

ALABAMA LEGISLATIVE COMMITTEE ON JOINTS

2834 SRES SB 156 - SB 168

8/14

(3) "commission" means the Alaska Commercial Fisheries Entry Commission;

(4) "debtor" means an individual commercial fisherman who either initially contracts for a loan under AS 16.10.333 — 16.10.337 or assumes a loan as provided in those sections. (§ 1 ch 134 SLA 1972; am § 5 ch 83 SLA 1978)

Effect of amendments. — The 1978 amendment added paragraphs (3) and (4).

Article 8. Salmon Hatcheries.

Section	Section
380. Regional associations	440. Regulation
385. [Transferred]	460. inspection of hatchery
420. Conditions of a permit	470. Annual report

Editor's notes. — As to legislative findings concerning salmon enhancement and purpose of AS 16.10.375 — 16.10.620, see § 1, ch. 59, SLA 1979, in the 1979 Temporary and Special Acts and Resolves.

Sec. 16.10.380. Regional associations. (a) The commissioner shall assist in and encourage the formation of qualified regional associations for the purpose of enhancing salmon production. A regional association is qualified if the commissioner determines that

(1) it is comprised of associations representative of commercial fishermen in the region;

(2) it includes representatives of other user groups interested in fisheries within the region who wish to belong; and

(3) it possesses a board of directors which includes no less than one representative of each user group that belongs to the association.

(b) In this section "user group" includes, but is not limited to, sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities.

(c) A qualified regional association, when it becomes a nonprofit corporation under AS 10.20.005 — 10.20.725, is established as a service area in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services. (§ 2 ch 161 SLA 1976; am § 2 ch 59 SLA 1979)

Effect of amendments. — The 1979 amendment added subsection (c).



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

7-19-83
7:30p

July 19, 1983

Ur

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CS SB 156 (Rls) --
Relating to the sale,
lease, or grant of
state hatchery
facilities.

Dear Mr. President:

Under the authority granted in art. II, sec. 15, of the Alaska Constitution, I have vetoed Committee Substitute for Senate Bill No. 156 (Rls).

The sale, lease, or granting of publicly financed hatchery facilities to the private sector, some of which have been constructed with publicly endorsed bond monies, represents a major public policy issue having significant long term institutional implications. This Administration may conclude after thorough review of the subject that it is in the public interest to provide for such transfers. However, that policy determination has yet to be developed.

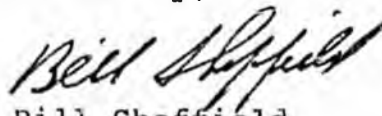
I asked my Fisheries Task Force to review the state's hatchery program and recommend to me long term goals and objectives for this important activity. The Task Force did review the program, but made a determination that the issue was complicated and of such importance that they ultimately recommended I establish a special Aquaculture Policy Study Group to perform the necessary, indepth analysis of the present program, goals and problems of the state's salmon aquaculture program.

The Governor is elected by the citizens and is directly accountable to the citizens. This bill fragments that line of accountability by requiring the regional quasi-private, non-profit associations to approve of transfer to non-association, private, non-profit operators, thus giving a group in the private sector very unusual authorities over executive actions.

The Attorney General has also advised me that there is a possible constitutional problem with the bill in its provision that the commissioner may grant hatcheries to aquaculture associations or non-profit hatchery corporations. If "grant" means without payment, as it presumably does, the transaction might be in violation of the requirements of Article IX, Section 6 of the State Constitution, which prohibits the expenditure of public money or transfer of public property for other than public purposes. Similar problems might arise if a hatchery was sold for less than its fair market value.

Until these several issues are clarified and until the Legislature and I have had an opportunity to establish the state's Aquaculture Policy I have determined that it is not in the public's interest to approve this legislation and perhaps to allow the transfer of a facility prior to making these determinations.

Sincerely,



Bill Sheffield
Governor

Alaska State Legislature

BETTYE FAHRENKAMP
CHAIRMAN
ROBERT H. ZIEGLER, SR.
VICE-CHAIRMAN
DICK ELIASON - PAUL FISCHER
VIC FISCHER - BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-2834
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Senate

Committee on Resources

TO: Senate Resources Committee Members
FROM: Senate Resources Committee Staff
RE: March 25 Hearing
DATE: March 24, 1983

On Friday, March 25 at 3:00 pm in the Beltz Room, the following bills will be heard:

SB 120 AN ACT RELATING TO SOIL AND WATER CONSERVATION.

The sponsor of SB 120 has requested that the Committee consider Sponsor Substitute for SB 120 in lieu of the original bill.

SSSB 120 creates the Soil and Water Conservation Board in place of the Soil Conservation Board, and replaces the current system of one Soil Conservation District (which includes the area of the entire state) divided into subdistricts, with a system of Soil and Water Conservation Districts.

The membership of the Board is increased to allow for appointment of 1 member from each of 5 geographic areas of the state; each board member must be a producer of renewable resources and have a cooperative agreement with a soil and water conservation district, rather than possessing land as is currently required. The Board's advisory duties are increased to allow them to hold public hearings and to review appeals. The Commissioner of DNR is authorized to appoint an executive director and clerical staff to assist the Board.

The following 3 bills have passed out of the Resources Subcommittee on Fisheries. Recommendations of the Subcommittee have been incorporated into draft Committee Substitutes, which will be discussed by Senator Mulcahy, Subcommittee Chairman, at the hearing.

CSSB 73 AN ACT RELATING TO COMMERCIAL FISHING LOANS, which changes the residency requirement for a commercial fishing loan from 5 years to 2 years.

CSSB 136 AN ACT RELATING TO THE OPERATION OF STATIONARY FISHING GEAR, which provides exemptions to the present requirement that a permit holder be physically present during the operation of stationary fishing gear.

CSSB 156 AN ACT RELATING TO THE SALE, LEASE OR GRANT OF STATE HATCHERY FACILITIES, which allows the Commissioner of Fish and Game to sell, lease, or grant a state hatchery facility to a qualified regional aquaculture association.

The following two bills will also be heard:

SR 2 RELATING TO THE CROSS ISLAND WELL

SR 2 resolves that the North Slope Borough not impose restrictions in addition to those already required by the state on the operator of the Cross Island Well in the Beaufort Sea.

SB 151 AN ACT RELATING TO REGIONAL RESOURCE DEVELOPMENT AUTHORITIES.

The Committee will be considering further a Committee Substitute for SB 151. Additional amendments to the CS are still being prepared, and will be submitted to you under separate cover prior to Friday's hearing.

It is hoped that final Committee action could be taken on several of these bills.

Alaska Statutes

Title 16. Fish and Game.

Chapter

- 10. Fisheries and Fishing Regulations (§§ 16.10.010 — 16.10.720)
- 20. Conservation and Protection of Alaskan Wildlife (§§ 16.20.010 — 16.20.320)
- 51. Alaska Seafood Marketing Institute (§§ 16.51.010 — 16.51.180)
- 52. Fishery Industrial Technology Center (§§ 16.52.010 — 16.52.070)
- 55. Shooting and Firearm Safety (§§ 16.55.010 — 16.55.040)

Chapter 05. Fish and Game Code.

Article

- 4. Licensing of Commercial Fishing Crewmembers and Vessels (§§ 16.05.440 — 16.05.720)

Article 1. The Department of Fish and Game.

Section

- 50. Powers and duties of commissioner
- 65. Application extension
- 90. Organization of the department
- 94. Duties of section of subsistence

Section

- hunting and fishing
- 110. Composition of fund
- 130. Diversion of funds prohibited

Sec. 16.05.050. Powers and duties of commissioner. The commissioner has, but not by way of limitation, the following powers and duties:

(1) assist the United States Fish and Wildlife Service in the enforcement of federal laws and regulations pertaining to fish and game;

(2) through the appropriate state agency, acquire by gift, purchase, or lease, or other lawful means, lands, buildings, water, rights-of-way, or other necessary or proper real or personal property when the acquisition is in the interest of furthering an objective or purpose of the department and the state;

(3) design and construct hatcheries, pipe lines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state;

(4) accept money from any person under conditions requiring the use of the money for specific purposes in the furtherance of the protection, rehabilitation, propagation, preservation, or investigation of the fish and game resources of the state or in settlement of claims for damages to fish or game resources;

"that calendar year" for "the following fiscal year of the state" in the introductory language of paragraph (12).

Editor's notes. — Section 14, ch. 79, SLA 1979 provides in subsection (b): "Not later than 30 days after the effective date of this Act, the commissioner of fish and game shall designate fish and shellfish species as developing commercial fish species in accordance with AS 16.05.050(12) for the purpose of taxing developing commercial fish species from the effective date of this Act and until June 30, 1980."

Section 14, ch. 79, SLA 1979, as amended by § 13, ch. 155, SLA 1980 provides in subsection (a): "The taxes paid for the 1978 calendar year under AS 43.75

shall be shared with municipalities in accordance with AS 43.75.130 and 43.75.135, as those sections read before their respective amendment and repeal by this Act. The taxes paid for the 1979 calendar year and for each succeeding calendar year shall be shared with municipalities in accordance with AS 43.75.130 as amended by sec. 11 of this Act."

Section 14, ch. 82, SLA 1982, provides: "The designation of developing commercial fish species required to be made not later than January 31, 1983, under AS 16.05.050(12), as amended in sec. 1 of this Act, supersedes the designation of developing commercial fish species for the fiscal year ending June 30, 1983."

Sec. 16.05.060. Emergency openings and closures.

NOTES TO DECISIONS

Effect of orders. — Authorized by this section, emergency closure orders have the force and effect of law. *F/V Am. Eagle*, ADF&G No. 39 v. State, Sup. Ct. Op. No. 2227 (File Nos. 3973, 3974, 4023), 620 P.2d 657 (1980).

Vagueness of order. — The closure of a shellfish district by emergency order was not in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, in violation of the due process rights of a fishing vessel's owners. *F/V Am. Eagle*, ADF&G No. 39 v. State, Sup. Ct. Op. No. 2227 (File Nos. 3973, 3974, 4023), 620 P.2d 657 (1980).

Area closed. — This section does not prohibit the closure of an entire statistical area of king crab stocks or district thereof. *F/V Am. Eagle*, ADF&G No. 39 v. State, Sup. Ct. Op. No. 2227 (File Nos. 3973,

3974, 4023) 620 P.2d 657 (1980).

Use to enforce resource management plan. — If the Board of Fisheries properly adopted a plan for the management of state fishery resources, the Commissioner of the Department of Fish and Game could enforce that policy through the emergency order process. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, Sup. Ct. Op. No. 2358 (File No. 5072), 626 P.2d 897 (1981).

Selective closures. — The Commissioner of the Department of Fish and Game may use the emergency order process to close down one type of fishery and not another in order to implement a policy establishing priorities of use. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, Sup. Ct. Op. No. 2358 (File No. 5072), 626 P.2d 897 (1981).

Sec. 16.05.065. Application extension. (a) The commissioner shall extend the time and dates during which application may be made for fish or game registration if he finds that

(1) the conservation and management of the fish or game resource will not be affected adversely; and

(2) the failure to timely apply is the result of excusable neglect.

(b) The fee for an extension granted under this section is \$45.

(c) As used in this section, "excusable neglect" does not include unfamiliarity with or ignorance of applicable laws and regulations. In order to show excusable neglect, a person must have demonstrated,

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UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE
197 SOUTH FRANKLIN ST.
JUNEAU, ALASKA 99801
907 586-2820

Cass M. Parsons
Executive Director

March 15, 1983

Honorable Bob Mulcahy
Chairman
Subcommittee on Fisheries
Pouch V
Juneau, Alaska 99811

Dear Senator Mulcahy:

During its last annual board meeting in February, the United Fishermen of Alaska's Board of Directors endorsed the concept of transferring state hatchery facilities to private non-profit aquaculture associations in the event the FRED Division of the Department of Fish and Game is faced with the necessity of closing state hatchery facilities.

The UFA favors passage of Senate Bill 156, a bill allowing the State of Alaska the statutory authority to transfer, by lease or sale, state hatchery facilities to qualified regional aquaculture associations.

Sincerely,

Cass M. Parsons
UFA Executive Director

CMP/jb

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SENATE RESOURCES COMMITTEE
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: SB 168

BILL NAME: Relating to the A.P.A.

SPONSOR(S): Rules (Governor)

RELATED BILLS PENDING:

DATE INTRODUCED: 3-9-83

REFERRALS: Resources
State Affairs
Finance

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMITTEE
SUBSTITUTES DRAFTED:

notify Nancy Ford when scheduled

SB 168 RELATING TO THE ALASKA POWER AUTHORITY.
ORIGINAL SPONSOR: RULES/GOVERNOR.

We passed this bill out of Resources with a Committee Substitute (see attached sectional analysis).

Finance Committee also did a C.S. that made the following change:

The Resources CS repealed AS 44.83.398(b)(2), the "blackmail clause", which says that if \$5 billion is not deposited in the APA fund by July 1986, power projects would have to have rates set for them under the greater of 2 formulas. This could result in the doubling of electric rates if Susitna is not forthcoming.

Instead of repealing this clause, the Finance CS amends it to \$3.5 billion by 1990.

Rules Committee also did a C.S. that made the following change:

On page 1, line 16, delete "present". This would require that to take action a majority of the members concur, rather than a majority of the members present.

*pass
16-3
yea*

Both Finance and Rules Committees did a Letter of Intent (attached).

Generally, the bill makes numerous clarifying and "house-keeping" changes in the statutes governing operations and specifically bonding matters of the APA. In addition, would make it permissive rather than mandatory that the authority issue bonds for the energy program, ensure that a feasibility study of a proposed project include an independent cost estimate, and require APA to enter into power sales contracts for energy transmission as well as production.

Passed out of Resources Committee 4/23/83 - all DO PASS.

STATE OF ALASKA
FINAL STATEMENT OF FISCAL IMPACT

Bill No: _____ Date on Bill: _____
 Title: "An Act relating to the Alaska Power Authority; and providing for
 Sponsor: Rules Committee by request of the Governor
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86
Capital						
Operating						
Total			0	0	0	

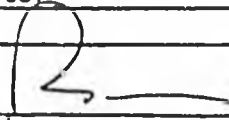
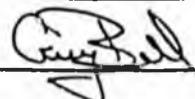
b. Revenues:

Revenue						
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. This statement has been reviewed by the OMB in the Office of the Governor. It may be considered to represent the policy of the Sheffield Administration and the final estimate of fiscal impact.

Prepared By: Eric Gould, Executive Director Phone: 277-7641
 Division: Alaska Power Authority Date: _____
 Approved by Commissioner: Richard A. Lyon  Date: _____
 Department: Commerce and Economic Development
 Reviewed by OMB:  Date: 3/3/82
 Phone: 465-3568

5. Distribution:
- Original to Legislative Finance
 - Copy to Department
 - Copy to Sponsor
 - Copy to Requestor

2/8/83

"LETTER OF INTENT
CSSB 168 (FIN)

The Legislature, in enacting legislation establishing the Energy Program for Alaska, expressed its desire to provide the lowest reasonable power costs to consumers. To further achieve that end, it is the intent of the Legislature to take appropriate action to enhance the Alaska Power Authority's ability to obtain long-term bond financing at the lowest possible cost.

The Legislature requests the Power Authority to fully explore and study the desirability and implications of allowing the Alaska Power Authority to sell a power project to a qualified utility and report its findings and recommendations to the Second Session of the Thirteenth Legislature. The study should address both short-term and long-term impacts of the proposal on the individual projects, as well as on the overall Energy Program for Alaska.

deleted in Rules

To facilitate consummation of the power sale agreements and to preclude new project service area energy rates from exceeding the existing energy rates in the early years of the new project(s), the Legislature requests the Power Authority to study the problem expeditiously and recommend solutions to the Second Session of the Thirteenth Legislature. The solutions proposed should consider the use of state equalization grants or loans.

deleted in Rules

The Legislature also requests the Power Authority to examine the impact of the current restriction which prohibits utilities that purchase power from a Power Authority project to set lower rates for industrial consumers than the rates charged residential consumers.

It is the further intent of the Legislature that the Power Authority consider extending its short term debt which is currently outstanding until the Legislature has had an opportunity to address all of these issues next year.

Offered: 4/27/83
Referred: State Affairs

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 168 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

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

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

9 * Section 1. AS 44.83.040 is amended to read:

10 Sec. 44.83.040. OFFICERS; MEETINGS; [AND] QUORUM. The directors
11 shall elect one of their number as chairman and may elect other offi-
12 cers they determine desirable. The powers of the authority are vested
13 in the directors, and four directors of the authority constitute a
14 quorum. Action may be taken and motions and resolutions adopted by
15 the authority at a meeting by the affirmative vote of a majority of
16 the [AT LEAST THREE] directors present. The directors of the authori-
17 ty serve without compensation, but they shall receive the same travel
18 pay and per diem as provided by law for board members.

19 * Sec. 2. AS 44.83.040 is amended by adding new subsections to read:

20 (b) The board may meet and transact business by an electronic
21 medium if

22 (1) public notice of the time and locations where the meet-
23 ing will be held by an electronic medium has been given in the same
24 manner as if the meeting were held in a single location;

25 (2) participants and members of the public in attendance
26 can hear and have the same right to participate in the meeting as if
27 the meeting were conducted in person; and

28 (3) copies of pertinent reference materials, statutes, reg-
29 ulations, and audio-visual materials are reasonably available to

1 participants and to the public.

2 (c) A meeting by an electronic medium as provided in this sec-
3 tion has the same legal effect as a meeting in person.

4 (d) A director of the authority may not vote on a resolution of
5 the authority relating to a lease or contract to be entered into by
6 the authority under this chapter if the director is a party to the
7 lease or contract or has a direct ownership or equity interest in a
8 firm, partnership, corporation, or association that is a party to the
9 contract or lease. When abstaining from voting, the director must
10 disclose the reason for the abstention. A director who is a member of
11 an electric cooperative that is organized under or subject to the
12 Electric and Telephone Cooperative Act (AS 10.25) may vote on a reso-
13 lution relating to a contract or lease to which that cooperative is a
14 party. The director shall disclose the cooperative membership at the
15 time of voting. A resolution of the authority that is approved by a
16 majority of the directors present who are not barred from voting under
17 this subsection is a valid action of the authority for all purposes.

18 * Sec. 3. AS 44.83.105 is amended to read:

19 Sec. 44.83.105. BONDS FOR POWER PROJECTS UNDER THE ENERGY PRO-
20 GRAM FOR ALASKA. The authority may [SHALL] borrow money and [SHALL]
21 issue its bonds for the acquisition or construction of power projects
22 to be acquired or constructed under the energy program for Alaska.
23 The [ON WHICH THE] principal of and interest on the bonds are payable
24 from money derived from the sale of wholesale power from power proj-
25 ects financed under AS 44.83.380 - 44.83.425 from the power develop-
26 ment fund or from a source referred to in AS 44.83.100 as the author-
27 ity determines. The bonds may be issued if

28 (1) appropriations to the power development fund for the
29 power project are insufficient to cover the cost of acquiring or

1 constructing the power project; and

2 (2) the authority determines that the amount of interest
3 the authority will pay on its bonds is not more than alternative costs
4 of securing money from other sources, except for the general fund, to
5 pay for the acquisition or construction of the power project.

6 * Sec. 4. AS 44.83.110(b) is amended to read:

7 (b) Notwithstanding any other provisions of this chapter, the
8 trust indenture, trust agreement, secured loan agreement, or other
9 instrument or the resolution constituting a contract with bondholders
10 shall contain a covenant by the authority that it will at all times
11 maintain rates, fees or charges sufficient to pay, and that a contract
12 entered into by the authority for the sale, transmission or distribu-
13 tion of power shall contain rates, fees or charges sufficient to pay
14 the costs of operation and maintenance of the project, the principal
15 of and interest on bonds issued under the trust agreement as the same
16 severally become due and payable, to provide for debt service coverage
17 as considered necessary by the authority for the marketing of its
18 bonds and to provide for renewals, replacements and improvements of
19 the project, and to maintain reserves required by the terms of the
20 trust agreement. This subsection does not require a covenant that
21 varies from a covenant entered into in accordance with the provisions
22 of AS 44.83.380 - 44.83.425.

23 * Sec. 5. AS 44.83.120 is amended to read:

24 Sec. 44.83.120. VALIDITY OF PLEDGE. It is the intention of the
25 legislature that a pledge made in respect of bonds is considered
26 perfected and is [SHALL BE] valid and binding from the time the pledge
27 is made; that the money or property so pledged and thereafter received
28 by the authority shall immediately be subject to the lien of the
29 pledge without physical delivery or further act; and that the lien of

1 the pledge shall be valid and binding as against all parties having
2 claims of any kind in tort, contract or otherwise against the authori-
3 ty irrespective of whether the parties have notice. Neither the
4 resolution, trust agreement nor any other instrument by which a pledge
5 is created need be recorded or filed under the provisions of the
6 Uniform Commercial Code to be perfected or to be valid, binding or
7 effective against the parties.

8 * Sec. 6. AS 44.83.185(a) is amended to read:

9 (a) The authority shall submit a feasibility study and plan of
10 finance, including a cost estimate from an independent source, for a
11 proposed new project to the legislature. When the report of the divi-
12 sion of budget and management examining the feasibility study and plan
13 of finance is completed as required by AS 44.83.183, it shall be sub-
14 mitted to the legislature.

15 * Sec. 7. AS 44.83.195(a) is amended to read:

16 (a) When a project is operated by the authority, the authority
17 shall enter into one or more contracts for the sale of electrical
18 power, energy, transmission capacity, or service from the project.
19 Unless the contract is entered into under AS 44.83.380 - 44.83.425, a
20 [A] contract entered into under this section shall meet all require-
21 ments of AS 44.83.090.

22 * Sec. 8. AS 44.83.361(a)(2) is amended to read:

23 (2) principal [AND INTEREST] payments on loans made under
24 this section.

25 * Sec. 9. AS 44.83.361(c) is amended to read:

26 (c) A loan from the rural electrification revolving loan fund
27 shall bear an annual rate of interest of two percent of the unpaid
28 balance of the loan. Interest received on a loan made under this sec-
29 tion must be transferred monthly to the commissioner of revenue for

1 deposit in the general fund.

2 * Sec. 10. AS 44.83.361(d)(2)(B) is amended to read:

3 (B) payments on the unpaid balance of the principal of
4 the loan for each new consumer served by the electric service
5 extended with the loan proceeds [DURING THE PRECEDING YEAR FOR
6 WHICH THE LOAN WAS MADE]; payments on the unpaid balance of the
7 principal of the loan shall be made at a rate equal to the dif-
8 ference between the actual cost of making the service connection
9 to the consumers and the minimum investment per consumer required
10 of the utility before a loan is made under (b) of this section.

11 * Sec. 11. AS 44.83.361 is amended by adding new subsections to read:

12 (f) In this section,

13 (1) "consumer" means a person, as defined in AS 01.10.-
14 060(7), or a governmental agency, if the person or governmental agency
15 requests and offers to pay for electrical service to a facility or
16 part of a facility; the authority shall consider a person who, or a
17 governmental agency that, offers to pay for electrical service to
18 several facilities to be a separate consumer for each facility, if
19 each facility is physically separate from another facility, other than
20 through electric service lines, and if the person or governmental
21 agency requests and offers to pay for electrical service to each
22 facility;

23 (2) "facility" means a structure capable of receiving and
24 using electrical energy; and

25 (3) "governmental agency" includes, with respect to the
26 state or federal government or a municipal government, a legislative
27 body, board of regents, administrative body, board, commission, com-
28 mittee, subcommittee, authority, council, agency, public corporation,
29 school board, department, division, bureau, or other subordinate unit,

1 whether advisory or otherwise, of the state, federal, or municipal
2 government.

3 * Sec. 12. AS 44.83.384(b)(1) is amended to read:

4 (1) is economically feasible [MEETS THE REVENUE REQUIRE-
5 MENTS OF AS 44.83.394]; and

6 * Sec. 13. AS 44.83.384(c) is amended to read:

7 (c) Notwithstanding (b)(1) of this section and AS 44.83.396 -
8 44.83.398 [AS 44.83.394 - 44.83.398], the fund may be used by the
9 authority to provide money for the cost of a power project that is or
10 was either constructed or [AND] owned by the United States government
11 if the requirements of this subsection are met. The provisions of
12 AS 44.83.177 - 44.83.187 do not apply to a power project financed
13 under this subsection. The authority may use money in the fund for
14 the cost of a power project under this subsection if

15 (1) the legislature enacts a law approving the project;

16 (2) the division of budget and management in the Office of
17 the Governor reviews a feasibility study and a plan of finance for the
18 project and determines that the feasibility study complies with the
19 requirements for a feasibility study submitted under AS 44.83.181(b)
20 and that the plan of finance complies with the requirements for a plan
21 of finance submitted under AS 44.83.181(c); and

22 (3) the project meets the other requirements of this chap-
23 ter.

24 * Sec. 14. AS 44.83.386 is amended to read:

25 Sec. 44.83.386. INVESTMENT OF FUND. The Department of Revenue
26 shall invest the money in the fund in accordance with AS 37.10.070 and
27 37.10.075. The Department of Revenue shall provide money in the fund
28 to the authority only after costs have been [A COST FOR A PROJECT IS]
29 incurred or amounts in the fund have been otherwise obligated under

1 contracts for the acquisition and construction of a project. Amounts
2 that have been obligated, but for which costs have not yet been incur-
3 red, may be segregated by the Department of Revenue or transferred to
4 the authority only with the prior approval or agreement of the commis-
5 sioner of revenue. Interest received on money that is segregated or
6 transferred under this section must be deposited in the general fund.

7 * Sec. 15. AS 44.83.396(a) is amended to read:

8 (a) A power project that is acquired or constructed as part of
9 the energy program for Alaska is owned, [BY THE STATE] and shall be
10 administered, by the authority.

11 * Sec. 16. AS 44.83.396(c) is amended to read:

12 (c) The authority shall enter into a contract or lease under
13 reasonable terms and conditions to permit the applicant utility to
14 operate the power project when the applicant utility is the only
15 wholesale power customer to be served directly by the power project
16 unless the authority determines a utility making application for a
17 contract or lease to operate a power project is not a qualified util-
18 ity or is not capable of operating that power project efficiently and
19 in a manner that is consistent with national standards for the indus-
20 try and with agreements with bondholders.

21 * Sec. 17. AS 44.83.396(e) is amended to read:

22 (e) When the authority permits a power project to be operated by
23 a qualified utility under a contract or lease, the authority shall

24 (1) review and approve the annual budget for the operation
25 and maintenance of the power project; and

26 (2) assure that the project is being operated efficiently
27 and in a manner that is consistent with national standards for the
28 industry and agreements with bondholders.

29 * Sec. 18. AS 44.83.398(c) is amended to read:

deleted in Finance C.S.

1 (c) The authority shall transmit all the money that it receives
2 under (a) of this section to the commissioner of revenue for deposit
3 in the state general fund except for money it has pledged or otherwise
4 covenanted to secure bonds [IN ACCORDANCE WITH CONTRACTS WITH BOND-
5 HOLDERS].

6 * Sec. 19. AS 44.83.398(e) is repealed and reenacted to read:

7 (e) After determining the wholesale power rate for a power proj-
8 ect under the provisions of this section, the authority may adjust the
9 rate or change the rate provisions to insure that the revenue derived
10 from that power project and the aggregate revenues of the authority
11 will be adequate to comply with rate cove..ants and other agreements
12 contained in any trust indenture or trust agreement entered into by
13 the authority for the security of the holders of bonds issued to
14 finance the power project.

15 * Sec. 20. AS 44.83.398(g) is amended to read:

→this section is not deleted in Finance C.S.

16 (g) For the purposes of (b)(1)(B) [AND (b)(2)(B)(ii)] of this
17 section, a power project's proportionate share of debt service on
18 state loans and bonds for all power projects in the energy program for
19 Alaska is equal to the state's investment in the power project divided
20 by the state's investment in all power projects in the energy program
21 for Alaska and multiplied by the debt service on state loans and bonds
22 for all power projects in the energy program for Alaska. In this
23 subsection

24 (1) "state's investment in the power project" includes all
25 state money invested in a power project, including loans, grants, and
26 proceeds from bonds, less the principal repayments on the project's
27 proportionate share of debt service on state loans and bonds;

28 (2) "state's investment in all power projects in the energy
29 program for Alaska" includes all state money invested in the power

1 projects, other than interties, in the energy program for Alaska,
2 including loans, grants, and proceeds from bonds, less the principal
3 repayments on bonds and state loans issued for the power projects.

4 * Sec. 21. AS 44.83.398(h) is amended to read:

5 (h) Notwithstanding (g) of this section, in the 1983 state fis-
6 cal year the proportionate share of debt service under (b) of this
7 section, expressed as a rate, for a power project for which a con-
8 struction contract has been awarded before the effective date of this
9 Act may not exceed the average debt service component of the wholesale
10 power rate for all power projects in the energy program for Alaska.
11 The limit imposed by this subsection shall be increased in the 1984
12 state fiscal year to four percent above the average debt service com-
13 ponent of the wholesale power rate for all power projects in the
14 energy program for Alaska and by an additional four percent above that
15 average in each succeeding state fiscal year. If application of this
16 subsection results in the production of insufficient revenue to pay
17 the total debt service for all projects in the energy program for
18 Alaska, a project that does not have its share of debt service limited
19 under this subsection shall be subject to a rate in addition to the
20 rate established under (b) of this section. The additional rate is
21 the rate that the authority estimates is necessary to produce revenue
22 that is sufficient to pay the difference between the total debt ser-
23 vice for all projects in the energy program for Alaska and the revenue
24 actually produced to pay that debt service, multiplied by a fraction
25 whose numerator is the total cost of the project and whose denominator
26 is the total cost of all of the projects that are subject to the
27 additional rate. In this subsection, "projects in the energy program
28 for Alaska" does not include an intertie that is authorized as a
29 separate project as described in (f) of this section.

1 * Sec. 22. AS 44.83.425(2) is amended to read:

2 (2) "debt service" means the amounts covenanted with re-
3 spect to, or pledged to pay, bonds under a trust agreement securing
4 [CASH FLOW NECESSARY TO SECURE] bonds;

5 * Sec. 23. AS 44.83.196, 44.83.195(b), 44.83.382(b)(2), 44.83.394 and
6 44.83.398(b)(2) are repealed.

7 * Sec. 24. This Act takes effect immediately in accordance with AS 01.-
8 10.070(c).

Rules CS made only 1 change:
p.1, line 16, delete [present].

Offered: 5/26/83
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 168 (Finance) / Rules

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

9 * Section 1. AS 44.83.040 is amended to read:

10 Sec. 44.83.040. OFFICERS; MEETINGS; [AND] QUORUM. The directors
11 shall elect one of their number as chairman and may elect other offi-
12 cers they determine desirable. The powers of the authority are vested
13 in the directors, and four directors of the authority constitute a
14 quorum. Action may be taken and motions and resolutions adopted by
15 the authority at a meeting by the affirmative vote of a majority of
16 the [AT LEAST THREE] directors [present]. The directors of the authori-
17 ty serve without compensation, but they shall receive the same travel
18 pay and per diem as provided by law for board members.

19 * Sec. 2. AS 44.83.040 is amended by adding new subsections to read:

20 (b) The board may meet and transact business by an electronic
21 medium if

22 (1) public notice of the time and locations where the meet-
23 ing will be held by an electronic medium has been given in the same
24 manner as if the meeting were held in a single location;

25 (2) participants and members of the public in attendance
26 can hear and have the same right to participate in the meeting as if
27 the meeting were conducted in person; and

28 (3) copies of pertinent reference materials, statutes, reg-
29 ulations, and audio-visual materials are reasonably available to

1 participants and to the public.

2 (c) A meeting by an electronic medium as provided in this sec-
3 tion has the same legal effect as a meeting in person.

4 (d) A director of the authority may not vote on a resolution of
5 the authority relating to a lease or contract to be entered into by
6 the authority under this chapter if the director is a party to the
7 lease or contract or has a direct ownership or equity interest in a
8 firm, partnership, corporation, or association that is a party to the
9 contract or lease. When abstaining from voting, the director must
10 disclose the reason for the abstention. A director who is a member of
11 an electric cooperative that is organized under or subject to the
12 Electric and Telephone Cooperative Act (AS 10.25) may vote on a reso-
13 lution relating to a contract or lease to which that cooperative is a
14 party. The director shall disclose the cooperative membership at the
15 time of voting. A resolution of the authority that is approved by a
16 majority of the directors present who are not barred from voting under
17 this subsection is a valid action of the authority for all purposes.

18 * Sec. 3. AS 44.83.105 is amended to read:

19 Sec. 44.83.105. BONDS FOR POWER PROJECTS UNDER THE ENERGY PRO-
20 GRAM FOR ALASKA. The authority may [SHALL] borrow money and [SHALL]
21 issue its bonds for the acquisition or construction of power projects
22 to be acquired or constructed under the energy program for Alaska.
23 The [ON WHICH THE] principal of and interest on the bonds are payable
24 from money derived from the sale of wholesale power from power proj-
25 ects financed under AS 44.83.380 - 44.83.425 from the power develop-
26 ment fund or from a source referred to in AS 44.83.100 as the author-
27 ity determines. The bonds may be issued if

28 (1) appropriations to the power development fund for the
29 power project are insufficient to cover the cost of acquiring or

1 constructing the power project; and

2 (2) the authority determines that the amount of interest
3 the authority will pay on its bonds is not more than alternative costs
4 of securing money from other sources, except for the general fund, to
5 pay for the acquisition or construction of the power project.

6 * Sec. 4. AS 44.83.110(b) is amended to read:

7 (b) Notwithstanding any other provisions of this chapter, the
8 trust indenture, trust agreement, secured loan agreement, or other
9 instrument or the resolution constituting a contract with bondholders
10 shall contain a covenant by the authority that it will at all times
11 maintain rates, fees or charges sufficient to pay, and that a contract
12 entered into by the authority for the sale, transmission or distribu-
13 tion of power shall contain rates, fees or charges sufficient to pay
14 the costs of operation and maintenance of the project, the principal
15 of and interest on bonds issued under the trust agreement as the same
16 severally become due and payable, to provide for debt service coverage
17 as considered necessary by the authority for the marketing of its
18 bonds and to provide for renewals, replacements and improvements of
19 the project, and to maintain reserves required by the terms of the
20 trust agreement. This subsection does not require a covenant that
21 varies from a covenant entered into in accordance with the provisions
22 of AS 44.83.380 - 44.83.435.

23 * Sec. 5. AS 44.83.120 is amended to read:

24 Sec. 44.83.120. VALIDITY OF PLEDGE. It is the intention of the
25 legislature that a pledge made in respect of bonds is considered
26 perfected and is [SHALL BE] valid and binding from the time the pledge
27 is made; that the money or property so pledged and thereafter received
28 by the authority shall immediately be subject to the lien of the
29 pledge without physical delivery or further act; and that the lien of

1 the pledge shall be valid and binding as against all parties having
2 claims of any kind in tort, contract or otherwise against the authori-
3 ty irrespective of whether the parties have notice. Neither the
4 resolution, trust agreement nor any other instrument by which a pledge
5 is created need be recorded or filed under the provisions of the
6 Uniform Commercial Code to be perfected or to be valid, binding or
7 effective against the parties.

8 * Sec. 6. AS 44.83.185(a) is amended to read:

9 (a) The authority shall submit a feasibility study and plan of
10 finance, including a cost estimate from an independent source, for a
11 proposed new project to the legislature. When the report of the divi-
12 sion of budget and management examining the feasibility study and plan
13 of finance is completed as required by AS 44.83.182, it shall be sub-
14 mitted to the legislature.

15 * Sec. 7. AS 44.83.195(a) is amended to read:

16 (a) When a project is operated by the authority, the authority
17 shall enter into one or more contracts for the sale of electrical
18 power, energy, transmission capacity, or service from the project.
19 Unless the contract is entered into under AS 44.83.380 - 44.83.425, a
20 [A] contract entered into under this section shall meet all require-
21 ments of AS 44.83.090.

22 * Sec. 8. AS 44.83.361(a)(2) is amended to read:

23 (2) principal [AND INTEREST] payments on loans made under
24 this section.

25 * Sec. 9. AS 44.83.361(c) is amended to read:

26 (c) A loan from the rural electrification revolving loan fund
27 shall bear an annual rate of interest of two percent of the unpaid
28 balance of the loan. Interest received on a loan made under this sec-
29 tion must be transferred monthly to the commissioner of revenue for

1 deposit in the general fund.

2 * Sec. 10. AS 44.83.361(d)(2)(B) is amended to read:

3 (B) payments on the unpaid balance of the principal of
4 the loan for each new consumer served by the electric service
5 extended with the loan proceeds [DURING THE PRECEDING YEAR FOR
6 WHICH THE LOAN WAS MADE]; payments on the unpaid balance of the
7 principal of the loan shall be made at a rate equal to the dif-
8 ference between the actual cost of making the service connection
9 to the consumers and the minimum investment per consumer required
10 of the utility before a loan is made under (b) of this section.

11 * Sec. 11. AS 44.83.361 is amended by adding a new subsection to read:

12 (f) In this section,

13 (1) "consumer" means a person, as defined in AS 01.10.-
14 060(7), or a governmental agency, if the person or governmental agency
15 requests and offers to pay for electrical service to a facility or
16 part of a facility; the authority shall consider a person who, or a
17 governmental agency that, offers to pay for electrical service to
18 several facilities to be a separate consumer for each facility, if
19 each facility is physically separate from another facility, other than
20 through electric service lines, and if the person or governmental
21 agency requests and offers to pay for electrical service to each
22 facility;

23 (2) "facility" means a structure capable of receiving and
24 using electrical energy; and

25 (3) "governmental agency" includes, with respect to the
26 state or federal government or a municipal government, a legislative
27 body, board of regents, administrative body, board, commission, com-
28 mittee, subcommittee, authority, council, agency, public corporation,
29 school board, department, division, bureau, or other subordinate unit,

1 whether advisory or otherwise, of the state, federal, or municipal
2 government.

3 * Sec. 12. AS 44.83.384(b)(1) is amended to read:

4 (1) is economically feasible [MEETS THE REVENUE REQUIRE-
5 MENTS OF AS 44.83.394]; and

6 * Sec. 13. AS 44.83.384(c) is amended to read:

7 (c) Notwithstanding (b)(1) of this section and AS 44.83.396 -
8 44.83.398 [AS 44.83.394 - 44.83.398], the fund may be used by the
9 authority to provide money for the cost of a power project that is or
10 was either constructed or [AND] owned by the United States government
11 if the requirements of this subsection are met. The provisions of
12 AS 44.83.177 - 44.83.177 do not apply to a power project financed
13 under this subsection. The authority may use money in the fund for
14 the cost of a power project under this subsection if

15 (1) the legislature enacts a law approving the project;

16 (2) the division of budget and management in the Office of
17 the Governor reviews a feasibility study and a plan of finance for the
18 project and determines that the feasibility study complies with the
19 requirements for a feasibility study submitted under AS 44.83.181(b)
20 and that the plan of finance complies with the requirements for a plan
21 of finance submitted under AS 44.83.181(c); and

22 (3) the project meets the other requirements of this chap-
23 ter.

24 * Sec. 14. AS 44.83.386 is amended to read:

25 Sec. 44.83.386. INVESTMENT OF FUND. The Department of Revenue
26 shall invest the money in the fund in accordance with AS 37.10.070 and
27 37.10.075. The Department of Revenue shall provide money in the fund
28 to the authority only after costs have been [A COST FOR A PROJECT IS]
29 incurred or amounts in the fund have been otherwise obligated under

1 contracts for the acquisition and construction of a project. Amounts
2 that have been obligated, but for which costs have not yet been incur-
3 red, may be segregated by the Department of Revenue or transferred to
4 the authority only with the prior approval or agreement of the commis-
5 sioner of revenue. Interest received on money that is segregated or
6 transferred under this section must be deposited in the general fund.

7 * Sec. 15. AS 44.83.396(a) is amended to read:

8 (a) A power project that is acquired or constructed as part of
9 the energy program for Alaska is owned, [BY THE STATE] and shall be
10 administered, by the authority.

11 * Sec. 16. AS 44.83.396(c) is amended to read:

12 (c) The authority shall enter into a contract or lease under
13 reasonable terms and conditions to permit the applicant utility to
14 operate the power project when the applicant utility is the only
15 wholesale power customer to be served directly by the power project
16 unless the authority determines a utility making application for a
17 contract or lease to operate a power project is not a qualified util-
18 ity or is not capable of operating that power project efficiently and
19 in a manner that is consistent with national standards for the indus-
20 try and with agreements with bondholders.

21 * Sec. 17. AS 44.83.396(e) is amended to read:

22 (e) When the authority permits a power project to be operated by
23 a qualified utility under a contract or lease, the authority shall

24 (1) review and approve the annual budget for the operation
25 and maintenance of the power project; and

26 (2) assure that the project is being operated efficiently
27 and in a manner that is consistent with national standards for the
28 industry and agreements with bondholders.

29 * Sec. 18. AS 44.83.398(b)(2) is amended to read:

1 (2) If, by July 1, 1990 [1986], the legislature has not
2 appropriated at least \$3,500,000,000 [\$5,000,000,000] to the fund, in
3 addition to appropriations to the fund of interest earned on money in
4 the fund, the authority shall, beginning on that date, establish and
5 maintain a separate wholesale power rate applicable to each power
6 project that is acquired or constructed under the energy program for
7 Alaska. The wholesale power rate shall be computed by the authority
8 annually, or more frequently as may be necessary, and shall be the
9 greater of

10 (A) 10 percent of the amount the authority has in-
11 vested in the power project, including loans and grants made by
12 the state; or

13 (B) the rate that the authority estimates is necessary
14 to produce revenue sufficient to pay

15 (i) operation, maintenance, and equipment re-
16 placement costs of the power project;

17 (ii) the power project's proportionate share of
18 debt service on state loans and bonds for all power projects
19 in the energy program for Alaska, determined in accordance
20 with (g) of this section; and

21 (iii) safety inspections and investigations of the
22 power project by the authority.

23 * Sec. 19. AS 44.83.398(c) is amended to read:

24 (c) The authority shall transmit all the money that it receives
25 under (a) of this section to the commissioner of revenue for deposit
26 in the state general fund except for money it has pledged or otherwise
27 covenanted to secure bonds [IN ACCORDANCE WITH CONTRACTS WITH BOND-
28 HOLDERS].

29 * Sec. 20. AS 44.83.398(e) is repealed and reenacted to read:

1 (e) After determining the wholesale power rate for a power proj-
2 ect under the provisions of this section, the authority may adjust the
3 rate or change the rate provisions to insure that the revenue derived
4 from that power project and the aggregate revenues of the authority
5 will be adequate to comply with rate covenants and other agreements
6 contained in any trust indenture or trust agreement entered into by
7 the authority for the security of the holders of bonds issued to
8 finance the power project.

9 * Sec. 21. AS 44.83.398(h) is amended to read:

10 (h) Notwithstanding (g) of this section, in the 1983 state fis-
11 cal year the proportionate share of debt service under (b) of this
12 section, expressed as a rate, for a power project for which a con-
13 struction contract has been awarded before the effective date of this
14 Act may not exceed the average debt service component of the wholesale
15 power rate for all power projects in the energy program for Alaska.
16 The limit imposed by this subsection shall be increased in the 1984
17 state fiscal year to four percent above the average debt service com-
18 ponent of the wholesale power rate for all power projects in the
19 energy program for Alaska and by an additional four percent above that
20 average in each succeeding state fiscal year. If application of this
21 subsection results in the production of insufficient revenue to pay
22 the total debt service for all projects in the energy program for
23 Alaska, a project that does not have its share of debt service limited
24 under this subsection shall be subject to a rate in addition to the
25 rate established under (b) of this section. The additional rate is
26 the rate that the authority estimates is necessary to produce revenue
27 that is sufficient to pay the difference between the total debt ser-
28 vice for all projects in the energy program for Alaska and the revenue
29 actually produced to pay that debt service, multiplied by a fraction

1 whose numerator is the total cost of the project and whose denominator
2 is the total cost of all of the projects that are subject to the
3 additional rate. In this subsection, "projects in the energy program
4 for Alaska" does not include an intertie that is authorized as a
5 separate project as described in (f) of this section.

6 * Sec. 22. AS 44.83.425(2) is amended to read:

7 (2) "debt service" means the amounts covenanted with re-
8 spect to, or pledged to pay, bonds under a trust agreement securing
9 [CASH FLOW NECESSARY TO SECURE] bonds;

10 * Sec. 23. AS 44.83.186, 44.83.195(b), 44.83.382(b)(2), and 44.83.394
11 are repealed.

12 * Sec. 24. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).

Alaska State Legislature

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



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

Senate

Committee on Resources

TO: Senate Resources Committee Members
FROM: Senate Resources Committee Staff
RE: Hearing, 4/15/83
DATE: April 14, 1983

The following bills will be before the Committee Friday, April 14.

SB 11 MAKING SPECIAL APPROPRIATIONS TO THE ALASKA POWER AUTHORITY.

Please note that a draft Committee Substitute has been prepared for this bill, which would appropriate funds for specific projects. We are expecting testimony on these projects from the APA at our hearing.

SB 168 RELATING TO THE ALASKA POWER AUTHORITY.

Attached are the Governor's transmittal letter and an analysis prepared by the Senate Advisory Council. SB 168 would permit meetings of the APA by electronic media, make it permissive rather than mandatory that the authority issue bonds for the energy program, ensure that a feasibility study of a proposed project include an independent cost estimate, require APA to enter into power sales contracts for energy transmission as well production, and repeal the "Susitna blackmail clause" (the portion of the wholesale power rate provision which makes future rates contingent on the appropriation of \$5,000,000,000 to the power development fund before July 1, 1986).

SJR 3 PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF ALASKA RELATING TO AGRICULTURAL RIGHTS IN STATE LANDS.

The amendment proposes when State lands which are classified as agricultural and are disposed of either by sale or long term

Committee Memo
April 14, 1983

lease, only agricultural rights to the lands can be conveyed. The amendment is designed to place in the Constitution the requirements of existing law to ensure that agricultural lands are never converted to other uses.

The hearing is scheduled for Friday, April 14th at 3:00 p.m. in the Beltz Room.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 15, 1983

SUBJECT: Alaska Power Authority
(SB 168)

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: *LHA* Linn H. Asper
Legislative Counsel

I have prepared statutory language for SB 168 that would allow a director of the authority to vote on a lease or contract with an electric cooperative even though the director is a member of that cooperative:

On page 2, line 13: After "purposes." add a new sentence to read:

"Notwithstanding the other provisions of this subsection, a director who is a member of an electric cooperative may vote on a resolution of the authority relating to a lease or contract with that cooperative."

LHB:ljb
15/001

Alaska State Legislature

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



POUCH V
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(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

April 20, 1983

Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: SB 168, Relating to the Alaska Power Administration

On Friday, April 22, the Committee will again take up consideration of this bill. This bill makes numerous clarifying and "house-keeping" changes in the statutes governing operations and specifically bonding matters of the APA. At the hearing on the bill on April 15, several amendments were offered. It was requested that the amendments be submitted to APA for comment. The APA and other concerned parties have subsequently agreed to the attached three amendments numbered Amendments 1-3. Amendment number 2 was changed from its original form to retain the existing language contained in SB 168 and strike another redundant clause.

Senator Fischer has also submitted the attached Amendment No. 4. This amendment is currently being reviewed by the APA and the Division of Legal Services. The amendment would require that prior to any project construction, the APA would have to have completed power sale contracts.

In addition, Senator Eliason may propose an amendment to include the general provisions of HB 4 barring blanket insurance programs by the state on projects such as hydroelectric construction projects. Attached is a copy of HB 4.

STATE OF ALASKA

Bill Sheffield, Governor

APR 21 1983

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

465-3600

April 21, 1983

The Honorable Betty Fahrenkamp
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 168, relating to the
Alaska Power Authority
A.G. No. 377-023-83

Dear Senator Fahrenkamp:

The governor's office has relayed a request for our comments regarding the amendments to SB 168 which were proposed at the hearing of the Senate Resources Committee on April 15, 1983. I discussed the proposed amendments with the APA's staff, bond counsel and underwriters, and found no opposition to the proposed amendments. Our comments regarding each specific amendment follow:

(1) This amendment to page 1, section (d), lines 4-13, would allow a director to vote on a contract or lease between the power authority and an electric co-operative of which the director is a member, and would require the director to disclose this membership at the time of voting. We agree that this amendment would ensure that the APA Board is able to act on contracts and leases regardless of the membership of directors in any electric co-operative.

(2) This amendment to page 4, section 6, lines 4-10 would omit an amendment to AS 44.83.185(a), which would have required that the APA submit to the legislature an independent cost estimate for a proposed new project along with its feasibility report and plan of finance for that project. The APA could still obtain an independent cost estimate at that stage but would not be required to do so. Requiring an early, independent cost estimate would give the legislature more information with which to evaluate a project before approving it. However, we do not view this requirement as essential to facilitating the

rating quality or marketability of bonds issued for a project which has been approved.

(3) As we understand it, this proposal is to repeal AS 44.83.394 and make conforming amendments to AS 44.83.384(b)(1) and (c). The reference to "deleting" AS 44.83.394 is confusing. If section 14 is simply deleted from SB 168, AS 44.83.394 will remain unchanged. Section 22 of the bill, page 9, line 19 could be amended to repeal AS 44.83.394. There is a typographical error in the proposed amendment; in reference to page 5, line 29 of the bill, the change should be from AS 44.83.394 to AS 44.83.396. There is no section AS 44.83.395. We agree that the provisions of AS 44.83.384(b)(1) and 44.83.394 are presently redundant, and that the proposed repeal of AS 44.83.394 and amendment to AS 44.83.384(b)(1) would solve this redundancy.

I will be present at your hearing of this bill on Friday, April 22, 1983, and will testify if there are any questions.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Laura L. Davis

Assistant Attorney General

LLD:jf

cc: Ray Benish
Director of Finance
Alaska Power Authority

Dick Lyon
Commissioner
Department of Commerce & Economic
Development

Emil Notti
Legislative Assistant
Office of the Governor

April 15, 1983

Proposed Amendments , SB 168 (APA)

- 1) On page 2, section (d), lines 4-13, make the following changes:

"(d) A director of the authority may not vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if the director is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association that is a party to the contract or lease. When abstaining from voting, the director must disclose the reason for the abstention. A director who is a member of an electric cooperative which is organized under or subject to the Electric and Telephone Cooperative Act (AS 10.25.010--10.25.650) as provided in that act may vote on a resolution regarding a contract or lease to which the cooperative is a party and shall disclose that membership at the time of voting. A resolution of the authority that is approved by a majority of the directors present who are not barred from voting under this subsection is a valid action of the authority for all purposes."

Rationale

The intent of the amendment is to exempt directors who are customers of electric coops, and therefore by definition part owners, from the conflict of interest prohibition on voting. It is conceivable that a majority of the Board might be coop customers, such as of Chugach Electric Coop in Anchorage, at make Board action on a project such as the Anchorage-Fairbanks Intertie problematic.

- 2) On page 4, delete section 6, lines 4-10. That section reads as follows:

Sec. 6. AS 44.83.185(a) is amended to read:

(a) The authority shall submit a feasibility study and plan of finance, including a cost estimate from an independent source, for a proposed new project to the legislature. When the report of the division of budget and management examining the feasibility study and plan of finance is completed as required by AS 44.83.183, it shall be submitted to the legislature.

Rationale

Section 44.83.186 requires an independent cost estimate after the legislature approves a project and allows only a 7.5% increase in costs without having to revise the feasibility study and resubmit the study and the independent estimate to the legislature for reapproval. The APA is currently obtaining independent cost estimates in advance and verifies estimates in-house to avoid coming back to the legislature. The amendment is felt to be redundant and would require unnecessary costs, especially in the case of smaller projects.

- 3) Page 7, line 1, Sec. 14. "AS 44.83.394 is deleted."

Page 5, before line 28, add the following new section and renumber accordingly:

Sec. 12. AS 44.83.384(b)(1) is amended to read:

"(b) Money in the fund may be used under (a) of this section only for a project that

(1) [meets the revenue requirements of AS 44.83.394] is economically feasible; and "

Rationale

The effect of the Administration's amendment in the bill to 44.83.394 would be to make the project expenditures dependent on an authority's finding that the project is economically feasible. Section 44.83.394(b) addresses the same allowed uses of money in the fund and makes the sections redundant. This amendment would preserve the intent to ensure economical feasibility while eliminating the redundancy.

On page 5, line 29, change "AS 44.83.394--" to "AS 44.83.395--"

This is a conforming amendment to the above change.

ALASKA POWER AUTHORITY

334 WEST 5th AVENUE - ANCHORAGE, ALASKA 99501

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

TELECOPIED 4/21/83

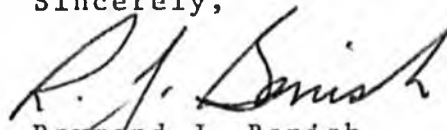
April 21, 1983

Senator Bettye Fahrenkamp
Alaska State Legislature
Pouch V (Mail Stop 3100)
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Pursuant to your request, enclosed is a statement regarding the proposed changes to AS 44.83. The statement includes an alternative section that may be employed for reasons stated.

Sincerely,



Raymond J. Benish
Director of Finance

RJB:kjs

Encl.

cc: Laura Davis, Department of Law
Alaska Power Authority Board
of Directors

The following new section has been proposed for AS 44.83 (Alaska Power Authority's statutes):

AS 44.83.395. POWER SALES CONTRACT REQUIREMENTS. The Alaska Power Authority may not begin construction or site preparation of a power project until power sales agreements have been completed that contractually obligate participating utilities to purchase wholesale power at the rates required under 44.83.398.

This provision would limit the flexibility and bargaining position the Authority may have in obtaining the very power sales agreements (or their equivalents) sought by the author of this proposed legislation. Although obtaining full contractual commitments prior to major construction of a project is generally the preferred course, there may be times when some construction including site clearing may be desirable in order to take advantage of short construction seasons and the like. Furthermore, there may be instances where a prospective purchaser of power may hold out and refuse to sign or "complete" a power sales agreement despite the fact that other prospective purchasers already have. Other problems with the proposed legislation relate to the very intent of a "completed" power sales agreement. Does a "completed" power sales agreement preclude amendments and revisions in order to, for example, make the agreement more palatable to the underwriting community? Consequently, it is suggested that the legislative intent underlying the proposed new section may be met

by providing that clear memoranda of understanding or letters of intent (commitments which are something less than a "complete" power sales agreement) would afford the Authority sufficient flexibility to go forward with construction. The following version of the proposed new section is therefore offered:

AS 44.83.395. REQUIREMENTS FOR THE SALE OF POWER. The Authority may not begin construction of a power project until the Authority obtains binding assurances, in the form of letters of intent, memoranda of understanding or contracts for the sale of power, from prospective purchasers of power from the power project that the amounts required under AS 44.83.398 will be paid to the Authority.



Official Business

Alaska State Legislature

Senate

Office of the President

APR 25 1983

Pouch V
State Capitol
Juneau, Alaska 99811

April 11, 1983

TO: Senate Resources Committee
Senator Bettye Fahrenkamp, Chair

FROM: Senator Jay Kerttula
Senate President

SUBJECT: SB 168

When the Resources Committee considers SB 168, the Governor's bill that would restructure the Alaska Power Authority, you may wish to refer to the attached memo by Kurt Dzinich of the Senate Advisory Council. He has provided some valuable suggestions as to how the APA may better serve the energy needs of the State.

Thank you for considering this report.

Attachment

Alaska State Legislature

Advisory Council Members
Senator Kerttula, Chairman
Senator Bennett
Senator Vic Fischer
Senator Fahrenkamp



Pouch V
State Capital
Juneau, Alaska 99811
Phone: (907)465-3114

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: Senator Kerttula
President
Alaska State Senate

FROM: Kurt S. Dzinich *KSD*
Senior Advisor
Senate Advisory Council

DATE: April 1, 1983

RE: Alaska Power Authority

In response to our recent discussion, I am providing you with some thoughts on how to improve the workings and the effectiveness of the Alaska Power Authority in carrying out its legislatively mandated obligations. While the Authority has done an admirable job under sometimes trying circumstances, it is clear that there is room for significant improvement.

My observations of the Authorities' activities since January of 1982 have convinced me that the area needing the most immediate attention is the board of directors. Currently, the board consists of 7 directors, three of which are commissioners of principal executive departments, three are public directors, and one is specifically designated by statute as the director of Budget and Management. The directors elect one of their members as chairman.

The greatest weakness of the current setup is that the commissioners are much too busy running their own departments and fending off alligators to be able to devote sufficient time to APA matters to do justice to the Energy Program for Alaska. For example, the director of the Budget and Management division (proposed to become Office of Management and Budget) who has a pivotal role to play by statutes, has not managed to attend neither one of the two crucial board meetings under the new administration. This is especially disturbing since at these meetings the new board members were to be acquainted with the operations of the Authority and set the tone for the future.

The second major weakness of the present Board is the fact that the chairman is only a part-time job. This makes it necessary for the executive director to spend a significant portion of his time traveling and testifying at various meetings and hearings. Since the executive director is also responsible for directing a staff of almost fifty, as well as millions of dollars worth of contracts, it would be better for the Energy Program if he was able to devote more time to these key and essential tasks.

The third significant weakness of the present set-up is that as the State revenues decline and the competition for the funds increases by the various departments, it is conceivable that the directors, who are also commissioners, would be faced with a conflict of interest in deciding which projects or programs to recommend for approval.

The fourth area of concern is that the Legislature has no input into the Board or the Authority except at budget time. The Energy Program for Alaska is much too important to be handled on that infrequent basis.

I believe that the best way to eliminate the problems noted above is to restructure the Board as follows:

1. Appoint a full-time chairman, to be selected by the Governor and approved by the Legislature.
2. Appoint 5 part-time board directors who are not commissioners or directors of major organizational elements such as OMB. Three of the directors to be appointed by the Governor and two by the legislative leadership. The directors should have a sound business or engineering background in the area of energy generation, utility operations, etc.
3. Discontinue the statutory requirement designating OMB as the reviewing agency of reconnaissance and feasibility studies and the finance plans. The plan of finance should be reviewed by an agency such as Department of Revenue with expertise in financing and bonding which could also assess the overall impact of a new project on the State's financial posture. The studies on the other hand should be reviewed by an organizational element dealing with energy issues. For example, I believe that the Division of Energy and Power Development would be a much more appropriate agency than OMB due to staff expertise in similar functional areas.

I have also considered making APA a line agency. While there would be some advantages to such a move, I am convinced that they would be outweighed by the disadvantages. The major advantage of the the Authority is its ability to secure financing through the bond market. This is

absolutely essential given the reality of our decreasing state revenues. If for no other reason than that, the agency should remain as an Authority.

During the past few weeks I have become aware of a memorandum - copy attached - which proposes to realign the way in which the APA Board handles its duties. There are two major areas of concern that I believe will be detrimental to the Energy Program for Alaska.

By going to a subcommittee format it will become much more difficult for the public and other interested parties to follow the activities of the Board. In addition, the subcommittee staff - such as it may be - will in fact become the dominant force in the preparation of decision documents for the Board. Given the past inclinations of some of these staffers, we can anticipate more studies, less vision, and short-term solutions.

The second area of concern is that if the memorandum recommendations are adopted, there will be a needless increase in the bureaucracy. For example, the Board would be hiring "independent" advisors not involved with APA. This seems redundant and totally wasteful of state funds given that the Authority - which works for the Board - already has a staff charged with accomplishing all tasks necessary to allow board members to make intelligent decisions. Of course, the board members must take the time to become familiar with the issues and data being presented there - probably prior to the meetings.

I am also attaching a memo from Commissioner Wunnicke dealing with the formation of an Interagency Susitna Review group. While I have and continue to support coordination between various agencies, some of the things being said in the memo are of concern. The allegation that the agencies have not been involved in the Susitna project has to be considered with amazement and in fact can not be justified. For example, the Susitna Steering Committee was formed in 1980 to informally monitor the progress and provide advice on resolving problems. It consisted of both federal and state agency representatives. In fact it did serve a constructive purpose and only became defunct in 1982 when some members objected to not having authority to impose their views.

The APA hired a full-time expert in the environmental and natural sciences in early 1982 for the main purpose of coordinating with the federal and state agencies.

While APA did in fact provide copies of the final FERC license application to key state agencies, it remains as the applicant and therefore responsible for the content. Once FERC deems the application as being acceptable for processing, it provides copies to federal, state and local agencies for comment in their respective areas of expertise. It would be therefore redundant to have the Interagency group try to accomplish the same task(s).

4/1/83

While I am opposed to the Interagency Review group as proposed, a similar advisory group could serve a useful purpose if it confined itself to recommending to the APA Board resolutions of major interagency conflicts such as length of fish studies or fish mitigation measures. By the same token, once the decision is made, individual agencies should not continue with delaying tactics but support the overall goal and solutions.

I am totally opposed to any member of such a group as proposed to be able to request funds from APA. Coordination and review is an inherent function of any such organization and should be handled by routine internal budgeting process.

I hope my comments are of some help in deciding if and how you want to proceed. I believe the Energy Program in Alaska is one of our larger and more important programs that should not be allowed to detract from its legislatively mandated goals. I would be happy to discuss further details at your convenience.

KSD;lal
Attachments

RECEIVED

MAR 15 1983

ALASKA POWER AUTHORITY

Susitna Interagency Review Group

Date of Meeting: 3/17/83
Time of Meeting: 2:00 p.m.
Meeting Location: DNR Conference Room (#18)
555 Cordova St., Anchorage, Ak. 99510

RECEIVED

MAR 1 1983

ALASKA P.A.

AGENDA

Purpose of Meeting: To discuss a proposal to establish more effective ways for state agencies to facilitate the SuHydro project planning and permitting.

- I. Introduction and background. Jim Barnett, Deputy Commissioner, DNR.
- II. Summary of state agency comments to Draft F.E.R.C. application for SuHydro project. State agency representatives.
- III. Discussion of Commissioner Wunnicke's 3/9/83 memo proposing interagency review group.
- IV. Decisions and followup.

MEMORANDUM
10 Governor Sheffield's Cabinet

DATE: March 9, 1983

FILE NO: 4843.1

TELEPHONE NO. 465-2400

FROM ^{NLS} Esther C. Wunnicke
Commissioner
Department of Natural Resources

SUBJECT: Formation of Interagency
Review Group for Susitna
Dams Licensing

The need for more State involvement in planning for hydroelectric projects has recently been emphasized by the Alaska Power Authority Board, by the Federal Energy Regulatory Commission, and in testimony before the Senate State Affairs Committee. The Tye Lake project also points to this need.

To date, although FERC directed the Alaska Power Authority "to consult with the appropriate resource agencies in preparing its (Susitna) application," the agencies have not been directly involved in the planning or review of resource-related environmental programs for Susitna, and they have not seen the final license application (which describes these programs) submitted to FERC by the APA.

The State's interests would be served by the immediate formation of an interagency group to review and provide input for the FERC license application. The group's charge would be to ensure the appropriate participation of the State in the licensing process, and to provide the Governor with coherent policy background on the project. All affected state agencies should be represented, and the group should be divided into economic (finance, revenue) and environmental (land, water, habitat, socio-economic) subgroups.

The FERC licensing process for the Susitna project is just beginning. The State needs to develop a mechanism of providing coherent analysis of the proposal. Thus, I invite your representative to meet with other agency representatives on this topic next week in Anchorage. I have asked Jim Barnett, Deputy Commissioner of this Department in Anchorage, to chair the meeting on Thursday, March 17 at 2:00 p.m. in the DNR Conference Room 18 at 555 Cordova Street. Please call Jim's office (276-2653) to confirm. A draft agenda for the meeting is attached, and a packet of proposed draft materials should be available in Anchorage by Monday, March 14.

Thank you for your attention.

cc: Lennie Boston
Governor's Office

DRAFT AGENDA

Following is the proposed outline for discussion of the interagency group's responsibilities and organization:

I. Department involvement.

Each interested Department will have a single designated representative to the group. However, other agency staff will be involved in the task forces working on projects.

II. Organization.

Two subgroups will be formed for the study of environmental and economic issues. Task forces will report to the subgroups on specific assignments.

III. Charge.

The interagency group will respond for the State to requests for supplements to the FERC license, through APA. It will also review and report on other issues that it finds significant.

IV. Reporting.

The group will report to the Board of the Power Authority and to the Commissioners of the affected Departments.

V. Funding.

No additional funding will be provided for the group's operations, as the function is coordination, rather than new research. However, agencies unable to meet necessary costs are directed to request funding from APA project budgets.

MEMORANDUM

APA Board

TO: ~~COMMISSIONER DANIEL A. CASEY~~
FROM: SPECIAL ASSISTANTS
DATE: 3/10/83
SUBJECT: APA BOARD POLICY AND PROCEDURES

At a series of meetings this week the staff to the Cabinet members of the APA Board* considered the question of how the Board can gain greater policy and procedural control over APA activity. Our preliminary recommendations are set forth below. They are organized according to functional lines following loosely the format of an APA staff document entitled "Administrative Policy Issues" (attached). We recommend the creation of several Board Subcommittees to facilitate managing the large and complex volume of work.

Policy and Procedural Areas

- I. Finance and Project Selection
- II. Project Management/Contracts
- III. Audit
- IV. Legislation
- V. Routine Business

I. FINANCE AND PROJECT SELECTION

Staff recommends that the Board establish a Finance Subcommittee to handle the following financial issues, with the Commissioner of Revenue or his designee as an ex-officio member.

a. Project Selection Process -- Financial considerations both for state funds and debt are determined by the requirements of specific projects. A critical APA activity therefore is project selection, as good projects are less likely to encounter financial problems. The Finance Subcommittee should review current procedures and establish Board policy on analytic methods for project selection. Issues include criteria for prioritizing research, Board review and approval of RFP's, overall project review process, treatment of return on equity, treatment of non-hydro alternatives and existing utility facilities, project sizing, critical assumptions, and modeling capabilities. Professional services contracts for recon and feasibility studies are integral to the selection process.

*Tom Singer, DOT; George Matz, OMB; Ned Farquhar, DNR; Ed Eboch, Commerce.

b. Long Range Financial Plan -- The Board should establish financial policies pursuant to the statutorily mandated adoption of an APA Long Range Financial Plan and project specific financial plans. Financial planning should be integrated with the long range budget preparation and approval process. Issues include fiscal impact, power pricing policies, project debt/equity ratios, borrowing policies, expenditure policies, legislative funding of debt reserve funds, use of the state's moral obligation, and power marketing (see especially "Marketing of Project Power Under the Energy Program for Alaska", 12/28/82 memo from Hyles Yerkes to Eric Yould in the Power Rates Appendix of the Board packet for the 3/14/83 meeting.)

c. Interim Financing -- The Board should review current interim financing policy and practices. Issues include incremental funding and project phasing, reliance on legislative intent for future appropriations, securing debt with APA general assets, and refinancing the \$200 million outstanding Notes.

d. Return on State Equity -- State general fund contributions to power projects are presently treated as grants but could provide revenue to the Treasury in the future. The new Board should establish policy on returns to equity. Issues include target amount and timing of returns, and incorporation of equity returns in project analysis (the APA's proposed legislation would repeal the current ambiguous requirement).

e. Power Sales Contracts -- Areas where the Board retains discretion, given legal requirements of lenders and APA statutes, needs clarification. Issues include timing requirements for these contracts, budget and revenue implications where additional subsidies are required, e.g. if the cost of hydro is to be made competitive with diesel, and conformance with plans of finance.

f. Wholesale Power Rates -- See (d) above. Statutory provisions should be described in plain language.

g. Loans and Grants -- The Board should establish consistent criteria and procedures, interest rate policy, guidelines for Board involvement in loan approvals, and regular reporting on this highly fragmented activity.

h. Financial Reporting -- Pursuant to the 12/82 "Report to Management" audit recommendations, financial reporting needs to be improved and consolidated to provide centralized information on the multitude of APA funding sources, uses, and accounts.

II. PROJECT MANAGEMENT/CONTRACTS

APA contracting activity can be divided into the following areas:

- Construction and Procurement Contracts
- Professional Services Contracts
- Project Operation and Maintenance Contracts
- Procurement of Materials and Services Required for Normal Project Operation and Maintenance
(Power Sales Contracts are covered under Finance above)

Staff recommends creation of a Project Management Subcommittee to focus on policy and procedure for awarding and tracking contract activity. Issues include selection criteria, guidelines for Board involvement, handling of ATN's and contract amendments, format and content of staff presentations on contracts, periodic status reporting, and budget implications (especially future commitments, and decisions which require additions to APA staff).

III. AUDIT

Staff recommends that the Board immediately provide for an Assumption Audit (possibly in conjunction with the Legislative Budget and Audit Committee) to thoroughly review APA activities. An Assumption Audit would effectively familiarize the new Board with the APA and provide a thorough beginning for future efforts.

Staff further recommends that the Board establish an Audit Subcommittee to manage this effort and future independent Board audits. The Board should also review progress made to date on implementing the recommendations of the Price Waterhouse 12/82 "Report to Management."

IV. LEGISLATION

a. Statutory Matters and Regulations -- The Board should establish procedures for providing policy input to proposed changes to the APA statutes. The Board should consider retaining independent legal advice (including bond counsel). Periodic reporting on the status of bills during the legislative session may be desired.

b. Liaison with the Legislature -- The Board should establish policies governing APA staff communication with the legislature, especially representation at legislative hearings and requests for information or other items.

V. ROUTINE BUSINESS

a. Board/Staff Liaison -- The Board has before it recommendations contained in a 3/1/83 memorandum from Commissioner Wunnicke. In addition, the Board may wish to adopt additional procedures. Periodic brief Project Summaries would help to place Board decisions in their full context. These could include:

-- Analytics Summary: project description, recon and feasibility results, finance plan summary, update results.

-- Approval Milestone Chart: recon and feasibility study approval, Board/Governor approval, legislative approval, borrowing authorizations (legislative and Board), FERC liscence, power sales contracts, other liscences and permits.

-- Funding Summary: total project cost, state monies received (loans and grants), legislative intent, anticipated future budget requests, borrowed monies, anticipated future borrowing, significant covenants and agreements.

-- Cost Performance Progress Curves: status to date and forecasts for major activities like engineering, design, procurement, and construction.

-- Anticipated Problems: problem statement, implications, recommendations.

b. Budget Preparation and Approval Process -- The Board should establish procedures for providing input to current and future APA budgets. Financial plans should also be considered here. Presentation of agenda items at Board meetings should include budget implications.

c. Financial Advisor, Underwriter, and Consulting Engineer Selection -- The Board should consider obtaining independent advisors not financially involved in APA development activity.

d. Project Construction Decisions -- The Board should consider procedures for staff presentation of "Final Project Reports" and for Board approval, policy on project phasing, and consideration of financial implications of these decisions.

e. Project Liscencing and Design Decisions -- The Board should consider policies and procedures for Board involvement in liscencing and design activities.

f. Ownership of Projects -- The Board should establish policy on APA ownership of projects and the Energy Program for Alaska. The current system appears to offer disincentives for communities with "good" projects to join the system.

g. Power Cost Assistance Program -- The Board should re-evaluate the policies behind this program. Periodic financial reporting and consideration of long term budget implications should be required.

h. Annual Report -- The Board should review the content and format, consider changes, and require formal Board adoption.

i. Public Relations -- The Board should examine current APA public relations activity and consider policies and procedures to provide Board control. These activities influence public expectations and opinion.

j. Litigation Status -- The Board may wish to receive periodic status reports on pending lawsuits involving the APA and their implications.

k. Board Liability -- The Board may wish to receive a briefing by the Dept. of Law on the extent of their legal liability in APA activity.

The Chemical Bank v. Washington Public Power Supply System case decided by the Washington Supreme Court on June 15, 1983 in which the court holds invalid power sales agreements supporting \$2.5 billion in public bonds will have a profoundly negative effect on public power financing. The court in the WPPSS case specifically said that the municipalities and the PUDs lacked statutory authority to enter into contracts with WPPSS which required the utilities to make payments regardless whether a project was completed and regardless of reduction or curtailment of project output. As well, the court stated that stepup provisions, i.e., provisions requiring payments on behalf of defaulting parties, were not authorized under Washington law.

In light of this decision, bond counsel deems it necessary that the authority of Alaska Power Authority to enter into power sales agreements with stepup and take-or-pay provisions must be absolutely clear. Bond counsel feel that such contracts are currently authorized by the statute; however, in order to make bonds secured by such contracts marketable, in light of the WPPSS case, it is felt necessary to further specify the contracting authority. It should be emphasized that this amendment does not authorize the APA to transfer to utilities the risk of non-completion of a project, as was attempted by WPPSS.

Add the following

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

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

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

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

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

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



ALASKA RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

MEMORANDUM

June 24, 1983

TO: Pat Pourchot
Senate Resources Committee

FROM: David Hutchens
Executive Director

SUBJECT: Section 21, SB 168

AS 44.83.398 (a) and (d) require utilities who purchase wholesale power from one of the Power Authority projects to agree with the APA to do two things in dealing with their industrial customers:

- (1) give preference in selling retail power to all classes of consumers except industrial consumers, and
- (2) charge industrial consumers a rate equal to or greater than the retail rate for residential consumers.

These provisions were enacted as a part of SB 25 in 1961. At that time it was assumed that APA power projects would be largely financed by state appropriations, and the resulting power rates would be extremely low. These provisions were intended to prevent the state from subsidizing big industrial power users (like aluminum reduction plants) through their power rates.

The situation has changed now, and revenue bond financing has once again become the major component of new investments in APA projects. Instead of giving industry too good of a deal, the problem now is keeping utility rates competitive with the cost for industrial consumers to generate all their own power. There is a

DEMOCRACY IN ACTION

very serious need for the utilities to be able to buy power from APA projects which is presently surplus, and sell it to their industrial customers at attractive rates on an interruptible basis. Without modification, the present law makes that virtually impossible. Unless this kind of change is made, the APA will find it extremely difficult to market the available energy from its projects, and the utilities will lose (or not achieve) economies of scale.

Section 21 of SB 158 recognizes the fact that it costs less per KWH to serve one big customer than it does to serve 500 little ones. An unregulated utility buying power from APA would be authorized to sell electricity to its industrial customers at less than the residential retail rate only if the utility can demonstrate to the APA that this increased sales volume (or increased utilization of the APA project) will result in lower rates for the residential consumers than they otherwise would have experienced.

Determining the appropriate allocation of costs among the various classes of consumers is the very essence of rate design regulation by the Public Utilities Commission. In order to let the expertise of the APUC govern in these matters and in order to avoid two separate (and probably conflicting) rate setting procedures, Section 21 provides that for regulated utilities, the APUC will determine the retail rates for all classes of consumers including industrial consumers. In proposing the amendment which eventually produced Section 21, it was my intent that the APUC would establish the rate design on a cost of service basis in its usual way without any additional rate hearings being prompted by the passage of this bill.

It needs to be noted that Section 21 amends only the existing provision on rates. The existing requirements would remain in effect that preference in providing service must be given to all classes of consumer except industrial consumers.

*intent of original
is not to use power prices as
a loss leader to attract industry
keep conservative language
This is a balancing bill -
& such changes require
thought & practical
comment.*

* Sec. 20. AS 44.83.398(c) is amended to read:

(c) The authority shall transmit all the money that it receives under (a) of this section to the commissioner of revenue for deposit in the state general fund except for money it has pledged or otherwise covenanted to secure bonds [IN ACCORDANCE WITH CONTRACTS WITH BOND-HOLDERS].

*res sets greater savings
w/o amendment*

*wholesale
rate is mandated
to be fixed by
project.*

*STUDY + report
is due on rate structures
AND NO DISCUSSION IN COMMENT
yet received on impacts -
plus effects on*

* Sec. 21. AS 44.83.398(d)(2) is amended to read:

(2) may not be less than the rate charged residential consumers unless the utility demonstrates that a lower rate for industrial consumers will result in a rate for residential consumers that is lower than it would be if the industrial rate were not allowed; notwithstanding the provisions of this paragraph, if a utility is regulated by the Alaska Public Utilities Commission the rates for all classes of consumers of that utility shall be determined by the Alaska Public Utilities Commission.

* Sec. 22. AS 44.83.398(e) is repealed and reenacted to read:

(e) After determining the wholesale power rate for a power project under the provisions of this section, the authority may adjust the rate or change the rate provisions to insure that the revenue derived from that power project and the aggregate revenues of the authority will be adequate to comply with rate covenants and other agreements contained in any trust indenture or trust agreement entered into by the authority for the security of the holders of bonds issued to finance the power project.

* Sec. 23. AS 44.83.398(h) is amended to read:

(h) Notwithstanding (g) of this section, in the 1983 state fiscal year the proportionate share of debt service under (b) of this

PS

the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether the parties have notice. Neither the resolution, trust agreement nor any other instrument by which a pledge is created need be recorded or filed under the provisions of the Uniform Commercial Code to be perfected or to be valid, binding or effective against the parties.

* Sec. 6. AS 44.83.185(a) is amended to read:

(a) The authority shall submit a feasibility study and plan of finance, including a cost estimate from an independent source, for a proposed new project to the legislature. When the report of the division of budget and management examining the feasibility study and plan of finance is completed as required by AS 44.83.183, it shall be submitted to the legislature.

* Sec. 7. AS 44.83 is amended by adding a new section to read:

Sec. 44.83.192. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS. In requesting bids and awarding construction contracts under this chapter the authority may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker, ^{delete} and may not agree to provide insurance to a contractor who is awarded a construction contract.

Support { Jeff Berry supports existing language
delete RAY Benich - APA wants deletion
Anselm Stracke - 2nd Com. of Admin

* Sec. 8. AS 44.83.195(a) is amended to read:

(a) When a project is operated by the authority, the authority shall enter into one or more contracts for the sale of electrical power, energy, transmission capacity, or service from the project.

HCS CSSB 168 (Fin)

Amendment #1

*Pat
Check*

Sec. 3

AS 44.83.092 Authority for Municipalities and Utilities to enter Power Sales Contracts

This section deals with the Washington Public Power Supply System (WPPSS) case from the Washington Supreme Court case where the court held the local utilities did not have the legal authority to enter into power sales contracts. The new section lays out the essential elements of a power sales contract and grants the authority for the local utilities to enter the contracts. It does not mandate the local utilities to enter such contracts.

Sec. 8 AS 44.83.192 Insurance Requirements in Construction Contracts

This section says the authority may not require a contractor to buy insurance from a particular broker or may not agree to provide insurance to a contractor.

Sec. 20. AS 44.83.398(b)(2)

This section is the "Susitna equity" clause and the House has it amended to be effective in 1991 and at dollar figure of \$5 billion dollars.

Sec. 25

This section authorizes a third turbine at Terror Lake without a cost figure.

Sec. 26

This section authorizes Chester Lake hydroelectric project at a construction cost of \$13,200,000.

The industrial rate section has been removed in its entirety.

The House Letter of Intent deals with the Susitna equity clause by telling the Authority to bond finance the present projects and asks the Governor to prepare a plan for the equity in future Energy Program for Alaska Projects. The Letter also directs the Authority to enter negotiations for the sale of power to U.S. Borax. The Authority would then return for necessary legislation to implement the sale. The Letter also assures the communities that the WPPSS amendment is permissive language and only deals with the legal authority to enter power sales contracts not a requirement to enter such contracts.

A M E N D M E N T # |

Offered in the HOUSE

BY RINGSTAD

TO: HCS CSSB 168(Fin)

Page 1, line 9 through page 11, line 10:

Delete all material and insert the following:

"* Section 1. AS 44.83.040 is amended to read:

Sec. 44.83.040. OFFICERS; MEETINGS; [AND] QUORUM. The directors shall elect one of their number as chairman and may elect other officers they determine desirable. The powers of the authority are vested in the directors, and four directors of the authority constitute a quorum. Action may be taken and motions and resolutions adopted by the authority at a meeting by the affirmative vote of a majority of the [AT LEAST THREE] directors. The directors of the authority serve without compensation, but they shall receive the same travel pay and per diem as provided by law for board members.

* Sec. 2. AS 44.83.040 is amended by adding new subsections to read:

(b) The board may meet and transact business by an electronic medium if

(1) public notice of the time and locations where the meeting will be held by an electronic medium has been given in the same manner as if the meeting were held in a single location;

(2) participants and members of the public in attendance can hear and have the same right to participate in the meeting as if the meeting were conducted in person; and

(3) copies of pertinent reference materials, statutes, reg-

ulations, and audio-visual materials are reasonably available to participants and to the public.

(c) A meeting by an electronic medium as provided in this section has the same legal effect as a meeting in person.

(d) A director of the authority may not vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if the director is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association that is a party to the contract or lease. When abstaining from voting, the director must disclose the reason for the abstention. A director who is a member of an electric cooperative that is organized under or subject to the Electric and Telephone Cooperative Act (AS 10.25) may vote on a resolution relating to a contract or lease to which that cooperative is a party. The director shall disclose the cooperative membership at the time of voting. A resolution of the authority that is approved by a majority of the directors present who are not barred from voting under this subsection is a valid action of the authority for all purposes.

* Sec. 3. AS 44.83 is amended by adding a new section to read:

Sec. 44.83.092. AUTHORITY FOR MUNICIPALITIES AND UTILITIES TO ENTER INTO POWER SALES CONTRACTS. The authority and any municipality or public or private entity operating an electric utility, or a municipality or private entity and another municipality or private entity, may enter into a contract providing for or relating to the sale of electric power by the authority to the municipality or entity, or by the municipality or entity to another municipality or entity.

The contract may provide

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

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

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

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

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

* Sec. 4. AS 44.83.105 is amended to read:

Sec. 44.83.105. BONDS FOR POWER PROJECTS UNDER THE ENERGY PROGRAM FOR ALASKA. The authority may [SHALL] borrow money and [SHALL] issue its bonds for the acquisition or construction of power projects to be acquired or constructed under the energy program for Alaska. The [ON WHICH THE] principal of and interest on the bonds are payable from money derived from the sale of wholesale power from power projects financed under AS 44.83.380 - 44.83.425 from the power development fund or from a source referred to in AS 44.83.100 as the authority determines. The bonds may be issued if

(1) appropriations to the power development fund for the power project are insufficient to cover the cost of acquiring or constructing the power project; and

(2) the authority determines that the amount of interest the authority will pay on its bonds is not more than alternative costs of securing money from other sources, except for the general fund, to pay for the acquisition or construction of the power project.

* Sec. 5. AS 44.83.110(b) is amended to read:

(b) Notwithstanding any other provisions of this chapter, the trust indenture, trust agreement, secured loan agreement, or other instrument or the resolution constituting a contract with bondholders shall contain a covenant by the authority that it will at all times maintain rates, fees or charges sufficient to pay, and that a contract entered into by the authority for the sale, transmission or distribution of power shall contain rates, fees or charges sufficient to pay the costs of operation and maintenance of the project, the principal of and interest on bonds issued under the trust agreement as the same severally become due and payable, to provide for debt service coverage as considered necessary by the authority for the marketing of its bonds and to provide for renewals, replacements and improvements of the project, and to maintain reserves required by the terms of the trust agreement. This subsection does not require a covenant that varies from a covenant entered into in accordance with the provisions of AS 44.83.380 - 44.83.425.

* Sec. 6. AS 44.83.120 is amended to read:

Sec. 44.83.120. VALIDITY OF PLEDGE. It is the intention of the

legislature that a pledge made in respect of bonds is considered perfected and is [SHALL BE] valid and binding from the time the pledge is made; that the money or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act; and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether the parties have notice. Neither the resolution, trust agreement nor any other instrument by which a pledge is created need be recorded or filed under the provisions of the Uniform Commercial Code to be perfected or to be valid, binding or effective against the parties.

* Sec. 7. AS 44.83.185(a) is amended to read:

(a) The authority shall submit a feasibility study and plan of finance, including a cost estimate from an independent source, for a proposed new project to the legislature. When the report of the division of budget and management examining the feasibility study and plan of finance is completed as required by AS 44.83.183, it shall be submitted to the legislature.

* Sec. 8. AS 44.83 is amended by adding a new section to read:

Sec. 44.83.192. INSURANCE REQUIREMENTS IN CONSTRUCTION CONTRACTS. In requesting bids and awarding construction contracts under this chapter the authority may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent, or broker and may not agree to provide insurance to a contractor who is awarded a construction con-

tract.

* Sec. 9. AS 44.83.195(a) is amended to read:

(a) When a project is operated by the authority, the authority shall enter into one or more contracts for the sale of electrical power, energy, transmission capacity, or service from the project. Unless the contract is entered into under AS 44.83.380 - 44.83.425, a [A] contract entered into under this section shall meet all requirements of AS 44.83.090.

* Sec. 10. AS 44.83.361(a)(2) is amended to read:

(2) principal [AND INTEREST] payments on loans made under this section.

* Sec. 11. AS 44.83.361(c) is amended to read:

(c) A loan from the rural electrification revolving loan fund shall bear an annual rate of interest of two percent of the unpaid balance of the loan. Interest received on a loan made under this section must be transferred monthly to the commissioner of revenue for deposit in the general fund.

* Sec. 12. AS 44.83.361(d)(2)(B) is amended to read:

(B) payments on the unpaid balance of the principal of the loan for each new consumer served by the electric service extended with the loan proceeds [DURING THE PRECEDING YEAR FOR WHICH THE LOAN WAS MADE]; payments on the unpaid balance of the principal of the loan shall be made at a rate equal to the difference between the actual cost of making the service connection to the consumers and the minimum investment per consumer required of the utility before a loan is made under (b) of this section.

* Sec. 13. AS 44.83.361 is amended by adding a new subsection to read:

(f) In this section,

(1) "consumer" means a person, as defined in AS 01.10.-060(7), or a governmental agency, if the person or governmental agency requests and offers to pay for electrical service to a facility or part of a facility; the authority shall consider a person who, or a governmental agency that, offers to pay for electrical service to several facilities to be a separate consumer for each facility, if each facility is physically separate from another facility, other than through electric service lines, and if the person or governmental agency requests and offers to pay for electrical service to each facility;

(2) "facility" means a structure capable of receiving and using electrical energy; and

(3) "governmental agency" includes, with respect to the state or federal government or a municipal government, a legislative body, board of regents, administrative body, board, commission, committee, subcommittee, authority, council, agency, public corporation, school board, department, division, bureau, or other subordinate unit, whether advisory or otherwise, of the state, federal, or municipal government.

* Sec. 14. AS 44.83.384(b)(1) is amended to read:

(1) is economically feasible [MEETS THE REVENUE REQUIREMENTS OF AS 44.83.394]; and

* Sec. 15. AS 44.83.384(c) is amended to read:

(c) Notwithstanding (b)(1) of this section and AS 44.83.396 -

sioner of revenue. Interest received on money that is segregated or transferred under this section must be deposited in the general fund.

* Sec. 17. AS 44.83.396(a) is amended to read:

(a) A power project that is acquired or constructed as part of the energy program for Alaska is owned, [BY THE STATE] and shall be administered, by the authority.

* Sec. 18. AS 44.83.396(c) is amended to read:

(c) The authority shall enter into a contract or lease under reasonable terms and conditions to permit the applicant utility to operate the power project when the applicant utility is the only wholesale power customer to be served directly by the power project unless the authority determines a utility making application for a contract or lease to operate a power project is not a qualified utility or is not capable of operating that power project efficiently and in a manner that is consistent with national standards for the industry and with agreements with bondholders.

* Sec. 19. AS 44.83.396(e) is amended to read:

(e) When the authority permits a power project to be operated by a qualified utility under a contract or lease, the authority shall

(1) review and approve the annual budget for the operation and maintenance of the power project; and

(2) assure that the project is being operated efficiently and in a manner that is consistent with national standards for the industry and agreements with bondholders.

* Sec. 20. AS 44.83.398(b)(2) is amended to read:

(2) If, by July 1, 1991 [1986], the legislature has not

44.83.398 [AS 44.83.394 - 44.83.398]. the fund may be used by the authority to provide money for the cost of a power project that is or was either constructed or [AND] owned by the United States government if the requirements of this subsection are met. The provisions of AS 44.83.177 - 44.83.187 do not apply to a power project financed under this subsection. The authority may use money in the fund for the cost of a power project under this subsection if

- (1) the legislature enacts a law approving the project;
- (2) the division of budget and management in the Office of the Governor reviews a feasibility study and a plan of finance for the project and determines that the feasibility study complies with the requirements for a feasibility study submitted under AS 44.83.181(b) and that the plan of finance complies with the requirements for a plan of finance submitted under AS 44.83.181(c); and
- (3) the project meets the other requirements of this chapter.

* Sec. 16. AS 44.83.386 is amended to read:

Sec. 44.83.386. INVESTMENT OF FUND. The Department of Revenue shall invest the money in the fund in accordance with AS 37.10.070 and 37.10.075. The Department of Revenue shall provide money in the fund to the authority only after costs have been [A COST FOR A PROJECT IS] incurred or amounts in the fund have been otherwise obligated under contracts for the acquisition and construction of a project. Amounts that have been obligated, but for which costs have not yet been incurred, may be segregated by the Department of Revenue or transferred to the authority only with the prior approval or agreement of the commis-

appropriated at least \$5,000,000,000 to the fund, in addition to appropriations to the fund of interest earned on money in the fund, the authority shall, beginning on that date, establish and maintain a separate wholesale power rate applicable to each power project that is acquired or constructed under the energy program for Alaska. The wholesale power rate shall be computed by the authority annually, or more frequently as may be necessary, and shall be the greater of

A) 10 percent of the amount the authority has invested in the power project, including loans and grants made by the state; or

(B) the rate that the authority estimates is necessary to produce revenue sufficient to pay

(i) operation, maintenance, and equipment replacement costs of the power project;

(ii) the power project's proportionate share of debt service on state loans and bonds for all power projects in the energy program for Alaska, determined in accordance with (g) of this section; and

(iii) safety inspections and investigations of the power project by the authority.

* Sec. 21. AS 44.83.398(c) is amended to read:

(c) The authority shall transmit all the money that it receives under (a) of this section to the commissioner of revenue for deposit in the state general fund except for money it has pledged or otherwise covenanted to secure bonds [IN ACCORDANCE WITH CONTRACTS WITH BOND-HOLDERS].

* Sec. 22. AS 44.83.398(e) is repealed and reenacted to read:

(e) After determining the wholesale power rate for a power project under the provisions of this section, the authority may adjust the rate or change the rate provisions to insure that the revenue derived from that power project and the aggregate revenues of the authority will be adequate to comply with the rate covenants and other agreements contained in any trust indenture or trust agreement entered into by the authority for the security of the holders of bonds issued to finance power projects in the Energy Program for Alaska.

* Sec. 23. AS 44.83.398(h) is amended to read:

(h) Notwithstanding (g) of this section, in the 1983 state fiscal year the proportionate share of debt service under (b) of this section, expressed as a rate, for a power project for which a construction contract has been awarded before the effective date of this Act may not exceed the average debt service component of the wholesale power rate for all power projects in the energy program for Alaska. The limit imposed by this subsection shall be increased in the 1984 state fiscal year to four percent above the average debt service component of the wholesale power rate for all power projects in the energy program for Alaska and by an additional four percent above that average in each succeeding state fiscal year. If application of this subsection results in the production of insufficient revenue to pay the total debt service for all projects in the energy program for Alaska, a project that does not have its share of debt service limited under this subsection shall be subject to a rate in addition to the rate established under (b) of this section. The additional rate is

the rate that the authority estimates is necessary to produce revenue that is sufficient to pay the difference between the total debt service for all projects in the energy program for Alaska and the revenue actually produced to pay that debt service, multiplied by a fraction whose numerator is the total cost of the project and whose denominator is the total cost of all of the projects that are subject to the additional rate. In this subsection, "projects in the energy program for Alaska" does not include an intertie that is authorized as a separate project as described in (f) of this section.

* Sec. 24. AS 44.83.425(2) is amended to read:

(2) "debt service" means the amounts covenanted with respect to, or pledged to pay, bonds under a trust agreement securing [CASH FLOW NECESSARY TO SECURE] bonds;

* Sec. 25. Section 48, ch. 83, SLA 1980 is amended by adding a new subsection to read:

(e) The authorization made by this section for the Terror Lake project includes authorization for the installation of a third generating unit at the project.

* Sec. 26. The Chester Lake hydroelectric project is authorized, and a construction cost of \$13,200,000 is approved, under the provisions of AS 44.83.185(c).

* Sec. 27. AS 44.83.186, 44.83.195(b), 44.83.382(b)(2), and 44.83.394 are repealed.

* Sec. 28. This Act takes effect immediately in accordance with AS 01.-10.070(c)."

HOUSE LETTER OF INTENT

For Senate Bill No. 168

The Legislature, in enacting the Energy Program for Alaska, expressed its desire to provide the lowest reasonable power costs to consumers. To further achieve that end, it is the intent of the Legislature to take appropriate action to enhance the Alaska Power Authority's ability to obtain long-term bond financing at the lowest possible cost. It is for this purpose that we have amended the "Susitna equity clause."

Substantial equity has been invested in the Energy Program by the State of Alaska and declining state revenues will have an impact on the development of energy projects for other regions of the state. It is the intent of the Legislature that the balance of the financing needed for those projects under construction in the Program be raised by debt financing - thus reserving future revenues for future energy projects throughout the rest of the state. We support the intent of the Alaska Power Authority to go to the bond market in early 1984 for the necessary funds. However, in order to further facilitate the bonding capability of the Power Authority, it is imperative that utilities who will receive wholesale power from Solomon Gulch, Terror Lake, Tyee Lake and Swan Lake sign power sales contracts as soon as possible and no later than January 1, 1984. By taking this action, the utilities served will ensure long-term benefits to their consumers through stable power rates.

The Governor is requested to prepare a plan for providing the necessary equity for future projects in the Energy Program for Alaska. This plan must be constitutionally sound and provide for the proper administrative and Legislative approval for the various projects. This plan shall be submitted to the Legislature no later than January 15, 1984.

It is the intent of the Legislature that the Alaska Power Authority enter negotiations to sell power to the U.S. Borax Company for its proposed mining operation near Ketchikan. If necessary, the power authority should return to the Legislature with proposals for statutory changes that may be needed to implement the negotiated power sale.

It is the intent of the legislature that the language enacted as AS 44.83.092 Authority for Municipalities and Utilities to Enter into Power Sales Contracts is permissive language for the local utilities to enter a power sales contract. This section addresses the essential components of a power sales contract and the legal authority to enter such contracts, not the requirement to enter such a contract or any of its provisions.

It is also understood by the legislature that in AS 44.83.000 (1) that the amounts payable under the contract may be operating expenses of the utility and the determination of this issue can only be found in the local utilities current financing documents.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
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Senate

Committee on Resources

April 20, 1983

Memo

To: Billy Berrier, Director Legal Services

From: Senator Bettye Fahrenkamp

Subject: Request for Legal Review

Attached is a proposed amendment to SB 168 relating to the Alaska Power Administration statutes. I would appreciate your review of this amendment prior to final consideration of the bill on Friday, April 22.

The intent of the amendment is to require APA to secure "take or pay" type contracts prior to any project construction activities. It is the sponsor's intent not to permit the type of "loose" contracts similar to those obtained for the Swan Lake project to satisfy the terms of this amendment.

April 15, 1983

House version

Proposed Amendments , SB 168 (APA)

1) On page 2, section (d), lines 4-13, make the following changes:

"(d) A director of the authority may not vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if the director is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association that is a party to the contract or lease. When abstaining from voting, the director must disclose the reason for the abstention. A director who is a member of an electric cooperative which is organized under or subject to the Electric and Telephone Cooperative Act (AS 10.25.010--10.25.650) as provided in that act may vote on a resolution regarding a contract or lease to which the cooperative is a party and shall disclose that membership at the time of voting. A resolution of the authority that is approved by a majority of the directors present who are not barred from voting under this subsection is a valid action of the authority for all purposes."

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Rationale

The intent of the amendment is to exempt directors who are customers of electric coops, and therefore by definition part owners, from the conflict of interest prohibition on voting. It is conceivable that a majority of the Board might be coop customers, such as of Chugach Electric Coop in Anchorage, at make Board action on a project such as the Anchorage-Fairbanks Intertie problematic.

done
in
HB

2) On page 4, delete section 6, lines 4-10. That section reads as follows:

Sec. 6. AS 44.83.185(a) is amended to read:

(a) The authority shall submit a feasibility study and plan of finance, including a cost estimate from an independent source, for a proposed new project to the legislature. When the report of the division of budget and management examining the feasibility study and plan of finance is completed as required by AS 44.83.183, it shall be submitted to the legislature.

Rationale

Section 44.83.186 requires an independent cost estimate after the legislature approves a project and allows only a 7.5% increase in costs without having to revise the feasibility study and resubmit the study and the independent estimate to the legislature for reapproval. The APA is currently obtaining independent cost estimates in advance and verifies estimates in-house to avoid coming back to the legislature. The amendment is felt to be redundant and would require unnecessary costs, especially in the case of smaller projects.

not in
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3) Page 7, line 1, Sec. 14. "AS 44.83.394 is deleted."

Page 5, before line 28, add the following new section and renumber accordingly:

Sec. 12. AS 44.83.384(b)(1) is amended to read:

"(b) Money in the fund may be used under (a) of this section only for a project that

(1) [meets the revenue requirements of AS 44.83.394] is economically feasible; and "

Rationale

The effect of the Administration's amendment in the bill to 44.83.394 would be to make the project expenditures dependent on an authority's finding that the project is economically feasible. Section 44.83.394(b) addresses the same allowed uses of money in the fund and makes the sections redundant. This amendment would preserve the intent to ensure economical feasibility while eliminating the redundancy.

On page 5, line 29, change "AS 44.83.394--" to "AS 44.83.395--"

This is a conforming amendment to the above change.

Alaska State Legislature

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



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Senate

Committee on Resources

TO: Billy Berrier, Director
Legal Division

FROM: Bettye Fahrenkamp, Chairman
Senate Resources Committee

RE: SB 168, An Act relating to the Alaska Power Authority.

DATE: April 25, 1983

Please draw up in final form a Senate Resources Committee Substitute for SB 168, incorporating the following amendments:

AMENDMENT NO. 1

On page 2, section(d), lines 4-13, make the following changes:

'(d) A director of the authority may not vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if the director is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association that is a party to the contract or lease. When abstaining from voting, the director must disclose the reason for the abstention. A director who is a member of an electric cooperative which is organized under or subject to the Electric and Telephone Cooperative Act (AS 10.25.010--10.25.650) as provided in that act may vote on a resolution regarding a contract or lease to which the cooperative is a party and shall disclose that membership at the time of voting. A resolution of the authority that is approved by a majority of the directors present who are not barred from voting under this subsection is a valid action of the authority for all purposes."

AMENDMENT NO. 2

On page 4, following line 10 add the following new section 7 and renumber accordingly:

Sec. 7. AS 44.83.186 is repealed.

Billy Berrier
April 25, 1983
Page 2

AMENDMENT NO. 3

On page 5, before line 28, add the following new section 12 and renumber accordingly:

Sec. 12. AS 44.83.384(b)(1) is amended to read:

(b) Money in the fund may be used under (a) of this section only for a project that

(1) meets the revenue requirements of AS 44.83.394 is economically feasible; and

On page 7, line 1, Sec. 14, Change "AS 44.83.394 is amended to read:" to "AS 44.83.394 is repealed."

On page 5, line 29, change "AS 44.83.394--" to "AS 44.83.395--" to conform.

If you have questions concerning the Committee Substitute, please contact Patrick Pourchot of my staff and return the completed copy of the bill to him in Room 125 Capitol.