



LAWS OF ALASKA

1978

Source

SCS CSHB 442

Chapter No.

156

AN ACT

Relating to the Alaska Power Authority; and providing for an effective date.

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

* Section 1. AS 44.56.010(a)(2) and (3) are amended to read:

(2) the establishment of power projects at these sites is necessary to supply power at the lowest reasonable cost to the state's municipal electric, rural electric, cooperative electric, and private electric utilities, and regional electric authorities, and thereby to the consumers of the state, as well as to supply existing or future industrial needs;

(3) the achievement of the goals of lowest reasonable consumer power costs and beneficial long-term economic growth and of establishing, operating and developing power projects in the state will be accelerated and facilitated by the creation of an instrumentality of the state with powers to construct, acquire, finance, and operate power projects.

* Sec. 2. AS 44.56.030 is repealed and re-enacted to read:

Sec. 44.56.030. MEMBERSHIP OF THE AUTHORITY. (a) The authority shall consist of the following directors:

(1) four directors at large to be appointed by the governor and confirmed by the legislature;

(2) the commissioner of commerce and economic development.

(b) The commissioners of community and regional affairs, natural resources, transportation and public

facilities, and revenue shall have the rights and privileges of directors except for the right to vote and may not be considered for purposes of quorum or voting.

* Sec. 3. AS 44.56.040 is amended to read:

Sec. 44.56.040. OFFICERS AND QUORUM. The directors shall elect one of the directors at large as chairman and other officers they determine desirable. The powers of the authority are vested in the directors, and three directors of the authority constitute a quorum. Action may be taken and motions and resolutions adopted by the authority at a meeting by the affirmative vote of at least three directors. The directors of the authority serve without compensation, but they shall receive the same travel pay and per diem as provided by law for board members.

* Sec. 4. AS 44.56 is amended by adding a new section to read:

Sec. 44.56.045. QUALIFICATIONS, POWERS, AND DUTIES OF OFFICERS AND DIRECTORS. (a) The directors at large must be residents and qualified voters of Alaska and shall comply with the requirements of AS 39.50 (conflict of interests). The directors at large shall serve four-year terms. The four original directors at large have terms of one, two, three, and four years, respectively.

(b) A vacancy in a directorship occurring other than by expiration of a term shall be filled in the same manner as the original appointment, but for the unexpired portion of the term only.

(c) The authority shall employ an executive director who may, with the approval of the authority, employ additional staff as necessary. In addition to its staff of regular employees, the authority may contract for and engage the services of legal and bond counsel, consultants, experts, and financial and technical advisors the authority considers necessary for the purpose of conducting studies, investigations, hearings, or other proceedings. The board of directors shall establish the compensation of the executive director. The executive director of the authority is subject to the provisions of AS 39.25.

* Sec. 5. AS 44.56.070 is amended to read:

Sec. 44.56.070. PURPOSE OF THE AUTHORITY. The purpose of the authority is to promote, develop and advance the general prosperity and economic welfare of the people of Alaska by providing a means of constructing, acquiring, financing and operating power production facilities limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar energy production and waste energy conservation facilities.

* Sec. 6. AS 44.56.080(5) is amended to read:

(5) to acquire, whether by construction, purchase, gift or lease, and to improve, equip, operate, and maintain power projects;

- * Sec. 7. AS 44.56.080(6) is amended to read:

(6) to issue bonds to carry out any of its corporate purposes and powers, including the acquisition or construction of a project to be owned or leased, as lessor or lessee, by the authority, or by another person, or the acquisition of any interest in a project or any right to capacity of a project, the establishment or increase of reserves to secure or to pay the bonds or interest on them, and the payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers;

- * Sec. 8. AS 44.56.080(8) is amended to read:

(8) to accept gifts, grants or loans from, and enter into contracts or other transactions regarding them, with any person;

- * Sec. 9. AS 44.56.080(10) is amended to read:

(10) to enter into contracts with the United States or any person and, subject to the laws of the United States and subject to concurrence of the legislature, with a foreign country or its agencies, for the financing, construction, acquisition, operation and maintenance of all or any part of a power project, either inside or outside the state, and for the sale or transmission of power from a project or any right to the capacity of it or for the security of any bonds of the authority issued or to be issued for the project;

- * Sec. 10. AS 44.56.080(11) is amended to read:

(11) to enter into contracts with any person and with the United States, and, subject to the laws of the United States and subject to the concurrence of the legislature, with a foreign country or its agencies for the purchase, sale, exchange, transmission, or use of power from a project, or any right to the capacity of it;

- * Sec. 11. AS 44.56.080(13) is amended to read:

(13) to perform reconnaissance studies with respect to power projects;

- * Sec. 12. AS 44.56.090 is repealed and re-enacted to read:

Sec. 44.56.090. POWER CONTRACTS AND THE ALASKA PUBLIC UTILITIES COMMISSION. (a) The authority shall, in addition to the other methods which it may find advantageous, provide a method by which municipal electric, rural electric, cooperative electric, or private electric utilities and regional electric authorities, or other persons authorized by law to engage in the distribution of electricity may secure a reasonable share of the power generated by a project, or any interest in a project, or for any right to the power and shall sell the power or cause the power to be sold at the lowest reasonable prices which cover the full cost of the electricity or services, including capital and operating costs, debt coverage as considered appropriate by the authority, and other charges that may be authorized by

this chapter. A contract for the sale, transmission and distribution of power generated by a project or any right to the capacity of it shall provide:

(1) for payment of all operating and maintenance expenses of a project and costs of renewals, replacements and improvements of it;

(2) for interest on and amortization charges sufficient to retire bonds of the authority issued for the project and reserves for them, plus a debt service coverage factor as may be determined by the authority to be necessary for the marketability of its bonds;

(3) for monitoring of the project by the authority or its agents;

(4) for full and complete disclosure to the authority of all factors of cost in the transmission and distribution of power, so that rates to any persons may be fixed initially in the contract and may be adjusted from time to time on the basis of true cost data;

(5) for periodic revisions of the service and rates to persons on the basis of accurate cost data obtained by the accounting methods and systems approved by the directors and in furtherance and effectuation of the policy declared in this chapter;

(6) for the cancellation and termination of a contract upon violation of its terms by any person;

(7) for security for performance as the authority may consider practicable and advisable, including provisions assuring the continuance of the distribution and transmission of power generated by a project and the use of its facilities for these purposes; and

(8) other terms not inconsistent with the provisions and policy of this chapter as the authority may consider advisable.

(b) The authority is not subject to the jurisdiction of the Alaska Public Utilities Commission. Nothing in this chapter grants the authority any jurisdiction over the services or rates of any public utility or diminishes or otherwise alters the jurisdiction of the Alaska Public Utilities Commission with respect to any public utility, including any right the commission may have to review and approve or disapprove contracts for the purchase of electricity by a public utility.

* Sec. 13. AS 44.56.110(a)(1) is amended to read:

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

(A) the application, investment, deposit, use and disposition of the proceeds of bonds of the

authority or of money or other property of the authority or in which it has an interest;

(B) the fixing and collection of rentals, charges, fees or other consideration for, and the other terms to be incorporated in, contracts with respect to a project or to generated power;

(C) the assignment by the authority of its rights in contracts with respect to a project or to generated power or in a mortgage or other security interest created with respect to a project or generated power to a trustee for the benefit of bondholders;

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

(E) the vesting in a trustee of rights, powers, duties, funds or property in trust for the benefit of bondholders, including, without limitation, the right to enforce payment, performance, and all other rights of the authority or of the bondholders, under a lease, power of contract, contract of sale, mortgage, security agreement, or trust agreement with respect to a project by injunction or other proceeding or by taking possession of by agent or otherwise and operating a project and collecting rents or other consideration and applying the same in accordance with the trust agreement;

* Sec. 14. AS 44.56.110(d) is amended to read:

(d) If the authority decides to issue bonds secured by such a capital reserve fund, the bonds may not be issued if the amount in the capital reserve fund is less than such an amount as may be established by resolution of the authority (called the "capital reserve fund requirement"), unless the authority, at the time of issuance of the obligations, deposits in the capital reserve fund from the proceeds of the obligations to be issued or from other sources, an amount which, together with the amount then in the fund, will not be less than the capital reserve fund requirement.

* Sec. 15. AS 44.56.150 is amended to read:

Sec. 44.56.150. TAX EXEMPTION. All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes of the state or a political subdivision of the state; however, the authority may make payments in place of taxes in amounts equal to the real and personal property taxes which would be assessed on its real and personal property by each political subdivision in which its property is located to the same extent as if that property were private property and the authority were a non-public corporation. All bonds issued under this chapter are issued by a body corporate and public of this state and for an essential public and governmental purpose and the bonds and the interest and income on and from the bonds and all income of the authority are exempt from taxation except for transfer, inheritance and estate taxes.

* Sec. 16. AS 44.56.170 is repealed and re-enacted to read:

Sec. 44.56.170. POWER PROJECT FUND. (a) There is established as a separate fund the power project revolving fund which shall be administered by the authority as a trust fund separate and distinct from any other money or funds of the authority, and which shall be composed of appropriated funds and interest earned on loans by the fund.

(b) The authority may make loans from the fund to electric utilities, regional electric authorities, cities, boroughs, regional and village corporations, village councils, and nonprofit marketing cooperatives to pay the costs of

(1) feasibility studies, preconstruction engineering, and design of any power projects;

(2) constructing, equipping, modifying, and expanding small-scale power production facilities or conservation facilities, limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar energy production and waste energy conservation facilities; and

(3) reconnaissance studies, preconstruction engineering, design, construction, equipping, modification, and expansion of potable water supply including surface storage and groundwater sources and transmission of water from surface storage to existing distribution systems.

(c) Before making any loans, except loans made under (f) of this section, from the power project revolving fund, the authority shall by regulation specify the standards for those loans with respect to the following:

(1) criteria regarding the eligibility of borrowers and of types of projects;

(2) standards regarding the technical and economic viability and revenue self-sufficiency of eligible projects;

(3) interest rates and other terms and conditions, and collateral or any other security required for loans; and

(4) other relevant criteria, standards, or procedures.

(d) Any loan made by the authority must be made according to the standards, criteria, and procedures established by regulation under this section.

(e) Repayment of the loans shall be secured in such manner as the authority determines is feasible to assure prompt repayment under a loan agreement entered into with the borrower. The authority may forgive repayment of loans made for reconnaissance studies if the study shows that a project is not feasible. Under a loan agreement, repayment may be deferred for 10 years or until the project for which the loan is made has achieved earnings from its operations sufficient to pay the loan, whichever is earlier.

(f) Projects for which loans are outstanding from the water resources revolving loan fund (AS 45.86) on the effective date of this Act may receive additional funding from the power project revolving loan fund for a term not exceeding 50 years and at an interest rate of not less than three nor more than five per cent a year on the unpaid balance. Repayment of loan principal and interest shall commence on the date of commercial operation of the project funded by the loan or 10 years from the date the loan is granted, whichever is earlier.

* Sec. 17. AS 44.56.180 is amended to read:

Sec. 44.56.180. ASSESSMENT, PROPOSAL, AND CONSTRUCTION OF PROJECTS. (a) The authority shall, for each new project, determine the most appropriate means by which to finance a project which may include, but is not limited to,

- (1) the issuance of revenue bonds;
- (2) a guarantee of indebtedness by the Alaska Permanent Fund Corporation in accordance with AS 37.13.200;
- (3) an appropriation from the general fund; or
- (4) any combination of (1), (2), and (3) of this subsection.

(b) Upon completion of the reconnaissance study, the authority shall submit to the governor and the legislature a statement of its recommendations for financing each new project. The financing plan may include a recommendation for a guarantee of indebtedness or a general fund appropriation only when necessary to supplement private financing in order to make a project financially feasible. If the recommended financing for the project includes a guarantee of indebtedness by the permanent fund or an appropriation from the general fund, the legislature must first give its approval by joint resolution before the authority may proceed with the engineering or design phase of the project. The legislative approval required in this subsection may not be considered the approval required under AS 37.13.230 for granting of a permanent fund guarantee.

(c) The authority shall submit a statement outlining the general design, demonstration of financial feasibility, and maximum amount of bonds and appropriations estimated to be necessary for each new project to the governor and the legislature, together with a statement that the authority intends to design, acquire, construct or finance the project itself or that it intends that the project be designed, acquired, constructed or financed by the United States or another person under agreement with the authority which may provide for ownership of all or a portion of the project by the authority or of a right to the capacity of it. If the legislature adopts a joint resolution approving the general design and maximum amount of bonds, the authority shall, in accordance with the terms of the joint resolution, (1) proceed to design, acquire and construct the new project, or (2) agree with the United States or other person for design, acquisition and construction of the project by the United States, for payments to the United States or other person for such design, acquisition

Chapter 156

and construction, reimbursement by the United States or other person in certain events, and otherwise on the terms and conditions as may be set out in such agreement.

(d) If the new project is to be designed, acquired and constructed by the authority, it shall be designed, acquired and constructed as a public work of the state. For the purpose of this section a new project does not include (1) an addition or modification to an existing project if the total cost of the addition or modification does not exceed \$1,000,000; (2) any repair or reconstruction of a project; or (3) any design, acquisition or construction necessary to complete a project for which bonds previously authorized by the legislature have been issued. Any such addition, modification, repair, reconstruction, design, acquisition or construction may be undertaken by the authority without any of the approvals necessary for a new project.

* Sec. 18. AS 44.56.180 is amended by adding a new subsection to read:

(e) Any power project proposal requiring approval by the legislature under this chapter, except on projects with a complete reconnaissance study on the effective date of this Act, together with supporting data, analyses, and findings of the authority, shall be submitted to the governor for review. The governor shall make an evaluation of the proposal which shall include, but not be limited to, an analysis of the balance of benefits and costs to Alaska, including environmental and social costs, and the ability of the project to generate sufficient revenues to be self-supporting. The governor shall submit the results of the evaluation, his recommendations, if any, and a statement as to whether the project is consistent with the long-term plan to the legislature.

* Sec. 19. AS 44.56.210 is repealed and re-enacted to read:

Sec. 44.56.210. APPROPRIATIONS AND REPORTS. (a) Notwithstanding any other provision in this chapter, the authority is subject to the provisions of the Executive Budget Act (AS 37.07).

(b) The authority shall, by the 15th day of each regular legislative session, present to the legislature a report detailing project status, original costs and projected costs, particularly highlighting any costs in excess of the original cost estimates submitted for each project when that project was originally approved by the legislature.

* Sec. 20. AS 44.56 is amended by adding a new section to read:

Sec. 44.56.224. LONG-TERM PLAN. The Department of Commerce and Economic Development, assisted by the authority, shall prepare, after public hearings, and, as appropriate, revise a long-term electrical power development plan for meeting projected electrical energy demand in Alaska at the lowest reasonable cost, including environmental and social costs, consistent with acceptable standards of reliability. The plan must include, but is not limited to,

considerations specified in sec. 180(e) of this chapter. The plan and any revision of it shall be submitted to the governor for his approval and shall be reviewed by all appropriate state agencies. After approval by the governor the plan shall be submitted to the legislature.

* Sec. 21. AS 44.56.230(4) is amended to read:

(4) "power project" or "project" means a plant, works, system, facility, water rights, fuel deposits or sources, and real estate and personal property of any nature whatsoever, together with all facilities and appurtenances related to them or necessary for the purposes of them used or useful in power production limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar energy production and waste energy conservation and the transmission, purchase, sale, exchange and interchange of power, and shall include any interest in them, whether divided or undivided, or any right to the capacity of them;

* Sec. 22. AS 44.56.230 is amended by adding new paragraphs to read:

(6) "person" includes a public agency in addition to the entities set out in AS 01.10.060(7);

(7) "reconnaissance study" means a study conducted for the purpose of establishing, with reasonable certainty, the economic merit of developing a certain project and includes, without relying on costly data collection, an environmental assessment so as to insure that no adverse environmental impacts exist of such magnitude as to render the project inadvisable, an assessment of a community's present economy and power needs, an estimate of the community's future economy and power needs, a determination of alternative energy costs, and an estimate of the project cost.

* Sec. 23. AS 44.56.050 is repealed.

* Sec. 24. The requirements of AS 44.56.180(e), enacted in sec. 18 of this Act, do not apply to any project which the authority has determined to finance and in which it will not maintain an ownership interest upon completion and for which the Tenth Legislature has adopted a joint resolution of approval.

* Sec. 25. This Act takes effect immediately in accordance with AS 01.10.070(c).