

**CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 181(CRA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/13/00  
Referred: Finance

Sponsor(s): SENATOR TAYLOR

**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 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 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  
27 31, 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 42.45.040 is amended to read:

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

15 \* **Sec. 4.** AS 42.45 is amended by adding new sections to read:

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

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

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

20 (1) the endowment account; and

21 (2) the equalization account.

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

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

26 (2) accumulated earnings of the fund;

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

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

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

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

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

7 (3) gifts, bequests, and contributions of money and other assets given  
8 to the fund that are designated for the equalization account.

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

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

13 **Sec. 42.45.080. Powers and duties of the commissioner of revenue.** (a) The  
14 commissioner of revenue is the fiduciary of the fund. In managing the fund, the  
15 commissioner shall

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

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

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

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

23 (2) determine the appropriate investment objectives;

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

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

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

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

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

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

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

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

6 (1) "endowment account" means the account established in  
7 AS 42.45.070(b);

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

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

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

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

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

17 (2) accumulated earnings of the fund;

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

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

26 \* **Sec. 6.** AS 42.45.100(b) is amended to read:

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

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

31 (2) money appropriated from the National Petroleum Reserve - Alaska

1 special revenue fund under AS 37.05.530(g);

2 (3) money appropriated from the equalization account  
 3 (AS 42.45.070(c)) of the power cost equalization endowment fund  
 4 (AS 42.45.070(a)) under AS 42.45.085(a);

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

6 (5) [(4)] interest earned on the fund balance.

7 \* **Sec. 7.** AS 42.45.100 is amended by adding a new subsection to read:

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

13 \* **Sec. 8.** AS 42.45.100(d) is amended to read:

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

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

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

26 (b) The agency may

27 (1) acquire, own, operate, and manage one or more power projects; and

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

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

1 In addition to the powers authorized under AS 42.45.300, the agency has the power  
2 (1) to adopt bylaws of the agency;  
3 (2) to sue and be sued;  
4 (3) to carry out the authorized purposes of the agency; and  
5 (4) subject to (e) of this section, to issue revenue bonds and secure  
6 financing that are not obligations of either the state or the public utilities that formed  
7 the agency to provide financing to carry out the authorized purposes of the agency.

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

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

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

20 (3) the transfer of personnel and the preservation of employment  
21 benefits; and

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

26 (e) The public utilities forming the agency shall pledge and agree with the  
27 holders of revenue bonds or other financing secured under this section, including with  
28 a state entity that provides financing, that the public utilities and the agency will not  
29 terminate the agency or take any other action that would limit or alter the rights and  
30 powers vested in the agency by this section to fulfill the terms of a contract made by  
31 the agency with the holders and that the public utilities and the agency will not in any

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

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

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

15 (h) 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 44.83.525 is amended to read:

28 **Sec. 44.83.525. Rate reopeners.** A power sales agreement for the sale of  
 29 power from the initial project [, AS DESCRIBED IN AS 44.83.398(a),] financed with  
 30 a loan under AS 44.83.510 may include among its provisions an agreed schedule of  
 31 wholesale power rates [NOTWITHSTANDING THE PROVISIONS OF AS 44.83.398],

1 but must include a provision for a rate reopener at least every 15 years. **For purposes**  
 2 **of this section, Tye Lake, Swan Lake, Solomon Gulch, and Terror Lake**  
 3 **hydroelectric facilities are considered to be one power project, and this power**  
 4 **project is referred to as the initial project.**

5 \* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section  
 6 to read:

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

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

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

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

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

23 (d) In this section,

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

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

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

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

31 (5) "Department of Commerce and Economic Development" means the former

1 Department of Commerce and Economic Development;

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

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

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

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

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

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

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

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

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

27 (15) "Wrangell" means the City of Wrangell Light Department, a municipally  
28 owned electric utility serving Wrangell and environs.

29 \* **Sec. 13.** AS 42.45.050 is repealed.

30 \* **Sec. 14.** AS 42.45.070(b)(4) and AS 44.83.398 are repealed.

31 \* **Sec. 15.** (a) Section 5 of this Act takes effect only if the memorandum of understanding

1 between the Alaska Energy Authority and the purchasing utilities dated April 11, 2000, is  
2 terminated before the closing date of the sale of the four dam pool hydroelectric project under  
3 that memorandum of understanding.

4 (b) If sec. 5 of this Act takes effect under (a) of this section, sec. 5 of this Act takes  
5 effect on the date of termination of the memorandum of understanding described in (a) of this  
6 section. The executive director of the Alaska Energy Authority shall certify the date of  
7 termination of the memorandum of understanding to the lieutenant governor and the revisor  
8 of statutes.

9 \* **Sec. 16.** (a) Sections 10, 11, and 14 of this Act take effect only if the Alaska Energy  
10 Authority and the joint action agency to be formed by the purchasing utilities under  
11 AS 42.45.310, enacted by sec. 9 of this Act, complete the purchase and sale of the four dam  
12 pool hydroelectric project as described in the memorandum of understanding dated April 11,  
13 2000.

14 (b) If secs. 10, 11, and 14 of this Act take effect under (a) of this section, they take  
15 effect on the day after the closing date of the sale of the four dam pool hydroelectric project  
16 under the memorandum of understanding dated April 11, 2000. The executive director of the  
17 Alaska Energy Authority shall certify the closing date of the sale to the lieutenant governor  
18 and the revisor of statutes.

19 \* **Sec. 17.** Section 8 of this Act takes effect July 1, 2002.

20 \* **Sec. 18.** Section 13 of this Act takes effect July 2, 2000.

21 \* **Sec. 19.** Except as provided in secs. 15 - 18 of this Act, this Act takes effect July 1,  
22 2000.