



LAWS OF ALASKA

1983

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Chapter No.

89

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:

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: July 21, 1983
Actual Effective Date: July 22, 1983

AN ACT

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

* Section 1. AS 44.83.040 is amended to read:

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

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

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

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

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

(3) copies of pertinent reference materials, statutes, regulations, and audio-visual materials are reasonably available to

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1 participants and to the public.

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

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

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

19 Sec. 44.83.092. AUTHORITY FOR MUNICIPALITIES AND UTILITIES TO
20 ENTER INTO POWER SALES CONTRACTS. The authority and any municipality
21 or public or private entity operating an electric utility, or a munic-
22 ipality or private entity and another municipality or private entity,
23 may enter into a contract providing for or relating to the sale of
24 electric power by the authority to the municipality or entity, or by
25 the municipality or entity to another municipality or entity. The
26 contract may provide

27 (1) that the amounts payable under the contract are operat-
28 ing expenses of the utility and are valid and binding obligations of
29 the municipality or other entity payable from the gross revenues of
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1 the utility;

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

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

7 (4) that after completion of a project the municipality or
8 other entity is obligated to make payments notwithstanding a suspen-
9 sion or reduction in the amount of the power supplied by the project;
10 or

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

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

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

23 (1) appropriations to the power development fund for the
24 power project are insufficient to cover the cost of acquiring or con-
25 structing the power project; and

26 (2) the authority determines that the amount of interest
27 the authority will pay on its bonds is not more than alternative costs
28 of securing money from other sources, except for the general fund, to
29 pay for the acquisition or construction of the power project.
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1 * Sec. 5. AS 44.83.110(b) is amended to read:

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

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

19 Sec. 44.83.120. VALIDITY OF PLEDGE. It is the intention of the
20 legislature that a pledge made in respect of bonds is considered
21 perfected and is [SHALL BE] valid and binding from the time the pledge
22 is made; that the money or property so pledged and thereafter received
23 by the authority shall immediately be subject to the lien of the
24 pledge without physical delivery or further act; and that the lien of
25 the pledge shall be valid and binding as against all parties having
26 claims of any kind in tort, contract or otherwise against the authori-
27 ty irrespective of whether the parties have notice. Neither the
28 resolution, trust agreement nor any other instrument by which a pledge
29 is created need be recorded or filed under the provisions of the
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1 Uniform Commercial Code to be perfected or to be valid, binding or
2 effective against the parties.

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

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

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

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

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

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

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

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

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

29 (c) A loan from the rural electrification revolving loan fund

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1 shall bear an annual rate of interest of two percent of the unpaid
2 balance of the loan. Interest received on a loan made under this sec-
3 tion must be transferred monthly to the commissioner of revenue for
4 deposit in the general fund.

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

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

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

15 (f) In this section,

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

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

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

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

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

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

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

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

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

25 (3) the project meets the other requirements of this chap-
26 ter.

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

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

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

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

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

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

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

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

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

(2) assure that the project is being operated efficiently

1 and in a manner that is consistent with national standards for the
2 industry and agreements with bondholders.

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

4 (2) If, by July 1, 1991 [1986], the legislature has not
5 appropriated at least \$5,000,000,000 to the fund, in addition to
6 appropriations to the fund of interest earned on money in the fund,
7 the authority shall, beginning on that date, establish and maintain a
8 separate wholesale power rate applicable to each power project that is
9 acquired or constructed under the energy program for Alaska. The
10 wholesale power rate shall be computed by the authority annually, or
11 more frequently as may be necessary, and shall be the greater of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (e) The authorization made by this section for the Terror Lake
15 project includes authorization for the installation of a third gen-
16 erating unit at the project.

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

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

22 * Sec. 28. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c)."
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