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1 adoption.

2 * Sec. 12. AS 44.88.085 is amended by adding new subsections to read:

3 (g) The authority shall adopt regulations necessary for the
4 following purposes in connection with its programs for the financing
5 of projects under AS 44.88.155 - 44.88.159:

6 (1) determination of borrower eligibility;

7 (2) loan guidelines and terms including, but not limited
8 to, maximum loan amounts and required loan-to-value ratios, but ex-
9 cluding loan interest rates;

10 (3) characteristics of projects eligible for loans or
11 purchase of loans; and

12 (4) the qualifications of loan originators and servicers
13 and the method of allocating amounts available for the purchase of
14 loans.

15 (h) The authority shall adopt regulations necessary for the
16 following purposes in connection with its program for encouraging the
17 exportation of Alaska goods, services, and raw materials under AS 44.-
18 88.300 - 44.88.390:

19 (1) establishing criteria for the eligibility of exporters
20 and export transactions for the loan guarantees provided in AS 44.88.-
21 300;

22 (2) setting out the minimum equity interest a borrower must
23 have in the borrower's business to qualify for a loan guarantee under
24 AS 44.88.300 - 44.88.390;

25 (3) adoption of collateral or security requirements to
26 ensure the full repayment of loan guarantees and solvency of an insur-
27 ance program established under AS 44.88.300 - 44.88.390;

28 (4) providing guidelines for extension of a loan guarantee
29 under AS 44.88.300 - 44.88.390;

1 (5) setting out the maximum aggregate amount of guaranteed
2 financing available to an exporter and the maximum amount of guaran-
3 teed financing available for a transaction eligible for guaranteed
4 financing;

5 (6) establishing the limits on the interest that may be
6 charged for guaranteed financings, the maximum fees that a participat-
7 ing financial institution may charge for making a loan that will be
8 guaranteed under AS 44.88.300 - 44.88.390, and the terms of and proce-
9 dures for repayment of a guaranteed financing; and

10 (7) establishing procedures for making a claim on the
11 guarantee or insurance in the event of a default.

12 * Sec. 13. AS 44.88.090(a) is amended to read:

13 (a) Subject to (g) of this section, the authority may borrow
14 money and may issue bonds, including but not limited to bonds on which
15 the principal and interest are payable[,]

16 (1) exclusively from the income and receipts or other money
17 derived from the project or development project financed with the
18 proceeds of the bonds or derived from the exporter or exporting trans-
19 action financed, guaranteed, or insured with the proceeds of the
20 bonds; [,]

21 (2) exclusively from the income and receipts or other money
22 derived from designated projects or development projects or other
23 sources whether or not they are financed, insured, or guaranteed in
24 whole or in part with the proceeds of the bonds; [,] or

25 (3) from its income and receipts or other assets generally,
26 or a designated part or parts of them.

27 * Sec. 14. AS 44.88.090(e) is repealed and reenacted to read:

28 (e) Before issuing bonds, the authority shall provide for con-
29 sideration at least sufficient, in the judgment of the authority, to

1 pay the principal of and interest on the bonds as they become due and
2 to create and maintain the reserves for the payments that the authori-
3 ty considers necessary or desirable, and to meet all obligations in
4 connection with the lease or agreement and all costs necessary to
5 service the bonds, unless the lease or agreement provides that the
6 obligations are to be met or costs are to be paid by a party other
7 than the authority. If the bonds are being issued to finance a
8 project or projects under AS 44.88.155 - 44.88.159, then the con-
9 sideration shall be provided by lease or other agreement regarding the
10 project or projects. If the bonds are being issued to finance a
11 development project or development projects under AS 44.88.172 -
12 44.88.177, then the consideration shall be provided by lease or other
13 agreement regarding the development project or development projects.
14 If the bonds are being issued to provide money to finance, guarantee,
15 or insure an exporting transaction under AS 44.88.300 - 44.88.390,
16 then the consideration shall be provided by agreement with the ex-
17 porter.

18 * Sec. 15. AS 44.88.090(g) is amended to read:

19 (g) The authority may not

20 (1) issue bonds, other than refunding bonds, in any 12-
21 month period beginning after June 30, 1982, in an amount that exceeds
22 the amount of bonds authorized to be issued during the preceding
23 12-month period, unless a different amount is authorized by the legis-
24 lature; or

25 (2) issue revenue bonds other than refunding bonds for a
26 project under AS 44.88.155 - 44.88.159, for a development project
27 under AS 44.88.172 - 44.88.177, or to provide money to finance,
28 guarantee or insure an exporting transaction under AS 44.88.300 -
29 44.88.390, [THIS CHAPTER] in an amount greater than \$50,000,000 during

1 any 12-month period beginning after June 30, 1981, unless the issuance
2 is included separately in the estimates required in the report of the
3 authority under AS 44.88.210(b) and unless the legislature, by law,
4 approves the issuance.

5 * Sec. 16. AS 44.88.090(h) is amended to read:

6 (h) The authority may combine, for the purposes of a single
7 offering, bonds financing more than one project or development project
8 under AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177, and bonds
9 issued to provide money to finance, guarantee, or insure an exporting
10 transaction under AS 44.88.300 - 44.88.390 [AS 44.88.010 - 44.88.220].

11 * Sec. 17. AS 44.88.100 is amended to read:

12 Sec. 44.88.100. TRUST INDENTURES AND TRUST AGREEMENTS. In the
13 discretion of the authority, an issue of bonds may be secured by a
14 trust indenture or trust agreement between the authority and a corpo-
15 rate trustee (which may be a trust company, bank, or national banking
16 association, with corporate trust powers, located inside or outside
17 the state) or by a secured loan agreement or other instrument or under
18 a resolution giving powers to a corporate trustee (hereinafter in this
19 section referred to as "trust agreement") by means of which the auth-
20 ority may:

21 (1) make and enter into any and all the covenants and
22 agreements with the trustee or the holders of the bonds which the
23 authority may determine to be necessary or desirable, including,
24 without limitation, covenants, provisions, limitations and agreements
25 as to

26 (A) the application, investment, deposit, use and
27 disposition of the proceeds of bonds of the authority or of money
28 or other property of the authority or in which it has an inter-
29 est;

1 (B) the fixing and collection of rents or other con-
2 sideration for, and the other terms to be incorporated in, a
3 lease or contract of sale of a project or development project
4 financed under AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177,
5 or of a facility that is part of an exporting transaction fi-
6 nanced, guaranteed, or insured under AS 44.88.300 - 44.88.390;

7 (C) the assignment by the authority of its rights in
8 the lease or contract of sale of a project or development project
9 financed under AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177,
10 or of a facility that is part of an exporting transaction fi-
11 nanced, guaranteed, or insured under AS 44.88.300 - 44.88.390 or
12 in a mortgage or other security interest created with respect to
13 a project or development project financed under AS 44.88.155 -
14 44.88.159 or 44.88.172 - 44.88.177, or with respect to a facility
15 that is part of an exporting transaction financed, guaranteed, or
16 insured under AS 44.88.300 - 44.88.390 to a trustee for the
17 benefit of the bondholders;

18 (D) the terms and conditions upon which additional
19 bonds of the authority may be issued;

20 (E) the vesting in a trustee of rights, powers,
21 duties, funds or property in trust for the benefit of bond-
22 holders, including, without limitation, the right to enforce
23 payment, performance and all other rights of the authority or of
24 the bondholders [,] under a lease, contract of sale, mortgage,
25 security agreement, or trust agreement with respect to a project
26 or development project financed under AS 44.88.155 - 44.88.159 or
27 44.88.172 - 44.88.177, or with respect to a facility that is part
28 of an exporting transaction financed, guaranteed, or insured
29 under AS 44.88.300 - 44.88.390 by mandamus or other proceeding or

1 by taking possession of by agent or otherwise and operating a
2 project or facility and collecting rents or other consideration
3 and applying the same in accordance with the trust agreement;

4 (2) pledge, mortgage or assign money, leases, agreements,
5 property or other assets of the authority either presently in hand or
6 to be received in the future, or both; and

7 (3) provide for any other matters of like or different
8 character which in any way affect the security or protection of the
9 bonds.

10 * Sec. 18. AS 44.88.105(f) is amended to read:

11 (f) The authority may not establish a capital reserve fund to
12 secure an issue of bonds in an amount in excess of \$1,000,000 unless
13 at least 20 percent of the principal amount of the loan for the proj-
14 ect or development project being financed under AS 44.88.155 -
15 44.88.159 or 44.88.172 - 44.88.177, or of the loan to finance, guaran-
16 tee, or insure an exporting transaction under AS 44.88.300 - 44.88.390
17 is retained by a federal or state chartered financial institution or
18 the Alaska Commercial Fishing and Agriculture Bank.

19 * Sec. 19. AS 44.88.130 is amended to read:

20 Sec. 44.88.130. PLEDGE OF THE STATE. The state pledges to and
21 agrees with the holders of bonds issued under this chapter and with
22 the federal agency that lends [WHICH LOANS] or contributes funds in
23 respect to a project or development project financed under AS 44.88.-
24 155 - 44.88.159 or 44.88.172 - 44.88.177, or in respect to an export-
25 ing transaction financed, guaranteed, or insured under AS 44.88.300 -
26 44.88.390 [,] that the state will not limit or alter the rights and
27 powers vested in the authority by this chapter to fulfill the terms of
28 a contract made by the authority with the holders or federal agency
29 and that the state will not [, OR] in any way impair the rights and

1 remedies of the holders until the bonds, together with the interest on
2 them with interest on unpaid installments of interest, and all costs
3 and expenses in connection with an action or proceeding by or on
4 behalf of the holders [,] are fully met and discharged'. The authority
5 is authorized to include this pledge and agreement of the state,
6 insofar as it refers to holders of bonds of the authority, in a con-
7 tract with the holders [,] and, insofar as it relates to a federal
8 agency, in a contract with the federal agency.

9 * Sec. 20. AS 44.88.140 is amended to read:

10 Sec. 44.88.140. EXEMPTION FROM TAXATION. (a) The real and
11 personal property of the authority and its assets, income, and re-
12 cepts are declared to be the property of a political subdivision of
13 the state and, together with any project or development project fi-
14 nanced under AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177, [THIS
15 CHAPTER] and a leasehold interest created in a project or development
16 project financed [APPLICANT OR OTHER PERSON] under AS 44.88.155 -
17 44.88.159 or 44.88.172 - 44.88.177 [THIS CHAPTER], devoted to an
18 essential public and governmental function and purpose, and the
19 property, assets, income, receipts, project, development project, and
20 leasehold interests shall be exempt from all taxes and special assess-
21 ments of the state or a political subdivision of the state, including,
22 without limitation, all boroughs, cities, municipalities, school
23 districts, public utility districts and other taxing units. All bonds
24 of the authority are declared to be issued by a political subdivision
25 of the state and for an essential public and governmental purpose and
26 to be a public instrumentality, and the bonds, and the interest on
27 them, the income from them and the transfer of the bonds, and all
28 assets, income and receipts pledged to pay or secure the payments
29 [PAYMENT] of the bonds, or interest on them, shall at all times be

1 exempt from taxation by or under the authority of the state, except
2 for inheritance and estate taxes and taxes on transfers by or in
3 contemplation of death. Nothing in this section affects or limits an
4 exemption from license fees, property taxes, or excise, income or any
5 other taxes, provided under any other law, nor does it create a tax
6 exemption with respect to the interest of any business enterprise or
7 other person, other than the authority, in any property, assets,
8 income, receipts, project, development project, or lease whether or
9 not financed under this chapter.

10 (b) The authority may enter into agreements with an applicant or
11 [A] proposed [PROJECT] applicant under this chapter [OR PROJECT APPLI-
12 CANT] providing for payments, computed on a formula basis or otherwise
13 [,] in lieu of taxes, which the authority may consider appropriate.
14 The agreement may provide that the payments be made to the political
15 subdivision of the state in which a project or development project is
16 or is to be located or to any other taxing unit of the state includ-
17 ing, without limitation, a borough, city, municipality, school dis-
18 trict or public utility district, the area of which is coterminous in
19 whole or in part with that of the political subdivision.

20 * Sec. 21. AS 44.88.155(a) is amended to read:

21 Sec. 44.88.155. ENTERPRISE DEVELOPMENT ACCOUNT [FUND]. (a) The
22 enterprise development account [FUND] is established in the revolving
23 fund [AUTHORITY]. The enterprise development account [FUND] is a
24 trust fund for the uses and purposes of this chapter [AS 44.88.010 -
25 44.88.220]. The enterprise development account [FUND] consists of
26 money or assets appropriated or transferred to the authority and other
27 money or assets deposited in it by the authority.

28 * Sec. 22. AS 44.88.155(b) is amended to read:

29 (b) The authority may establish in the enterprise development

1 account [FUND] a small enterprise loan account, a loan insurance
2 account, and other accounts it considers appropriate.

3 * Sec. 23. AS 44.88.155(c) is amended to read:

4 (c) Money and other assets of the enterprise development account
5 [FUND] may be used to secure bonds of the authority issued to finance
6 the purchase of loans for projects [,] and shall be held and invested
7 by the authority in the types of investments described in AS 37.10.-
8 070(a) and AS 39.35.110(a)(9) and (14) or shall be used to purchase
9 loans for projects [AS DEFINED IN AS 44.88.220].

10 * Sec. 24. AS 44.88.155(d) is amended to read:

11 (d) A loan purchased in whole or in part by the authority with
12 assets of the enterprise development account or with proceeds of bonds
13 secured by assets of the enterprise development account, other than a
14 loan which is financed with the proceeds of bonds of the authority and
15 secured only by a project applicant or a project,

16 (1) may not exceed

17 (A) \$10,000,000; or

18 (B) \$500,000 if the loan is purchased under AS 44.88.-

19 158;

20 (2) may not exceed the cost of the project or 75 percent of
21 the appraised value of the project, whichever is less, unless the
22 amount of the loan in excess of this limit is federally insured or
23 guaranteed or is insured by a qualified mortgage insurance company;

24 (3) may not be for a term longer than three-quarters of the
25 authority's estimate of the life of the project or 25 years from the
26 date the loan is made, whichever is earlier;

27 (4) shall contain complete amortization provisions satis-
28 factory to the authority requiring periodic payments by the borrower;

29 (5) shall be in the form and contain the terms and

1 provisions with respect to insurance, repairs, alterations, payment of
2 taxes and assessments, default reserves, delinquency charges, default
3 remedies, acceleration of maturity, secondary liens, and other matters
4 the authority prescribes;

5 (6) shall be secured as to repayment by a mortgage or other
6 security instrument in the manner the authority determines is feasible
7 to assure timely repayment under a loan agreement entered into with
8 the borrower;

9 (7) may not be made unless

10 (A) at least 10 percent of the principal amount of the
11 loan is retained by the originator of the loan; or

12 (B) 100 percent of the principal amount of the loan is
13 guaranteed by the United States or an agency or instrumentality
14 of the United States;

15 (8) must be

16 (A) at least partially guaranteed by the United States
17 or an agency or instrumentality of the United States, subject to
18 the provisions of AS 44.88.158; [OR]

19 (B) financed from the proceeds of bonds; or

20 (C) expected by the authority to be financed from the
21 proceeds of bonds.

22 * Sec. 25. AS 44.88.155(e) is amended to read:

23 (e) The authority may adopt regulations for the administration
24 of the enterprise development account including [FUND WHICH MAY IN-
25 CLUDE], without limitation, provisions for fees and agreements re-
26 lating to application, loan commitment, servicing, and origination of
27 loans by other lenders.

28 * Sec. 26. AS 44.88.155(f) is amended to read:

29 (f) The authority may enter into agreements as to the use of the

1 money in the enterprise development account [FUND], including without
2 limitation, trust or custody arrangements with banks or trust com-
3 panies. It may also pledge, assign, or grant the agreement, interests
4 under an agreement, or interests in the enterprise development account
5 [FUND] as may be necessary or appropriate to provide for payment and
6 security for bonds of the authority issued to finance the purchase by
7 the authority of loans for projects.

8 * Sec. 27. AS 44.88.155 is amended by adding a new subsection to read:

9 (h) The provisions of this section apply only with respect to
10 loans purchased or made by the authority for projects under AS 44.88.-
11 155 - 44.88.159.

12 * Sec. 28. AS 44.88.157(a) is amended to read:

13 (a) The loan insurance account is established in the revolving
14 fund. The purpose of the loan insurance account is to provide insur-
15 ance of mortgage loans and other loans made or purchased by the au-
16 thority under AS 44.88.155, or made by others and approved for insur-
17 ance by the authority, for a project. The authority may enter into
18 agreements as to the use of money in the loan insurance account and
19 may pledge, assign, or grant interests in the loan insurance account
20 as provided in this section. The authority may adopt regulations and
21 enter into agreements with respect to the exercise of any power or
22 approval relating to the loan insurance account under this section,
23 including, without limitation, agreements as to the use of money in
24 the loan insurance account, agreements with respect to the terms and
25 conditions upon which payments from the loan insurance account will be
26 made with respect to a loan insured under this section, agreements as
27 to separate subaccounts in the loan insurance account for different
28 categories of loans or as to loans made by the authority or any other
29 person, and agreements regarding the payment of and security for bonds

1 issued by the authority. An agreement, the rights of the authority
2 under an agreement, or payments received or to be received under an
3 agreement may be pledged or assigned by the authority for the benefit
4 of the holders of bonds issued by the authority.

5 * Sec. 29. AS 44.88.157(b) is amended to read:

6 (b) The authority may, upon application of a borrower or pro-
7 posed borrower, insure and make advance commitments to insure loan
8 repayments required under the terms of a loan made by it or by another
9 lender with respect to a project, upon the terms and conditions the
10 authority prescribes. To be eligible for insurance under this section
11 [AS 44.88.010 - 44.88.220], a loan for a project

12 (1) shall be held by the authority or by a lender approved
13 by the authority as responsible and able to service the loan;

14 (2) may not exceed \$10,000,000 for a project, or 90 percent
15 of the cost of the project or 90 percent of the appraised value of the
16 project, whichever is less;

17 (3) may not be made for a term longer than three-quarters
18 of the authority's estimate of the life of the project or 25 years
19 from the date of issuance of the insurance, whichever is earlier;

20 (4) shall contain complete amortization provisions satis-
21 factory to the authority requiring periodic payments by the borrower;
22 and

23 (5) shall be in the form and contain the terms with respect
24 to insurance, repairs, alterations, payment of taxes and assessments,
25 default reserves, delinquency charges, default remedies, acceleration
26 of maturity, additional and secondary liens, and other matters that
27 the authority prescribes.

28 * Sec. 30. AS 44.88.157(k) is amended to read:

29 (k) A loan may not be insured under this section [FROM A LOAN

1 INSURANCE ACCOUNT WITHIN THE ENTERPRISE DEVELOPMENT FUND] if the loan
2 is for a project the cost of which exceeds \$10,000,000.

3 * Sec. 31. AS 44.88.157(1) is amended to read:

4 (1) A loan in excess of \$1,000,000 may not be insured under this
5 section [FROM A LOAN INSURANCE ACCOUNT WITHIN THE ENTERPRISE DEVELOP-
6 MENT FUND] unless at least 20 percent of the principal amount of the
7 loan is retained by a federal or state chartered financial institution
8 or the Alaska Commercial Fishing and Agriculture Bank.

9 * Sec. 32. AS 44.88.158(a) is amended to read:

10 Sec. 44.88.158. ENTREPRENEURIAL AND SMALL BUSINESS ENTERPRISE
11 LOAN ACCOUNT. (a) An entrepreneurial and [A] small business enter-
12 prise loan account is established in the revolving [ENTERPRISE DE-
13 VELOPMENT] fund. The account may be composed of money or assets
14 appropriated or transferred to the authority, interest on investments
15 and loans of the entrepreneurial and small business enterprise loan
16 account, the unpledged income of the revolving [ENTERPRISE DEVELOP-
17 MENT] fund, and other money or assets deposited in it by the authori-
18 ty.

19 * Sec. 33. AS 44.88.158(b) is amended to read:

20 (b) The authority may use money in the entrepreneurial and small
21 business enterprise loan account to purchase or participate in the
22 purchase of loans to entrepreneurial and small business enterprises
23 and to purchase the guaranteed portion of a loan made by a private
24 financial institution after June 30, 1981, to an entrepreneurial or
25 [A] small business enterprise to pay the cost of a project or ex-
26 porting transaction [, AS DEFINED IN AS 44.88.220], if the loan is
27 guaranteed by the United States or an agency or instrumentality of the
28 United States, including, but not limited to, the Small Business
29 Administration, the National Marine Fisheries Service, and the Farmers

1 Home Administration.

2 * Sec. 34. AS 44.88.159 is amended by adding a new subsection to read:

3 (d) The provisions of this section apply only to loans financed
4 under AS 44.88.155 - 44.88.159.

5 * Sec. 35. AS 44.88.172 is amended to read:

6 Sec. 44.88.172. ECONOMIC DEVELOPMENT ACCOUNT [FUND]. (a) The
7 economic development account [FUND] is established in the revolving
8 fund [AUTHORITY]. The account [FUND] consists of money or assets
9 appropriated, loaned, or transferred to the authority, and other money
10 or assets deposited in the account [FUND] by the authority. The
11 account [FUND] may [ONLY] be used only to finance, acquire, manage,
12 and operate development projects that the authority intends to own and
13 operate. The term "operate" includes operation directly by the au-
14 thority, or by an agent of the authority.

15 (b) If a development project is financed or developed through
16 use of the assets of the economic development account [FUND], the
17 authority may not pledge or use [OTHER] assets of the enterprise de-
18 velopment account established in AS 44.88.155 [AUTHORITY] to assist in
19 the financing, development, or operation of the development project.
20 However, whether or not the authority uses the economic development
21 account [FUND], it may issue bonds to finance a development project
22 and may secure the bonds with a mortgage, pledge, or assignment of the
23 development project or of revenues, money, or agreements attributable
24 to the development project or the bonds. Financing assistance pro-
25 vided with respect to a development project under this section shall,
26 to the maximum extent reasonable under the circumstances, be made in
27 the form of a loan to the project [AS PROVIDED IN SEC. 10 OF THIS
28 ACT].

29 * Sec. 36. AS 44.88.190 is amended by adding a new subsection to read:

1 (c) A loan purchased or financed by the authority in whole or in
2 part is exempt from the provisions of AS 45.45.010. A guarantee
3 extended under AS 44.88.300 or insurance provided under AS 44.88.390
4 does not constitute insurance for the purposes of AS 21.03.010.

5 * Sec. 37. AS 44.88.220 is amended by adding new paragraphs to read:

6 (13) "development project" means a plant or facility used or
7 intended for use in connection with making, processing, preparing, or
8 producing goods, products, or substances, or in connection with de-
9 veloping or utilizing a natural resource, or extracting, smelting,
10 transporting, converting, assembling, or producing minerals, raw
11 materials, chemicals, compounds, alloys, fibers, commodities and
12 materials, products, or substances;

13 (14) "entrepreneurial enterprise" means an enterprise in
14 which one or more individuals have an ownership interest in an innova-
15 tive high-risk venture or ventures;

16 (15) "revolving fund" means the Alaska Industrial Develop-
17 ment Authority revolving fund created in AS 44.88.060.

18 * Sec. 38. AS 44.88 is amended by adding new sections to read:

19 ARTICLE 5. EXPORT ASSISTANCE.

20 Sec. 44.88.300. GUARANTEED FUNDING FOR EXPORT TRANSACTIONS. The
21 authority may provide guaranteed funding, through a participating
22 banking organization, for an export transaction that the authority
23 determines is eligible under AS 44.88.310.

24 Sec. 44.88.310. ELIGIBILITY OF EXPORT TRANSACTIONS. An export-
25 ing contract is a transaction eligible for guaranteed funding under
26 AS 44.88.300 - 44.88.390 if, in the judgment of the authority, it will
27 create or maintain employment in the state and it

28 (1) promotes the sale abroad of raw materials extracted in
29 the state, or goods whose final stage of production occurs in the

1 state, that constitutes 25 percent or more of the contract price;

2 (2) provides for the rendering of services abroad by a
3 business located in the state if 25 percent or more of the contract
4 price consists of wages or other payments made to persons normally
5 residing in the state;

6 (3) promotes the sale abroad of raw materials or goods
7 distributed by a business located in the state if

8 (A) 25 percent or more of the contract price consists
9 of wages or other payments made to persons or businesses normally
10 residing or located in the state; or

11 (B) the business has a significant relationship with
12 the state based upon

13 (i) the amount of capital investments it has that
14 are located in the state;

15 (ii) the number of state residents employed by the
16 business;

17 (iii) the amount of business transacted in the
18 state; or

19 (iv) a combination of (i) - (iii); or

20 (4) provides both for the sale abroad of raw materials
21 extracted in the state or goods whose final stage of production occurs
22 in the state, and for the rendering of services abroad by state resi-
23 dents, the aggregate value of which is 25 percent or more of the
24 contract price.

25 Sec. 44.88.320. LIMITATIONS ON GUARANTEES. (a) The authority
26 may not guarantee more than 90 percent of a loan under AS 44.88.300.

27 (b) The authority may not guarantee a loan under AS 44.88.300
28 unless the authority finds that the guarantee is reasonably necessary
29 to stimulate or facilitate the making of a loan for an eligible

1 exporting transaction.

2 Sec. 44.88.330. CREDIT OF EXPORTER. Before the authority may
3 guarantee a loan under AS 44.88.300, the participating financial
4 institution shall investigate the credit or sources of credit avail-
5 able to the exporter to determine the economic benefits to be derived
6 from the guarantee, the prospects of repayment, and other factors
7 necessary to determine that the guaranteed funding is consistent with
8 the purposes of AS 44.88.300 - 44.88.390.

9 Sec. 44.88.340. CONFIDENTIALITY OF INFORMATION. Information
10 submitted to or compiled by the authority regarding the identity,
11 background, finances, marketing plans, trade secrets, or other commer-
12 cially sensitive affairs of the exporter is confidential, unless the
13 exporter consents to its disclosure.

14 Sec. 44.88.350. FEES CHARGED. The authority shall, by regula-
15 tion, establish fees to be charged to a participating financial insti-
16 tution for providing a guarantee under AS 44.88.300. The fees must be
17 sufficient to cover the costs of administering the guarantee program
18 under AS 44.88.300 - 44.88.390 and any premium the authority pays for
19 insuring its risks.

20 Sec. 44.88.360. EFFECT OF GUARANTEE. (a) A guarantee under
21 AS 44.88.300 shall guarantee against political or commercial loss, in
22 whole or in part, of principal and interest on an eligible export
23 transaction. The guarantee may include, without limitation, insurance
24 against loss up to a stated amount. A guarantee under AS 44.88.300
25 may not be terminated, canceled, or revoked, except under its terms.
26 A guarantee held by a participating financial institution is presumed
27 to be valid.

28 (b) In this section, "political loss" means a loss incurred as a
29 result of a political risk insured under an export credit insurance

1 umbrella policy, or a comparable policy or agreement, issued by the
2 Export-Import Bank of the United States.

3 Sec. 44.88.370. GUARANTEE NOT A GENERAL OBLIGATION OF THE STATE.
4 A guarantee under AS 44.88.300 is not a general obligation of the
5 state.

6 Sec. 44.88.380. PERSONAL LIABILITY. An officer, employee, or
7 agent of the authority may not be held personally liable on a contract
8 or agreement entered into with respect to a guarantee under AS 44.88.-
9 300, or for damage or injury resulting from the performance of duties
10 under AS 44.88.300 - 44.88.390.

11 Sec. 44.88.390. EXPORT INSURANCE ACCOUNT. (a) The export
12 insurance account is established in the revolving fund. The account
13 consists of money appropriated to it by the legislature and other
14 money and assets, including bond proceeds, deposited in it by the
15 authority. The account shall be held as security for the holders of
16 bonds issued by the authority for the purposes of AS 44.88.300 -
17 44.88.390. The authority may enter into trust agreements with respect
18 to the use of money in the account, including the use of that money to
19 discharge a guarantee obligation of the authority. The trust agree-
20 ments may contain provisions and limitations concerning the investment
21 and disbursement of money in the account, the payment of expenses of
22 the account, the appointment, resignation and discharge of trustees,
23 the delegation of enforcement and collection powers under the insur-
24 ance agreements to the trustee, the duties of the trustees, amendments
25 of the trust agreements, and other lawful provisions and limitations
26 the authority considers appropriate. The trust agreements may pledge
27 premiums and other money that may be deposited in the account. The
28 pledge shall be valid and binding from the time the pledge is made.
29 The premiums and other money pledged and thereafter received by the

1 account, or by the trustees in its behalf, shall immediately be sub-
2 ject to the lien of the pledge. The pledge shall be valid and binding
3 against parties having claims against the account, irrespective of
4 whether the parties have notice of the pledge.

5 (b) The authority may use proceeds of bonds issued for the
6 purposes of AS 44.88.300 - 44.88.390 to purchase insurance, which may
7 be pledged for the security of the holders of the bonds. If insurance
8 is pledged as security, whether obtained through the export insurance
9 account or purchased with bond proceeds, a description of the insur-
10 ance shall expressly indicate the limitation of the liability of the
11 authority and that neither the credit nor the taxing power of the
12 state or a political subdivision of the state is available to satisfy
13 obligations with respect to the insurance.

14 * Sec. 39. AS 44.88.156, 44.88.158(c), and secs. 10 and 11, ch. 162,
15 SLA 1984, are repealed.

16 * Sec. 40. This Act takes effect immediately under AS 01.10.070(c).
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Senator Rick Wehling

February 13, 1987

To: State of Alaska
Senate Committee for Labor and Commerce

Mr. Chairman, Members of the Committee:

Please find attached copies of my oral testimony which was made on Monday February 9, 1987 via the legislative telecommunication system.

To supplement that testimony, I will further state that while I applaud the efforts of the legislature to increase Alaskan business participation in the export markets, I see this proposed legislation as merely a gesture that duplicates existing facilities. As a very simple indication you might call the State Department of Commerce, as I did, and ask for the total value of exports from Alaska. You will discover that the Alaska Department of Commerce does not have this number but will refer you to the U.S. Department of Commerce where one can obtain some numbers.

If you take the value of total exports and subtract the numbers for natural resources, including oil and gas, urea, ammonia, fisheries, timber and metal you will find practically no manufactured products being exported. There are good sound economic and business reasons for the failure of Alaskan businesses to participate in export business. Manufactured products, by their nature, require higher labor costs as a per cent of total costs than natural resource extraction. We are all aware that the costs of labor and of doing business in Alaska are among the highest in the U.S. and the world. State governments can in fact do a great deal to create environments which will stimulate and encourage private enterprises. Long-term consistency in the State's policy on taxation and simplification of bureaucratic procedures regarding insurance, specifically product liability and worker's compensation can reduce costs and make Alaska more competitive. Small businesses in particular suffer from the burden of reporting to federal, state and local governments on all aspects of their business. The costs of filing reports and retaining resident experts on these myriad subjects are oppressive.

I would encourage you to recognize that business does much better with less government than with more and that organizing a venture for profit still remains a valid objective in our society.

Sincerely yours,

Wilson A Gay
Wilson A Gay
2531 Curlew Circle
Anchorage, AK 99515

Mr. Chairman, members of the committee:

My name is Wilson A. Gay. I reside at 2531 Curlew Circle, Anchorage, AK and am a resident of the State of Alaska. I represent myself and am not employed by or under contract to another party. For background information, I have been employed by the Dow Chemical Co. for 30 years, retiring as Treasurer of the Corporation in June of 1986. The last 25 years of my career at Dow were spent in finance both international and domestic. Dow Chemical is one of the world's leading firms in international trade and derives nearly 50% of its almost \$12 billion in sales from markets outside the U.S. It was necessary to develop a financial strategy to facilitate this business. Export credit and guarantees were a part of this strategy. In this regard relationships with EX-IM Bank and the Foreign Credit Ins. Association were in my hands.

As to the proposed legislation, I will only address the export credit or guarantee section of the bill.

1. If this legislation is adopted, once again there will be duplication of effort at the State and Federal levels with the resulting increase in costs to U.S. taxpayers. In my years of working with EX-IM Bank and FCIA I found the staff to be expert and always willing to work with the manufacturer on viable export related plans. Additionally commercial banks have always offered the facilities to provide for these various Federal programs. Should the State of Alaska thru AIDA embark on similar programs there will be costs of training and maintaining staff for programs which will realize infrequent use.

2. Under the export guarantee section it will prove both costly and cumbersome should AIDA become a direct guarantor since obtaining information on the credit of the buyer can be very difficult.

3. Section 44-98-360 mentions political risk guarantees and provides no further definition. I can assure you that political risk insurance can become a nightmare for both the insurer and insured. While there has been legal language developed which gives definition to revolution, insurrection rebellion, expropriation, and inconvertibility, the interpretation becomes very complicated when it is subjected to the laws of two nations. I will point out that in extreme situations, solutions to the question of political risk guarantees have only been settled by nation-to-nation negotiation. This is not a legal area in which AIDA or the State of Alaska should participate.

It would seem to me that an intelligent program of communication and cooperation with EX-IM and FCIA and the holding of a series of promotional seminars which would explain these agencies' functions to the Alaska business and financial community would serve to identify prospective users of these services. Such an approach would be extremely low-cost when compared to the prospective expense of a new organization and could quickly identify immediate areas of application for these export credit services.

Pilson A. Stey

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Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 9, 1987

The Honorable Tim Kelly, Chair
Senate Committee on Labor & Commerce
P.O. Box V
Juneau, Alaska 99811

Dear Senator Kelly:

I am enclosing for your review a Sponsor Substitute for Senate Bill 68. The original legislation was a companion bill to House Bill 47, introduced by Representative Kay Brown, and had a hearing in your committee on February 18.

The Alaska Railroad Corporation provided an analysis of both the original and the Committee Substitute of HB 47, and stated their opposition. In its analysis of the House Committee Substitute, the Alaska Railroad claimed that "the opportunity for public review of significant changes in land use is guaranteed by the legislative oversight and approval provisions which already exist in ARCA".

I introduce my Sponsor Substitute to address this very subject, because under ARCA (AS 42.40.285), the railroad is constrained without legislative oversight and approval, only when it proposes to

- "1) exchange, donate, sell, or otherwise convey its entire interest [emphasis added] in land;
- 2) issue bonds;
- 3) extend railroad lines; this paragraph does not apply to a spur, industrial, team, switching or side track;
- 4) lease land for a period in excess of 35 years".
[Emphasis added.]

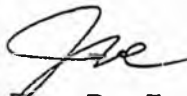
My substitute would provide the opportunity for public input regarding changes made within local municipalities. At worst, it would follow the current policy being executed by the Alaska Railroad (according to their own statements) and, at best, it would provide a safety net by ensuring those citizens, who may be affected by considerations of the railroad, an opportunity to give their input and testimony. As you will notice, all other sections of the original bill have been excluded.

I respectfully ask you to review the SS for SB 68, and would be grateful if you would schedule a hearing at the earliest possible date.

If you need any additional information or have any questions regarding this substitute, please do not hesitate to contact my office.

With best wishes, I am

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe".

Joe P. Josephson
State Senator



1 IN THE SENATE

BY JOSEPHSON

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 68

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the management of land owned by
7 the Alaska Railroad Corporation and located within a
8 municipality."

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

10 * Section 1. AS 42.40.100 is amended to read:

11 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is respons-
12 ible for the management of the corporation but shall delegate certain
13 powers and duties to the chief executive officer in accordance with
14 AS 42.40.120. In managing the corporation the board shall

15 (1) be responsible for the management of the financial and
16 legal obligations of the Alaska Railroad;

17 (2) operate the Alaska Railroad as a common carrier subject
18 to the jurisdiction of the United States Interstate Commerce Commis-
19 sion consistent with 45 U.S.C. 1207;

20 (3) generally manage the corporation on a self-sustaining
21 basis;

22 (4) apply to the legislature for an appropriation with the
23 concurrence of the governor to be used to provide a particular service
24 that is not otherwise self-sustaining if a subsidy is required to
25 maintain that service;

26 (5) provide for safe, efficient, and economical transporta-
27 tion to meet the overall needs of the state;

28 (6) raise needed capital by issuing bonds of the corpo-
29 ration upon approval by the legislature while ensuring that borrowing

1 by the corporation does not directly or indirectly endanger the
2 state's own borrowing capacity;

3 (7) review all state and other land disposal proposals to
4 aid in planning for future development or expansion of transportation
5 services;

6 (8) ensure that the procurement procedures of the corpo-
7 ration meet accepted railroad industry standards;

8 (9) ensure that the accounting procedures of the corpo-
9 ration meet generally accepted accounting principles consistent with
10 industry standards for comparable railroads;

11 (10) manage land, interests in land, and natural resources
12 on land held by the corporation and located within a municipality in
13 the best interest of the municipality; in determining the best inter-
14 est of the municipality the corporation shall consider land use plans
15 and ordinances of the municipality where railroad land exists, adja-
16 cent land uses, the economic development and revenue generating poten-
17 tial of the land and natural resources, and public comment received on
18 proposed land management actions.

19 * Sec. 2. AS 42.40.350(c) is amended to read:

20 (c) The corporation may lease, subject to AS 42.40.285 and (d)
21 of this section, grant easements in or permits for, or otherwise
22 authorize use of portions of rail land. The board shall hold at least
23 one public hearing in a municipality before taking a land management
24 action under this subsection involving rail land within the municipal-
25 ity. However, the corporation may not convey its entire interest in
26 rail land except as provided in AS 42.40.285, 42.40.370(d), and 42.-
27 40.400.
28
29

FEB 06 '87

ACTION	INFO	ACTION	INFO
MJY	_____	ATP	_____
JBB	_____	DAR	_____
LDW	X	FCW	_____
VMH	X	LJH	_____
JDW	_____		_____
	_____		_____
Circ	_____	Copy	_____
Call Up	_____	File	_____

February 2, 1987

The Honorable Kay Brown
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Representative Brown:

You recently requested information about moose mortality on the Alaska Railroad (ARR) and the guiding industry. In your discussion with Regional Game Supervisor Dan Timm he said that the department would provide more information on these subjects. This letter responds to your letter to Dan Timm of January 19 regarding the issue of moose mortality. I will follow-up with a letter on the guiding industry shortly.

With respect to moose mortality on the ARR, I have enclosed several documents which summarize the problem, actions we have suggested that the railroad take to help reduce mortality, and the railroad's response. I have also included information about road kills in the Matanuska/Susitna Valley.

Prior to state ownership of the ARR, moose mortality was notably under reported. As you can see from the enclosures, July 1, 1984 - June 30, 1985, was the worst year on record with 382 moose killed. The great majority of animals were killed between Houston and Chase between late-January and late-March. When the packed snow depth is 30 to 35 inches, the mortality rate increases markedly. At that point, moose are primarily looking for areas of minimal snow depth to conserve energy; because they are plowed, railroad and highway rights-of-way are highly attractive.

Many moose-railroad collisions result in unsalvageable meat. However, moose meat fit for human consumption is taken by ARR personnel to the nearest crossing and the location is reported to Fish and Wildlife Protection (FWP) officers. A list of needy families in the Matanuska/Susitna Valley is maintained by FWP, and when salvageable moose meat becomes available, a family is called. Other animals probably are picked up and used by residents living near the track. When

animals are unfit for salvage, the ARR removes the carcasses from the immediate right-of-way and puts them in heavy brush, ravines, or similar locations. Although we do not have records on the proportion of moose salvaged in prior years, as of January 3, 44 moose had been killed by train this winter and 10 were reported for salvage to FWP.

It is possible that some of the 34 unreported animals were utilized by local residents, but most were unfit for salvage. As of January 3, 60 moose have been killed by cars in the same area, and nearly all of these animals were salvaged.

Our interpretation of current regulations is that the ARR is not required to notify FWP when an animal is killed. You asked whether legislation should be introduced to require salvage. In our view the ARR, under state ownership, is being sufficiently cooperative in the salvage of most moose fit for human consumption, particularly considering the remoteness of the area, winter weather conditions, the relatively few workers on the line during winter months, and the relatively high cost of salvaging meat. With continuing public interest and concern for train-caused moose mortality, the ARR should remain very cooperative.

You also asked if the ARR has been cooperative in trying to reduce moose collisions. As you will see from the enclosed letters, the department has made a number of suggestions to reduce collisions, and we will make additional suggestions to the ARR after we have analyzed currently available data. Unlike the situation which existed when the railroad was federally owned, ARR officials have been very cooperative in letting us see their daily records and in openly discussing the problem.

Some of our suggestions have been adopted and likely reduced moose mortality in the latter part of the 1984-85 winter. Others have not been adopted because of federal regulations governing railroad operations, high monetary cost, or other reasons.

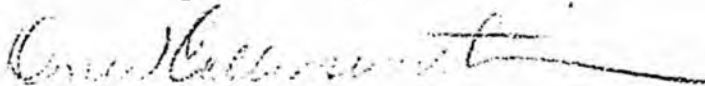
Nothing short of complete fencing on both sides of at least 65 miles of track with over- or underpasses to facilitate moose movements will reduce moose mortality to a bare minimum. However, fencing and maintenance of moose passage structures would cost several million dollars and even then would not eliminate mortality. Sweden, British Columbia, and other areas have problems such as ours, but they too have not found an adequate solution.

Following the high moose mortality in the winter of 1984-85 on the railroad and highways, the Board of Game acted to reduce hunter harvest in the affected area. The moose population has responded well. It is preferable that

hunters take moose during severe winters than for trains to kill them. However, hunting along the ARR right-of-way can also create problems because the ARR has concerns with people being on or near the right-of-way, or using the railroad right-of-way for access.

Thank you for the opportunity to provide you with background information and suggestions regarding moose mortality. If you have any questions on this material, please do not hesitate to contact us. Best wishes for success in your new role as state representative.

Sincerely,



Don W. Collinsworth
Commissioner

Enclosures

cc: William Nix, Acting Commissioner
Department of Public Safety

Lew Pamplin, Director
Game Division, Department of Fish and Game

bcc: Roland Shanks

DWC/LP/ama

ALASKA RAILROAD CORPORATION

Senator Kelly



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

January 28, 1987

M

Representative Dave Donley, Chairman
Labor & Commerce Committee
House of Representatives
P. O. Box V
Juneau, Alaska 99811

Re: HB 47, An Act Relating to the Alaska Railroad Corporation

Dear Representative Donley:

Thank you for allowing the Alaska Railroad Corporation ("ARRC") this opportunity to comment upon HB 47 which proposes significant changes to ARRC's enabling legislation.

We understand that your committee will conduct a work session on this bill and others today. I hope that our comments will be helpful as you review the legislation. Should questions arise which are not adequately addressed in our position paper, please feel to contact me. My phone number is 265-2461.

I do apologize for the length of our response and our delay in getting it to you. However, the bill recommends sweeping changes to a model of a public corporation created, as you know, by the 1984 legislature to operate the State-owned railroad. That model was intended to insure that the railroad would be a rail carrier generating, retaining, and managing its revenues to better serve Alaska's transportation and development needs. Although State leadership gave ARRC enough independence to conduct its activities as a separate and viable economic entity, a recognition of State ownership and essential governmental functions led to public accountability requirements manifested most clearly by open meetings, governor-appointed board members, financial and management audits, annual and oversight reports, legislative approval of land disposals, and long-range capital improvement and program plans. This blend of substantial financial and operational independence subject to State oversight has resulted in a quasi-public, quasi-private railroad armed with the flexibility it needs to react quickly to changing market, operational, and financial needs.

Representative Donley
January 28, 1987
Page 2

The model was created only after months, perhaps years, of research, study, discussion, and debate. If I had to choose one message to leave with you today, it would simply be that HB 47 proposes sweeping detrimental changes to the legislature's earlier vision of a financially independent, but publicly accountable, railroad only two years following transfer. The work reflected in the Alaska Railroad Corporation Act and ARRC's track record to date perhaps deserve the same commitment of time and careful deliberation before the Act's vision is in large part abandoned.

Our feeling is that in a number of ways HB 47 will restrict and curtail ARRC's ability to react meaningfully to changing freight and real estate markets to the detriment of its self-sufficiency and those many Alaskans who depend upon a viable rail transportation option in Alaska. Those who appear most likely to benefit by such changes are the railroad's water carrier, trucking, and real estate competitors.

Thank you very much.

Sincerely yours,



Larry D. Wood
General Counsel

cc: ~~Members of the House Labor & Commerce Committee~~
F. G. Turpin, President & CEO

3671L

House Bill 47: An Act Relating to
the Alaska Railroad Corporation

I. Introduction. House Bill 47, introduced by Representatives Brown, Ellis and Boyer, proposes numerous and substantial changes to the Alaska Railroad Corporation Act, AS 42.40.010 et seq. ("ARCA"). The issues raised by the bill fall into four categories, each of which has been the subject of at least some recent media attention. All, we believe, are adequately accommodated or protected by existing laws or Alaska Railroad Corporation ("ARRC") board rules. The proposed changes will also harm the economic viability of the railroad.

These are the first major revisions of ARCA which have been proposed since 1984 when the law was enacted. The following discussions explain the sweeping limitations to ARRC's original State charter suggested by this bill. The legislature has previously directed that ARRC operate as a self-sustaining business and has blended substantial financial and operational independence with public accountability requirements. Many of HB 47's abrupt and significant changes threaten to destroy those dynamic characteristics which give ARRC the flexibility it needs to survive economically in today's declining freight markets.

ARRC strongly opposes HB 47 and respectfully recommends that ARCA remain unchanged.

II. Major Provisions of the Bill.

A. Moose Kills. One area of concern addressed by HB 47 is the effect of railroad operations on wildlife, specifically moose. The bill requires that ARRC salvage meat and consult with the State Department of Fish and Game (ADF&G) to minimize adverse effects. We believe that these proposals only duplicate present laws and ignore ARRC/ADF&G cooperation.

As a consequence of railroad, truck, and automobile operations in Alaska, moose are unfortunately killed. We explain below that ARRC has already mitigated these losses by changing some equipment and operational techniques, repeatedly discussing remedial alternatives with State Fish & Game representatives, and insuring that, where possible, meat is salvaged.

B. Confidentiality. The bill restricts those subjects which may be protected as confidential and discussed by ARRC's Board at executive sessions. Freight divisions, contract rate agreements and discussions of land acquisitions

or disposals are targeted. As explained below, public discussion and disclosure of vital railroad market data will actually injure consumers by giving railroad competitors the opportunity to make rail transportation a less competitive option in Alaska.

C. Operations. Several sections of HB 47 require the railroad board to ensure that passenger and freight services are maintained at 1985 levels. Board approval will be required for any expansion or reduction of service. Present law requires involves Board approval only where a change in service levels is "major." Although inadequate financial resources may allow the Board to forego railroad expansions, it may not reduce the 1985 services levels for financial reasons. Presumably, any such reduction may require legislative approval.

Discussion which follows points out that railroad passenger service is a major drain on ARRC revenues: \$1.5 million annually. Although State tourism needs, resident access requirements, and tradition may justify ARRC's commitment to passenger service, economics do not. Save for a few excursion lines, Alaska's is the only unsubsidized rail passenger service in America. Present State law requires ARRC to report significant and permanent service reductions to the legislature. However, despite these losses, ARRC has not reduced services. They have been increased. Innovations in equipment, scheduling, and routes have helped mitigate the \$2 million annual loss which existed before transfer.

For its economic survival, however, ARRC depends upon the flexibility of its management to immediately respond to changing freight market conditions by expanding, modifying, or in some cases, reducing service levels. To the extent this bill will detract from ARRC's marketplace resiliency it will significantly defeat the State's earlier attempts to preserve rail freight service in Alaska.

D. Land Issues. HB 47's provisions also significantly affect ARRC's leasing, easements and permitting practices. The bill proposes that railroad managers may only enter into such land use agreements for one year or less; Board approval would be required for agreements of greater duration. The Board must hold at least one public hearing not less than 60 days before entering such agreements. In addition, it must make a written finding that these contracts are in the best interest of the people of the State, taking into consideration adjacent land uses, municipal land use plans and ordinances, economic development, revenue-generating potential, and public comment received.

The bill retains the current requirement that disposals be made at fair market value, but clarifies an exception for disposals to the State and municipalities. In addition, it

requires that any disposal of natural resources (e.g., gravel, timber) be made by competitive bid.

Finally, HB 47 would require legislative approval of all leases for over 35 years. ARCA presently allows longer leases so long as a right of termination is retained if the property is needed for railroad purposes after 35 years.

To the extent these significant modifications attempt only to underscore the need for public awareness of ARRC leasing decisions, we can applaud such concern. However, a discussion which follows points out that Board policies and rules already protect the public's need to know of railroad leasing activities. The ARRC, we believe, has already struck a careful balance between public involvement in its leasing decisions and its fundamental reliance upon real estate leasing practices which can adequately and quickly respond to market opportunities. Even a brief review of financial statements emphasizes the railroad's traditional and heavy reliance upon growing real estate revenues. HB 47's modifications promise to undermine railroad financial viability by seriously inhibiting marketing opportunities. The changes work to the advantage only of ARRC's competitors and, ironically, to the probable disadvantage of Alaska's public which, we believe, will increasingly depend upon aggressive development of private and public land resources.

III. HB 47's Impact.

A. Moose Kills. Like other Alaskans, ARRC is already subject to the requirements of AS 16.30 regarding salvage of big game. Moreover, the railroad has a history of cooperation with ADF&G, as attested by the attached article from that department's own in-house magazine. Corporation personnel continue to consult with ADF&G representatives and with fish and wildlife enforcement officers of the Department of Public Safety. Procedures are already in place to help insure killed moose are salvaged.

The unfortunate fact is that moose choose to use the cleared railroad track as well as public roads in years of heavy snowfall. For example, the winter of 1985-86 was extremely mild and only 17 moose were killed by railroad operations. In the 1984-85 snowy winter, more moose were killed on southcentral Alaska highways (319) than on the railroad right-of-way (316).

We believe the legislation is unnecessary. ARRC already abides by the State's salvage laws and it will continue to work with ADF&G personnel to mitigate moose losses.

B. Executive Session/Confidentiality. Sections 4 and 5 of HB 47 propose that confidential railroad marketing and

business data, including freight divisions and contract rate agreements, be disclosable to the public. The railroad's water carrier, trucking, real estate, and port competitors would reap the greatest benefit from this relaxation of the law. Using sensitive information related to railroad freight rates, developing markets, and business opportunities to their advantage, railroad competitors may successfully eliminate ARRC's capability to offer competitive freight rates and real estate in Alaska.

The State purchased the railroad in part to preserve a rail transportation option in Alaska. Therefore, it structured a public corporation which would vigorously pursue a market presence to best serve consumer needs and avoid State financial assistance. In ARCA the Alaska legislature recognized ARRC's need to protect its proprietary information from general public scrutiny to preserve that mandate of railroad self-sufficiency. HB 47 promises to largely undo this protection.

Rate divisions and contract rate agreements explain just how much ARRC charges to haul commodities. Divisions split freight revenues for particular shipments between the railroad and its connecting carriers; contract rate agreements establish freight charges between the railroad and its shippers. Armed with information collected from ARRC's files (or Board minutes since HB 47 would also eliminate freight divisions, contract rate agreements, and proposed land acquisitions and disposals as subjects which may be discussed in the Board's executive sessions), competitors may undercut railroad charges and contracts to their financial advantage in what are already highly competitive freight and real estate markets.

Federal law may also protect the freight rate information which railroad competitors seek through passage of this legislation.^{1/} After the transfer of the railroad into

1/ Please see 49 U.S.C. § 11910: "A common carrier . . . that knowingly discloses to another person, except the shipper or consignee, . . . (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier . . . without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, shall be fined not more than \$1,000." Because divisions and contract rate agreements will contain such information, legal counsel should opine whether HB 47 will inevitably conflict with this federal mandate. Note that the Interstate Commerce Commission requires only that minimal aspects of contract rate agreements be filed with that agency.

State ownership, the federal Alaska Railroad Transfer Act ("ARTA") specified that the State-owned railroad would be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the ICC and entitled to all of the business opportunities available to comparable railroads, including contract rate agreements. 45 U.S.C. § 1207.

Like federal deregulation in the airline, trucking, and telephone industries, deregulation of certain rail activities in the Staggers Rail Act of 1980 was meant to promote the viability of the rail transportation option in America. The Act was passed as a response to the financial difficulties then plaguing the nation's railroads. Congress felt that much of the problem lay with excessive governmental regulations. Hence, it granted rail carriers the privilege to conduct their operations by contract as other businesses do. Instead of charging uniform tariffs of general applicability, railroads would be able to negotiate individual contracts with their shippers.

For example, no longer bound by difficult and time consuming notice and rate-making regulations in its competition for TOFC ("trailer on flat car") traffic, railroads, including ARRC, may adjust rates quickly to changing market conditions, contract directly with shippers for the movement of their freight, and offer special services and accommodations to customers on a one-to-one basis. Special care is taken to ensure that contract rate agreement information is not disclosed to competitors. The overriding thrust of the Staggers Act is to protect the confidentiality of contract provisions and to ensure to the purchasers of transportation services and to railroads a degree of confidentiality similar to that of other businesses throughout the country.

HB 47 threatens to largely eliminate legislative directions that all business opportunities available to other railroads be afforded to ARRC and that the corporation be operated "according to sound business management practices" on a self-sustaining basis. To be successful, ARRC must continue to offer competitively-priced services in the marketplace. HB 47's demand that the railroad's shipper and carrier agreements be open for inspection by its competitors may also be an indication that ARRC has made its mark as a serious competitor for freight in a diminishing Alaska market.

HB 47 also eliminates confidential Board discussions of the details related to proposed land acquisitions or disposals. The prospect of public discussion of the confidential terms of proposed real estate transactions would have a significant chilling effect on ARRC market opportunities. The bill ignores the reality that most businessmen and women do not announce land acquisitions or

development plans until all options have been quietly researched, examined, and discussed. If ARRC should ever compete with other industrial landowners for this highly competitive trade, it must have the flexibility to honor requests that proposal information be protected. Public involvement at this early stage may even go beyond what is required of State agencies. The public interest is presently and adequately protected by the current law and Board rules that require all sales of land be acted upon and approved by the Board and legislature in public session.

C. Operational Restraints. The legislature's vision that ARRC be self-sustaining will be severely impacted by HB 47's directive that passenger and freight service levels be maintained at 1985 levels. Also, present law already requires a detailed oversight report to be provided to the governor and legislature before ARRC may undertake a significant reduction in services. The report, and public Board action which proceeds it, ensures adequate protection of the public's interest and provides ample opportunity for public involvement as a recent proposed sale of exhausted rail passenger equipment demonstrated.

Although some adjustments are naturally required by changing markets and developing innovations, the corporation's commitment to existing levels of freight and passenger services is evident. In fact, ARRC has dramatically improved passenger services since transfer and is committed to the purchase of new passenger coaches and two newly refurbished self-propelled railcars. Nonetheless, passenger service amounts to a \$1.5 million drain on ARRC's financial resources -(down from a \$2 million annual loss at transfer). However, to be economically viable, ARRC must have the ability to adapt to swings in the economic climate, particularly as freight markets change.

An examination of revenues from passenger service for the first 18 days of January 1987 demonstrates the need for flexibility in managing service levels. Total estimated revenues were \$12,504 while the estimated costs were \$59,900, for a loss of \$47,496. Such seasonal variations in market demand are expected and the corporation has not moved to eliminate these services.

Managerial flexibility to match the overall level of services to market demands is essential. HB 47 would eliminate that flexibility, to the marked disadvantage of ARRC's financial self-sufficiency and to the probable advantage of railroad competitors.

D. Land Issues. The corporation is the owner of a substantial amount of land (over 22,000 acres in addition to right-of-way) suitable for commercial leasing. Long-term

leases of that land are subject to the provisions of a Board policy which was developed only after significant public input. The Board's leasing policy is intended to accommodate the continued viability of competitive railroad leasing and adequate public awareness and involvement.

The additional requirements imposed by this bill would adversely affect the corporation's leasing program in many respects. In ARRC's commercial setting, its ability to act decisively is often necessary to capitalize on real estate market trends. HB 47's 60-day notice requirement would significantly destroy ARRC's marketing efforts in a highly competitive economy and seriously impact any opportunity to obtain the highest possible return on rail land.

The delay and intense public scrutiny suggested by this legislation would also discourage many potential lessees who are both eager to finalize a transaction and reluctant to prematurely reveal their financial affairs in public. The present Board policy requires public Board action to approve leases of more than three years and advance public notice of lease approvals. These public Board meetings allow concerned citizens ample opportunity to submit their comments. Proposed lease development of railroad Government Hill is a recent example of this process in action. It appears to provide an adequate balance between aggressive development of ARRC lease opportunities with public awareness and input. HB 47's attempts to significantly complicate railroad leasing procedures promises to undermine the railroad's self-sufficiency without meaningfully improving ARRC's own recognition and implementation of its public accountability obligations.

The bill's restriction of leases to 35 years in duration without legislative approval would also undermine leasing opportunities. Most long-term ground lease terms start at 55 years to allow high-quality improvements to be amortized over the entire lease term. ARRC's present policy was designed to accommodate commercial lessees who envision substantial improvements to railroad property. Financial institutions will not loan money to these lessees to build significant improvements unless a longer lease term is assured. After considerable discussions involving ARRC representatives, prospective and present lessees, and banks, ARCA's present restriction on long-term leases (they may be terminated if needed for railroad purposes after 35 years) has satisfied lending institutions. Lessees are on their way to improving lease parcels. Parenthetically, those improvements will also substantially add to the State's equity as the owner of rail property.

An additional impact of HB 47 is a logistic one. The corporation is presently lessor or permittor in some 1200

agreements. On the average, roughly two dozen such agreements are processed through the corporation's real estate department a month. Some of these transactions involve minor amendments, but a considerable number are substantial changes. Were the Board of Directors required to hold a public hearing before every agreement is made, it would be forced to devote an inordinate amount of attention to commercial, market-dictated decisions more appropriately left to the corporate officers hired to apply their experience and skill in real estate leasing. ARCA's honorariums may not begin to adequately compensate a largely volunteer Board for such new management responsibilities. On the other hand, long-term leases may require Board scrutiny, and provision has been made to present them, following public notice, to the Board for approval at its public meetings.

HB 47 also requires a detailed inventory of land and natural resources in ARRC's annual report to the legislature. This detailing of "present uses, future development plans, and known resource development potential for the land, interests in land, and natural resources" calls for extraordinary research, development and planning efforts which ARRC is presently not funded or staffed to provide. Of course, specific land use planning for large industrial areas must and is being developed to effectively respond to market needs, but the comprehensive land and natural resources planning called for here can only compel the commitment of dwindling personnel and financial resources to less vital activities.

HB 47 amends AS 42.40.350(d) to expressly permit leases to municipalities at less than fair market value. This change is also unnecessary; ARRC has consistently interpreted an existing exception for State leases to include leases to political subdivisions.

Finally, the bill proposes that any sale of railroad natural resources be made by competitive bid. This is also an unnecessary and undesirable limitation. Similar to the marketing of rail leases, ARRC needs the flexibility to establish the fair market value of any natural resources slated for sale by means in addition to competitive bid. This is particularly true when market conditions are greatly fluctuating and values are best established over time. The proposal also ignores the reality that sales of gravel and rock, for example, may not be conducive to the artificial structuring of a competitive sale format because of time constraints, remote locations, and market conditions.

ARCA already calls for the "prudent operation of the railroad according to sound business management practices" and directs ARRC's Board and management to "manage the corporation on a self-sustaining basis." A limitation on the types of

permitted sales of natural resources is at best a redundancy which also calls for prudent decision-making and, at the worst, a limitation which also threatens the railroad's financial vitality.

IV. Conclusion.

The Alaska Railroad Corporation opposes HB 47. The sweeping limitations it proposes upon railroad operations may not only undo the legislature's original vision of a quasi-private, quasi-public railroad armed with the flexibility it needs to survive in competitive freight and real estate markets, but seriously threaten its economic survival.

For all these reasons, we respectfully request that the bill's proposed amendments to the Alaska Railroad Corporation Act be rejected.

3654L

When Moose and Train Meet:



by Jack C. Didrickson and Raymond J. Kramer

On the last day of February 1985, Alaska Railroad Locomotive Number 3006N chugged its way out of the Anchorage railroad yards bound for Fairbanks. None of its crew realized that an unwanted record would be set before it arrived at its destination the next morning. Nineteen moose would die that trip, crushed by the locomotive, while the helpless crew watched, unable to save the victims. And, as the winter snows continued, more moose died on almost every run until the annual total for the entire length of the railroad came to 385.

Fortunately, not every year is a duplicate of the winter of 1984-85. This past winter (1985-86), 17 moose were killed along the entire length of the Alaska Railroad.

What causes these mortalities, and what can be done to lessen or prevent them? These are questions of primary importance to not only game biologists and railroad employees, but also to the public, some of whom see this as a shameful situation that could be easily remedied. Although many ideas have been proposed and tried, there is no one good solution.

Initially, both ADF&G and the Alaska Railroad presumed

that the high mortality in some years occurred simply because the moose population periodically fluctuated, with most kills occurring when the population was high. We now know this is not the case. By correlating the Alaska Railroad's daily records over the years with weather patterns which coincided with the chronology of high moose losses, we could see a pattern. In years of deep snow depth (three to five feet) for long periods of time, moose losses along the tracks drastically increased. Conversely, in winter periods of little snow, or when spring thaws decreased the snow depths, moose-train incidents significantly declined.

A majority of the 1984-85 mortalities occurred on the tracks between Willow and Talkeetna, in an area known as Game Management Unit (GMU) 14B. This is an area with a large moose population, most of which remains in the high reaches of the Talkeetna Mountains throughout the summer and fall. In winter, as snow and winds increase in these highlands, a large number of the moose move down the mountain slopes to their critical winter food supply of willows along the Susitna River.

Unfortunately, both the railroad and the main highway from Anchorage to Fairbanks bisect their migration path.

When snows exceed three feet, the moose find these man-made "trails" a convenient place to walk or rest, and therein lies the cause of the mortality. Moose are somewhat reluctant to leave these cleared areas and they have not, for the most part, learned to fear trains or autos. As a result, an additional 77 animals were killed by highway vehicles during the 1985 season. Also, many become stressed by deep snow and the lack of nearby browse. In residential areas along the highway, stressed moose belligerently chased dogs, children, and adults, with the result that another 40 were killed in defense of life and property, bringing the total loss of moose in GMU 14B to 502. Hunters, on the other hand, took only 216 animals in the following 20-day September season, before the deep snows set in.

Although a large percentage of mortalities for all years occurs between Willow and Hurricane, with a few other "hot spots," mortalities are otherwise fairly uniformly distributed along the entire length of the tracks; therefore, the problem is not merely a local one. A solution must be provided that works along the entire railroad corridor from Seward to Whittier to Fairbanks.

Meetings have been held between the Alaska Railroad personnel and ADF&G game biologists to seek answers and actions, and members of the public have enthusiastically offered innovative ideas, but no single, concrete solution has been found.

There are certain realities which must be faced where "compromise" simply won't work. The trains must run and they must run on or near schedule; too many people and businesses are dependent on the products delivered to interrupt service. Closing down the railroad in winter is no solution. Scheduling the trains to run only in daylight hours won't work, with only four to five hours of daylight present during the critical months. Accurately predicting where and when deep snows will occur is beyond human technology. We must look to the tracks and trains themselves for solutions.

Perhaps the most "far-out" solution offered so far was that of a giant cushioned rubber bumper attached to the front of the locomotive. Here, laws of physics and elasticity come to bear, causing visions of a moose being hit at 40 mph, sinking into this giant cushion, and then being sprung out in front of the train again, only to be picked up and thrust again, endlessly bouncing down the tracks.

Another more realistic attempt was to mount sonic whistles on the locomotive which might alert the animals. The experiment failed, however. When the train moved comparatively slowly, the whistles didn't whistle, and when it was very cold they froze into silence.

Slowing the train from 40 to 20 mph in "hot spot" areas was another idea. Not only did scheduling dif-

In times of heavy snow, moose make use of the cleared areas on the tracks of the Alaska Railroad for walking and resting. Here, a train has stopped for a moose bedded down on the tracks during a snowstorm in the winter of 1985.



M. Penn
Anchorage Daily News

difficulties make this impossible, but the trains couldn't climb certain grades on the icy tracks if momentum was lost.

Decking or covering the ties on trestle bridges to permit moose to safely cross was suggested, but this idea was denied because speed sensors on the train wheels reportedly will not work properly in the presence of the coverings.

One of the major problems in deep snow is that of the "tunnel" effect which trains create with their own snow plow on the front. In this situation, once a moose is on the track, after struggling in deep snow, it won't leave even with a train bearing down on it. There is little room between the train and the wall of snow and the moose are often sideswiped. "Wing plowing," where special equipment plows 20 feet on either side of the tracks seems to have merit in certain areas where topography permits, but this is not the complete answer. When the railroad bed is significantly higher than surrounding terrain, moose still prefer the track bed to jumping down into deep snow.

The best, but perhaps most complicated, scheme offered so far is to allow permit hunters to harvest moose along the railway corridor, at times when heavy snowfall occurs. Logistically, this would prove difficult. First, permits would have to be fairly allocated and there would be no guarantee in any particular year that a hunt would be held. The hunt would occur only in areas determined to be "hot spots" and then only within a narrow corridor along the tracks. When snows are deep, snowmachines bog down and would prove worthless. Furthermore, hunters riding snowmachines, or even walking down the railroad right-of-way, simply would not be safe; eventually someone would be hit by a train.

The only apparent method of getting hunters afield would be to run a "hunter train" which could stop in designated areas, let hunters off for a period of time, and pick them up later, with their harvested moose. This plan, too, offers tremendous logistical problems and would require a great deal of common sense and wintercraft knowledge on the part of each hunter. If regular train schedules were to continue, each hunter would have to be back at his designated pickup point precisely on time, as the train could not delay its schedule. A hunter who took an animal too far away would perhaps have to leave all or part of his moose behind; this is a violation of wanton waste laws and would defeat the purpose of obtaining the meat.

Based on random permit drawing, there is a chance that some inexperienced hunters might be drawn who would have no idea of the severity of camping out in -40° weather. To leave them out in these conditions overnight could prove disastrous, particularly if a storm occurred. Inevitably, someone would get lost, frostbitten, or hypothermic.

For lack of a workable solution, the problem is far from resolved. We would all like to see a harvest shift from trains to hunters. In Canada, Sweden, Norway, and Russia, game managers are also seeking answers to this problem, but as yet no economically feasible solution has been found. Fencing both sides of the railway would not only be exorbitantly expensive, but would also cut the moose off from their winter habitat. Overpasses or underpasses, with wing fences to funnel the animals onto these routes, have shown promise in Europe, but



M. Penn
Anchorage Daily News

Frank Box, boilermaker for the Alaska Railroad, welds one of two lights that were attached to the locomotives to chase moose off the tracks.

because of the great mileage involved would require literally millions of dollars to accomplish effectively in Alaska. Just such an underpass has been proposed outside Anchorage under the Glenn Highway; the results of this experiment will tell us much over the next few years.

Can our railbelt moose populations sustain these losses? The answer is a cautious "yes," with the adjustment of seasons and bag limits, but game managers would prefer to see a better use for the tons of meat that are spoiled by a train's crushing impact.

As Alaska moves into the 21st century, answers to this vexing problem may be found. In the meantime, game biologists must continue to obtain basic biological information to justify attempts at possible solutions.

Jack C. Didrickson, who has been with the department since 1959, serves as Area Game Biologist with the Division of Game, ADF&G, Palmer.

Raymond J. Kramer serves as Game Biologist, Division of Game, ADF&G, Anchorage.

FACSIMILE COVER SHEET

TO: Representative Dave Donley, Chairman
Labor & Commerce Committee

FROM: Larry D. Wood, Esq.

General Counsel's Office
Alaska Railroad Corporation

DATE: 1/28/87

NUMBER OF PAGES (including cover sheet): 15

If any questions/problems with transmittal, please call (907) 265-2461.

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Original sponsor: Zharoff

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 81 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH 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 39.25.110(11) is amended to read:

10 (11) the officers and employees of the following boards,
11 commissions, and authorities:

12 (A) Alaska Gas Pipeline Financing Authority;

13 (B) Alaska Permanent Fund Corporation;

14 (C) Alaska Energy Center;

15 (D) Alaska Industrial Development Authority;

16 (E) Alaska Commercial Fisheries Entry Commission;

17 (F) Alaska Commission on Postsecondary Education;

18 (G) Alaska Power Authority;

19 * Sec. 2. AS 44.83.030 is repealed and reenacted to read:

20 Sec. 44.83.030. MEMBERSHIP OF THE AUTHORITY. The board of
21 directors of the authority consists of seven members. The commis-
22 sioner of commerce and economic development and the commissioner of
23 revenue serve as directors and the governor shall appoint one director
24 from the banking industry, one consumer representative, two directors
25 from business and industry, and one director who is experienced in the
26 electrical utility industry. Directors appointed by the governor
27 serve for staggered terms of six years and are subject to confirmation
28 by a majority of the members of the legislature in joint session.

29 * Sec. 3. AS 44.83.045(a) is amended to read:

1 (a) The [PUBLIC] directors appointed by the governor must
2 [SHALL] be residents and qualified voters of Alaska and shall comply
3 with the requirements of AS 39.50 (conflict of interests). [THE
4 PUBLIC DIRECTORS SHALL SERVE OVERLAPPING FOUR-YEAR TERMS.]

5 * Sec. 4. AS 44.83.045(c) is amended to read:

6 (c) The authority shall employ an executive director who may,
7 with the approval of the authority, employ additional staff as neces-
8 sary. In addition to its staff of regular employees, the authority
9 may contract for and engage the services of legal and bond counsel,
10 consultants, experts, and financial and technical advisors the author-
11 ity considers necessary for the purpose of conducting studies, inves-
12 tigation, hearings, or other proceedings. The board of directors
13 shall establish the compensation of the executive director. The
14 executive director and staff of the authority are in the exempt ser-
15 vice under AS 39.25.110 [IS SUBJECT TO THE PROVISIONS OF AS 39.25.-
16 010 - 39.25.220].

17 * Sec. 5. Notwithstanding the amendments to AS 44.83.030 made by sec. 2
18 of this Act, the public directors of the authority on the day before the
19 effective date of this Act shall continue to serve until their terms ex-
20 pire. On the effective date of this Act, the governor shall replace the
21 director of the office of management and budget and the three commissioners
22 in accordance with AS 44.83.030 as amended by this Act.

23 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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29

ARECA

Resolution 87-3-3

BE IT RESOLVED, ARECA urges support of SB81 relating to restructure of the APA board of directors with the following amendments:

1. Changing line 25 on page one to read "two directors who have utility board or management experience";
2. Removing the section 3;
3. Changing line 15 on page 2 to read "six-year terms" rather than four-year terms;
4. Reinstating the original wording in line 17 through 20 on page 2.

18 February, 1987

MEMORANDUM:

TO: Mark Johnson, Committee Aide
Senate Labor and Commerce Committee

FROM: Michael Thill *M.T.*
Senator Zharoff's Staff

SUBJ: SB 81 Relating to the Alaska Power Authority

Attached you will find a memo relating to the changes Senator Zharoff would like to make to SB 81. Per our conversation of 2/17, I have drafted a memo to legal services requesting a CS to effect these changes. The substantive changes we wish to make are as follows:

We would like to change the composition of the APA board to include the commissioners of DCED and Revenue, and have modified the earlier proposal for the Governor's appointees.

We would like to retain the clarification that employees of the APA are in the exempt service;

It will also be necessary to amend the language contained within section 7 to reflect the changes in the composition of the authority which occur in section 2.

Thank you for your consideration of this request.

19 February, 1987

MEMORANDUM:

TO: Ms Tam Cook, Director
Legal Services

FROM: Mark Johnson,
Senate Labor and Commerce Committee

I would like to request the drafting of an L&C CS for SB 81 to contain the following changes:

- 1) Rewrite section 2 concerning the composition of the authority to reflect the following membership:

Commissioner of DCED
Commissioner of Revenue
One director from the banking industry
One consumer representative
Two directors from business and industry
One director experienced in the electrical utility industry.

Directors appointed by the Governor shall serve staggered 6 year terms, and are subject to confirmation by the Legislature.

- 2) Delete section 3 in its entirety;
- 3) Amend section 5 to contain only those changes made on lines 26 and 27 regarding the exempt status of employees;
- 4) Delete section 6 in its entirety;
- 5) Rewrite section 7 to reflect the changes referenced above;
- 6) Renumber sections as appropriate.

Thank you for your attention to this request.

Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee

April 3, 1987

Senate Bill No. 81

Robert E. LeResche, Executive Director
Alaska Power Authority

As I will not be able to attend the Senate Labor and Commerce Committee hearing on Senate Bill No. 81, scheduled for consideration on April 3, 1987, please accept the following comments in lieu of my appearance before the Committee.

On February 27, 1987, the Alaska Power Authority Board of Directors met and consideration was given to Senate Bill No. 81. At this meeting the Board adopted a formal position in strong support of Section 1 of SB 81 and voted to oppose Sections 2,3,4 and 5 of the Bill. It is the consensus of a majority of members of the Alaska Power Authority Board that the structure of the Board remain as currently established. In their opinion, considering the statutory powers vested in the Alaska Power Authority Board of Directors, the current structure provides a proper level of checks and balances between the Alaska Power Authority, the Governor and the Legislature.

Additional Board action taken on SB 81 included the unanimous adoption of Alaska Power Authority Resolution No. 1987-06. The resolution supports amendment to AS 39.25.110 (11) as presented in Section 1 of SB 81, which specifically names the Alaska Power Authority as a state agency in exempt service. A copy of the resolution is attached.

While the Board opposes Sections 2,3,4 and 5 of SB 81, legislation which would resolve the Alaska Power Authority's exempt status issue is still necessary and desired during the legislative session. At this time, on behalf of the Alaska Power Authority Board of Directors, I respectfully request the Committee's favorable consideration of amendment to AS 39.25.1110 only.

Please contact me if I may provide additional information or assistance.

Attachment as stated.

ALASKA POWER AUTHORITY
Resolution 1987-06

RESOLUTION BY THE ALASKA POWER AUTHORITY BOARD OF DIRECTOR RECOMMENDING THAT AS 39.25.110 BE AMENDED TO SPECIFICALLY NAME THE ALASKA POWER AUTHORITY AS A STATE AGENCY IN EXEMPT SERVICE.

WHEREAS, the Alaska Power Authority was created as a public corporation of the State of Alaska with a separate and independent legal existence in the Department of Commerce and Economic Development; and

WHEREAS, the Alaska Power Authority consists of a seven member board of directors required to employ an Executive Director, who employs additional staff as necessary, and is granted powers under AS 44.83.030 to carry on and further its corporate purposes; and

WHEREAS, the Alaska Power Authority, although considered to be a State agency in exempt service not covered by the provisions of AS 39.25 (the State Personnel Act), is not specifically named as such in this chapter; and

WHEREAS, the Authority has been advised by the Office of the Attorney General to seek legislation to provide clarification on the status of the Executive Director and staff; and

WHEREAS, the Alaska Power Authority Board of Directors has previously adopted Resolution No. 1985-03 on February 26, 1985, in support of amendment to AS 39.25.110, to specifically name the Alaska Power Authority as a state agency in exempt service; and

WHEREAS, on September 19, 1986, the Superior Court of the State of Alaska ruled as a matter of law that the Alaska Power Authority employees were not members of the State of Alaska classified service;

NOW THEREFORE, BE IT RESOLVED, by the Board of Directors of the Alaska Power Authority:

That AS 39.25.110 is recommended for statutory amendment to specifically name the Alaska Power Authority as being a State agency in exempt service, thereby exempting the Authority from the provisions of the State Personnel Act;

BE IT FURTHER RESOLVED, that the Alaska Power Authority Board of Directors supports amendment to AS 39.25.110(11) as presented in Section 1 of Senate Bill No. 81, introduced in the Alaska State Senate on January 22, 1987.

This resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: Joe Halloran, Allison, Schaeffer
with Nicks

NAYS: Ø

ABSENT: Huffman

And the resolution was declared adopted on this the 27th day of February, 1987.

ALASKA POWER AUTHORITY

BY: _____



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

26 January, 1987

MEMORANDUM:

TO: Mark Johnson, Committee Aide
Senate Labor and Commerce Committee

FROM: Michael Thill
Senator Zharoff's Staff

SUBJ: SB 81 Relating to the Alaska Power Authority

The purpose of this legislation is to effect two changes in the APA statutes. These two policy changes were contained in CSSB 292(L&C) which was heard in the Senate Labor and Commerce Committee (5 do pass) and was in the Senate State Affairs Committee at the time of adjournment last year.

The first change places the employees and officers of the APA in the exempt service, thus clarifying in statute the current practice. I will include an AG's opinion concerning the need for this change in the backup I am providing you.

The second change involves restructuring the composition of the APA board, which is a modification of a recommendation contained within the "Advisory Committee Report on Statewide Power Production Costs". I will provide you with an excerpt from the relevant portions of this report, a copy of the statutes referenced, and a sectional for this measure.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474 • 485-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • J. RISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SB 81 Sectional Analysis:

Section 1) Adds the APA to the list of boards, commissions, and authorities whose officers and employees are in the exempt service.

Section 2) Changes the composition of the APA Board to seven members as follows:

Commissioner of DCED

One director from the banking industry

One consumer representative

Two directors from business and industry

Two directors who are managers in the utility industry;

Directors appointed by the Governor shall serve staggered 6 year terms, and are subject to confirmation by the Legislature.

Section 3) Adds new language so that the board advises the executive director, rather than the powers of the authority being held directly by the board.

Section 4) Directors appointed by the Governor must be state residents and comply with conflict of interest provisions.

Section 5) Adds language so that the powers of the authority are vested in the executive director. Adds staff of the APA to the exempt service category.

Section 6) Amends language to be consistent with sections 3 and 5.

Section 7) Current public members will serve out their terms, however on the effective date of this act, the Governor shall replace the director of OMB and the 3 commissioners. (Except the commissioner of DCED)

Section 8) Immediate effective date.

July 27, 1977

The Honorable H. Phillip Hubbard
Commissioner
Department of Commerce and
Economic Development

AVRUM M. GROSS
ATTORNEY GENERAL

Legal status of executive
director and staff of
Alaska Power Authority
Our File: J-66-719-77

By:
G. Thomas Koester
Assistant Attorney General
Department of Law

You requested an opinion regarding the applicability of AS 39 to the executive director and staff of the Alaska Power Authority, AS 44.56. We understand that the thrust of your request relates to the coverage of these positions by the State Personnel Act, AS 39.25.

AS 44.56.050 provides that the executive director employed by the authority is subject to confirmation by the legislature. While the confirmation requirement is invalid, Bradner v. Hammond, 553 P.2d 1 (Alaska 1976), this is a clear indication that the legislature intended the executive director to be exempt from Personnel Act coverage. Therefore, we believe the Act has no application to the executive director position.

Whether the Act applies to the staff is difficult to determine. AS 44.56 provides no guidance, and we have been unable to discover anything in its legislative history to resolve the issue.

The statutes governing agencies similar to the Power Authority usually state expressly the status of employed staff (e.g., Municipal Bond Bank Authority: employees are in the classified service, AS 44.58.070; Small Business Development Corporation: employees are in the exempt service, AS 44.60.380). One notable exception is AS 18.55, the Alaska State Housing Authority (ASHA) Act. However, AS 18.55:070, the provision authorizing ASHA to employ staff, was enacted by the Territorial Legislature in 1949, several years before the Personnel Act was enacted in 1960. ASHA employees have been considered in the exempt service since 1960; ASHA has its own personnel rules which are similar to those governing "normal" state employment, but does not consider itself under the Personnel Act. The legislature arguably ratified this situation in 1971 when it created the Alaska Housing Finance Corporation (AHFC), AS 18.56, providing that "[t]he personnel of the corporation are exempt from AS 39.25 to the same extent as the personnel of [ASHA]." AS 18.56.070.

The Honorable H. Phillip Hubbard
Commissioner
Department of Commerce and
Economic Development

July 27, 1977

We suggest that staff employed by the Alaska Power Authority be considered in the exempt service and not covered by the provisions of AS 39.25. This conclusion is based on the fact that the authority, while "a public corporation of the state," has a "separate and independent legal existence," AS 44.56.020, the fact that the legislature arguably has ratified this approach, and the fact that this approach applies to most of the other public corporations of the state (ASHA, AHFC, Alaska Toll Bridge Authority, Small Business Development Corporation; the one exception is the Municipal Bond Bank Authority). However, note that whatever personnel system is established must incorporate merit principles. Alaska Const., art. XII, §6. Perhaps the authority can follow a system patterned after the ones employed by ASHA and AHFC.

However, because it is not certain that this approach is correct and it could be argued the other way, we urge you to seek legislation clarifying the status of staff employed by the Alaska Power Authority.

GTH:md

cc: V. Kent Dawson
Legislative Assistant
Office of the Governor

STATE
of ALASKA

MEMORANDUM

TO: Hon. Phillip Hubbard, Commissioner
 Department of Commerce & Economic
 Development
 ATTN: Lois Cook

DATE: July 11, 1978

FILE NO: J-66-808-78

TELEPHONE NO.

FROM: AVRUM M. GROSS
 ATTORNEY GENERAL

SUBJECT: Status of personnel
 of the Alaska Power
 Authority

By:
 Rodger W. Pegues
 Assistant Attorney General

This responds to your request for our opinion as to the effect of the recent amendment to the APA's organic act which provides, "The executive director of the authority is subject to the provisions of AS 39.25."

We are advised on good authority that the amendment was proposed to make the executive director subject to the Conflict of Interest Act and that, by error, the reference was made to AS 39.25 rather than to AS 39.50. The bill was rushed through at the last minute, and passed without correction to the reference. The Statute Reviser will be asked to make a corrective amendment in his omnibus bill next year.

In our view, the plain error rule controls. The amendment makes sense only if it is read to be 39.50 rather than 39.25. Making a person "subject to" the State Personnel Act -- without anything more -- accomplishes nothing. Under that Act, one may be exempt, partially exempt, or classified. If the amendment is read to mean AS 39.25, i.e., the Personnel Act, then all it says is that the executive director is exempt, partially exempt, or classified. He is that now, i.e., he is exempt. Moreover, there is neither rhyme nor reason to place the executive director under the Personnel Act and not include his staff. That will be the result, however, if the amendment's plain language is followed. On the other hand, if the reference were to AS 39.50, i.e., to the Conflict of Interest Act, it would subject the executive director to that Act's requirements and thereby accomplish the amendment's purpose. Moreover, it would make sense to subject the executive director to that Act but not to include his staff. Accordingly, the reference to AS 39.25 must be considered plain error, and the status quo ante obtains.

That the amendment was intended to subject the executive director to the Conflict of Interest Act does not, however, mean that he is now subject to that Act. Until a

Lois Cook
July 11, 1978
Page #2

law has been passed subjecting him to that Act, he is not subject to it; it takes more than intent to make a law. Train v. City of New York, 420 U.S. 35, 45 (1975). Nothing prevents his filing a Conflict of Interest Statement voluntarily, however, or the authority's requiring him to file one as a condition of employment.

The answers to your questions then are as follows:

(1) The executive director of the APA is in the exempt service.

(2) The other employees of the APA are in the exempt service.

RWP/pjg



Alaska Power Authority

State of Alaska

March 4, 1986

Senator Fred Zharoff, Chairman
Senate Labor and Commerce Committee
P.O. Box V
Capital Building
Juneau, Alaska 99811

Dear Senator Zharoff:

As requested, the attached position paper relating to CSSB 292 is provided. If I may be of further assistance please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Heath".

Robert D. Heath
Executive Director

POSITION PAPER CSSB 292 (SENATE LABOR AND COMMERCE)

SECTION 1:

CSSB 292 (SENATE LABOR AND COMMERCE) amends AS 39.25.110 (11) by establishing the Alaska Power Authority as a state agency in exempt service. Currently the legal status of the Executive Director and staff of the Alaska Power Authority is not expressly stated through statute. The Alaska Power Authority has been advised by the Attorney General's office to seek legislation clarifying the status of staff employed by the Alaska Power Authority. The Alaska Power Authority supports this amendment as shown by the resolution adopted by the Board of Directors at the 2/26/85 board meeting.

SECTION 2:

CSSB 292 (SENATE LABOR AND COMMERCE) addresses the membership of the Alaska Power Authority Board of Directors and proposes to repeal and reenact AS 44.83.030. Currently, the Executive Director and staff of the Alaska Power Authority reports directly to the Board of Directors. Because of this organizational structure, it is not appropriate for staff to render an opinion or state a position on the proposed language to restructure the make-up of the Alaska Power Authority Board. However, staff will present and solicit the Board's formal opinion on the bill at the next board meeting, tentatively scheduled for 3/24/86 or 3/25/86. The board's position on this matter will be expeditiously communicated in writing to the appropriate legislative committees.

SECTION 3,4,5,6 AND 7:

CSSB 292 (SENATE LABOR AND COMMERCE) propose amendments also requiring consideration by the Alaska Power Authority Board of Directors.

DEPARTMENT OF LAW

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

OFFICE OF THE ATTORNEY GENERAL

April 1, 1985

M E M O R A N D U M

TO: Honorable Bill Sheffield
Governor

FROM: Norman C. Gorsuch
Attorney General

RE: Attached bill placing employees of
the Alaska Power Authority in the
exempt service
Cur file: 377-181-85

Attached is a bill exempting the employees of the Alaska Power Authority from the State Personnel Act (AS 39.25). The bill was recommended by the board of directors of the Alaska Power Authority to clarify the status of the authority's executive director and staff.

It has long been our view that the Alaska Power Authority is exempt from the State Personnel Act, but a last-minute error in SCS CSSE 442, when it was passed by the legislature in 1978 (sec. 4, ch. 156, SLA 1978), confused the issue. 1978 Inf. Opp. Att'y Gen. (July 11; J-66-808-78). The attached amendment will finally correct that error. As mentioned in that July 11, 1978 opinion, it is likely that the original intent was to cite AS 39.50, the conflict-of-interests chapter, rather than AS 39.25. However we understand that the authority does not want to amend AS 44.83.045(c) in a way that would subject the executive director to AS 39.50.

A draft transmittal letter to the legislature is also attached.

UCG:CEJ:mem

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

Lee Nunn, Chairman
Alaska Power Authority
Anchorage

Robert Heath, Executive Director
Alaska Power Authority

ALASKA POWER AUTHORITY
Resolution 1985-03

RESOLUTION BY THE ALASKA POWER AUTHORITY BOARD OF DIRECTORS RECOMMENDING THAT AS 39.25.110 BE AMENDED TO SPECIFICALLY NAME THE ALASKA POWER AUTHORITY AS A STATE AGENCY IN EXEMPT SERVICE.

WHEREAS, the Alaska Power Authority was created as a public corporation of the State of Alaska with a separate and independent legal existence in the Department of Commerce and Economic Development; and

WHEREAS, the Alaska Power Authority consists of a seven member board of directors required to employ an Executive Director, who employs additional staff as necessary, and is granted powers under AS 44.83.080 to carry on and further its corporate purposes; and

WHEREAS, the Alaska Power Authority, although considered to be a State agency in exempt service not covered by the provisions of AS 39.25 (the State Personnel Act), is not specifically named as such in this chapter; and

WHEREAS, the Authority has been advised by the Office of the Attorney General to seek legislation to provide clarification on the status of the Executive Director and staff;

NOW THEREFORE, BE IT RESOLVED, by the Board of Directors of the Alaska Power Authority:

That AS 39.25.110 is recommended for statutory amendment to specifically name the Alaska Power Authority as being a State agency in exempt service, thereby exempting the Authority from the provisions of the State Personnel Act;

BE IT FURTHER RESOLVED, that the Alaska Power Authority Board of Directors respectfully requests the Governor to introduce legislation providing for amendment to AS 39.25.110 as recommended herein.

This resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: Arnold, Harrison, Hoffman, Allison, Knapp, Lounsbury, Hinn
NAYS: 0
ABSENT: 0

And the resolution was declared adopted on this the 21st day of February, 1985.

ALASKA POWER AUTHORITY
BY: [Signature]
Chairman

BY: [Signature]
Secretary



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Commerce & Economic Development	DIVISION Alaska Power Authority	BILL NUMBER SR 292	SPONSOR Rules Committee by Request of Governor
DEPARTMENT POSITION Support Legislation			
PREPARED BY Susan White (561-7877)	DATE 2/7/86	COMMISSIONER'S SIGNATURE	DATE

SUMMARY

OTHER AGENCIES AFFECTED BY BILL N/A	CONSTITUENT GROUP(S) AFFECTED BY BILL N/A
ORGANIZATIONAL SUPPORT FOR BILL N/A	ORGANIZATIONAL OPPOSITION TO BILL N/A

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
In previous years, the AG's office advised the Department of Commerce and Economic Development to seek legislation clarifying the status of staff employed by the Alaska Power Authority (see attached copy of AG's letter dated 7/27/77). Although the Authority is a public corporation of the State, with a separate and independent legal existence, this status has not been expressly stated through statute. Amendment to AS 39.25.110(11) will confirm such legal status.

ANALYSIS OF BILL/PROGRAM EFFECTS
Amendment to this section would clarify the legal status of and specifically name the Alaska Power Authority as a State agency in exempt service. The exemption would cover the Alaska Power Authority Board of Directors, Executive Director and the entire staff of the Alaska Power Authority. The amendment allows for the Alaska Power Authority to be included with those boards, commissions and authorities in exempt service under AS 39.25.110(11).

AMENDMENTS PROPOSED

2973/559

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

RECEIVED

FEB 19 1985

LAW OFFICES

BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON

A PROFESSIONAL CORPORATION

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- CYNTHIA L. DUCLEY
- ERIC A. EISEN
- JOSEPH W. EVANS
- CARL E. FORSBERG
- WILLIAM W. GARNER
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- CAROL JOHNSON
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- STANLEY T. LEWIS
- JEFFREY B. LOWENFELS
- LAWRENCE Z. OSTROVSKY
- MICHAEL J. PARISE
- SUZANNE C. PESTINGER
- TIMOTHY PETUMENOS
- MICHAEL V. REUSING
- ELISABETH H. ROSS
- E. BUDD SIMPSON
- STEPHEN F. SORENSEN
- SHERIDAN STRICKLAND
- BARRY N. SUMMER
- JON K. TILLINGHAST
- DANIEL WESTERBURG

February 13, 1985

*D.C. BAR ONLY
**D.C. AND ALASKA BAR
ALL OTHERS ALASKA BAR ONLY

William Mellow
Assistant Attorney General
Attorney General's Office
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Juneau, Alaska 99811

Jonathan B. Rubini
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Frank Raye, Director
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Mr. Brad Thompson
Division of Risk Mgmt.
State of Alaska
Pouch "C"
Juneau, Alaska 99811

Mr. Dick Stone
Northern Adjusters
2609 Arctic Blvd.
Anchorage, Alaska 99503

Re: Sidney R. Kidwell v. State of Alaska
James E. Benka v. State of Alaska

Gentlemen:

I have already discussed with most of you my thoughts on these cases. As you are aware, two employees of the Alaska Power Authority, Kidwell and Benka, have sued the State of Alaska for wrongful termination. This letter and the attached Research Memorandum focuses on the claim made by these employees that they were fired contrary to the provisions of the Alaska Personnel Act.

Our investigation reveals that the Alaska Power Authority did not follow the Alaska Personnel Act because they were under the impression that the personnel act did not apply to the Alaska Power Authority.

As you can see from the attached Research Memorandum, we have a substantial concern that the personnel act will be held to apply to the Alaska Power Authority. I have routed results of this research to a broader group of people than I normally would in view of the fact that it

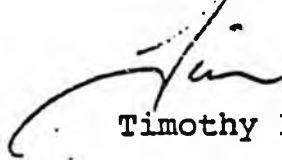
William Mellow
Jonathan G. Rubini, Esq.
Frank Raye
Brad Thompson
Dick Stone
February 13, 1985
Page 2

appears important that the State consider remedial legislation specifically exempting the Alaska Power Authority from the provisions of the personnel act.

We have much more detailed memoranda in the file on the factual circumstances surrounding the termination of Kidwell and Benka which we can make available for your review. The issue addressed in the attached memorandum however is a purely legal issue regarding the procedures that must be followed under the Alaska Personnel Act. It did not appear necessary to detail the facts of the Kidwell and Benka cases in order to keep you advised.

Very truly yours,

BIRCH, HORTON, BITTNER,
PESTINGER & ANDERSON



Timothy Petumenos

TP/jm

Encl.

cc: Ray Benish
David Ritze

**ADVISORY COMMITTEE REPORT
ON
STATEWIDE POWER PRODUCTION
COSTS**



**DECEMBER 15, 1984
ANCHORAGE, ALASKA**

December 15, 1984

Board of Directors
Alaska Power Authority
334 West 5th Avenue
Anchorage, Alaska 99501

On November 9, 1984, Governor Sheffield appointed an Advisory Committee on Statewide Power Production Costs. The committee reporting directly to the Board of Directors of the Alaska Power Authority, was asked to investigate the economic, financial, political, and administrative feasibility of a comprehensive Statewide program to establish a basis for equitable power production costs in Alaska through purchase and resale agreements.

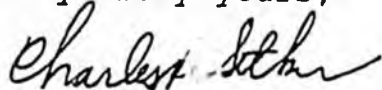
The committee was asked to deliver its report by December 15, 1984. Please find herewith the requested report.

Quantitative information and related analysis was provided by OMB and the APA staff. While the resulting numbers provided in this report appear reasonable, further analysis may be required to confirm their accuracy.

A list of the Advisory Committee members follows this letter. Each of these members is to be commended for his or her hard work, creative thinking, and team spirit. Without such cooperation, we could not have produced the attached report in such a short period of time.

We appreciate having had the opportunity to contribute to such an important issue. Hopefully, our efforts will provide a useful direction for further discussions.

Very truly yours,



Charles P. Sitkin
Chairman

CPS:pj

ADVISORY COMMITTEE ON STATEWIDE POWER PRODUCTION COSTS

Charles P. Sitkin, Arthur Young & Company, Chairman
Nels A. Andersen, Jr., Co-Ma Services
Charles Freeman, Mayor, Ketchikan
Loyd Hodson, Gen. Mgr., Alaska Village Electric Cooperative
David Hutchens, Exec. Director, ARECA
Loren Karro, Tlingit-Haida REA
Robert Martin, Jr., Gen. Mgr., Chugach Electric Association
Don Mellish, National Bank of Alaska
David Nease, Gen. Mgr., Kodiak Electric Association
Tom Stahr, Gen. Mgr., Anchorage Municipal Light & Power
Ivan Forsheim, Board President, Golden Valley Electric Assoc.
Eric Meyer, AKPIRG

I. COMMITTEE REPORT

I. COMMITTEE REPORT

A. INTRODUCTION

This report is a compilation of the documentation developed by the Advisory Committee on Statewide Power Production Costs.

The report is divided into several sections. Section I, Committee Report, contains this introduction, and:

- The Conceptual Framework--to serve as background for the committee report,
- the Power Cost Equalization Concept--developed and recommended by the Advisory Committee.

Section II contains four reports:

- "Problems Addressed by the Advisory Committee"--A definition of the electric energy supply problem prepared by ARECA.
- "Sub-Committee Report on Power Equalization"--Lloyd Rodson, Chairman
- "Sub-Committee Report on Capital Requirements for Rate Equalization"--Tom Stahr, Chairman
- "Sub-Committee Report on Organization"--Bob Martin, Chairman

The Appendix of the report contains a copy of the Governor's letter establishing the Advisory Committee and a list of the Committee members.

B. CONCEPTUAL FRAMEWORK

Alaskan electric utilities, the State administration, and the legislature have been attempting for a number of years to provide reliable electric energy to all Alaskans at a reasonable cost. This has not been an easy task since Alaska has a great range of community sizes, the communities are geographically isolated, and there is a great disparity in the cost to generate electricity. Various attempts have been made to reduce electric costs to the consumer. These have ranged from grants to purchase generation and distribution systems and state financing of hydroelectric projects to subsidies of retail electric costs. On one hand, some very low cost electricity is currently available because of relatively old Federally financed hydroelectric projects in Anchorage and Juneau, and relatively old and soon to expire favorable gas purchase contracts in the Anchorage area.

Current electric generation costs in Alaska are unstable as we look to the future. Old hydroelectric facilities are being used to capacity. Gas contracts are about to expire. The power cost equalization program that subsidizes rural diesel-fired electric generation systems are provided on a year by year basis, subject to approval by legislature. The cost of providing electricity to the utilities throughout the State varies greatly and symptoms have been addressed on a "squeaky wheel" basis (e.g New hydro projects, the Fairbanks-Anchorage Intertie, Susitna/Bradley Lake feasibility studies and license applications, power cost equalization program, alternate energy subsidies, and waste heat recovery grants).

The economic planning for capital additions has also been piecemeal. The construction of the "Four Dam Pool" was accomplished without thinking through how the dams would best fit into the

overall energy supply situation; and while there is a growing recognition that additional electric generation capacity will be required in the Railbelt, the method of financing such additions is unclear. Certainly without a comprehensive program, each individual utility will have to plan for its immediate capacity shortfalls within its ability to raise funds. Some coherent solution is necessary to provide for a more fair basis for establishing electric energy costs and for allocating State resources.

In particular, the allocation of State resources to subsidize high current electric costs should be provided in a manner that will contribute to a long term solution rather than merely providing immediate relief, which by so doing delays coming to grips with the hard decisions necessary for a long term solution.

The underlying electric supply problem in Alaska is due to the geographic isolation of its approximately 250 population centers that range from 50 to 250,000 people. Except in a few isolated instances, there is no interconnection of these communities. By contrast, in the Lower 48 the electric transmission grid is extensive and includes almost the entire population.

In the Lower 48, because of this transmission grid, one utility can take the lead and build a new generation plant with capacity in excess of its needs. Neighboring utilities can then purchase power from the first utility at a price that may be higher than its current electric generation costs, but may well be less than the cost for these neighboring utilities to build added capacity at that time. As demand grows and the total demand placed upon the first utility's newest plant approaches its capacity, a neighboring utility could commit to build a generation plant, once again, in excess of its needs; the extra capacity is then

sold to neighboring utilities. Through this natural marketing mechanism, electric power generation costs are kept more or less in line between utilities over time.

Utilities within the State of Alaska do not enjoy the cost leveling effects made possible by the electric transmission grid in the Lower 48. To compensate for this condition, it is necessary to create administratively a system through which energy costs can be pooled in a manner analagous to the physical pooling available through the interconnection possibilities of an electric transmission grid.

A method for doing this can be accomplished through a statewide electric power marketing agency. This agency would purchase electric energy from each participating utility in the State at an established rate per kilowatt-hour and then resell this power to the utility at an average statewide rate. This concept shifts subsidizing the higher cost utilities from the State General Fund to the consumers who currently enjoy lower cost electric rate--primarily, the Anchorage and Juneau areas. In order to make this marketing agency logically attractive to Anchorage and Juneau, now enjoying electric generation costs less than the state average, it is necessary to establish an air-tight mechanism through which these communities future electric costs will be maintained at a rate significantly lower than would be possible otherwise.

If the equalization program is to work, a constitutional change will be necessary to provide continued State funding; also, the agency responsible for electric generation costs equalization and for the prudent development of capital additions must be organized so that its mission can be accomplished over time in a consistent, objective manner.

The next section will discuss the elements of the power cost equalization concept developed by the Advisory Committee based on the framework just described. The concept has three equally important and necessary components:

- Statewide power production cost equalization
- Planning and development of a statewide power generation system to minimize the average cost of electric generation.
- The organization that will manage the first two components to occur in the most cost beneficial way.

C. POWER COST EQUALIZATION CONCEPT

Utility rate making is based on the concept of averaging the cost of a service within a common class of consumers. Using this concept, the committee is defining a common class of consumers to be all electric energy consumers in the State of Alaska. The reason for defining the class in this manner is based on social and economic considerations discussed elsewhere in this report.

The concept should be viewed as having three components. Each of the three components must be able to support itself conceptually and all three together are necessary for a workable program. The three legs of the stool are:

- The mechanism for power cost equalization
- The mechanism for providing capital additions
- The organization to plan, implement, and administer elements of this concept.

Each component of the concept will be presented in the following sub-sections.

1. Power Cost Equalization

The way in which power costs throughout the State of Alaska could be equalized is for each utility to sell its power to a marketing agency at its cost, and then repurchase the same number of kilowatt-hours from the marketing agency at the State-wide average cost. ¹

The unit cost (per kilowatt-hour) of consumption for each utility should be established on an annual basis. Basically, an accepted set of power production cost categories should be developed such as those used in REA Form 12f plus the allocation of general and administrative expenses to the power production function. Once the unit cost of power for a utility has been established, the monthly sales to the marketing agency would be the product of the kilowatt-hours sold multiplied by the established unit cost per kilowatt-hour for the utility.

The cost to repurchase of power on a monthly basis would then be based on the Statewide average cost of power multiplied by the same number of kilowatt-hours that were sold to the marketing agency. The average cost would be the cost of the total kilowatt-hours purchased by the marketing agency from all the participating utilities plus the marketing agency's cost of operation divided by the total kilowatt-hours purchased.

¹ In this report, the term power, electric generation, and power production are used interchangeably. The unit of measure is kilowatt-hours. The cost associated with power production are those generation and transmission costs necessary to produce electricity and deliver it to a utility's distribution system plus an appropriate allocation of the utility's general and administrative expenses (G&A).

The Statewide average cost per kilowatt-hour is the rate at which the consumer should be charged. This calculated power production cost should be a direct charge to the consumer, specifically broken out on his bill. The most significant reason for this is that direct billing of the customer by the marketing agency is necessary for the marketing agency to qualify for tax exempt bonds to finance the capital additions--necessary in the second component of the committee's concept.

Using 1983 electric rates and consumption statistics, the average power production cost for the State would be 5.0¢. By way of comparison using this average power production cost, Anchorage Municipal Light & Power's revised retail rate would be 6.9¢, (as opposed to 5.5¢) per kilowatt-hour a 27% increase in the retail rate. Alaska Village Electric Cooperative 16.5¢ (as opposed to 44.8¢ without Power Cost Equalization per kilowatt-hour, a 63.2% decrease. It is important to note that considering current cost of heating oil (\$1.90 per gallon), electricity at 10¢ per kilowatt hour or less becomes an attractive alternative for space heating. The AVEC retail rate of 16.5¢ per kilowatt-hour is clearly above that 10¢ threshold. The Committee does not expect a significant amount of space heating fuel switching to occur under its power cost averaging concept. Furthermore, since no arbitrary life line limitation on kilowatt hours consumed is assumed in this concept, we believe that more commercial and industrial enterprises in rural Alaska would be encouraged to purchase power from the recognized utilities (rather than self generation), thereby, further increasing the efficiency of utilities operation.

Since the marketing agency will be averaging the cost of power statewide, there will be a strong interest on the part of all consumers to hold this average cost down. This element of the concept creates the condition under which the other two components of the concept become imperative and viable--the mechanism for capital additives and the organization to manage and administer the concept.

Capital additions must be thoroughly planned for and introduced whether they be a small, highly cost beneficial system enhancement in the Lower Kuskokwim, or a major multi-hundred megawatt project in the Railbelt. The justification for capital additions would be based on lowering the average cost per kilowatt-hour for the statewide network.

Some Anchorage and Juneau consumers at this point, may be concerned about the potential for their rates to increase under this concept. The committee believes that this concept offers a win-win solution wherein all the State consumers benefit--current rates are generally lowered and stabilized and an environment is created to develop capital additions to produce economic electric generation capacity significantly more efficient and cost-beneficial over the long term than would be otherwise possible.

Under the concept presented by the committee, the State will immediately proceed with a capital additions program to significantly reduce the Statewide average cost of power production. The cost of these capital additions would be financed by tax exempt revenue bonds. During the transition period, from the time of enactment of the program to when the new capacity comes on line, the State would provide funding to equalize the power costs of the consumers whose power pro-

duction costs are above the statewide average. Their power costs would be brought to the point of their average cost of power without the capacity addition bonding costs. The State would further subsidize the consumers with rates lower than the statewide average (without the capital additions bonding) so that their rates would remain on their historically increasing trend, as if they were not participants in the statewide program. These State subsidies would continue until such time that the capacity additions would provide for equal to or lower electric rates than would be possible without the capital additions. (This concept is discussed further in the next section).

2. Mechanism For Capital Additions

In the concept developed by the Committee, the subsidy for high-cost power production by the State has been shifted from the State to a form of cross-subsidy by the rate payer. In order to have a program that will be acceptable to all concerned (i.e., both those who receive the benefit of the cross-subsidy, and those who would now be paying the extra cost to provide the cross-subsidization), it is necessary to effect sufficient economies overall such that the long run electric costs will be lower for all. Additionally, although it is not necessary to justify the economic viability of the total concept, the Committee believes that the electric costs, of those who currently enjoy lower than average power production costs not increase above what they otherwise would experience in absence of the cost equalization program.

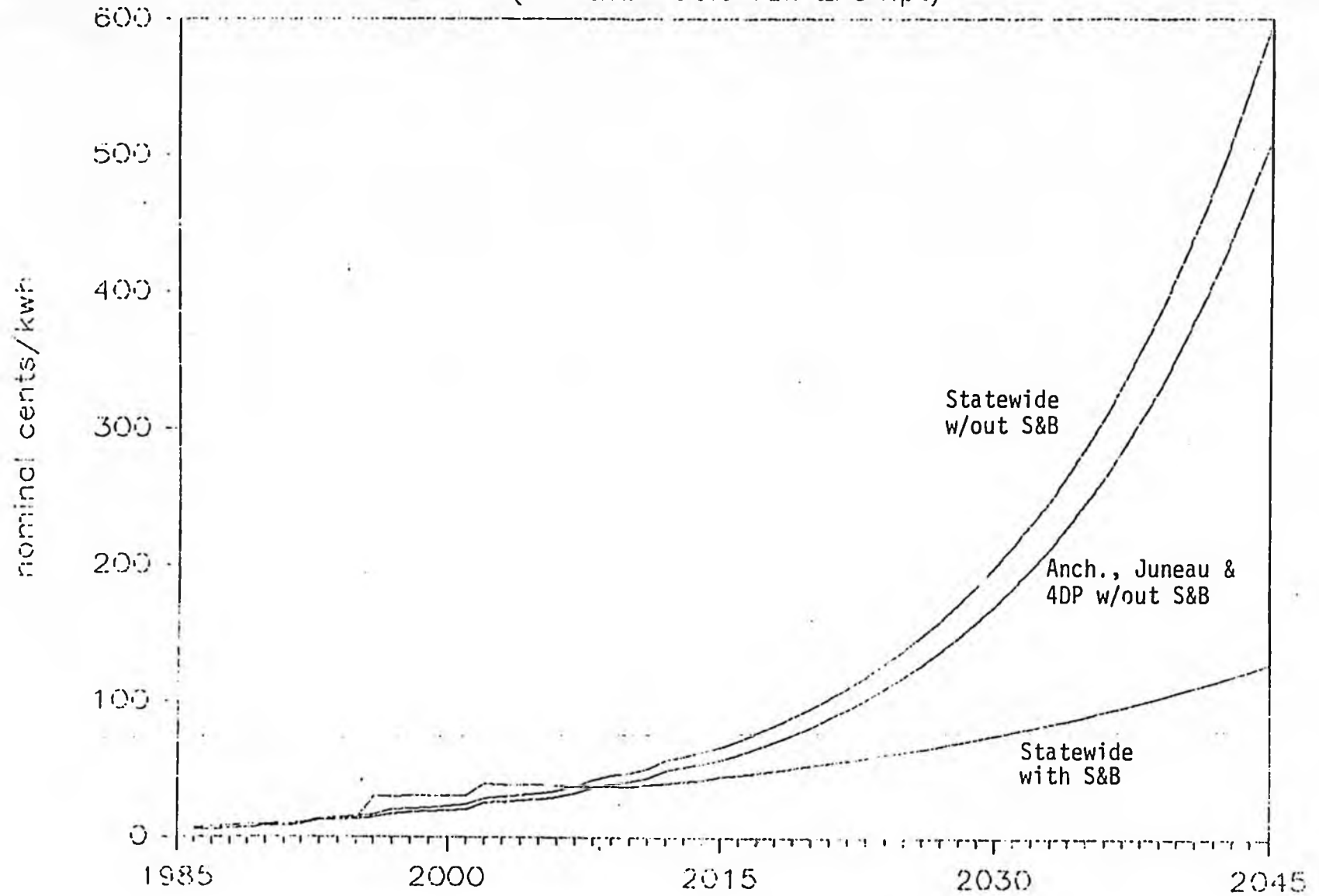
The Statewide objective under the concept of power cost equalization would be to develop an electric generation system that would offer the lowest possible average power

production costs to all consumers. The organization providing oversight to this operation would have the commitment to the consumers to make cost-beneficial judgements on capital additions, wherein the cost of that addition will, over a reasonable period of time, be more than justified through lower power production costs. Certainly opportunities for such capacity additions through the consolidation of generation between several independently owned utilities in rural Alaska may, contribute to the reduction of the average generation costs; however, the only place where economies are of sufficient scale to affect the overall Statewide average power price in the Railbelt. By construction of the lowest life cycle cost electric power alternative, the Susitna Hydro Electric Project, it will be possible to lower Statewide rates substantially below what they otherwise would have been under the best thermal alternatives using natural gas and coal-fired generation.

Using the lowest life cycle cost mix alternative yields lower electric rates for all Alaskans from about 2007 and beyond. The figure following this page shows the nominal cost of power production in cents per kilowatt hour plotted against time, assuming 100% tax exempt financing. One curve increasing upwards over time, is the Anchorage, Juneau, and Four Dam Pool average nominal power production cost without Bradley Lake or Susitna. The curve slightly above it presents a statewide average rate without Bradley Lake or Susitna. The third curve represents the statewide average power production cost per kilowatt-hour with Susitna and Bradley Lake. Note that from about 1996 to 2007 the nominal power production cost statewide would be higher than without Susitna and Bradley Lake. After 2007, the statewide power

PRODUCTION COST RATES

(Susitna 100% Tax Exempt)



production cost with these two dams would be significantly below the statewide cost without the dams, and as time goes by the cost advantage to the consumer would become greater and greater.

It is the position of this Committee, that the best way to meet the long term electric energy needs of all Alaskans is for the State to provide economic relief by means of rate stabilization during this transition period from 1996 to 2007. Before 2007, it is the Committee's recommendation that the State provide a certain amount of rate stabilization to prevent rates from rising above what they would have been under the thermal alternative. This rate stabilization will require a fund established over 8 years, 1986 to 1993, inclusively, to be made up of eight equal deposits of approximately \$250 million with all interest accruing to the fund. This is the approximate amount required, assuming tax exempt financing is used for the major projects. To ensure this possibility under today's tax laws, direct billing by the State wide agency for energy is necessary with each utility showing the power production cost as a separate line item on its bill.

Thus to achieve an equalization of power production costs throughout the State, to minimize electric rates statewide over the long run, and to endow a program that will assume complete responsibility for meeting statewide power generation requirements far into the future, the State would provide funds to initially equalize power generation costs throughout the State during the transition period. And if it is deemed appropriate that those in the Juneau and Anchorage area, currently enjoying lower than average power production

assured, including Bradley Lake, Crater Lake, Susitna, and the bush additions required to meet load increases engendered by this program in the most efficient manner.

3. The Organization

The Alaska Power Authority has a mission that requires a commitment to the future. The duration of its job will necessarily extend beyond the time in which any of its Board of Directors will hold their position. This fact is not dissimilar from the situation facing any corporation. Corporations typically deal with this situation by building a degree of perpetuity into their Board of Directors by having specific staggered terms of office. The current law, established during the Hammond Administration, has the majority of the Board positions filled by Commissioners within the State administration. Changes to the Board's composition result from the personal career directions of the Commissioners, and the fact that the outside members of the Board are appointed for four years. A situation is created where the organizational life of the Board of Directors is shorter than the period between key decision points on major capital projects. As a result, there is a whip-sawing of policy, commitment, and knowledge that has been a detriment to long term energy policy development and planning.

It is the belief of this Committee that the organizational component of the Power Production Cost Equalization Concept presented herein requires equal attention as those of the two aforementioned components. The Committee believes that the Board of Directors of the organization that will plan, operate, monitor, and control the activities inherent in this power production cost equalization concept must have the

degree of independence and perpetuity necessary for a consistent long term cost-beneficial program such as described in this document. There should be full recognition of the management commitment that is necessary for the long term capital commitment and long term construction cycles of the electric generation facilities inherent under this concept.

The Committee assumes that the Alaska Power Authority (APA) will be the organization to administer this program. Since State funds will be involved, the legislature and administration will continue to be interested in the success of the program.

It is the recommendation of the Committee that a nine member board be created with the fiduciary responsibility of setting policy and directing the operation of the Power Authority. The Board would be constituted as follows:

- The Commissioner of Commerce and Economic Development--This would be the only Board member without a fixed term and would be the specific person charged with representing the interests of the Governor and his administration.
- Four Directors appointed by the Governor for staggered six year terms and approved by the legislature--These four members should include one member from the banking industry and one a consumer representative and two from business and industry.
- Four Directors from the Alaska Systems Coordinating Council (ASCC)--The Alaska Systems Coordinating Council is an existing group of electric utility

managers who on ad hoc basis are now coordinating the development of electric generation and transmission systems within the State. The Governor should appoint and the legislature approve these four Directors--two Railbelt, one Southeast Alaska, and one bush utility manager. The ASCC should make recommendations to the Governor. As with the other appointed members, the ASCC Directors should serve six year staggered terms.

An important function of the Board of Directors will be to set electric power development policy and to assure that cost-beneficial planning and operations are conducted by the APA that will benefit all Alaskan consumers. In order to insure that generating capacity additions are the ones which result in minimum cost, are compatible to long range plans and contribute to system optimization, any equalization payments for prospective units must be based solely on pre-construction approval by the Power Authority Board. In no event should the Authority be required to purchase power either directly or indirectly through a participating system which was not generated by said participating system.

Over the past few years, the State of Alaska has provided loans or grants for substantial sums of monies to develop generation capacity--most notable examples are the Four Dam Pool and the Fairbanks-Anchorage Intertie. It is the recommendation of this committee that these loans be converted to grants by the State and be considered as equity of the Alaska Power Authority. These projects obviously fit within the context of the concept presented by the Committee, in that they contribute to lowering the cost of generation for all

Alaskans. Furthermore, the accumulation of equity within the Power Authority, in conjunction with the more stable Board of Directors, and the concept for power cost price stabilization and equalization, will together present a more professional and lower risk picture to revenue bond underwriters.

4. Summary

In summary, it is the recommendation of the Advisory Committee on Statewide Power Production Costs that:

- a marketing agency be established to purchase electric power from utilities within Alaska and resell this power to these utilities at an average cost,
- this same agency provide for future capital additions to meet the energy needs of the State in the most cost-beneficial long term manner,
- the State provide interim power cost stabilization and equalization relief until such time that the capital additions provided by the Agency offer lower power production costs than would be available absent these capital additions,
- the Alaska Power Authority be established as this marketing and electric power development agency with the Board of Directors of the APA reconstituted to assure perpetuity of the Board and consistency in policy development and decision-making.

The Committee believes that certain constitutional changes will be required to assure the continued funding necessary for this concept. It is the recommendation of the Committee that as many of the features as possible discussed above be incorporated in the Constitutional change. This will assure the consumers of the State's commitment to the concept, the consistency in the provisioning of electricity in the future, and that the Alaska Power Authority will have the expertise to perform its mission over the long term.