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MEMORANDUM

January 28, 2009

SUBJECT: Senate Bill 88, repealing delayed amendments to the power cost equalization program in order to make permanent certain formula amendments that were treated as temporary when enacted -- sectional analysis (Work Order No. 26-LS0414/R)

TO: Senator Lyman Hoffman, Co-Chair
Senate Finance Committee

FROM: Jack Chenoweth
Assistant Revisor

Among other additions and amendments, § 2, ch. 2, 4SSLA 2008, temporarily amended the parameters for a community to be eligible to receive power cost equalization payments under the power cost equalization program.¹ For one year, now scheduled to

¹ Substantively, § 2, ch. 2, 4SSLA 2008, made changes to AS 42.45.110(c) that increased the maximum allowable kilowatt-hour cost for which power cost equalization payments could be calculated from 52.5 cents to \$1.00 per kilowatt hour:

(c) The amount of power cost equalization provided for each [PER] kilowatt-hour under [SUBSECTION] (b) of this section may not exceed 95 percent of the power costs, or the average rate for each [PER] eligible kilowatt-hour sold, whichever is less, as determined by the commission. However,

(1) [DURING THE STATE FISCAL YEAR THAT BEGAN JULY 1, 1999,] the power costs for which power cost equalization are [WERE] paid to an electric utility are [WERE] limited to minimum power costs of more than 12 cents a [PER] kilowatt-hour and less than \$1 a [52.5 CENTS PER] kilowatt-hour;

(2) each year [DURING EACH FOLLOWING STATE FISCAL YEAR], the commission shall adjust the power costs for which power cost equalization may be paid to an electric utility based on the weighted average retail residential rate in Anchorage, Fairbanks, and Juneau; however, the commission may not adjust the power costs under this paragraph to reduce the amount below the lower limit set out in (1) of this subsection; and

end June 30, 2009, the standards were relaxed -- made less restrictive. Another provision of that Act, § 3, ch. 2, 4SSLA 2008, effective June 30, 2009, restores the standards to what they were before the temporary adjustment.

The provisions of Senate Bill 88 set aside the provisions of the 2008 Act that would restore the former standards.

Bill section 1 repeals the substantive law provision, sec. 3, ch. 2, 4SSSLA 2008, that, if left unamended, would restore the former factors that apply to calculate the amount of power cost equalization payable under that program.

Bill section 3 repeals the related delayed effective date provision, sec. 11, ch. 2, 4SSLA 2008, that, on June 30, 2009, would provide for restoration of the former factors under that power cost equalization formula. This bill section is, in effect, the repeal of an effective date provision that, under the *Manual of Legislative Drafting*, requires that it be separately set out and noticed in the bill title ("providing for an effective date by repealing the effective date of sec. 3, ch. 2, 4SSLA 2008"). *Manual of Legislative Drafting* at pp. 12 - 13. This change affects an effective date in the earlier bill and requires a two-thirds vote in each house for adoption.

Bill section 2 is a contingency provision so that, if Senate Bill 88 is passed late in the session and is substantially delayed in transmittal to the governor, or the governor otherwise fails to act to approve the bill until at or beyond the June 30, 2009, transitional date, the new provisions are made retroactive so that the legislature's intent (to eliminate the scheduled formula calculation change) is fully and seamlessly carried out.

Bill section 4 gives the measure an immediate effective date and requires a two-thirds vote in each house for adoption.

This sectional analysis was prepared in response to a request from Jay Livey.

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(3) the power cost equalization **for each** [PER] kilowatt-hour may be determined for a utility without historical kilowatt-hour sales data by using kilowatt-hours generated.

A related amendment proposed by § 3, ch. 2, 4SSLA 2008, would readjust the maximum allowable, as amended in the last line of AS 42.45.110(c)(1), as shown in the text, from \$1 back to the former rate of 52.5 cents.