

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/19/00

Referred: Rules

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

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 relating to the Railbelt energy fund; authorizing and relating to the sale of the
4 four dam pool hydroelectric project; establishing and relating to joint action
5 agencies created to purchase power 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 financing source for 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 long-term, stable 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 ensure local control of power generation resources necessary for a
18 healthy economy and benefit the communities and their ratepayers by providing for stable
19 energy rates.

20 * **Sec. 2.** AS 37.05.520 is amended to read:

21 **Sec. 37.05.520. Railbelt energy fund.** There is established in the general fund
22 the Railbelt energy fund. The fund consists of money appropriated to it by the
23 legislature **and interest received on money in the fund.** The department of revenue
24 shall manage the fund. [INTEREST RECEIVED ON MONEY IN THE FUND SHALL
25 BE ACCOUNTED FOR SEPARATELY AND MAY BE APPROPRIATED INTO
26 THE FUND ANNUALLY.] The legislature may appropriate money from the fund for
27 programs, projects, and other expenditures to assist in meeting Railbelt energy needs,
28 including projects for retrofitting state-owned buildings and facilities for energy
29 conservation.

30 * **Sec. 3.** AS 42.05.431(c) is amended to read:

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

1 (1) a wholesale agreement for the sale of power from a project licensed
 2 by the Federal Energy Regulatory Commission on or before January 1, 1987, and
 3 related contracts for the wheeling, storage, regeneration, or wholesale repurchase of
 4 power purchased under the agreement, entered into between the Alaska Energy
 5 Authority and one or more other public utilities or among the utilities after October 31,
 6 1987, and before January 1, 1988, and amendments to the wholesale agreement or
 7 related contract, **and the wholesale agreement or related contract assigned by the**
 8 **Alaska Energy Authority to a joint action agency formed under AS 42.45.310 that**
 9 **purchases the project from the Alaska Energy Authority,** are not subject to review
 10 or approval by the commission until all long-term debt incurred for the project is
 11 retired, **or, for a wholesale agreement or related contract assigned to a joint action**
 12 **agency formed under AS 42.45.310, until all long-term debt incurred to pay the**
 13 **purchase price to the Alaska Energy Authority is retired;** and

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

18 * **Sec. 4.** AS 42.45.040 is amended to read:

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

25 * **Sec. 5.** AS 42.45 is amended by adding new sections to read:

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

27 **Sec. 42.45.070. Power cost equalization endowment fund established.** (a)
 28 The power cost equalization endowment fund is established as a separate fund of the
 29 authority. The fund consists of

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

1 (2) accumulated earnings of the fund;
 2 (3) gifts, bequests, contributions of money and other assets, and federal
 3 money given to the fund that are not designated for annual expenditure for power cost
 4 equalization; and

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

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

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

17 **Sec. 42.45.080. Powers and duties of the commissioner of revenue.** (a) The
 18 commissioner of revenue is the fiduciary of the fund. In managing the fund, the
 19 commissioner shall

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

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

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

25 (1) consider the status of the fund's capital and the income generated
 26 on both current and probable future bases;

27 (2) determine the appropriate investment objectives;

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

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

30 (c) On July 1 of each year, the commissioner shall determine the monthly
 31 average market value of the fund for the previous three fiscal years.

1 **Sec. 42.45.085. Use of the power cost equalization endowment fund.** (a)
 2 Seven percent of the amount determined by the commissioner of revenue on July 1 of
 3 each year under AS 42.45.080(c) may be appropriated for the fiscal year beginning the
 4 following July 1 for the following purposes:

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

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

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

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

11 **Sec. 42.45.099. Definition.** In AS 42.45.070 - 42.45.099, "fund" means the
 12 power cost equalization endowment fund established in AS 42.45.070.

13 * **Sec. 6.** AS 42.45.070(a) is amended to read:

14 (a) The power cost equalization endowment fund is established as a separate
 15 fund of the authority. The fund consists of

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

18 (2) accumulated earnings of the fund;

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

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

28 * **Sec. 7.** AS 42.45.100(b) is amended to read:

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

31 (1) money appropriated to provide power cost equalization to eligible

1 electric utilities and to provide grants for utility improvements;

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

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

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

8 (5) [(4)] interest earned on the fund balance.

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

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

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

16 * **Sec. 9.** AS 42.45 is amended by adding a new section to article 5 to read:

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

23 (b) The agency may

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

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

28 (c) The agency is an instrumentality of the public utilities that form the
29 agency, but has a separate and independent legal existence from the public utilities.

30 In addition to the powers authorized under AS 42.45.300, the agency has the power

31 (1) to adopt bylaws of the agency;

- 1 (2) to sue and be sued;
- 2 (3) to carry out the authorized purposes of the agency; and
- 3 (4) subject to (e) of this section, to issue revenue bonds and secure
- 4 financing that are not obligations of either the state or the public utilities that formed
- 5 the agency to provide financing to carry out the authorized purposes of the agency.

6 (d) The agency is created by a written agreement among the public utilities

7 forming the agency. Each public utility forming the agency shall adopt the terms of

8 the agreement by ordinance or resolution. Subject to (c) of this section, the agreement

9 establishing the agency may define the powers, functions, and activities of the agency

10 and specify the means by which they shall be performed. The agreement may

11 establish the rights and responsibilities of the public utilities that form the agency. If

12 applicable, the agreement shall provide for

13 (1) apportionment between the public utilities forming the agreement

14 of responsibility for providing finances to the expenses incurred in the performance of

15 the functions or activities;

16 (2) apportionment of fees or other revenue derived from the functions

17 or activities and the manner in which the revenue shall be accounted for;

18 (3) the transfer of personnel and the preservation of employment

19 benefits; and

20 (4) the rights of the public utilities forming the agency to terminate the

21 agreement, subject to (e) of this section, including resolving disputes if the public

22 utilities are unable, upon termination of the agreement, to agree on the transfer of

23 personnel or the division of assets and liabilities between the parties to the agreement.

24 (e) The public utilities forming the agency shall pledge and agree with the

25 holders of revenue bonds or other financing secured under this section, including with

26 a state entity that provides financing, that the public utilities and the agency will not

27 terminate the agency or take any other action that would limit or alter the rights and

28 powers vested in the agency by this section to fulfill the terms of a contract made by

29 the agency with the holders and that the public utilities and the agency will not in any

30 way impair the rights and remedies of the holders until the bonds or other financing

31 secured under this section, together with the interest on them with interest on unpaid

1 installments of interest, and all costs and expenses in connection with an action or
 2 proceeding by or on behalf of the holders are fully met and discharged. The agency
 3 may include this pledge and agreement of the public utilities and the agency, insofar
 4 as it refers to holders of bonds of the agency, in a contract with the holders and,
 5 insofar as it relates to a state entity, in a contract with the state entity.

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

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

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

15 (i) In this section,

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

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

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

20 * **Sec. 10.** AS 44.83.510(a) is amended to read:

21 (a) Repayment of a loan from the former power development revolving loan
 22 fund must be made with the proceeds from the sale of power from projects in the
 23 former energy program for Alaska. [EXCEPT AS PROVIDED IN AS 44.83.398(i),
 24 THE PAYMENTS REQUIRED TO BE MADE BY THE AUTHORITY ON A LOAN
 25 FROM THE FUND CONSTITUTE DEBT SERVICE FOR THE PURPOSE OF
 26 CALCULATING THE WHOLESALE POWER RATE IN AS 44.83.398(b)(1).]

27 * **Sec. 11.** AS 42.45.050 is repealed.

28 * **Sec. 12.** AS 42.45.070(a)(4), 42.45.070(c), AS 44.83.398, and 44.83.525 are repealed.

29 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section
 30 to read:

31 INTERIM DETERMINATION OF AMOUNTS AVAILABLE FOR

1 APPROPRIATION. (a) Notwithstanding AS 42.45.080(c) and 42.45.085(a), enacted by sec. 5
 2 of this Act, the amount that may be appropriated from the power cost equalization endowment
 3 fund (AS 42.45.070, enacted by sec. 5 of this Act) shall be determined as follows:

4 (1) for fiscal year 2002, the amount that may be appropriated from the power
 5 cost equalization endowment fund (AS 42.45.070, enacted by sec. 5 of this Act) is seven
 6 percent of the market value of the fund on February 1, 2001;

7 (2) for fiscal year 2003 through the first fiscal year that begins after the closing
 8 date of the sale of the four dam pool hydroelectric project under the memorandum of
 9 understanding, the amount that may be appropriated annually from the power cost equalization
 10 endowment fund (AS 42.45.070, enacted by sec. 5 of this Act) is seven percent of the market
 11 value of the fund on February 1 of the prior fiscal year;

12 (3) for subsequent fiscal years, the commissioner of revenue shall exclude the
 13 time period and market value of the power cost equalization endowment fund (AS 42.45.070,
 14 enacted by sec. 5 of this Act) before the closing date of the sale of the four dam pool
 15 hydroelectric project in making the determination required under AS 42.45.080(c), enacted by
 16 sec. 5 of this Act.

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

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

21 **LEGISLATIVE AUTHORIZATION TO CONVEY.** (a) Notwithstanding
 22 AS 44.83.396, the joint action agency to be formed by the purchasing utilities may purchase,
 23 and the Alaska Energy Authority may sell, the four dam pool hydroelectric project under the
 24 memorandum of understanding, but only if the memorandum of understanding is amended to
 25 include a provision consistent with this subsection that prohibits the agency from selling a four
 26 dam pool hydroelectric project to any purchaser other than a purchasing utility as defined in
 27 this section and that limits the ability of the purchasing utility to subsequently sell the four
 28 dam pool hydroelectric project. A purchasing utility that has purchased a four dam pool
 29 hydroelectric project may only sell the project to a subsequent purchaser if the legislature
 30 approves the terms of the sale in advance of the effective date of the sale. To further the
 31 important public benefits and best interests of the state that will result from the sale under the

1 memorandum of understanding, the Department of Natural Resources may transfer, assign, or
 2 convey to the joint action agency permits, rights-of-way, leases, and other interests in state
 3 land that comprise any part of the four dam pool hydroelectric project.

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

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

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

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

17 (d) In this section,

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

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

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

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

25 (5) "Department of Commerce and Economic Development" means the former
 26 Department of Commerce and Economic Development;

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

30 (7) "joint action agency" means an agency formed under AS 42.45.310, enacted
 31 by sec. 9 of this Act;

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

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

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

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

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

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

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

23 (13) "Petersburg" means the City of Petersburg, doing business as Petersburg
24 Municipal Power and Light, a municipally owned electric utility serving Petersburg and
25 environs;

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

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

31 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2 CONDITIONAL EFFECT. (a) Section 6 of this Act takes effect only if the
3 memorandum of understanding between the Alaska Energy Authority and the purchasing
4 utilities dated April 11, 2000, is terminated before the closing date of the sale of the four dam
5 pool hydroelectric project under that memorandum of understanding.

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

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) Sections 10 and 12 of this Act take effect only if the
11 Alaska Energy Authority and the joint action agency to be formed by the purchasing utilities
12 under AS 42.45.310, enacted by sec. 9 of this Act, complete the purchase and sale of the four
13 dam pool hydroelectric project as described in the memorandum of understanding dated
14 April 11, 2000.

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

17 * **Sec. 17.** (a) If sec. 6 of this Act takes effect under sec. 15 of this Act, sec. 6 of this Act
18 takes effect on the date of termination of the memorandum of understanding described in
19 sec. 15 of this Act. The executive director of the Alaska Energy Authority shall certify the
20 date of termination of the memorandum of understanding to the lieutenant governor and the
21 revisor of statutes.

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

24 * **Sec. 18.** (a) If secs. 10 and 12 of this Act take effect under sec. 16 of this Act, they take
25 effect on the day after the closing date of the sale of the four dam pool hydroelectric project
26 under the memorandum of understanding dated April 11, 2000. The executive director of the
27 Alaska Energy Authority shall certify the closing date of the sale to the lieutenant governor
28 and the revisor of statutes.

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

31 * **Sec. 19.** Except as provided in secs. 17 and 18 of this Act, this Act takes effect July 1,

1 2000.