided for in the EPCA. The legislature should consider revisions to eliminate these conflicts.

4. Are public interest groups sufficiently involved in the EPCA process?

Public interest groups are not specifically included in the EPCA process. They may participate at the public hearing, but by this time the developer has completed a master application as well as all permit applications. One option would be to involve public interest groups at initial stages of the process. For instance, DEC might identify such groups and suggest to the developer that he contact them at an early stage.

5. Should state agencies be prohibited from intervening in the FERC licensing procedure?

It appears that state agencies may intervene in the FERC licensing procedure, and air complaints and reservation at that time. Thus, an agency can avoid participation in EPCA, and still intervene later at the FERC level. This effectively negates the goal of the EPCA that all interested agencies make their determinations in the EPCA process. The legislature may wish to prohibit state agencies from participation in the FERC process if that agency failed to participate in the EPCA process. Alternatively, the legislature may wish to prohibit any agency from intervention at the FERC level, mandating all state discussion occur within the EPCA process.

6. Should Alaska parallel the FERC criteria for short form applications?

Under the FERC licensing procedures, facilities at existing dams of less than 1.5 Mw capacity receive a streamlined treatment. Also, facilities at existing dams of 1.5Mw to 15 Mw can use a short form application. The legislature should consider whether Alaska should parallel these criteria in its licensing procedure, and provide an abbreviated procedure for qualifying sites.

7. Should there be a Master Application with all relevant questions, rather than a series of permit applications?

Under the current system, the master application is really designed to provide sufficient information so that an agency can determine whether a particular permit is necessary. The legislature should consider whether a Master Application could be designed which would include all relevant information, thus allowing a developer to deal with only one application rather than many.

Also, the legislature may wish to consider adoption of a General Permit for a class of activities. Such a permit would allow several activities related to a type of enterprise with attendant conditions as specified by the administering agency. For instance, there might be one Hydroelectric Permit, or several classes of Hydro Permits, including Small-Scale Hydro and Large-Scale Hydro, distinguished by power characteristics.

8. Should central authority for a final determination be given to one lead agency?

The DEC is presently given the role of central coordination, but does not have final authority for a decision. Under a lead agency system, one agency would listen to the views of the other and then make an independent decision.

Such a lead agency might perform a function which is absent in Alaska's system. That function is to compare the overall social, economic, environmental, and energy costs with the overall social, economic, environmental,

and energy benefits of a project. Each agency now examines a particular facet of a project, but no one agency makes an overall evaluation weighing all the factors in balance.

If a lead agency system is chosen the role of the DEC should be reexamined. The DEC has a primary mandate of ensuring environmental conservation, and might be in a conflict situation if it also attempted to weigh all other costs and benefits. Perhaps an existing planning agency within the DC&ED, such as the Division of Energy and Power Development, could best perform this role. Alternatively, an Energy Facilities Siting Committee could be created. Development of a comprehensive State Energy Plan would facilitate this type of approach.

This system would have certain advantages and disadvantages compared to the present system. In terms of advantages, it could resolve any interagency conflicts which had arisen, and would offer a larger perspective than that of the individual agencies. It would have a legislative mandate to make an overall evaluation of the project. It would also facilitate the FERC licensing process because it could present the FERC with a uniform view (i.e., the State of Alaska has approved this project with the following conditions and requirements) and allow the FERC to only deal with only one state agency.

This system poses the disadvantage that it will conceivably overrule another agency which has more expertise. The present agencies possess a great deal of technical knowledge in their subject area, and it would be unfortunate to have an agency with less knowledge of the subject matter in a position to override a decision. Also, due to political realities, such a system might produce interagency tension and distrust, and ultimately be less effective.

9. Should a Joint Interim Committee be established to study these and other recommendations?

Some of the options outlined above will require detailed research before the legislature can properly amend statutes. For instance, study of EPCA conflicts vis-a-vis other statutes (No. 3) requires an in-depth analysis of present law. The possibility of a Master Application (No. 4) requires careful drafting to insure that all relevant information is included. The legislature may wish to create a Joint Interim Committee to study those options which the legislature finds most interesting. Staffing and funding should be provided, with a final report from the Committee presented to the legislature at a given time (6 months to 1 year).

INTRODUCTION

The purpose of this set of options is to provide the Alaska Legislature with various methods for stimulating renewable energy resource development. Numerous options have been suggested for modifying the authority of some existing developmental and funding entities and for securing additional development funds. Our selections for accomplishing these purposes are designed to provide for the least amount of change to the existing state structure and/or to serve special needs that currently are not being met.

To accomplish the purposes identified, some degree of state subsidization may be required. Generally, a subsidy is any non compensated transfer of resources from the state treasury. An example of state subsidization is where the state provides direct financing for projects at interest rates below the market rate because such projects are viewed as beneficial to the state's interest.

Constraints should be imposed on any form of state subsidization program to insure that the least cost methods of achieving the desired end is selected and that the degree of subsidization is limited to that desired by the legislature.

There are various methods of achieving this result, two of which are discussed in this report. One method is to insure the feasibility of projects by considering the best alternative for the desired purpose. This may be accomplished by having the project size limited to match a reasonable forecast of end-use demand. A second check is provided by insuring that project financing costs

are minimized by enabling the utilization of financing economies of scale, requiring the selection of the most appropriate method of financing for each project and directing that project subsidies be limited to those necessary to enable the construction of a particular project.

OPTION NUMBER 1 Renewable Resource Planning and Demonstration

The Renewable Resource Planning and Demonstration Option is not designed to provide for actual development of a particular project. Under this option, the Legislature would be responsible for conducting oversight responsibilities specifically geared to requiring action by the Alaska Renewable Resource Corporation in the exercise of their project demonstration and technical assistance functions. In addition, this option calls for the legislature to expand the current responsibilities of the Alaska Power Authority.

The Alaska Power Authority (APA) and the Alaska Renewable Resources Commission (ARRC) could be given a comprehensive planning function. The plans, submitted annually or more frequently to the Governor, Legislature and Department of Commerce and Economic Development, should detail present use and future projections for the use of renewable resources throughout the state.

In addition to planning, the APA could be authorized by appropriate legislation to engage in demonstration projects involving renewable resources. These projects could be financed through legislative appropriations. The ARRC presently has the authority to conduct demonstration projects. An annual or semi-annual reporting requirement may also be appropriate here. The reporting requirements

for demonstration projects should include: technical performance data, costs, and potential commercial application of the demonstration projects; projections of the technology's future contribution to energy supply for each renewable resource; and, projections as to how each renewable resource demonstrated will match end-use demand under various geographic situations, could be required.

This option would have little effect on the status quo from a financial perspective, while at the same time would be providing the Alaska Legislature and Governor, as well as prospective developers, with technical information and comprehensive planning. The planning aspect would be of particular benefit to the State in its attempt to develop a comprehensive energy plan and would insure that renewable resources were appropriately included.

OPTION NUMBER 2 Alaska Renewable Resources Development Corporation

This option would provide the Alaska Renewable Resources Corporation with developmental authority specifically for renewable resources technology projects, and/or for a liberalization of their current loan restrictions. This action would obviously require a change in the legislative charter of the Corporation. The Alaska Renewable Resources Corporation presently has the authority to sponsor research and development of renewable resource technology and to assist in demonstrating their technical and economic feasibility. (ALASKA STAT. § 37.12.010 [1978]). The existing Alaska Renewable Resources Corporation may also loan money to developers under specific circumstances.

Either instead of, or in addition to, granting the Corporation developmental authority, many of the loan restrictions which currently are in effect could be eliminated or modified. For example, loan periods are presently limited to thirty years unless the legislature approves the loan by concurrent resolution. The Corporation could be given discretion to increase the loan retirement period for projects which could justify the need for such longer period.

An increase in the maximum amount per loan could also be permitted. Presently, the per project limit is set at five percent of the resources of the Corporation or \$1,500,000, whichever is less.

Both of these suggestions are desirable for stimulating renewable energy resource development. Most of these projects (hydro-electric projects for example) are very capital intensive and will frequently require loans in excess of the maximum limit. Additionally, many potentially valuable renewable energy projects will require a payback exceeding 30 years.

There presently also exists a limit on the percentage of outstanding corporate stock in any one project which may be held by the Corporation without legislative approval. To provide maximum development flexibility to ARRC, this limitation could be removed.

OPTION NUMBER 3 Exemption of Small Scale Renewable Resource Projects
Developed or Financed by APA From Legislative
Approval

The APA has board authority to develop generating and transmission facilities in Alaska. However, projects, without regard

to size, are subjected to legislative approval. This option is designed to exempt renewable resource projects either developed directly or financed by the APA from legislative approval.

The statutes under which the APA operates would have to be amended to achieve this objective. The exemption could be provided for APA projects of: a limited dollar amount, limited output capacity, or limited to a reasonable forecast of a particular project's end-use demand capacity.

This exemption would be provided by the APA upon a determination that all the requirements of technological and economic feasibility which the APA must currently consider are met. The reasoning behind the exemption is that renewable resource projects of a small scale nature should not be delayed for the period of time required for legislative consideration and approval.

The APA could also be given the authority to issue general obligation bonds, pledging the full faith and credit of the State. This additional bonding authority would round out the APA's financing flexibility. Of course, general obligation bonding would not be appropriate for all APA projects, but could be useful for some, since it should enable a slight saving over revenue bond rates.

Presently, the APA is required to submit details of proposed projects to the Governor to assure that all projects built conform to the Alaska comprehensive energy plan. The energy plan has not been completed and will not likely be so in the near future. A procedure for consultation rather than a requirement for approval from the Governor's Office would, at this point in time, appear to

be more appropriate. This consultation procedure would insure that projects undertaken by the APA will be incorporated in the final energy plan without burdening the APA with the uncertainty and delay in the current process.

As mentioned earlier, the APA has been delegated broad authority by the Legislature to engage in electric generation and transmission projects. It appears, however, that the special opportunities available to the APA have not been fully utilized. This appears to be largely a funding and autonomy problem. It would seem that the ability of the APA to accomplish its intended purpose would be enhanced by according the agency the independence and discretionary authority consistent with the original recognition of its expertise. Thus, in addition to the above suggestions, the APA would benefit from a general appropriation. Legislative control could be assured through the normal continuing exercise of legislative oversight over APA activities and some form of annual review and audit.

OPTION NUMBER 4 Establishment of a State Development Agency
 Using the Rural Electric Authority Model

The main purpose behind adoption of a State REA model is to provide for the development and funding of projects for areas of the State of Alaska which are either presently not receiving electricity, or are not adequately receiving such power. Since many areas in Alaska are not located near generation and distribution facilities, individual projects designed to meet the needs of such areas are necessary. Since the Alaska Power Authority has the power to develop projects in any area of the state, this proposal

is intended to supplement, not replace, the Alaska Power Authority.

Another purpose behind the adoption of a Rural Electric Authority (REA) model in Alaska is to serve some of the needs not being met by the Federal REA program currently in effect in Alaska. One of the most significant problems of the Federal REA program is that of limited funds available to state REA's and the substantial nationwide competition for those funds. Since this option is not designed to substitute the use of Alaska revenues for those provided by the federal programs, but only supplement the federal program, it may be desirable to stipulate that those projects apparently eligible for Federal REA funding attempt to acquire such funding before approval under the state program.

I. Authority

The initial step is to design a structural framework which would be suited to Alaska. The Federal Rural Electrification Act of 1936, as amended, (7 U.S.C. § 901 et seq. [1977]), and the Alaska Electric and Telephone Cooperative Act would provide a model for developing such a system. The Federal REA statute would provide a model for the state level Authority, while the Alaska REA statute would provide guidelines for establishing local cooperatives. Needless to say, both these statutes would have to be revised to meet the specific needs of Alaska but they should be consulted for structural guidance.

II. Financing the State REA

Providing the State Rural Electric Authority with financing sufficient to carry out the purposes of the enactment can take place in a number of ways. First, the Legislature may want to make

a direct appropriation from the general fund or other identifiable source of state revenues such as the Alaska permanent fund.

A system of loan advances could be made by the State Treasury from either the general fund or the Alaska permanent fund. These loans could be made providing for a set or accelerating interest rate, a deferred system of interest payments, or for no interest. In determining the interest amount, the current market rates could be used or the legislature could provide an interest subsidy, which would be any amount less than the market rates. The loan period could also be established by statute with or without a provision for extensions.

A revolving loan fund could also be set up, similar to the Power Project Revolving Fund, in the State Treasury. Capital and interest payments made by the individual cooperatives would be paid into this fund for later use by the State REA.

Another option would be to grant to the State REA bonding authority with the state pledging a guarantee on the bonds.

III. Cooperative Membership

Membership necessary to form a cooperative could be designed to accomodate the legislature's perception as to whom the benefits of the Act should innure. One possibility would be to have the Act available to all interests.

An alternative would be to specify those entities who would be qualified under the Act. The selection could include individuals, groups of individuals, all industries or specific industries, municipalities, boroughs, tribes, etc., or any combination of these or others.

Minimum limits as to the number of individuals necessary to create a cooperative may be desirable to assure future accountability. A maximum limit of inhabitants in an area may be imposed so as to insure the benefits of the Act are limited to rural or isolated areas as consistent with the purpose designed to be served by the Act.

IV. Cooperatives - Terms of Assistance and Amounts

The legislature may, for any one project or other cooperative undertaking, desire to place a maximum limitation on the amount which may be disbursed from the State Authority. The State Authority may be granted the appropriate authority by the legislature to distribute funds to the cooperatives in a variety of ways or combinations.

One possibility would be for the State Authority to issue direct loans to the cooperatives at an established interest rate based on market rates or in an amount less than the market rates. Deferred payment may also be desired. It is worth pointing out at this point that any interest rate on loans or other form of assistance which is not equivalent to the outside market rates is in fact a subsidy. Therefore, in establishing a set interest rate below the current market rate the legislature should consider what the market rates are at the time the rates are established so as to identify the extent of the subsidy provided.

Providing grants for projects meeting certain criteria may be available for allocation by the Authority. These grants could be established for feasibility studies, construction, or operation and maintenance.

To attract outside investors, the State REA may be given the authority to guarantee loans. Such guarantees may provide for a pledge of the Authority's appropriations or mortgages or the legislature may provide that the Authority be permitted to pledge the full faith and credit of the state or the general fund or permanent fund specifically.

Guaranteed loans should provide the cooperatives, assuming the project contemplated is otherwise economically feasible, with lower interest loans. Outside investors will also be more likely to invest in cooperative activities with a pledge of the credit of the state insuring repayment.

Another method would be for the State REA to subsidize a percentage of the interest payment on money financed from outside investors. This method could be expanded to provide a subsidy on not only a percentage of the interest, but also on the capital invested. One benefit associated with subsidizing some percentage of the interest on the project's debt is that the merits of the project have been evaluated by the market system prior to application and the precise subsidy necessary to finance the project may be identified and the subsidy limited to that amount.

A loan schedule should be established for cooperatives to undertake feasibility studies. Loans for feasibility studies should be forgivable in the event the project is not built. Some threshold criteria for eligibility for feasibility study loans could be established by the State REA to insure these funds are optimally used.

V. Standards for Review of Project Loans

Special consideration must be devoted to developing standards of review prior to the granting of project loans if renewable resources are deemed a priority for development. Given the capital intensity of most renewable resource projects short-run cost comparisons are ill suited. However, some comparison of alternatives should be made.

Projects proposed by cooperatives should be evaluated considering the best alternative over a period of years. The Federal REA has set the period for comparison purposes at ten years. Due to the high initial cost of renewable resource projects the period used for comparison purposes may need to be extended. Also, a reasonable fuel escalation factor should be used in determining the operating expenses of fossil fuel plants considered as alternatives.

Projects should also be evaluated based on their compatibility with end-use demand, determined by the use of appropriate established forecast methodologies. The methodologies to be used could be established through the promulgation of rules by the Administrator of the State REA. These procedures would insure continuity in evaluating the alternatives.

VI. Qualifying Projects

Many options are available to the legislature in establishing what will be deemed a qualifying project. For instance, the legislature may desire to define a qualifying project as any project which will produce power or energy or used to transport energy. This could be construed to include all types of generating and trans-

mission facilities including the wiring of individual homes or industries. Numerous limitations could be written in to disqualify specific types of generating facilities and/or end-user benefits.

An alternative would be to limit the generation facilities covered by the program to renewable resources, including or excluding cogeneration projects. The types of projects covered under renewable resources should be specified.

As to either of the above definitions of qualifying projects, a size limitation could be adopted. The size limitation could be expressed in terms of megawatts or B.T.U.'s whichever is appropriate for the energy type..

V. FUTURE WORK

Due to time constraints on the NCSL staff, several items outlined in the workplan were not covered in this policy report. The areas of (1) Public Utility Regulation, (2) Insurance, and (3) Federal Interface will be addressed in a future policy report to the committee. Pending the committee's future needs on the issues presented in this policy report and those not considered yet, NCSL staff will prepare additional policy reports, policy options and recommendation papers, and bill drafts as requested.

VI. APPENDICES

- A. List of state permits
- B. State workplan
- C. Resolution 79-8
- D. Cooperative Agreement between Alaska Agencies on Environmental Conservation
- E. HB 178
- F. HB 186

Appendix A

The following is a list of state permits which may be required by a hydroelectric developer. Some permits will apply to all sites; others are site specific. The reader is recommended to review each permit in detail in the Directory of Permits. The page number for each permit is included within the parenthesis, and refers to the March, 1978 edition of the Directory. These page numbers will probably be different in the newest edition of the Directory, due for release in November, 1979. As this list was compiled by use of the older edition of the Directory, the list may contain some discrepancies from present practice.

List of possible permits (some are site specific);

A. Department of Natural Resources (DNR)

1. Water rights - Water Use Permit (DNR-22)
(Question as to status of vested riparian water rights)
2. Land use - proof of ownership or proper lease
If land owned by State of Alaska,
Leasing of Lands-Other Than for the Extraction of Natural
Resources (DNR-10)
3. Miscellaneous Land Use Permit (DNR-12)
4. Right of Way or Easement Permit (DNR-14)
5. Special Land Use Permit (DNR-16)
6. Tidelands Permit (DNR-18)
7. Change or Vacation of Land Plat Approval (DNR-9)
8. Conditional Use Permit
9. Compliance with Soil Conservation Districts regulations
10. Compliance with Alaska Historic Preservation Act

If facility is within a state park, or has access or transmission routes through a state park, the following should be considered:

1. Access Route Permit (DNR-33)
2. Disturbance of Natural Material Permit (DNR-35)
3. Special Land Use Permit (DNR-39)
4. State Park Noncompatible Use Permit (DNR-40)
5. Field Archeology Permit (DNR-37)

B. Department of Environmental Conservation (DEC)

1. Air Quality Control Permit to Open Burn (DEC-1)
2. Air Quality Control Permit to Operate (DEC-4)
3. Discharge into Navigable Waters - Certificate of Reasonable Assurance (DEC-7)
4. Pesticide Permit (DEC-12)
5. Solid Waste Disposal Permit (DEC-15)
6. Surface Oiling Permit (DEC-15)
7. Waste Water Disposal Permit (DEC-25)

C. Department of Fish & Game (DF&G)

1. Anadromous Fish Protection Permit (DF&G-21)
2. Critical Habitat Areas Permit (DF&G-23)
3. State Game Refuge Land Use Permit (DF&G-24)
4. State Game Sanctuary Permit
5. Requirement of construction of fish ladders or hatcheries

D. Department of Transportation and Public Facilities (DOTPF)

1. Utility Permit for Encroachment within Highway Right-of-Way (DOTPF-9)
2. Encroachment Permit (DOTPF-11)
3. Driveway Permit (DOTPF-13)

E. Department of Commerce & Economic Development (DC&ED)

1. Public Utilities - Certificate of Public Convenience and Necessity (DC&ED-1)

F. Local

1. Certification of compliance with local zoning ordinances or comprehensive plans, or certification that there are no applicable requirements. (AS 46.35.130)

NATIONAL CONFERENCE OF STATE LEGISLATURES

ENERGY PROGRAM -- ALASKA
SMALL SCALE HYDROELECTRIC PROJECT

Study Areas

- A. Environmental Permits
 - conflicting statutory mandates (public notice hearing)
 - mechanisms to implement ERCA not in place
 - consolidation of permits and hearings
 - establishment of agencies' response to pending permits for time deadlines
- B. Water Law
 - investigate administrative resolution of the riparian question that is unresolved from the 1966 Water Use Act which adopted the appropriation doctrine for the state
 - joint resolution supporting federal quantification of reserved rights
- C. Public Utility Regulation
 - raise annual business revenue exemption for regulation purposes
 - implementation of PURPA
 - analysis of cream skimming by non-regulated utilities in a regulated utilities service area
- D. Insurance
 - examine authority of state to mandate pooled insurance
- E. Financing
 - state REA funding concept utilizing a portion of the permanent fund use for low interest loans
 - alternate methods of providing feasibility assistance
 - development of discretionary funds for Alaska Power Authority
 - bond guarantee program
 - small-scale hydro tax incentives
 - investigate Renewable Resources Corporation potential for increased financial support to micro hydro
- F. Federal Interface
 - development of memoranda of understanding with regard to the issue of federal jurisdiction in Alaskan projects where such jurisdiction is questionable

Staff ResponsibilitiesTaskStaffStatus

Project Introduction

NCSL

completed

Issue Identification

Joint

completed

Research and Analysis

NCSL

in progress

Supplemental Field Research

Joint

in progress

- State staff will conduct interviews and provide support for in state research. State staff will also assist in contact coordination.
- Emphasis will be placed on the issue areas of financing and environmental permits for 1980 session.

Project MilestonesStaffStatus

- State Profile

NCSL

completed

- Options and Recommendations

NCSL

November

- Issue Papers

NCSL

November

- Discussion Bill Drafts

Optional

December

- Draft Legislation

Optional

December

- Commercialization Workshop

NCSL

Summer 1980

- Review of Proposed Legislation

Joint

December

NATIONAL CONFERENCE OF STATE LEGISLATURES

ENERGY PROGRAM -- GEOTHERMAL PROJECT
PROPOSED TECHNICAL ASSISTANCE PROGRAM

STATE OF ALASKA

Study Areas

A. Resource Characterization

- distinguish high & low temperature resources
 - temperature threshold
- confirm subsurface ownership separate from water right
- address water law interface
 - property implications
 - protection of existing rights & water quality
 - clarification of application to by product water

B. Resource Access

- simplified procedures for low-temperature uses
 - miscellaneous land use permit/water right
 - unregulated put. residential use/water right
- substitute conforming use section for state withdrawals
- examine designation criteria & acreage limit (max.)
- adjust lower acreage limit for small-scale uses
- set deadline for mining claim diversion

C. Resource Allocation

- adopt firm policy with enforcement power
 - assign jurisdiction

D. Permitting

- remove overlapping jurisdiction re drilling
- distinguish regulation of high & low-temperature wells
- implementation of EPCA

E. Finance

- operator's incentives
 - state investment tax credit/property tax adjustment
 - deferral of royalties

- waive royalties for low-temperature use
 - * implications of temperature threshold
 - state loan/bond guarantees or certification
 - mandated pool coverage of reservoir risk
- consumer's incentives
 - income tax credits
 - property tax exemptions
 - state/utility loan program (weatherization/TVA)

F. District Heating

- confirm public bonding ability (alternative heat sources)

G. Public Utility Commission

- investigate commission policies
 - discretion to exempt from rate jurisdiction
 - certification control
 - reliability control

Staff Responsibilities

NCSL energy staff, in conjunction with legislative staff, will identify issues, conduct research, analyze policy concerns, investigate administrative responses and prepare legislative proposals, as needed.

<u>Tasks</u>	<u>Staff</u>	<u>Status</u>
Project Introduction	NCSL	completed
Issue Identification	Joint	completed
Research & Analysis	NCSL	in-progress
Supplemental Field Research	Joint ¹	in-progress
Project Milestones		
- Policy Profile	NCSL	completed
- Options & Recommendations ²	NCSL	12/79
- Discussion Bill Drafts	Optional	1/80
- Draft Legislation	Optional	2/80
Review of Proposed Legislation	Joint	1980

1- State Staff will conduct occasional in-state interviews and facilitate agency visits. Assistance of Geothermal Specialist in Div. of Energy and Power Development (State Energy Office) will be sought.

2- 1980 legislative proposals in selected areas only: leasing revisions, temperature threshold, DH, allocation, permitting, financing.

STATE OF ALASKA

JAY S. HAMMOND, Governor

WATER RESOURCES BOARD

Resolution 79-8

BUDGETING FOR WATER DATA COLLECTION

WHEREAS data on streamflow, precipitation, and groundwater levels is necessary for flood forecasting, public water supplies, hydro-power, fisheries management, and water rights adjudication, and

WHEREAS proper statistical development of hydrologic data requires multi-year efforts due to seasonal changes in the hydrologic cycle and yearly or multi-year changes in climate patterns, and

WHEREAS state agency programs to collect hydrologic data have traditionally been funded from the agencies annual operating budget, and

WHEREAS shifting annual priorities or budget cutbacks have sometimes eliminated hydrologic data collection programs in mid-term, thereby negating thousands of dollars of effort and rendering the project valueless;

NOW THEREFORE BE IT RESOLVED that the Board recommends that hydrologic data collection which requires multi-year efforts, be funded through the Capital Improvement Program rather than annual operating budgets to assure year-to-year continuity as well as timely conclusion and reduction of funding when the project is completed.

Adopted August 8, 1979

Richard H. Sims

Richard H. Sims
Chairman

Appendix D

COOPERATIVE AGREEMENT

BETWEEN THE

ALASKA DEPARTMENT OF FISH AND GAME

AND THE

ALASKA DEPARTMENT OF NATURAL RESOURCES

AND THE

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

This Cooperative Agreement is made and entered into this 21st day of June, 1979, by and between the Alaska Department of Fish and Game, hereinafter referred to as Fish and Game, the Alaska Department of Natural Resources, hereinafter referred to as Natural Resources, and the Alaska Department of Environmental Conservation, hereinafter referred to as Environmental Conservation.

WHEREAS, Fish and Game is responsible for the protection, conservation, and management of fish and game within the State of Alaska pursuant to Title 16 of the Alaska Statutes, and

WHEREAS, Natural Resources is responsible for the management of public lands owned by the State of Alaska pursuant to Title 38 of the Alaska Statutes, and is responsible for the determination and adjudication of rights in the waters of the State, and in water appropriation and distribution pursuant to Title 46, Chapter 15 of the Alaska Statutes, and

WHEREAS, the Department of Environmental Conservation is responsible for water pollution control pursuant to Title 46, Chapters 3 and 7 of the Alaska Statutes, and

WHEREAS, the purpose of this Agreement is to provide for mutual cooperation and coordination among the three Departments with regard to water rights permits and certificates, anadromous fish permits, wastewater disposal permits and State water quality certifications;

NOW, THEREFORE, the three Departments hereby agree as follows:

FISH AND GAME AGREES:

1. To send Natural Resources and Environmental Conservation copies of anadromous fish permit applications and locational maps when they are received by Fish and Game.

2. To send Natural Resources and Environmental Conservation copies of anadromous fish permits when they are issued pursuant to AS 16.05.870.

NATURAL RESOURCES AGREES:

1. To send Fish and Game and Environmental Conservation copies of water rights applications, locational maps and public notices for surface and groundwater appropriations as required by AS 46.15.070(b) during adjudication by Natural Resources. All single family domestic applications of 1,000 gallons per day or less will be exempt from this notice.
2. To identify to Fish and Game and Environmental Conservation by a copy of the posting notice, grandfather water rights cases for surface and groundwater appropriations that are being adjudicated by Natural Resources. All single family domestic declarations of 1,000 gallons per day or less will be exempt from this notice.
3. To send Fish and Game and Environmental Conservation copies of water rights permits and certificates authorized by AS 46.15 when they are issued.

ENVIRONMENTAL CONSERVATION AGREES:

1. To send Natural Resources and Fish and Game copies of wastewater disposal permit applications and locational maps as required by AS 46.03.110(c) when received by Environmental Conservation.
2. To send Natural Resources and Fish and Game copies of public notices of applications and locational maps for State Water Quality Certifications of federally permitted activities received by Environmental Conservation under 18 AAC 15 and P.L. 95-217 except where notice is received from the federal permitting agency.
3. To send Natural Resources and Fish and Game copies of wastewater disposal permits authorized by AS 46.03.100 and P.L. 95-217 when they are issued.
4. To send Natural Resources and Fish and Game copies of State water quality certifications authorized by P.L. 95-217 when they are issued.

FISH AND GAME, NATURAL RESOURCES, AND ENVIRONMENTAL CONSERVATION MUTUALLY AGREE:

1. Each Department will make available to the public appropriate permit application forms from the other two Departments.

2. Each Department will directly contact applicants for permits and certifications of the other Departments, when requiring information additional to the permit or certification applications and maps provided by the issuing Department, and to send a copy of any such written correspondence to the issuing Department.
3. Each Department will reference all interagency correspondence and correspondence to applicants concerning water rights permits and certificates, anadromous fish permits, wastewater disposal permits, and state water quality certifications with the document number assigned by the issuing agency.
4. Each Department will provide comments to the issuing Department on all projects for which applications for water rights permits or certificates, anadromous fish permits, wastewater disposal permits or water quality certifications have been received.
5. Comments upon permit or certification applications will be provided to the issuing Department within the time period stated on the transmittal memo sent by the issuing Department.
6. Each Department may notify another Department in writing that the Department will have no comment regarding a class or type of permit or certification application judged to have minor adverse impacts.
7. To include in water rights permits and certificates, anadromous fish permits, wastewater disposal permits, and state water quality certifications a citation of appropriate statutory authority along with conditions provided by Fish and Game for fish and game resource and habitat protection, conditions provided by Natural Resources for water appropriation and distribution and conditions provided by Environmental Conservation for water quality protection when these conditions are based on the statutory authority of these Departments, and to consider the inclusion of other recommendations provided by these Departments when judged by the issuing Department to be in the best public interest.
8. Prior to issuance, each Department will notify the appropriate Department of recommendations that the issuing Department does not agree to include in a permit or certification.
9. Each Department will be responsible for enforcing permit and certification conditions established pursuant to the authorities of that Department.
10. Each Department's permits and certifications will state that issuance of the permit or certification does not relieve the applicant from the responsibility to obtain permits or authorizations that may be required by other Federal, State, or local agencies. This statement shall direct the applicant to contact Environmental Conservation's Permit Information and Referral Center for information on additional authorizations that may be required.

11. Amendments to this Agreement may be proposed by one Department and shall become effective upon approval by each Department.
12. This Agreement shall become effective 30 days after it has been signed by each Department and shall continue in force until terminated by one Department following one hundred-twenty (120) days notice in writing to the other Departments of that Department's intention to so terminate.

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME

BY

Ronald O. Skoog
Ronald O. Skoog
Commissioner

Date

25 June 79

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

BY

Robert E. LeResche
Robert E. LeResche
Commissioner

Date

26 June 1979

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BY

Ernest W. Mueller
Ernest W. Mueller
Commissioner

Date

JUN 22 1979

Introduced: 2/2/79
Referred:- Resources

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE HOUSE

HOUSE BILL NO. 118

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the maintenance of stream flows
and levels of water."

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

* Section 1. AS 46.15.030 is amended to read:

Sec. 46.15.030. WATERS RESERVED TO THE PEOPLE. Wherever occurring
in a natural state, the waters are reserved to the people for common use
and are subject to appropriation and beneficial use and to reservation
of instream flows and levels of water, as provided in this chapter.

* Sec. 2. AS 46.15 is amended by adding a new section to read:

Sec. 46.15.145. RESERVATION OF WATER. (a) The state or any
political subdivision or agency of the state may apply to the commis-
sioner to reserve sufficient water to maintain a specified instream
flow or level of water at a specified point on a stream or body of
water, or in a specified stretch of stream, throughout the year or for
specified times of the year, for protection of fish and wildlife
habitat, migration, and propagation, for recreation and park purposes,
for navigation and transportation purposes, and for sanitary and water
quality purposes.

(b) Upon receiving an application, the commissioner shall proceed
in accordance with sec. 70 of this chapter.

(c) The commissioner shall issue a certificate reserving the
water requested if he finds that.

(1) the rights of prior appropriators will not be affected
by the reservation;

← should
add fee
agencies
to quantify
total
reserved
water
rights

add
power?

HB 118

1 (2) a need exists for the reservation;

2 (3) there is unappropriated water in the source sufficient
3 for the reservation; and

4 (4) the proposed reservation is in the public interest.

5 (d) After the issuance of a certificate of reservation, the
6 specified water shall be withdrawn from appropriation and the com-
7 missioner shall reject an application for a permit to appropriate the
8 reserved water.

9 (e) A reservation under this section does not affect any rights
10 in existence when the certificate reserving water is issued.

11 * Sec. 3. AS 46.15.260(1) is amended to read:

12 (1) "appropriate" means to divert, impound, or withdraw a
13 quantity of water from a source of water, or, in the case of a public
14 agency, to reserve water in accordance with sec. 145 of this chapter,
15 for a beneficial use;

16 * Sec. 4. AS 46.15.260(2) is amended to read:

17 (2) "appropriation" means the diversion, impounding or
18 withdrawal of a quantity of water from a source of water, or, in the
19 case of a public agency, the reservation of water in accordance with
20 sec. 145 of this chapter, for a beneficial use;

21 * Sec. 5. AS 46.15.260(3) is amended to read:

22 (3) "beneficial use" means a use of water for the benefit
23 of the appropriator, other persons or the public, that is reasonable
24 and consistent with the public interest, including, but not limited
25 to, domestic, agricultural, irrigation, industrial, manufacturing,
26 fish and shellfish processing, navigation and transportation, mining,
27 power, public, sanitary, fish and wildlife, [AND] recreational uses,
28 and maintenance of water quality;

29 HB 118

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE HOUSE

HOUSE BILL NO. 186

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Water Use Act; and providing
for an effective date."

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

* Section 1. AS 46.15 is amended by adding new sections to read:

Sec. 46.15.069. DETERMINATION OF EXISTING RIGHTS. (a) A
claimant of an existing right under AS 46.15.060 shall file a declara-
tion of appropriation with the commissioner as set out in this section.
The declaration shall be considered correct until a certificate of
appropriation is issued or denied. Priority of the right dates from
the day work was begun on the appropriation if due diligence was used
in completing the work; otherwise, from the day water was applied to
the beneficial use.

(b) The commissioner shall, as soon as practicable, determine
the rights of persons owning existing appropriations. To accomplish
this, the commissioner shall

(1) by order set a definite period for filing a declaration
of appropriation within a specified area or from a specified source;

(2) publish notice of the order once a week for three weeks
before the beginning of the period in a newspaper of general circula-
tion in the affected area;

(3) give notice of the order by certified mail to any
appropriator within the specified area or from the specified source
who has requested mailed notice or of whom the commissioner can readily
obtain knowledge, including each owner of a recorded mining claim.

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1 (c) The commissioner shall make investigations he considers
2 necessary of rights asserted by declarations filed under this section
3 and shall determine each existing appropriation and mail a summary of
4 that determination to each person who has filed a declaration with
5 respect to the specified area or source. Any person adversely affected
6 by a determination may file with the commissioner a request for a
7 hearing within 15 days after the date the notice is mailed. If a
8 hearing is requested, the commissioner shall send a notice of the time
9 and place of the hearing to each person who has filed a declaration.

10 (d) If a hearing is not requested with respect to a determination,
11 or if, after the hearing, the commissioner finds the determination to
12 have been correctly made, he shall immediately issue a certificate of
13 appropriation. If the commissioner finds the determination to be
14 incorrect, he shall correct it and either issue a certificate of
15 appropriation or refuse the certificate according to his findings.

16 (e) A person aggrieved by the action of the commissioner may
17 appeal to the superior court within 30 days after the date on which
18 that action is final.

19 Sec. 46.15.115. TERMINATION OF PERMITS. (a) If the commissioner
20 has reason to believe that a permit holder has wilfully violated any
21 terms, conditions, restrictions, or limitations of the permit, he may
22 require the holder to show cause why the permit should not be canceled.
23 Notice must be provided to the holder by personal service or by
24 certified mail. Upon giving notice, the commissioner may, and at the
25 request of the applicant shall, hold a hearing. Whenever, after
26 notice and hearing, if any, the commissioner finds that a wilful
27 violation has occurred, he may cancel or suspend the permit or impose
28 conditions on its future use to prevent further violations. Notice of
29 the order or decision must be served personally or sent by certified

HB 186

1 to the permit holder.

2 (b) If a permit holder fails to notify the commissioner, upon or
3 before the expiration of his permit or any extension of it, that he
4 has perfected his appropriation as provided in AS 46.15.120, the com-
5 missioner may require the holder to show cause why the permit should
6 not be canceled. Notice must be provided to the holder by personal
7 service or by certified mail. Upon giving notice, the commissioner
8 may, and at the request of the applicant shall, hold a hearing. Notice
9 of the order or decision must be served personally or sent by certified
10 mail to the permit holder.

11 (c) Upon termination of a permit under this section, the appro-
12 priation reverts to the state and the water becomes unappropriated
13 water.

14 * Sec. 2. AS 46.15.120 is amended to read:

15 Sec. 46.15.120. CERTIFICATES. Upon completion of construction
16 of the works and commencement of use of water, the permit holder shall
17 notify the commissioner that he has perfected his appropriation. If
18 the commissioner determines that the appropriation has been perfected
19 in substantial accordance with the permit, he shall issue the permit
20 holder a certificate of appropriation. The commissioner may issue the
21 certificate subject to conditions he considers necessary to protect
22 the water rights of other persons and the public interest. [THE
23 CERTIFICATE SHALL SET OUT SUCH INFORMATION AS THE COMMISSIONER MAY
24 PRESCRIBE BY REGULATION.]

25 * Sec. 3. AS 46.15 is amended by adding a new section to read:

26 Sec. 46.15.134. NOTICES; OBJECTIONS. (a) Upon receiving an
27 application, the commissioner shall prepare a notice containing the
28 location and extent of the proposed appropriation, the name and address
29 of the applicant, and other information he considers pertinent. The

determination upon the application.

(e) A person aggrieved by the action of the commissioner may appeal to the superior court.

(f) The commissioner may, by regulation, designate types of appropriations which are exempt from this section and provide simplified procedures for ruling on the applications. (§ 1 ch 50 SLA 1966; am § 6 ch 104 SLA 1971; am § 52 ch 71 SLA 1972)

1 notice must state that within 15 days after publication or service of
2 notice, persons may file with the director written objections, stating
3 the name and address of the objector, and any facts tending to show
4 that rights of the objector or the public interest would be adversely
5 affected by the proposed appropriation.

6 (b) The commissioner shall have notice published at the appli-
7 cant's expense in one issue of a newspaper of general circulation in
8 the area of the state in which the water is to be appropriated. The
9 commissioner shall also have notice served personally or by certified
10 mail upon an appropriator of water or applicant for or holder of a
11 permit who, according to the records of the Department of Natural
12 Resources, might be affected by the proposed appropriation, and may
13 serve notice upon any governmental agency, political subdivision or
14 person; notice must also be served upon the Department of Fish and
15 Game and the Department of Environmental Conservation.

16 (c) Within 15 days after publication or service of notice, an
17 interested person may file an objection. The commissioner may hold
18 hearings upon giving notice and shall grant, deny, or condition the
19 application in whole or in part after receipt of the last objection or
20 after conclusion of the hearing. Notice of the order or decision must
21 be served personally or mailed to any person who has filed an objection.

22 * Sec. 4. AS 46.15.140 is amended to read:

23 Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVERSION OF APPRO-
24 PRIATIONS. (a) The commissioner may declare an appropriation to be
25 wholly or partially abandoned and cancel the permit, certificate, or
26 declaration [REVOKE THE CERTIFICATE] of appropriation if an appropriator
27 with intention to abandon, does not make beneficial use of all or a
28 part of his appropriated water. An appropriation so forfeited and
29 abandoned reverts to the state and the water becomes unappropriated

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existing language is adequate

1 water.

2 (b) The commissioner may declare an appropriation to be wholly
3 or partially forfeited and shall cancel the permit, certificate, or
4 declaration [REVOKE THE CERTIFICATE] of appropriation if an appro-
5 priator voluntarily fails or neglects, without sufficient cause, to
6 make use of all or a part of his appropriated water for a period of
7 five successive years.

8 * Sec. 5. AS 46.15.150(b) is amended to read:

9 (b) To be entitled to a preference, an applicant must show that
10 his use will be prevented or substantially interfered with by a prior
11 appropriation, [;] the use is a preferred use, [;] the applicant agrees
12 to compensate a permit or certificate holder of [FOR] the prior appro-
13 priation for any damages occasioned or caused by the preferred use
14 [SUSTAINED BY THE PREFERRED USE], and other information which the
15 commissioner requires by regulation.

16 * Sec. 6. AS 46.15.160(a) is amended to read:

17 (a) The right to use water under an appropriation is [OR PERMIT
18 SHALL BE] appurtenant to the land or place where it has been or is to
19 be beneficially used; however, [PROVIDED, THAT] water supplied by one
20 person to another person's property is [SHALL] not [BE] appurtenant to
21 the property unless the parties so intend. An appurtenant water right
22 passes [SHALL PASS] with a conveyance of the land, or transfer, or by
23 operation of law unless specifically exempted from the conveyance.

24 * Sec. 7. AS 46.15.180 is amended to read:

25 Sec. 46.15.180. CRIMES. A person who constructs works for an
26 appropriation, or diverts, impounds, withdraws, or uses a significant
27 amount of water from any source without a permit or certificate of
28 appropriation; or a person who violates an order of the commissioner
29 to cease and desist from preventing any water from moving to a person

HB 186

1 having a prior right to use the same; or who violates an order of the
2 commissioner requiring him to modify a water body alteration that is
3 preventing water from moving to a person having a right to use the
4 water; or who disobeys an order of the commissioner requiring him to
5 take steps to cause the water to so move; or who fails or refuses to
6 install meters, gauges or other measuring devices or control works; or
7 who violates an order establishing corrective control works; or who
8 violates an order establishing corrective controls for an area or for
9 a source of water, or who knowingly makes a false or misleading
10 statement in a declaration of existing rights, is guilty of a misde-
11 meanor. Crimes under this section are in addition to any other crimes
12 provided by law.

13 * Sec. 8. AS 46.15.070 and 46.15.135 are repealed.

14 * Sec. 9. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).
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ALASKA POWER AUTHORITY

MEMORANDUM

TO: The Honorable Charles Webber
Commissioner
Department of Commerce &
Economic Development

FROM: Eric P. Yould *EY*
Executive Director
Alaska Power Authority

DATE: February 27, 1980

SUBJECT: Position Paper on SB 467 and HB 573

SB 467, and companion bill HB 573, appropriate \$1,000,000,000 to the Power Project Revolving Loan Fund administered by the Power Authority. A fiscal note and bill analysis was prepared on 2/20/80 and are attached. This position paper is submitted at the request of the Governor's office and reflects more consideration and perspective on the potential impacts of the bill than was expressed in the original bill analysis and fiscal note.

The current municipal tax exempt market is in turmoil unlike what has ever before been experienced. The impacts of inflation, the world political and economic environment, and Federal actions have all contributed to the present confusion in the municipal market which has reigned in other markets for the past year. When order is restored, the current high interest rates will most likely either persist or at best moderate slightly in succeeding years. This situation makes decisions to finance capital intensive projects extremely difficult in the short term due to potential large long term costs associated with wrong decisions.

If the municipal market interest rates are forecast to persist, then municipal finance at current rates should proceed. In this situation, direct state equity investment would achieve the principal purpose insuring lower cost power for Alaskan consumers. If today's rates are an aberration, then no projects should be financed in the municipal market until the market improves. In this situation, direct state equity investment in capital intensive projects can serve the purpose of interim financing to avoid the costs of inflation on construction costs due to delays in construction.

The appropriation would permit definite financing of all small scale power production facilities in the state of Alaska presently estimated to be developed over the next 10 to 15 years. Failure to pass the bill may result in stagnation of power development in the state while costs of projects

ALASKA POWER AUTHORITY

The Honorable Charles Webber
Memorandum
February 27, 1980
Page Two

continue to inflate and the ability to finance projects improves or worsens. The economic impacts of this occurrence in the inflationary energy environment that exists today are difficult to estimate. The benefit of not approving the appropriation is that state general fund surpluses can be invested for long or short term high yields until decisions to expend the principal and interest earnings are made.

A state decision to directly finance power projects through equity investment must involve additional decisions governing terms and conditions of the investment. The interest rate and terms of each investment will represent a return to the state and a subsidy to the project beneficiaries which should be based upon guidance from the legislature or administration.

To amplify on the foregoing discussion the impact of the appropriation bill should be illustrated by a case example. The Swan Lake Project in Ketchikan represents an ideal case which may be financed and constructed in the near future. The Plan of Finance for the project prepared in January, 1980 presented the impacts on power costs of state assistance and a revenue bond interest rate of $8\frac{1}{2}\%$, which was considered conservative at the time. The state assistance in the form of an \$18 million subordinate loan would lower bond indebtedness, improve the credit of the project financing, and result in lower costs of power to consumers. The Plan of Finance assumed low load growth forecasts and what appeared to be a conservative interest rate of $8\frac{1}{2}\%$. In the present municipal market, the Swan Lake project probably could not be financed, and if it could, it would be at a rate of 9 to $9\frac{1}{2}\%$. The Ketchikan Public Utilities could decide to accept the state loan, initiate construction of the project, and delay financing in anticipation of an improved market. If the market improves, the project could be financed and the only penalty is the cost of inflation on the portion of project construction for which bids were not accepted and construction not initiated. If the market does not improve, the Utility will have expended \$18 million on construction of a project which cannot be financed and which has increased in cost due to inflation.

SB 467 and HB 573 would alleviate the problems which face many project financings in today's market. In an unstable market, the state loans can greatly assist economic development and achieve lower cost power for Alaskan consumers.

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100
DEPARTMENT Legislation
ATTENTION Rep Malen to work

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|--|--|
| ☐ Approval | ☐ Note & Return |
| ☐ Signature | ☐ Initial & Return |
| ☐ Comment | ☐ Return As Requested |
| ☐ Contact Me | ☐ Return For Approval |
| ☐ Prepare Reply | ☐ Necessary Action |
| ☐ For Your File | ☐ Your Information |

Remarks:

FROM:
MAIL STATION NUMBER 0102
DEPARTMENT Budget & Mgmt
BY George W. J. DATE _____
02-002 (REV. 10/73)

Glacier Highway Electric Association Inc.



P.O. Box 115 • Auke Bay, Alaska 99821 • Phone (907) 789-7344

NEWSLETTER

* JUNEAU'S ENERGY FUTURE *

Our hydroelectric power resource is not limited to the Snettisham Project. The following is a list of potential hydroelectric projects in our back yard.

Resource Site	capacity (MW)	firm energy (gWH)
Snettisham (in service)	47	169
Crater Lake	27	106
Lake Dorothy	34	150
Tease Creek	16	70
Sweetheart Falls	29	125
Speel River	63	275
sub total	216	895
less Juneau's 1979 load	(26)	(130)
Net reserves	190	765

Our abundant hydropower capability is apparent. If you wish to look far into the future, our Canadian neighbors have gigantic hydropower potential. Some time in the 21 st. century there will probably be a power grid tying Southeast Alaska with British Columbia and the Yukon Territory. Hydroelectric power is our energy future. No informed man could say otherwise.

* NOTICE *

The annual meeting of the GHEA membership will be held March 20, 1980, 7:30 p.m., at the Auke Bay Elementary School's multi-purpose room (gym). The meeting is to promote better understanding by members of cooperative affairs, reporting on 1979 operations, future plans, election of three directors, and consideration of other business that should come before the membership.

Door prizes totaling some \$500 will be given away, including one month's free electricity for a residence. We hope you will join us for an informative and pleasant evening.

VOLUME II, NO. 3
MARCH 1980

PRESIDENT'S MESSAGE

In the last several newsletters we have tried to bring to light some of the aspects of important decisions facing us. Decisions on major issues such as stand-by generation, development of a transmission line and power substation at Auke Bay, major line upgrades (rebuilt), the merger question, financing requirements, marketing efforts, and philosophies on retail rate design are in the immediate future.

At this year's annual meeting we will be making an earnest effort to present information regarding GHEA's future to you, and more importantly - to listen to what you have to say. We will be streamlining the "reports" portion of the meeting this year and will be encouraging dialog between each of you, your elected board of directors, and the manager. Since a director's sole function is to represent you while steering GHEA on a course of sound business practice, we need your input.

I earnestly request you, a member and owner of GHEA, to come to the annual meeting; to come prepared to think, and to express your thoughts. As GHEA grows, it is becoming more and more a substantial business enterprise. Your thoughts matter. We, the directors, are fully prepared to listen. Attentively!

Sincerely,

Gordon Misch
Gordon Misch,
President

Decision is a sharp knife that cuts clean and straight; indecision is a dull one that hacks and tears and leaves rugged edges behind it.

-- Gordon Graham

* FROM THE WALL STREET JOURNAL *

The average annual cost of driving a humble new compact is now up to 32¢ per mile, or \$3,200 per year according to the Hertz Corp. That includes gasoline, oil, maintenance, parts and repairs, license fees, sales taxes, insurance, loan interest, and, of course, depreciation (which is computed simply by subtracting the resale value from the vehicle's initial purchase price). Its assumed in arriving at these figures, that the cars are driven 10,000 miles annually for three years, and that the owners put up 1/3 of the purchase price and finance the rest. In all, the cost of owning and driving a new car has risen about 90% between 1973 and 1979 says Hertz Corp. The jump in basic sales price has been the major culprit. The intermediate size car you bought in 1973 for \$3407, for example, would have cost you \$6,738 in 1979. That's an increase of 72.5%.

* GHEA's RATES *

Do you understand how our rates work? We have reason to suspect there are a number of people who don't. Our present residential rate is:

first 250 KWH	12.3¢ per KWH
next 250 KWH	9.6¢ per KWH
next 250 KWH	7.7¢ per KWH
over 750 KWH	4.7¢ per KWH

Now this rate does not work like an oil rate schedule. If in a month you purchase over 750 KWH you don't get all your electricity at 4.7¢ per KWH. Every month your bill is computed from zero. For example, if you purchased 800 KWH your bill would be:

first 250 KWH @	12.3¢ = \$30.75
next 250 KWH @	9.6¢ = \$24.00
next 250 KWH @	7.7¢ = \$19.25
next 50 KWH @	4.7¢ = \$ 2.35
TOTAL=	
800 KWH	= \$76.35

Understanding this rate is critical when considering electric heat. In our past newsletters we have been comparing oil heat to electric with electricity at 4.7¢ per KWH. This comparison is valid only if your present electricity use without electric heat is at least 750 KWH. In this case, all of your additional electricity purchases (in excess of 750 KWH) would be at the 4.7¢ rate.

* MEET THE CANDIDATES *

One of the more important items of business to be conducted at the annual meeting is the election of three directors. These directors are elected from among the membership. They serve as volunteers, without any monetary compensation, to direct the cooperative business toward accomplishing its stated objectives. Our present and potential directors as of this date are:

Back Loop Road

Mike McGonegal, Vice President
Gordon Misch, President

Mendenhall Peninsula

Malcolm Hursh, director
Eric Lindegaard Jr., director (retiring from the board this year)

Auke Bay to Indian Point

Ralph Graham, Treasurer
Jim House, director candidate
Jim Sidney, director candidate

Indian Point to Tee Harbor

Bob Millard, director
Andrew Rakos, director
Karen Ryals, Secretary (up for reelection)
Don Fisher, director candidate
Roy Varni, director candidate
Dennis Gwyther, director candidate

Tee Harbor to Eagle River

Carl Jensen, director (retiring from the board this year)
John Gitkov, director candidate

We point out the geographical location of the directors and nominees as one of the provisions of GHEA's bylaws is the desirability of geographical representation. The nominations for director are by a special committee appointed by the board. Our nominating committee this year consisted of the following people:

Dick Forrest, chairman
Leigh Gallagher
Bernie Hulk
John Gitkov
Kean Nordgensen

Jim Olsen
Frank Metcalf
Ted Vadman
Bill Flint

* BUILDER'S - TAKE NOTE *

The table reproduced here is taken directly from a market study of electric heat prepared by CH2M-Hill, a reputable international consulting firm. This study was commissioned by GHEA to gain an unbiased, professional analysis of oil versus electric structure and water heating. This table compares total annual costs for different systems to deliver space heat and hot water to a typical 2000 square foot Juneau home. For persons planning to build a new house, the conclusion is clear. All electric homes will be very popular. For a free copy of the complete study (24 pages in all) simply write or stop by the GHEA office and request the "Electric Heat Market Study".

COMPARISON OF TOTAL ANNUAL COST FOR ALTERNATE
SPACE HEATING AND WATER HEATING SYSTEMS
IN THE GHEA SERVICE AREA

Heating System	Energy Price	Case I--at Weather Station Temperatures	Case II--10°F Colder than at Weather Station	Case III--20°F Colder than at Weather Station
1. Heat Pump				
Current Price:	4.7c/KWH	\$2,125	\$2,842	\$3,872
Proposed Price:	4.2c/KWH	1,991	2,632	3,552
Future Price:*	5.0c/KWH	2,206	2,968	4,064
2. Electric Baseboard				
Current Price:	4.7c/KWH	2,870	3,820	4,777
Proposed Price:	4.2c/KWH	2,593	3,442	4,297
Future Price:	5.0c/KWH	3,037	4,048	5,066
3. Oil Furnace Hydronic**				
a. 50% efficiency				
Current Price:	\$0.90/gallon	2,857	3,757	4,664
Future Price:	\$1.25/gallow	3,819	5,068	5,327
b. 60% efficiency				
Current Price:	\$0.90/gallon	2,445	3,195	3,951
Future Price:	1.25/gallon	3,246	4,288	5,337

* Projected

**Based on 138,000 Btu per gallon of fuel oil

Note: Total annual cost includes fixed capital costs and fuel costs. Maintenance expenses are not included.

GHEA adds: Most consumers will no doubt favor the electric baseboard option. It is the least expensive to install and does not require any maintenance. Add the ease of individual room temperature control and you have a winner!



LAW OFFICES

WOHLFORTH & FLINT

A PROFESSIONAL CORPORATION

900 WEST FIFTH AVENUE, SUITE 505
ANCHORAGE, ALASKA 99501ERIC E. WOHLFORTH
ROBERT B. FLINT
TIMOTHY G. MIDDLETONPETER ARGETSINGER
SARAH FORGESTELEPHONE
AREA CODE 907
276-6401RECEIVED
AUG 08 1979MEMORANDUMALASKA DEPARTMENT OF REVENUE
TREASURY DIVISION
JUNEAU

TO: Alaska Power Authority

FROM: Wohlforth & Flint *Eric E. Wohlforth*

DATE: July 5, 1979

RE: Application of Executive Budget Act
(AS 37.07) To Alaska Power Authority

Background

The Alaska Power Authority is established under AS 44.56 as a public corporation of the state in the Department of Commerce and Economic Development with a separate and independent legal existence, AS 44.56.020. The purpose of the Authority is to provide a means of constructing, acquiring, financing and operating specified types of power production facilities and waste energy conservation facilities, AS 44.56.070. In furtherance of its corporate purposes, the Authority may receive and expend proceeds from the issuance of revenue bonds, income from the operation of power projects, grants or loans from the federal government, and appropriations from the general fund of the state, AS 44.56.080, 44.56.170, 44.56.180.

Although AS 44.56 appears for the most part to allow the Authority broad discretion and autonomy in the management of its financial affairs, AS 44.56.210 provides:

- (a) Notwithstanding any other provision in this chapter, the Authority is subject to the provisions of the Executive Budget Act (AS 37.07).
- (b) The Authority shall, by the 15th day of each regular legislative session, present to the Legislature a report detailing project status, original costs and projected costs, particularly highlighting any costs in excess of the original cost estimates submitted for each project when the project was originally approved by the Legislature.

AS 37.07, the Executive Budget Act, prescribes the manner in which the Governor is to prepare and submit the annual

budget to the Legislature, and the manner in which the Legislature shall review and act upon the budget. The Governor is required to submit a budget covering all estimated receipts and proposed expenditures of the state government, AS 37.07.070(a). The Governor also shall submit a capital improvement and financial plan, AS 37.07.020(b). Each agency shall prepare a program and financial plan which shall be submitted to the Division of Management and Budget for review and incorporation into a comprehensive plan to be submitted to the Legislature, AS 37.07.060. On the basis of the plans and the proposed budgets, the Legislature determines the necessary levels of funding for the activities of the several state agencies, AS 37.07.070.

The Alaska Power Authority recognizes that under AS 44.56.210 (a) its expenditures of monies appropriated from the state general fund for operating expenses are subject to appropriation under the Executive Budget Act. However, the Authority asserts that its expenditures of other funds should not be subject to the Executive Budget Act. As an independent corporate entity which plans to operate principally with revenue bond proceeds and project income, and currently operates with state appropriation, the Authority argues that its operations would be unduly hindered if its expenditures of funds from sources other than monies appropriated from the general fund for operating expenses are subject to AS 37.07.

Questions Presented

Does AS 44.56.210(a) require that expenditures of the Alaska Power Authority, other than expenditures of money appropriated for operating expenses to be funded from the state general fund, be subject to the appropriation and other procedures prescribed under the Executive Budget Act, AS 37.07?

Conclusions

Despite the provisions of AS 44.56.210(a), significant features of the context of AS 44.56, including the case law on the relationship of independent public authorities to legislative appropriation requirements, the structure of AS 37.07 and AS 44.56, and the legislative history of AS 44.56.210(a) support the construction that AS 44.56.210(a) subjects to the Executive Budget Act only the Authority's operating expenditures appropriated from the general fund.

This conclusion means that

- a) bond or note proceeds of the Authority and amounts derived from any source other than the state are not subject to the Executive Budget Act;

Wilmington Medical Center vs. Bradford, supra, was an action challenging legislation establishing a state health facilities authority. The authority was authorized to make loans to non-profit licensed health care facilities and issue tax exempt bonds for that purpose. The court described the authority's relation to the constitutional appropriation requirement [no money shall be drawn from the state treasury except pursuant to an appropriation made by act of the General Assembly...] as follows:

It is contended by Bradford that the Statute violates Art. VIII, §6 in that the funds raised by the Authority are public funds permitted by the Statute to be expended without the required appropriation by the General Assembly. We find no merit in this argument.

Monies in the "treasury", within the meaning of the constitutional term, are those in the custody and control of the State Treasurer. Opinion of the Justices, Del.Supr., 315 A.2d 580 (1974). The funds here involved would not pass through the State Treasury; they would be segregated and handled as trust funds by the trustee designated under §9712 of the Statute.

The generally accepted concept in this regard is the "conduit theory," originated by the U. S. Treasury Department in its consideration of the tax positions of the parties involved in the issuance of tax exempt revenue bonds. Under this theory, the Authority or municipality is deemed to be merely a conduit through which the bond proceeds pass to the borrower and the premiums pass to the bond purchasers. See 50 Wash. L. Rev. 440, 460 (1950). 382 A2d 1338, 1349-1350.

Huber vs. Groff, supra, involved a challenge to the constitutionality of the Montana Housing Board Statute, establishing a corporation to issue revenue bonds to provide financing for low income persons to purchase housing. The court stated:

The Constitution's provisions for payment out of the treasury only on a warrant and pursuant to an appropriation presents no problem, for the trust indenture funds are not deposited with the treasurer and the funds received from the sale of the resolution bonds are by statute deemed continuously appropriated. Section 35-523(1)(c), R.C.M. 1947.

This Court discussed a similar provision in *Geboski v. Montana Armory Board*, 110 Mont. 487, 493, 103 P.2d 679, 682, where it said:

"Section 14 relates to the method of handling the deposits of (f) state monies. The money raised here by the sale of bonds becomes a special fund to be disbursed for the erection of proposed buildings. This money is not derived by taxation and consequently need not be handled in that manner." 558 P.2d 1124, 1133-1134.

With regard to an authority formed to finance and operate a sports complex, the court in New Jersey Sports and Exposition Authority vs. McCrane, *supra*, comprehensively discussed the constitutional principles underlying the finances of public authorities:

The doctrine has long been settled that a State does not have to serve or perform personally all its governmental functions or public purposes. Performance of a particular public purpose or project may be entrusted under proper guidelines to an independent autonomous authority or agency. Like acceptance has been achieved for the view that when such an agency is created by act of the Legislature it may be authorized to incur financial obligations in the execution of its delegated governmental tasks, and to raise the funds to meet them by issuing its bonds or notes. In such case, the prevailing rule in this State and elsewhere is that if under the enabling statute there is an express declaration that the bonds or notes are obligations of the authority alone, that the State assumes no liability for their payment, that the faith and credit of the State are not pledged for their satisfaction, and that the holders must look solely to the authority for payment, then the debt limitation clause is satisfied. [citations]

* * *

From all of the above we are satisfied that where the Legislature has created a corporate agency, as an instrumentality of the government to perform a public purpose, whose debts are not dependent upon the Legislature for annual appropriations, Article 8, § II, ¶ 2 [regarding appropriations] is not applicable. It is common practice for such agencies by legislative prescription to run their own independent operation, manage their own income therefrom

and pay off their bonds solely from such funds, without regard to or control by or being subject to the appropriations clause. See, e.g., Clayton v. Kervick, *supra*; New Jersey Mortgage, Finance Agency v. McCrane, *supra*; Roe v. Kervick, *supra*; Behnke v. New Jersey Highway Authority, *supra*, 13 N.J. at 30-31, 97 A.2d 647 (1953); Parsons v. New Jersey Turnpike Authority, *supra*; McArthur v. Smallwood, *supra*, 281 S.W.2d 328; City of Oxnard v. Dale, *supra*, 290 P.2d 859; Antle v. Tuchbreiter, 414 Ill. 571, 111 N.E.2d 836 (1953); Book v. State Office Bldg. Comm'n, *supra*, 149 N.E.2d 273; State v. Board of Regents, 167 Kan. 587, 207 P.2d 373 (1949); State v. Board of Examiners, 121 Mont. 402, 194 P.2d 633 (1948). See generally Shostack, The Public Authority, 105 U.Pa.L.Rev. 553, 557-562 (1957); Comment, Obligations of a State Created Authority: Do They Constitute Debts of the State?, 53 Mich.L.Rev. 439 (1955). We do not find persuasive the arguably contrary view expressed in Nebraska in State v. Steen, 183 Neb. 297, 160 N.W.2d 164 (1968). Obviously the agencies' functional efficiency as a means of accomplishing pressing public projects would be virtually nil if the revenue produced by their financially self-sustaining operation had to be channeled into the State Treasury and disbursed in accordance with the annual appropriations clause. 292 A.2d 545, 551-552, 555.

Farrell vs. State Board of Regents, *supra*, involved legislation authorizing the Board to issue revenue bonds to finance the construction of university facilities. The Court held on the appropriations issue:

Obviously the legislature can and has determined that such receipts as are legislatively set aside from tuition fees and charges or income derived from university enterprises, and separated into special trust funds for retirement of bonds issued under the Act, are not then "state funds" requiring legislative appropriation. In support hereof see Brack v. Mossman, *supra*, at 170 N.W.2d 424, and Iowa Hotel Assn. v. State Board of Regents, *loc. cit.*, 253 Iowa 898, 114 N.W.2d 539. If any other approach were to be adopted no self-liquidating program could ever exist or be validly utilized by a state agency operating under any present or prospective legislative appropriation. Finally, as revealed, *supra*, such method of financing has previously been adjudged valid in Iowa and a great majority of other states.

From this it follows, the Act does not violate Article VII, section 5 of the Iowa Constitution. 179 N.W.2d 533, 546-547.

The Alaska Supreme Court has implicitly recognized the principle expressed in the cases quoted above. In DeArmond vs. Alaska State Development Corp., 376 P.2d 717 (Alaska 1962), the Court addressed the issue whether the issuance of debenture certificates by the corporation constituted the transfer of public funds and the use of public credit for other than a public purpose. The Court recognized these certificates to be revenue bond obligations, and responded in part as follows:

No public funds are being transferred to the corporation other than the loans just mentioned [an appropriation of \$150,000 as a loan to the corporation for organizational and administrative expenses]. The funds realized from the sale of certificates will come from private sources. The credit of the state is not being pledged. Even though we have found that the corporation's activities will serve a public purpose, it is clear enough that its objectives must be accomplished without the use of public funds and state credit. No violation of the Constitution has been shown. 376 P.2d 717, 722 (Emphasis added).

Here the Court used the term "public funds" in the same sense as the concept of funds in the State Treasury is used in the cases cited above, i.e., as funds derived from general revenue sources whose expenditure is subject to the constitutional appropriation requirement. The Court thus acknowledged that revenue bond proceeds do not fall within this category. The Court amplified its position in DeArmond in Walker vs. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966):

in DeArmond, a similar contention was urged as to the Bonds of the Alaska State Development Corporation. In DeArmond, we concluded that the funds realized through the sale of Bonds which were backed only by the resources and credit of the corporation and which did not constitute debts of the state were not public funds. We are of the opinion that our holding in DeArmond is controlling here and conclude that the bonds, notes and debentures of the Association are not debts of the State of Alaska within the scope of article IX, section 8 of our constitution. 416 P.2d 245, 253 (Footnotes omitted, emphasis added).

Along with its reference to DeArmond, the Court cited Book vs. State Office Building Commission, supra. In Book the Court held that revenues of an independent public authority pledged to the repayment of revenue bonds were not money in the state treasury within the meaning of the appropriation requirement in the Indiana State Constitution, and could be expended by the Authority without an appropriation.

Substantial precedent, recognized as authoritative by the Alaska Supreme Court, holds that special funds of an independent public authority may be expended without an appropriation in accordance with constitutional provisions such as Alaska Constitution Art. IX, §13. Insofar as the scope of AS 37.07 is limited to implementing Article IX §13, it should be construed not to apply to the Alaska Power Authority's expenditure of bond and note proceeds and other special funds. The policy supporting the exclusion of such funds from the constitutional requirement - efficiency and independence in the Authority's operations - supports with equal force a similar limiting construction of AS 44.56.210(a)'s application of AS 37.07 to the Alaska Power Authority.

3. The Structure of AS 37.07 and 44.56 related to the Authority's expenditures.

The requirement in AS 44.56.210(a) that the Authority be subject to the Executive Budget Act should be construed in accordance with the purposes the latter is designed to accomplish. These purposes are proper financial planning and management of state general funds and certain specified capital funds. These purposes do not pertain to non-general funds expended by the Authority. Moreover, AS 44.56 provides for a project-oriented planning and management process for the Authority's expenditures that is much better tailored to the Authority's mode of operation.

The general purpose of AS 37.07 is stated in AS 37.07.010:

It is the purpose of this chapter to establish a comprehensive system for state program and financial management which furthers the capacity of the Governor and Legislature to plan and finance the services which they determine the state will provide for its citizens.

AS 37.07.020 establishes the general scope of AS 37.07 with regard to budgeting and appropriations. It requires that the Governor prepare and submit to the Legislature a budget for the succeeding fiscal year covering all estimated receipts, including all grants, loans and money received from the Federal Government, and all proposed expenditures of the State Government. The budget shall be accompanied by a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

bill required by AS 37.07.020 shall be divided among the capital projects funds described in AS 44.42.080. These capital projects funds are all funds created in the Department of Transportation and Public Facilities, none of which pertain to capital projects undertaken by the Authority. Hence, budgeting of the Authority's non-general fund capital expenditures under AS 37.07 also would lead to no useful product or result under the structure of that statute.

In contrast, AS 44.56 establishes a project-oriented approval process whereby the Legislature may review the Authority's individual capital projects financed by revenue bonds, AS 44.56.180, and the standards by which the Authority makes loans from the Power Project Revolving Fund to finance projects undertaken by others, AS 44.56.170. Since AS 37.07 provides no specific procedures for the Authority's expenditure of non-general funds, while AS 44.56 does provide such procedures, interpreting AS 44.56.210(a) to subject all Authority expenditures to AS 37.07 contradicts the broader allocation of financial management jurisdiction between AS 44.56 and AS 37.07.

4. The legislative history of AS 44.56.210(a). *

Prior to the 1978 legislative session, AS 44.56.210 provided:

The authority shall submit its annual budget to the legislature through the governor as provided for state agencies by the Executive Budget Act (AS 37.07). It may expend money directly appropriated by the legislature only as provided by the legislature.

The present AS 44.56.210 was enacted by § 19 CH 156 SLA 1978. This bill originated as HB 422 in the 1977 legislative session. HB 422 was introduced at the request of the governor, 1977 House Journal 791 (April 6, 1977). The only statement in the legislative record of the bill's purpose or intent is the governor's letter of transmittal appearing at 1977 House Journal 792 - 793 (April 6, 1977). The provision of HB 422 that became § 19 of CH 156 was enacted without amendment. With regard to that provision the governor's letter of transmittal stated:

This amendment clarifies the intention that the authority be subject to the Executive Budget Act. Further, it is required that the authority make an annual report to the legislature of the status of each of its projects. 1977 House Journal at 793.

Such a statement by the executive in transmitting proposed legislation to the legislature may be considered in construing the statute. 2A C. Sands, Sutherland Statutory Construction (4th Ed.) § 48.05.

The statement above indicates that § 19 CH 156 SIA 1978 was intended to be a clarification of, rather than a change in, existing law. Although there may be a presumption that an amendment is intended to change legal rights rather than to interpret the preexisting law, the fact of amendment itself does not indicate whether it is one of substance or of form. This must be determined from the total context of the legislation. Laborers & Hod Carriers Union, Local No. 341 vs. Groothuis, 494 P.2d 808, 211 (Alaska 1972). The original wording of AS 44.56.210, with its reference to funds directly appropriated by the Legislature, indicated that the statute was enacted to address general fund expenditures. The context of AS 44.56.210 discussed under Parts 2 and 3 above supports that interpretation. Since the amendment of AS 44.56.210(a) was proposed as a clarification of existing law, the amended AS 44.56.210(a) should not be construed to expand the categories of Authority expenditures that are subject to AS 37.07.

5. The Power Project Revolving Fund.

The Alaska Power Authority may make loans from the Power Project Revolving Fund without legislative appropriation; however, where the legislature has designated the use of funds appropriated to the Revolving Fund, the Authority is bound by that designation.

The question with respect to the Revolving Fund involves a determination whether the Revolving Fund is a "special fund" sufficiently segregated from the state's general fund so as not to be subject to the constitutional appropriation requirement.

AS 44.56.170(a) provides:

There is established as a separate fund the power project revolving fund which shall be administered by the authority as a trust fund separate and distinct from any other money or funds of the authority, and which shall be composed of appropriated funds and interest earned on loans by the fund.

The Authority is authorized to make loans from the fund, AS 44.56.170(b), in accordance with eligibility standards established by regulation, AS 44.56.170(c), (d). The Revolving Fund has several characteristics of a special fund. It is designated a trust fund to be maintained separate from other funds. It is dedicated to a specific purpose, the financing of power project design and construction, AS 44.56.170(b). Interest earned on loans from the Revolving Fund remains in the Revolving Fund, AS 44.56.170(a). The principal difference between this fund and other special funds

is that the money in the Revolving Fund initially is derived from appropriations from the state general fund rather than from non-state government sources, see DeArmond v. Alaska State Development Corp., supra, Walker v. Alaska State Mortgage Association, supra.

On balance, however, it appears that the legislature intended that the Power Project Revolving Fund operate as a special fund, expenditures from which would not be subject to appropriation. First, although AS 44.56.170 specifically indicates that the Revolving Fund would be composed in part of appropriated funds, it is silent as to the need for appropriations for Revolving Fund expenditures. Compare, e.g., the Alaska Renewable Resources Development Fund, expenditures from which are made explicitly subject to the appropriation process, AS 37.11.030. Moreover, the Authority is explicitly authorized to make loans from the Revolving Fund in accordance with eligibility criteria established by regulation, AS 44.56.170(b). Granting such authority and requiring such standards would be superfluous if the legislature intended to retain authority to appropriate individual loans. The legislature in addition retains authority to review the eligibility criteria promulgated by the Authority under its power to review administrative regulations, AS 44.62.320(a), AS 24.20.400-460. Thus it appears that the legislature intended to appropriate funds into a special fund, delegating to the Authority discretion to make loans from the Revolving Fund, subject only to eligibility criteria which in turn are subject to legislative review.

Consistent with this approach, in 1978 the legislature appropriated money to the Revolving Fund, with the terms of the appropriation general as to types of projects and loan recipients, ch. 111 SLA 1978. In 1979, the legislative appropriation to the revolving fund was allocated to specific projects, ch. 49 SLA 1979. Even in 1979, however, it does not appear that the legislature intended that loans of the money so appropriated also be subject to appropriation. While the Authority's discretion in lending from the Revolving Fund would be limited by the terms of the appropriation, the Authority may lend the money in accordance with those terms without further legislative authorization.

Representative Freeman asked what the definition of "rural" was. Representative Meekins stated it is defined as anything with less than a population of 4500. There was discussion on the program.

Chairman Cowper asked what the lid on mortgages would be. Representative Meekins stated they are presently loaning \$7 million a month. He stated the \$2.8 million appropriation would allow them to average \$11 million a month. He stated the AHFC program is a good program. There was discussion on eligibility for loans. Representative Meekins stated that if there is going to be a working loan program in the bush, it will have to be subsidized. He stated that all this bill will do is alleviate the institutional barriers. He stated this rural program will take into consideration seasonal income, good and bad years (i.e. for fishing), etc. There was further discussion. Representative Meekins stated this bill is not to subsidize housing; he stated it is to provide the same kind of service in rural areas that there currently is in urban areas.

Representative Swanson stated that according to the definition, "rural" could be anything outside the city limits. He stated that according to this, the loans could end up going to areas outside of Anchorage, Juneau, etc., instead of the real "bush" areas. Representative Meekins stated this was a good point, and the definition of rural does need to be changed. He recommended a letter of intent be attached to the bill, defining what the Committee means by "rural". There was discussion. Representative Gruening stated the school foundation program definition relates to transportation facilities and accessibility by highways. He suggested it could be defined in that way.

Representative Gruening moved to report out Finance Committee Substitute to HB 861. Representative Duncan moved to amend the motion to include a letter of intent defining rural. There being no objection to the amendment it was so ordered. The letter of intent will be prepared and the Committee will review it at tomorrow's meeting. There being no objection, CSHB 861 was reported out of Committee with a "do pass" recommendation.

CSHB 861
REPORTED
OUT

The next bill to be considered by the Committee was HB 442.

HB 442

An Act relating to the Alaska Power Authority.

Chairman Cowper stated the bill is concerned with the Power Authority issuing revenue bonds with legislative approval. He stated there are several amendments to the bill, and a number of policy questions have to be discussed. He invited Mr. Eric Yould, Executive Director, Alaska Power Authority, to present testimony to the Committee.

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Mr. Yould advised he had been Executive Director of the APA for three months. He stated that on March 17th they presented an annual summary of what had been accomplished by APA to the Legislature. Mr. Yould presented a prepared statement (attached) referring to the Governor's amended version of HB 442 by Wohlforth & Flint (3/24/78).

Representative Swanson referred to Sec. 11 (page 5), and stated the original intent of this legislation was for water power. He asked by changing this language, if the intent was to get into windmills, etc. Mr. Yould stated that was a possibility, but they will be developing what is economically feasible.

There was discussion on Sec. 12 (page 5) which clarifies the relationship between APUC and the APA. Representative Gruening asked if the question on the relationship was one of the reasons there were problems in getting financing. Mr. Yould stated it was. Mr. Rhode advised he talked to White Weld about this, and they advised it would have an impact on the sale of bonds. He stated he also asked them about APA supplying power to local utilities, and they advised contracts have an escalation clause covering costs of fuel. He stated it is normal to provide a contract, and arbitration is set out if an agreement cannot be reached. Chairman Cowper asked who would look after the interests of the consumer. Mr. Yould stated APUC would. He stated they would not have control of APA, but will have control of what contracts the utilities can enter into. He stated APA is not taking away any powers of APUC, they are simply saying they are not subject to the same controls as the local utilities. Mr. Argetsinger advised the bond people get very nervous when any outside agency gets into control.

There was discussion on Sec. 20 (page 14). Chairman Cowper stated this Section gives the Governor authority to not approve the projects if he wishes.

There was discussion on the "grandfather" clause (Section 44.56.180(d) page 14). Chairman Cowper stated the clause is broad enough to cover anything the APA mentions in a resolution before July. He asked if there was any problem with limiting it to the specific projects (Healy and Soloman Gulch). Mr. Yould stated there was no problem with that, except they would have to be mentioned specifically in the legislation. Representative Gruening asked if the projects were urgent enough that they had to go ahead with them now. Mr. Yould stated the point is that these two projects are ready to go now. He stated if they didn't go ahead the community would have to find some other course of financing, and it would be most expensive. Chairman Cowper asked why they didn't go through the legislature with these two projects this year before this law is passed. Mr. Yould stated they could. There was discussion on the projects.

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Representative Gruening questioned the expanded authority for APA, and asked if they intended to get into nuclear power, or if this could be exempted. Mr. Yould stated the central area is the only area that could support a nuclear plant. He stated that within that area there are two options: (1) hydroelectric power; and (2) coal fire steam plant. He stated that if nuclear power is taken out, it would eliminate another option. He stated they would like to leave their options open so they would be able to look at nuclear plants. He stated they could not develop a nuclear plant within their appropriation. There was discussion on nuclear power. Chairman Cowper stated there is a policy question to be considered on whether or not nuclear power should be developed. Representative Haugen stated he could not imagine nuclear power being developed in Alaska. He asked about hydroelectric projects in Southeast.

Mr. Yould stated the \$50,000 exclusion would probably take care of the Sitka project, and they would probably not be subjected to the procedure of going through the legislature. He stated the Ketchikan project is not yet ready to proceed with construction. He stated they are still in the design stage.

Chairman Cowper stated the Committee also has received a workdraft revision of sections 16 & 17 (dated 4/5/78 - Rosenstein). Representative Gruening stated they have proposed to develop a procedure for projects that are not entirely viable on straight financing, so an alternative could be looked at. He stated that section 17 of the workdraft deals with that. He stated that section 16 deals with the power project revolving loan fund. He stated these two sections are proposed amendments to the Wohlforth & Flint bill to be used in lieu of their sections 16 and 17.

Mr. Yould stated they have no objections to these sections. He stated the committee might want to add "and principal payments" to line 16. He stated line 12 talks about "small scale energy production facilities", and he thinks this could be a little more definitive. Mr. Argetsinger stated it might be a good idea to have legislative intent indicating what "small scale" means. There was discussion. Representative Gardiner stated he feels projects above \$2 million should be going to the regular bond market. Representative Gruening stated he thinks the point is a good one, but he doesn't think it should be a monetary limitation. Chairman Cowper stated legislative intent could be included requiring the APA to come up with regulations that would raise the limit from time to time. Mr. Yould advised they have just adopted the first code of APA rules and regulations and have sent this to the Attorney General's Office. He

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stated there is time to include this in regulations. Representative Gardiner stated it probably would be better to define small scale in the size of the project, rather than a dollar figure, because the dollar figure could be outdated within a few years.

Representative Gruening stated section 17 would expand the authority of the loan fund in areas of water supply. He stated the feeling was with the APA's engineering expertise, they have the capability to monitor loans for such proposals. Mr. Yould stated he thinks section 17 is very good. He stated section (b) requires that even for projects they are able to finance on the lower money limit, that a report be made to the legislature. He stated they might not want those projects to come before the legislature since they have to come before the legislature anyway under section (c).

There was discussion on the loan fund. Chairman Cowper asked if it would be just as easy to use an annual appropriation from the Permanent Fund. Mr. Argetsinger stated that if the funds are subject to the Legislature to be appropriated, they have no guarantee. Chairman Cowper stated the question is whether a loan guarantee is the same thing as an appropriation. Speaker Malone stated this question came up under HB 595 on dedication of the permanent fund revenue. He stated he thinks legislative research stated that dedication of funds is constitutionally possible. Mr. Argetsinger stated before a person is going to accept a guarantee based on that, they will have to get an unqualified opinion. There was further discussion. Representative Gruening stated they would have to get an Alaska Supreme Court opinion on this. He stated unless that happens, this will never be resolved. There was further discussion.

Mr. Yould stated that section (b) really applies to those projects that do have have normal bonding, and should not apply to those that are healthy projects that could be financed no matter what. Mr. Argetsinger suggested that if section (c) is accepted, that section (b) have additional language included stating "for which the maximum estimated total costs is \$50 million."

Chairman Cowper stated there are additional proposed amendments in Representative Gardiner's memo of 3/23/78. He stated there is a suggestion that APUC's jurisdiction be extended TO APA, which is directly opposite of the Governor's suggested language.

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Representative Gardiner stated there is also a suggested amendment that relates to pricing policies. Mr. Yould stated these are very innovative techniques, but perhaps they should be addressed to the retail level, rather than the wholesale level. He stated he thinks that would be more appropriate. Chairman Cowper asked if that was consistent with their position on APUC jurisdiction. Mr. Yould stated it was. He stated they don't feel APA should be subjected to this.

Representative Gruening asked if under that agreement, APA could preclude APUC from bidding for bulk rates. Mr. Yould said no, they would be providing bulk power at a rate sufficient to pay off the debt. There was further discussion on this amendment.

Representative Gruening asked what would happen when the APA was operating a facility and setting its own rates, and asked if they could operate a facility and charge more than the amount needed to amortize bonds. Mr. Yould stated they couldn't do that, because they would be operating contrary to their statutory limitations, which state they are to be a nonprofit corporation. Chairman Cowper asked where it was written that APA does not engage in retail sales. Mr. Artsinger stated this is in section 12 .090(a) of the bill before the Committee. He stated they can only retail power to a bulk purchaser that is outside the area of existing utilities. Mr. Argetsinger again stated that if they are regulated by APUC, it will effect their ability to get financing and buy bonds.

There was discussion on pricing. Speaker Malone stated the bill is designed to provide for energy conservation. He said it is designed to get a pricing policy basing incremental increases in production to the incremental increases in cost. He stated he thinks it is economically justified. There was discussion on bulk rates.

Representative Gruening stated that maybe this should be written into APUC's authority and not this legislation. Representative Rhode stated he thinks the intent is good, but it shouldn't be in here.

Speaker Malone requested an opportunity to testify on the bill. He stated he didn't see the necessity for the grandfather clause under current section 180 in Chapter 278, SLA 1976. He stated there is no reason these projects couldn't be submitted to the legislature in a resolution this session.

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Speaker Malone stated that on the workdraft dated 4/5/78, Sec. 17, 180(d), he thinks the key element there begins on line 13 (through line 21). He stated that in those cases where a project is financially feasible without these forms of guarantee, they should be able to go ahead without going through the procedure. But, he stated he thinks it is useful to put in a screen so a project that is financially feasible doesn't crowd out those projects that may be necessary. He stated he thinks something should be included so this doesn't happen. Concerning nuclear energy, he suggested the law be specifically written to prohibit APA from participating in nuclear energy projects. He stated this is a new technique, and that currently there is no system for the disposal of nuclear waste.

There was brief discussion on nuclear power.

Mr. Phil Holdsworth, Southeast Conference, stated in the past they have received direct appropriations under the water resource revolving loan fund. He asked if it was the intent of this legislation to take the place of that type of activity. Chairman Cowper stated he is certain it would not be the intent to hold up any of these projects. Representative Gruening stated this legislation does not address the water resources revolving loan fund.

Chairman Cowper stated he would like to establish a subcommittee and asked them to come back with a new vehicle for the Committee's consideration. The following were appointed to the Subcommittee: Jim Duncan, Chairman; Representatives Gruening, Haugen, Freeman and Rhode. He requested the Subcommittee to report back to the full Committee on April 17 at 1:15 p.m. Chairman Cowper referred HB 906 (An Act making a special appropriation to the power project revolving loan fund; and providing for an effective date) to that Subcommittee.

HB 442
REFERRED
TO SUB-
COMMITTEE

HB 906
REFERRED
TO SUB-
COMMITTEE

A recess was called at 4:10 p.m. Chairman Cowper recalled the meeting to order at 4:36. He stated the Committee would continue to close out the UNIVERSITY OF ALASKA budget.

RECESS

U. OF A.
JUNEAU
DUDGET

UNIVERSITY CENTER-JUNEAU

Instruction: Representative Duncan stated he would like to add \$45.0 to conduct a feasibility study on establishing a maritime school in Southeast Alaska. He stated there is federal money available for the school. There was discussion.

4/10/78

HOUSE FINANCE COMMITTEE

April 18, 1978

2:05 p.m.

All members of the Committee were in attendance, except Chairman Cowper, Representatives Meekins and Rhode. Representative Duncan arrived later in the meeting. Also in attendance: Representatives Nels Anderson and Terry Gardiner; Eric Yould, Executive Director, Alaska Power Authority; J. Williamson, R.W. Beck & Associates; Fred Boness, Deputy Commissioner, Department of Natural Resources; Department of Fish and Game: Bob Rausch, Director, Division of Game; Rupert Andrews, Director, Division of Sport Fish; Jeff Morrison, Director, Division of Administration; Jim Rhode, Administrative Assistant to Chairman Cowper; Jay Hogan, Director, and Bob Grogan and Bob Schroeder, Fiscal Analysts, Legislative Finance Division.

PRESENT

Vice Chairman Freeman called the meeting to order and stated the Committee would address HB 442:

HB 442

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

[Representative Duncan arrived at this time.]

In referring to the Finance Committee Substitute (work draft copy) for HB 442, Representative Duncan stated it incorporates all the changes recommended by the subcommittee yesterday. He advised the Committee would hear testimony on proposed amendments by Mr. Williamson, representing the Southeast communities, and decide where to incorporate these in the bill.

Mr. Williamson began his presentation by stating these amendments relate to the engineering and construction phase. He advised the first, would add a new subsection (f) to Section 16. AS 44.56.170 that relates to the establishment of the revolving loan fund. He stated this would provide that projects that have outstanding loans at 3-5% interest rates and not exceeding 50-year terms would not have to repay such loans until the project becomes operable or 10 years from the date of the loan, whichever is earlier. In answer to a question, he stated the communities this would affect are Kodiak, Petersburg, Wrangell, Sitka and Ketchikan.

SOUTHEAST
COMMUNITIES
AMENDMENTS

Mr. Williamson advised the second amendment (page 8, line 3) relates to the "grandfather" clause, and the last amendment to Section 18. AS 44.56.180(e), relating to reconnaissance report approval by the Legislature, would make exception for those projects already approved by the Department of Commerce.

Representative Guy had a question pertaining to the eligibility criteria of the Alaska Power Authority revolving loan fund. In answer, Mr. Yould stated the ability of

the communities to repay the loans will be considered, but APA would take into account the need for the loans as well. Representative Guy brought up the guarantee of indebtedness by the Alaska Permanent Fund Corporation and asked if they were dipping into Permanent Fund money. Representative Gruening stated AS 37.13.200 deals with a guarantee in the income, not the principal. He advised the bill dealing with Permanent Fund procedures is HB 595.

Representative Haugen moved and asked unanimous consent that these amendments be adopted. Representative Gruening objected to the first amendment, stating he feels it should be left up to the discretion of APA as to whether they make these loans. He further stated he objects to repayment not being necessary until the project commences as a term of the loan. He commented, wherever possible, private financing should be obtained. Discussion followed.

There was discussion on the interest rate, with Mr. Yould stating with the revolving loan fund, APA regulations state they can go down to as low as 1% for any number of years for financing. There was discussion on the need for defining "small scale" power projects, with Mr. Yould stating he would not want to put restriction on monetary value and would rather do so on size. Discussion followed on using 5 megawatts as opposed to "under 30 megawatts" in defining small scale. In answer to a question, Mr. Yould stated cost of a 30 megawatt plant is \$70-\$100 million, and Mr. Williamson added that wouldn't be spent all in one year. Representative Gruening moved that power production facilities of 5 megawatts or less be defined as small scale, and then withdrew his motion.

There being no further objection, the amendments were adopted.

AMENDMENTS
ADOPTED

Representative Schaeffer proposed inserting "regional and" after "boroughs," on page 7, line 20. In answer to a question, he replied he is referring to the 12 Native regional corporations. Discussion followed on including profit-making corporations, with Representative Buchholdt pointing out the Native regional corporations fall into that category. Mr. Jim Rhode commented, when the original act was passed, effort was made to have APA supply power to private corporations. In answering a question, he stated Alaska Electric Light & Power is a private corporation. There being no objection to this proposal, it was so ordered.

SCHAEFFER
AMENDMENT
ADOPTED

Representative Duncan stated there had been discussion on deleting language in Section 17. AS.56.180(d) regarding public bidding. He advised it was suggested, on page 10, line 9, that a period be placed after "state", deleting "except that public bidding shall not be required,

AMENDMENT
ON PUBLIC
BIDDING
ADOPTED

if the authority so determines on projects in excess of \$50,000,000." Mr. Yould commented he sees no reason why public bidding should be exempt and that the construction part should be bid and procuring the services of a professional firm should be a negotiable contract. There being no objection, it was so ordered.

Mr. Yould proposed an addition to the "grandfather" clause (Section 17. AS 44.56.180(c)) be made and suggested the following language:

APA
AMENDMENT

"The requirements of Sec. (e) of this section do not apply to any project which the Authority has determined to finance and in which it will not maintain an ownership interest upon completion and for which the Legislature has adopted a resolution of approval prior to the conclusion of the Tenth Legislature."

He stated this would assure this requirement would not be imposed on APA and referred to the Healy and Solomon Gulch projects. Mr. Jim Rhode commented on the situation of bond council regarding these two projects. Representative Haugen asked about the Sitka project, and Mr. Yould replied the Healy and Solomon Gulch projects are projects they can proceed on, and at the present time, APA does not know the Sitka situation. Representative Gruening commented the resolution in this proposal should be denoted "concurrent".

ADOPTED

Mr. Yould brought up subsection (e), page 11, line 1, with regard to the Governor's evaluation and recommendations on long-term plans and wondered if he might hold up this submission if the plan is not completed. Representative Duncan stated "if any," could be inserted after "plan". There being no objection, it was so ordered.

There being no further comment on HB 442, Vice Chairman Freeman advised action would be deferred until the Finance committee substitute is prepared incorporating the adopted amendments. HB 442 was held over until tomorrow.

HB 442
HELD OVER

Vice Chairman Freeman brought up HB 906 for consideration:

HB 906

"An Act making a special appropriation to the power project revolving fund; and providing for an effective date."

Vice Chairman Freeman stated this would appropriate \$5 million of general fund money to the revolving fund. He indicated the bill can be reported out at this time, if the Committee so desires. However, he commented he

STATE
ALASKA

MEMORANDUM

RECEIVED

OFFICE OF THE COMMISSIONER

TO: The Honorable Thomas K. Williams
Commissioner
Department of Revenue

DATE: October 5, 1979

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: Withdrawal and investment
of appropriations for
Alaska Power Authority
Our File: J-66-012-80

By: *Thomas M. Jahnke*
Thomas M. Jahnke
Assistant Attorney General
Department of Law

Three questions have been addressed to the Department of Law for its consideration. They will be answered in turn.

You have inquired whether the Alaska Power Authority may withdraw an appropriated amount from the Renewable Resources Investment Fund [see AS 37.11.050 - 090 and AS 37.12.020(b)] prior to the receipt of revenue by that fund. The answer is no. At least three sources of authority support this result.

The first basis for this conclusion is AS 37.05.170 which declares:

No payment may be made and no obligation incurred against any fund unless the Department of Administration certifies that its records disclose that there is a sufficient unencumbered balance available in the fund and that an appropriation or expenditure authorization has been made for the purpose for which it is intended to incur the obligation.

As applied to the facts presented here, the result is indisputable: there being no balance in the fund, there can be no disbursement.

The second basis for the conclusion is the case of Ada County v. Wright, 92 P.2d 134 (Idaho 1939). In that case the state legislature appropriated to the counties money to be used for road and bridge construction. The appropriation was out of the State Highway Fund in the amount of 20% of the