

SENATE CS FOR CS FOR HOUSE BILL NO. 446(FIN) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/2/00

Offered: 4/19/00

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to utility ownership and funding; relating to sales, leases, and
2 dispositions of certain telephone cooperative property; establishing and relating to
3 the power cost equalization endowment fund; relating to the power cost
4 equalization and rural electric capitalization fund; relating to the Railbelt energy
5 fund; authorizing and relating to the sale of the four dam pool hydroelectric
6 project; establishing and relating to joint action agencies created to purchase
7 power projects; and providing for an effective date."

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

9 * Section 1. The uncoded law of the State of Alaska is amended by adding a new
10 section to read:

11 FINDINGS. The legislature finds that

12 (1) adequate and reliable electric service at affordable rates is a necessary
13 ingredient of a modern society and a prosperous developing economy;

(2) at the current stage of social and economic development in the state, direct participation by the state is necessary to assist in keeping rates in high-cost service areas to affordable levels;

(3) providing a long-term, stable financing source for power cost equalization will permit and encourage the electric utility industry and its lenders to develop plans, make investments, and take other actions that are necessary or prudent to provide adequate and reliable electric service at affordable rates and to meet the health and safety needs of residents of the state;

(4) revenue that was anticipated to be generated from the state-owned four dam pool hydroelectric project under the existing power sales agreement and that the legislature intended to provide a long-term source of financing for power cost equalization will no longer be available upon the sale of the four dam pool project;

(5) the proposed sale under the memorandum of understanding dated April 11, 2000, provides the state with fair value for the four dam pool hydroelectric project, relieves the state of the significant financial risks and obligations with respect to the project, and provides a long-term, stable financing source for power cost equalization; and

(6) establishment of joint action agencies under this Act and the sale of the four dam pool hydroelectric project to the joint action agency to be formed by the four dam pool local public utilities ensure local control of power generation resources necessary for a healthy economy and benefit the communities and their ratepayers by providing for stable energy rates.

* **Sec. 2.** AS 10.25.400 is amended by adding a new subsection to read:

(e) The requirements of (b) of this section do not apply to the lease, sale, or disposition of the property of a telephone cooperative that has annual gross revenue over \$25,000,000 unless a resolution passed by the board of directors of the cooperative provides that the requirements of (b) of this section will apply to the lease, sale, or disposition.

* **Sec. 3.** AS 37.05.520 is amended to read:

Sec. 37.05.520. Railbelt energy fund. There is established in the general fund the Railbelt energy fund. The fund consists of money appropriated to it by the legislature and interest received on money in the fund. The department of revenue

shall manage the fund. [INTEREST RECEIVED ON MONEY IN THE FUND SHALL BE ACCOUNTED FOR SEPARATELY AND MAY BE APPROPRIATED INTO THE FUND ANNUALLY.] The legislature may appropriate money from the fund for programs, projects, and other expenditures to assist in meeting Railbelt energy needs, including projects for retrofitting state-owned buildings and facilities for energy conservation.

* **Sec. 4.** AS 42.05.431(c) is amended to read:

(c) Notwithstanding (b) of this section,

(1) a wholesale agreement for the sale of power from a project licensed by the Federal Energy Regulatory Commission on or before January 1, 1987, and related contracts for the wheeling, storage, regeneration, or wholesale repurchase of power purchased under the agreement, entered into between the Alaska Energy Authority and one or more other public utilities or among the utilities after October 31, 1987, and before January 1, 1988, and amendments to the wholesale agreement or related contract, and the wholesale agreement or related contract assigned by the Alaska Energy Authority to a joint action agency formed under AS 42.45.310 that purchases the project from the Alaska Energy Authority, are not subject to review or approval by the commission until all long-term debt incurred for the project is retired, or, for a wholesale agreement or related contract assigned to a joint action agency formed under AS 42.45.310, until all long-term debt incurred to pay the purchase price to the Alaska Energy Authority is retired; and

(2) a wholesale agreement or related contract described in (1) of this subsection may contain a covenant for the public utility to establish, charge, and collect rates sufficient to meet its obligations under the contract; the rate covenant is valid and enforceable.

* **Sec. 5.** AS 42.45.040 is amended to read:

Sec. 42.45.040. Southeast energy fund. The Southeast energy fund is established as a separate fund. The fund consists of money transferred to it under former AS 42.45.050. The authority may make grants from the Southeast energy fund to utilities participating in the power transmission intertie between the Swan Lake and Tyee Lake hydroelectric projects for power projects, for repayment of loans, and for

1 payments on bonds.

2 * **Sec. 6.** AS 42.45 is amended by adding new sections to read:

3 **Article 1A. Power Cost Equalization Endowment Fund.**

4 **Sec. 42.45.070. Power cost equalization endowment fund established.** (a)

5 The power cost equalization endowment fund is established as a separate fund of the
6 authority. The fund consists of

7 (1) legislative appropriations to the fund that are not designated for
8 annual expenditure for the purpose of power cost equalization;

9 (2) accumulated earnings of the fund;

10 (3) gifts, bequests, contributions of money and other assets, and federal
11 money given to the fund that are not designated for annual expenditure for power cost
12 equalization; and

13 (4) payments received after June 30, 2001, for the sale of power made
14 to the state by the purchasing utilities under the memorandum of understanding dated
15 April 11, 2000, between the Alaska Energy Authority and the purchasing utilities.

16 (b) Nothing in this section creates a dedicated fund.

17 (c) In this section, "memorandum of understanding" means the memorandum
18 of understanding dated April 11, 2000, between the Alaska Energy Authority and the
19 purchasing utilities, consisting of Copper Valley Electric Association, Inc., City of
20 Ketchikan, Kodiak Electric Association, Inc., City of Petersburg, and City of Wrangell,
21 for the purchase and sale of the four dam pool hydroelectric project and any
22 amendment to that agreement that substitutes appropriations of \$20,000,000 from the
23 state constitutional budget reserve fund established under art. IX, sec. 17, Constitution
24 of the State of Alaska, for appropriations from the power project fund (AS 42.45.010).

25 **Sec. 42.45.080. Powers and duties of the commissioner of revenue.** (a) The
26 commissioner of revenue is the fiduciary of the fund. In managing the fund, the
27 commissioner shall

28 (1) have the same powers and duties as are provided in AS 37.10.071;
29 and

30 (2) invest the fund in a manner likely to achieve at least a seven
31 percent nominal return over time.

- 1 (b) In managing the fund, the commissioner shall
- 2 (1) consider the status of the fund's capital and the income generated
- 3 on both current and probable future bases;
- 4 (2) determine the appropriate investment objectives;
- 5 (3) establish investment policies to achieve the objectives; and
- 6 (4) act only in regard to the best financial interests of the fund.
- 7 (c) On July 1 of each year, the commissioner shall determine the monthly
- 8 average market value of the fund for the previous three fiscal years.

9 **Sec. 42.45.085. Use of the power cost equalization endowment fund.** (a)

10 Seven percent of the amount determined by the commissioner of revenue on July 1 of

11 each year under AS 42.45.080(c) may be appropriated for the fiscal year beginning the

12 following July 1 for the following purposes:

- 13 (1) funding the power cost equalization and rural electric capitalization
- 14 fund (AS 42.45.100);
- 15 (2) reimbursement to the Department of Revenue for the costs of
- 16 establishing and managing the fund; and
- 17 (3) reimbursement of other costs of administration of the fund.

18 (b) Nothing in this section creates a dedicated fund.

19 **Sec. 42.45.099. Definition.** In AS 42.45.070 - 42.45.099, "fund" means the

20 power cost equalization endowment fund established in AS 42.45.070.

21 * **Sec. 7.** AS 42.45.070(a) is amended to read:

22 (a) The power cost equalization endowment fund is established as a separate

23 fund of the authority. The fund consists of

- 24 (1) legislative appropriations to the fund that are not designated for
- 25 annual expenditure for the purpose of power cost equalization;
- 26 (2) accumulated earnings of the fund;
- 27 (3) gifts, bequests, contributions of money and other assets, and federal
- 28 money given to the fund that are not designated for annual expenditure for power cost
- 29 equalization; and
- 30 (4) repayments of principal and income that would have been
- 31 deposited in the former four dam pool transfer fund under former AS 42.45.050

[PAYMENTS RECEIVED AFTER JUNE 30, 2001, FOR THE SALE OF POWER MADE TO THE STATE BY THE PURCHASING UTILITIES UNDER THE MEMORANDUM OF UNDERSTANDING DATED APRIL 11, 2000, BETWEEN THE ALASKA ENERGY AUTHORITY AND THE PURCHASING UTILITIES].

* **Sec. 8.** AS 42.45.100(b) is amended to read:

(b) The fund shall be administered by the authority as a fund distinct from the other funds of the authority. The fund is composed of

(1) money appropriated to provide power cost equalization to eligible electric utilities and to provide grants for utility improvements;

(2) money appropriated from the National Petroleum Reserve - Alaska special revenue fund under AS 37.05.530(g);

(3) money appropriated from the power cost equalization endowment fund (AS 42.45.070) under AS 42.45.085(a);

(4) gifts, bequests, [AND] contributions from other sources, and federal money; and

(5) [(4)] interest earned on the fund balance.

* **Sec. 9.** AS 42.45 is amended by adding a new section to read:

Sec. 42.45.115. Exclusion from eligibility. (a) Notwithstanding the definition of "eligible electric utility" in AS 42.45.150, an electric utility whose primary source of power for sale to customers is one or more of the power projects that were part of the former initial project may not be considered an eligible electric utility.

(b) In this section, "former initial project" includes the Tyee Lake, Swan Lake, Solomon Gulch, and Terror Lake hydroelectric facilities.

* **Sec. 10.** AS 42.45 is amended by adding a new section to article 5 to read:

Sec. 42.45.310. Acquisition of power project. (a) Two or more public utilities that purchase power from a power project acquired or constructed as part of the former energy program for Alaska and owned by the Alaska Energy Authority under AS 44.83.396 may form a joint action agency under AS 42.45.300 and under this section to purchase the power project from the Alaska Energy Authority if the purchase and sale of project has first been authorized by law.

(b) The agency may

1 (1) acquire, own, operate, and manage one or more power projects or
 2 generating or transmission facilities; and

3 (2) participate in the design, development, construction, operation, and
 4 maintenance of a generating or transmission facility.

5 (c) The agency is an instrumentality of the public utilities that form the
 6 agency, but has a separate and independent legal existence from the public utilities.
 7 In addition to the powers authorized under AS 42.45.300, the agency has the power

8 (1) to adopt bylaws of the agency;

9 (2) to sue and be sued;

10 (3) to carry out the authorized purposes of the agency; and

11 (4) subject to (e) of this section, to issue revenue bonds and secure
 12 financing that are not obligations of either the state or the public utilities that formed
 13 the agency to provide financing to carry out the authorized purposes of the agency.

14 (d) The agency is created by a written agreement among the public utilities
 15 forming the agency. Each public utility forming the agency shall adopt the terms of
 16 the agreement by ordinance or resolution. Subject to (c) of this section, the agreement
 17 establishing the agency may define the powers, functions, and activities of the agency
 18 and specify the means by which they shall be performed. The agreement may
 19 establish the rights and responsibilities of the public utilities that form the agency. If
 20 applicable, the agreement shall provide for

21 (1) apportionment between the public utilities forming the agreement
 22 of responsibility for providing finances to the expenses incurred in the performance of
 23 the functions or activities;

24 (2) apportionment of fees or other revenue derived from the functions
 25 or activities and the manner in which the revenue shall be accounted for;

26 (3) the transfer of personnel and the preservation of employment
 27 benefits; and

28 (4) the rights of the public utilities forming the agency to terminate the
 29 agreement, subject to (e) of this section, including resolving disputes if the public
 30 utilities are unable, upon termination of the agreement, to agree on the transfer of
 31 personnel or the division of assets and liabilities between the parties to the agreement.

(e) The public utilities forming the agency shall pledge and agree with the holders of revenue bonds or other financing secured under this section, including with a state entity that provides financing, that the public utilities and the agency will not terminate the agency or take any other action that would limit or alter the rights and powers vested in the agency by this section to fulfill the terms of a contract made by the agency with the holders and that the public utilities and the agency will not in any way impair the rights and remedies of the holders until the bonds or other financing secured under this section, together with the interest on them with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders are fully met and discharged. The agency may include this pledge and agreement of the public utilities and the agency, insofar as it refers to holders of bonds of the agency, in a contract with the holders and, insofar as it relates to a state entity, in a contract with the state entity.

(f) Only to the extent any of the public utilities forming the agency is subject to the particular tax is the agency subject to state and local ad valorem, income, or excise taxes that may be assessed or levied against property, assets, income, and receipts of the agency or to the electric cooperative tax (AS 10.25.540 - 10.25.570).

(g) A loan, investment, or other financial aid provided to the agency by the state or any political subdivision of the state does not constitute a violation of AS 37.10.085.

(h) An agency formed by, and that continues to include, one or more municipal public utilities is a political subdivision only for purposes of AS 38.05.810.

(i) In this section,

(1) "agency" means a joint action agency formed under this section;

(2) "public utility" has the meaning given the term in AS 42.05.990;

(3) "state entity" means a state department, authority, or other administrative unit of the executive branch of state government.

* **Sec. 11.** AS 44.83.510(a) is amended to read:

(a) Repayment of a loan from the former power development revolving loan fund must be made with the proceeds from the sale of power from projects in the former energy program for Alaska. [EXCEPT AS PROVIDED IN AS 44.83.398(i),

1 THE PAYMENTS REQUIRED TO BE MADE BY THE AUTHORITY ON A LOAN
 2 FROM THE FUND CONSTITUTE DEBT SERVICE FOR THE PURPOSE OF
 3 CALCULATING THE WHOLESALE POWER RATE IN AS 44.83.398(b)(1).]

4 * **Sec. 12.** AS 42.45.050 is repealed.

5 * **Sec. 13.** AS 42.45.070(a)(4), 42.45.070(c), AS 44.83.398, and 44.83.525 are repealed.

6 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section
 7 to read:

8 INTERIM DETERMINATION OF AMOUNTS AVAILABLE FOR
 9 APPROPRIATION. (a) Notwithstanding AS 42.45.080(c) and 42.45.085(a), enacted by sec. 6
 10 of this Act, the amount that may be appropriated from the power cost equalization endowment
 11 fund (AS 42.45.070, enacted by sec. 6 of this Act) shall be determined as follows:

12 (1) for fiscal year 2002, the amount that may be appropriated from the power
 13 cost equalization endowment fund (AS 42.45.070, enacted by sec. 6 of this Act) is seven
 14 percent of the market value of the fund on February 1, 2001;

15 (2) for fiscal year 2003 through the first fiscal year that begins after the closing
 16 date of the sale of the four dam pool hydroelectric project under the memorandum of
 17 understanding, the amount that may be appropriated annually from the power cost equalization
 18 endowment fund (AS 42.45.070, enacted by sec. 6 of this Act) is seven percent of the market
 19 value of the fund on February 1 of the prior fiscal year;

20 (3) for subsequent fiscal years, the commissioner of revenue shall exclude the
 21 time period and market value of the power cost equalization endowment fund (AS 42.45.070,
 22 enacted by sec. 6 of this Act) before the closing date of the sale of the four dam pool
 23 hydroelectric project in making the determination required under AS 42.45.080(c), enacted by
 24 sec. 6 of this Act.

25 (b) The definitions contained in sec. 15(d) of this Act apply to the terms used in this
 26 section.

27 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section
 28 to read:

29 LEGISLATIVE AUTHORIZATION TO CONVEY. (a) Notwithstanding
 30 AS 44.83.396, the joint action agency to be formed by the purchasing utilities may purchase,
 31 and the Alaska Energy Authority may sell, the four dam pool hydroelectric project under the

memorandum of understanding, but only if the memorandum of understanding is amended to include a provision consistent with this subsection that prohibits the agency from selling a four dam pool hydroelectric project to any purchaser other than a purchasing utility as defined in this section and that limits the ability of the purchasing utility to subsequently sell the four dam pool hydroelectric project. A purchasing utility that has purchased a four dam pool hydroelectric project may only sell the project to a subsequent purchaser if the legislature approves the terms of the sale in advance of the effective date of the sale. To further the important public benefits and best interests of the state that will result from the sale under the memorandum of understanding, the Department of Natural Resources may transfer, assign, or convey to the joint action agency permits, rights-of-way, leases, and other interests in state land that comprise any part of the four dam pool hydroelectric project.

(b) The Alaska Industrial Development and Export Authority may issue bonds or otherwise extend financing to the joint action agency to be formed by the purchasing utilities, for the purposes and upon the terms set out in the memorandum of understanding. The total principal amount of the bonds and other financing provided by the Alaska Industrial Development and Export Authority under this subsection may not exceed \$110,000,000.

(c) The Department of Community and Economic Development and the Alaska Energy Authority may modify and amend the loan agreement and note to

(1) suspend the enforcement of rights and obligations, including payment obligations, under the loan agreement and note; and

(2) fully release, extinguish, and retire the debt and all other rights and obligations under the loan agreement and note, and cancel the note, upon completion of the purchase and sale of the four dam pool hydroelectric project under the memorandum of understanding.

(d) In this section,

(1) "Alaska Energy Authority" means the Alaska Energy Authority created in AS 44.83, successor in interest to the Alaska Power Authority;

(2) "Alaska Power Authority" means the former Alaska Power Authority;

(3) "authority" means the former Alaska Power Authority;

(4) "Copper Valley" means Copper Valley Electric Association, Inc., a cooperatively owned electric utility serving the communities of Valdez, Glennallen, and

1 environs;

2 (5) "Department of Commerce and Economic Development" means the former
3 Department of Commerce and Economic Development;

4 (6) "four dam pool hydroelectric project" means the Tyee Lake, Swan Lake,
5 Solomon Gulch, and Terror Lake hydroelectric facilities owned and administered by the
6 Alaska Energy Authority under AS 44.83.396;

7 (7) "joint action agency" means an agency formed under AS 42.45.310, enacted
8 by sec. 10 of this Act;

9 (8) "Ketchikan" means the City of Ketchikan, doing business as Ketchikan
10 Public Utilities, a municipally owned utility serving Ketchikan and environs;

11 (9) "Kodiak" means the Kodiak Electric Association, Inc., a cooperatively
12 owned electric utility serving the Kodiak Island Borough;

13 (10) "loan agreement" means the loan agreement effective October 28, 1985,
14 between the State of Alaska, Department of Commerce and Economic Development, and the
15 Alaska Power Authority regarding a loan from the power development revolving loan fund
16 to the Alaska Power Authority regarding the four dam pool hydroelectric project;

17 (11) "memorandum of understanding" means the memorandum of
18 understanding dated April 11, 2000, between the Alaska Energy Authority and Copper Valley,
19 Ketchikan, Kodiak, Petersburg, and Wrangell for the purchase and sale of the four dam pool
20 hydroelectric project and

21 (A) an amendment to that agreement consistent with the requirements
22 of (a) of this section concerning legislative approval of a subsequent sale of a
23 hydroelectric facility; and

24 (B) any amendment to that agreement that substitutes appropriations of
25 \$20,000,000 from the state constitutional budget reserve fund established under art. IX,
26 sec. 17, Constitution of the State of Alaska, for appropriations from the power project
27 fund (AS 42.45.010).

28 (12) "note" means the promissory note, dated February 13, 1986, which reflects
29 the authority's obligation to pay to the Department of Commerce and Economic Development
30 related to the loan agreement;

31 (13) "Petersburg" means the City of Petersburg, doing business as Petersburg

1 Municipal Power and Light, a municipally owned electric utility serving Petersburg and
 2 environs;

3 (14) "purchasing utilities" means Copper Valley, Ketchikan, Kodiak,
 4 Petersburg, and Wrangell;

5 (15) "Wrangell" means the City of Wrangell, doing business as Wrangell
 6 Municipal Light and Power, a municipally owned electric utility serving Wrangell and
 7 environs.

8 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section
 9 to read:

10 **CONDITIONAL EFFECT.** (a) Section 7 of this Act takes effect only if the
 11 memorandum of understanding between the Alaska Energy Authority and the purchasing
 12 utilities dated April 11, 2000, is terminated before the closing date of the sale of the four dam
 13 pool hydroelectric project under that memorandum of understanding.

14 (b) The definitions contained in sec. 15(d) of this Act apply to the terms used in this
 15 section.

16 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section
 17 to read:

18 **CONDITIONAL EFFECT.** (a) Sections 11 and 13 of this Act take effect only if the
 19 Alaska Energy Authority and the joint action agency to be formed by the purchasing utilities
 20 under AS 42.45.310, enacted by sec. 10 of this Act, complete the purchase and sale of the four
 21 dam pool hydroelectric project as described in the memorandum of understanding dated
 22 April 11, 2000.

23 (b) The definitions contained in sec. 15(d) of this Act apply to the terms used in this
 24 section.

25 * **Sec. 18.** Section 2 of this Act takes effect immediately under AS 01.10.070(c).

26 * **Sec. 19.** (a) If sec. 7 of this Act takes effect under sec. 16 of this Act, sec. 7 of this Act
 27 takes effect on the date of termination of the memorandum of understanding described in
 28 sec. 16 of this Act. The executive director of the Alaska Energy Authority shall certify the
 29 date of termination of the memorandum of understanding to the lieutenant governor and the
 30 revisor of statutes.

31 (b) The definitions contained in sec. 15(d) of this Act apply to the terms used in this

1 section.

2 * **Sec. 20.** (a) If secs. 11 and 13 of this Act take effect under sec. 17 of this Act, they take
3 effect on the day after the closing date of the sale of the four dam pool hydroelectric project
4 under the memorandum of understanding dated April 11, 2000. The executive director of the
5 Alaska Energy Authority shall certify the closing date of the sale to the lieutenant governor
6 and the revisor of statutes.

7 (b) The definitions contained in sec. 15(d) of this Act apply to the terms used in this
8 section.

9 * **Sec. 21.** Except as provided in secs. 18 - 20 of this Act, this Act takes effect July 1,
10 2000.