

HOUSE BILL NO. 446

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/12/00

Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing and relating to the power cost equalization endowment fund;
2 relating to the power cost equalization and rural electric capitalization fund;
3 authorizing and relating to the sale of the four dam pool hydroelectric project;
4 establishing and relating to joint action agencies created to purchase power
5 projects; and providing for an effective date."

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

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
8 section to read:

9 FINDINGS. The legislature finds that

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

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

1 affordable levels;

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

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

11 (5) the proposed sale under the memorandum of understanding dated April 11,
12 2000, provides the state with fair value for the four dam pool hydroelectric project, relieves
13 the state of the significant financial risks and obligations with respect to the project, and
14 provides a stable long-term financing source for power cost equalization; and

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

20 * **Sec. 2.** AS 42.05.431(c) is amended to read:

21 (c) Notwithstanding (b) of this section,

22 (1) a wholesale agreement for the sale of power from a project licensed
23 by the Federal Energy Regulatory Commission on or before January 1, 1987, and
24 related contracts for the wheeling, storage, regeneration, or wholesale repurchase of
25 power purchased under the agreement, entered into between the Alaska Energy
26 Authority and one or more other public utilities or among the utilities after October 31,
27 1987, and before January 1, 1988, and amendments to the wholesale agreement or
28 related contract, **and the wholesale agreement or related contract assigned by the**
29 **Alaska Energy Authority to a joint action agency formed under AS 42.45.310 that**
30 **purchases the project from the Alaska Energy Authority,** are not subject to review
31 or approval by the commission until all long-term debt incurred for the project is

1 retired, or, for a wholesale agreement or related contract assigned to a joint action
 2 agency formed under AS 42.45.310, until all long-term debt incurred to pay the
 3 purchase price to the Alaska Energy Authority is retired; and

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

8 * **Sec. 3.** AS 42.45 is amended by adding new sections to read:

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

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

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

13 (1) the endowment account; and

14 (2) the equalization account.

15 (b) The endowment account is established as a separate account of the fund
 16 in the authority. The endowment account of the fund consists of

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

19 (2) accumulated earnings of the fund;

20 (3) gifts, bequests, and contributions of money and other assets given
 21 to the fund that are not designated for the equalization account; and

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

25 (c) The equalization account is established as a separate account of the fund
 26 in the authority. The equalization account of the fund consists of

27 (1) the annual transfer to the equalization account from the endowment
 28 account provided for in (d) of this section;

29 (2) legislative appropriations to the fund that are designated for
 30 expenditure for the purpose of power cost equalization; and

31 (3) gifts, bequests, and contributions of money and other assets given

1 to the fund that are designated for the equalization account.

2 (d) On February 1 of each year, the commissioner of revenue shall transfer to
3 the equalization account seven percent of the market value of the endowment account
4 as of that date.

5 (e) Nothing in this section creates a dedicated fund.

6 **Sec. 42.45.080. Powers and duties of the commissioner of revenue.** (a) The
7 commissioner of revenue is the fiduciary of the fund. In managing the fund, the
8 commissioner shall

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

11 (2) invest the endowment account of the fund in a manner likely to
12 achieve at least a seven percent nominal return over time.

13 (b) In managing the fund, the commissioner shall

14 (1) consider the status of the fund's capital and the income generated
15 on both a current and probable future basis;

16 (2) determine the appropriate investment objectives;

17 (3) establish investment policies to achieve the objectives; and

18 (4) act only in regard to the best financial interests of the fund.

19 **Sec. 42.45.085. Use of the equalization account of the fund.** (a) Money in
20 the equalization account of the fund may be appropriated for the following purposes:

21 (1) funding the power cost equalization and rural electric capitalization
22 fund (AS 42.45.100);

23 (2) reimbursement to the Department of Revenue for the costs of
24 establishing and managing the fund; and

25 (3) reimbursement of other costs of administration of the fund.

26 (b) The balance remaining in the equalization account that, at the end of the
27 fiscal year, has not been appropriated, or that has been appropriated but not expended,
28 shall be invested until appropriated or expended.

29 **Sec. 42.45.099. Definitions.** In AS 42.45.070 - 42.45.099,

30 (1) "endowment account" means the account established in
31 AS 42.45.070(b);

1 (2) "equalization account" means the account established in
2 AS 42.45.070(c);

3 (3) "fund" means the power cost equalization endowment fund
4 established in AS 42.45.070.

5 * **Sec. 4.** AS 42.45.070(b) is amended to read:

6 (b) The endowment account is established as a separate account of the fund
7 in the authority. The endowment account of the fund consists of

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

10 (2) accumulated earnings of the fund;

11 (3) gifts, bequests, and contributions of money and other assets given
12 to the fund that are not designated for the equalization account; and

13 (4) **repayments of principal and income that would have been**
14 **deposited in the former four dam pool transfer fund under former AS 42.45.050**
15 **[PAYMENTS RECEIVED AFTER JUNE 30, 2001, FOR THE SALE OF POWER**
16 **MADE TO THE STATE BY THE PURCHASING UTILITIES UNDER THE**
17 **MEMORANDUM OF UNDERSTANDING DATED APRIL 11, 2000 BETWEEN**
18 **THE ALASKA ENERGY AUTHORITY AND THE PURCHASING UTILITIES]**.

19 * **Sec. 5.** AS 42.45.100(b) is amended to read:

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

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

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

26 (3) **money appropriated from the equalization account**
27 **(AS 42.45.070(c)) of the power cost equalization endowment fund**
28 **(AS 42.45.070(a)) under AS 42.45.085(a);**

29 (4) gifts, bequests, and contributions from other sources; and

30 (5) [(4)] interest earned on the fund balance.

31 * **Sec. 6.** AS 42.45.100 is amended by adding a new subsection to read:

1 (d) If the amount available to the fund under (b) of this section is less than
 2 \$15,700,000 for a fiscal year, subject to appropriation, an amount necessary to cover
 3 the shortfall shall be deposited into the fund from the dividend made available under
 4 AS 44.88.088 by the board of directors of the Alaska Industrial Development and
 5 Export Authority.

6 * **Sec. 7.** AS 42.45.100(d) is amended to read:

7 (d) If the amount available to the fund under (b) of this section is less than
 8 \$15,700,000 for a fiscal year, subject to appropriation, an amount necessary to cover
 9 the shortfall, **up to the sum of \$9,000,000 for the fiscal year,** shall be deposited into
 10 the fund from the dividend made available under AS 44.88.088 by the board of
 11 directors of the Alaska Industrial Development and Export Authority.

12 * **Sec. 8.** AS 42.45 is amended by adding a new section to article 5 to read:

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

19 (b) The agency may

20 (1) acquire, own, operate, and manage one or more power projects; and
 21 (2) participate in the design, development, construction, operation, and
 22 maintenance of a generating or transmission facility.

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

27 (1) adopt bylaws of the agency;
 28 (2) sue and be sued;
 29 (3) carry out the authorized purposes of the agency;
 30 (4) subject to (e) of this section, issue revenue bonds and secure
 31 financing that are not obligations of either the state or the public utilities that formed

1 the agency to provide financing to carry out the authorized purposes of the agency.

2 (d) The agency is created by a written agreement among the public utilities
3 forming the agency. Each public utility forming the agency shall adopt the terms of
4 the agreement by ordinance or resolution. Subject to (c) of this section, the agreement
5 establishing the agency may define the powers, functions, and activities of the agency,
6 and specify the means by which they shall be performed. The agreement may
7 establish the rights and responsibilities of the public utilities that form the agency. If
8 applicable, the agreement shall provide for

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

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

14 (3) the transfer of personnel and the preservation of employment
15 benefits; and

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

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

1 with the state entity.

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

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

9 (h) In this section,

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

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

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

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

16 **LEGISLATIVE AUTHORIZATION TO CONVEY.** (a) Notwithstanding
17 AS 44.83.396, the joint action agency to be formed by the purchasing utilities may purchase,
18 and the Alaska Energy Authority may sell, the four dam pool hydroelectric project under the
19 memorandum of understanding.

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

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

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

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

1 (d) In this section,

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

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

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

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

9 (5) "department" means the former Department of Commerce and Economic
10 Development;

11 (6) "Department of Commerce and Economic Development" means the former
12 Department of Commerce and Economic Development;

13 (7) "Department of Community and Economic Development" means the
14 Department of Community and Economic Development, successor to the department;

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

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

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

22 (11) "Kodiak" means the Kodiak Electric Association, Inc., a cooperatively
23 owned electric utility serving the Borough of Kodiak;

24 (12) "loan agreement" means the loan agreement effective October 28, 1985,
25 between the State of Alaska, Department of Commerce and Economic Development and the
26 Alaska Power Authority regarding a loan from the power development revolving loan fund
27 to the Alaska Power Authority regarding the four dam pool hydroelectric project;

28 (13) "memorandum of understanding" means the memorandum of
29 understanding dated April 11, 2000, between the Alaska Energy Authority and Copper Valley,
30 Ketchikan, Kodiak, Petersburg, and Wrangell for the purchase and sale of the four dam pool
31 hydroelectric project;

1 (14) "note" means the Promissory Note, dated February 13, 1986, which
2 reflects the authority's obligation to pay the department related to the loan agreement;

3 (15) "Petersburg" means the City of Petersburg, doing business as Petersburg
4 Municipal Power and Light, a municipally owned electric utility serving Petersburg and
5 environs;

6 (16) "purchasing utilities" means Copper Valley, Ketchikan, Kodiak,
7 Petersburg, and Wrangell;

8 (17) "Wrangell" means the City of Wrangell Light Department, a municipally
9 owned electric utility serving Wrangell and environs.

10 * **Sec. 10.** AS 42.45.050 is repealed.

11 * **Sec. 11.** AS 42.45.070(b)(4) and AS 44.83.398 are repealed.

12 * **Sec. 12.** (a) Section 4 of this Act takes effect only if the memorandum of understanding
13 between the Alaska Energy Authority and the purchasing utilities dated April 11, 2000 is
14 terminated before the closing date of the sale of the four dam pool hydroelectric project under
15 that memorandum of understanding.

16 (b) If sec. 4 of this Act takes effect under (a) of this section, sec. 4 of this Act takes
17 effect on the date of termination of the memorandum of understanding described in (a) of this
18 section. The executive director of the Alaska Energy Authority shall certify the date of
19 termination of the memorandum of understanding to the lieutenant governor and the revisor
20 of statutes.

21 * **Sec. 13.** (a) Section 11 of this Act takes effect only if the Alaska Energy Authority and
22 the joint action agency to be formed by the purchasing utilities under AS 42.45.310, enacted
23 by sec. 8 of this Act, complete the purchase and sale of the four dam pool hydroelectric
24 project as described in the memorandum of understanding dated April 11, 2000.

25 (b) If sec. 11 of this Act takes effect under (a) of this section, sec. 11 of this Act takes
26 effect on the day after the closing date of the sale of the four dam pool hydroelectric project
27 under the memorandum of understanding dated April 11, 2000. The executive director of the
28 Alaska Energy Authority shall certify the closing date of the sale to the lieutenant governor
29 and the revisor of statutes.

30 * **Sec. 14.** Section 7 of this Act takes effect July 1, 2002.

31 * **Sec. 15.** Section 10 of this Act takes effect July 2, 2000.

1 * **Sec. 16.** Except as provided in secs. 12 - 15 of this Act, this Act takes effect July 1,
2 2000.