

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/14/00

Referred: Today's Calendar

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 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 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 42.45.040 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) legislative appropriations to the fund that are not designated for  
 21 annual expenditure for the purpose of power cost equalization;

22 (2) accumulated earnings of the fund;

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

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

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

30 (c) In this section, "memorandum of understanding" means the memorandum  
 31 of understanding dated April 11, 2000, between the Alaska Energy Authority and

1 Copper Valley Electric Association, Inc., City of Ketchikan, Kodiak Electric  
 2 Association, Inc., City of Petersburg, and City of Wrangell for the purchase and sale  
 3 of the four dam pool hydroelectric project and any amendment to that agreement that  
 4 substitutes appropriations of \$20,000,000 from the state constitutional budget reserve  
 5 fund established under art. IX, sec. 17, Constitution of the State of Alaska, for  
 6 appropriations from the power project fund (AS 42.45.010).

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

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

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

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

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

17 (2) determine the appropriate investment objectives;

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

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

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

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

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

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

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

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

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

1 power cost equalization endowment fund established in AS 42.45.070.

2 \* **Sec. 5.** AS 42.45.070(a) is amended to read:

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

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

7 (2) accumulated earnings of the fund;

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

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

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

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

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

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

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

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

28 (5) [(4)] interest earned on the fund balance.

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

30 (d) If the amount available to the fund under (b) of this section is less than  
31 \$15,700,000 for a fiscal year, subject to appropriation, an amount necessary to cover

1 the shortfall shall be deposited into the fund from the dividend made available under  
2 AS 44.88.088 by the board of directors of the Alaska Industrial Development and  
3 Export Authority.

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

5 (d) If the amount available to the fund under (b) of this section is less than  
6 \$15,700,000 for a fiscal year, subject to appropriation, an amount necessary to cover  
7 the shortfall, **up to the sum of \$9,000,000 for the fiscal year**, shall be deposited into  
8 the fund from the dividend made available under AS 44.88.088 by the board of  
9 directors of the Alaska Industrial Development and Export Authority.

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

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

17 (b) The agency may

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

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

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

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

25 (1) to adopt bylaws of the agency;

26 (2) to sue and be sued;

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

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

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

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

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

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

12 (3) the transfer of personnel and the preservation of employment  
13 benefits; and

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

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

31 (f) Only to the extent any of the public utilities forming the agency is subject

1 to the particular tax is the agency subject to state and local ad valorem, income, or  
 2 excise taxes that may be assessed or levied against property, assets, income, and  
 3 receipts of the agency or to the electric cooperative tax (AS 10.25.540 - 10.25.570).

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

7 (h) In this section,

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

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

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

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

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

19 \* **Sec. 11.** AS 44.83.525 is amended to read:

20 **Sec. 44.83.525. Rate reopeners.** A power sales agreement for the sale of  
 21 power from a [THE INITIAL] project [, AS DESCRIBED IN AS 44.83.398(a),]  
 22 financed with a loan under AS 44.83.510 may include among its provisions an agreed  
 23 schedule of wholesale power rates [NOTWITHSTANDING THE PROVISIONS OF  
 24 AS 44.83.398], but must include a provision for a rate reopener at least every 15 years.

25 \* **Sec. 12.** AS 42.45.050 is repealed.

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

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

29 INTERIM DETERMINATION OF AMOUNTS AVAILABLE FOR  
 30 APPROPRIATION. (a) Notwithstanding AS 42.45.080(c) and 42.45.085(a), enacted by sec. 4  
 31 of this Act, the amount that may be appropriated from the power cost equalization endowment

1 fund (AS 42.45.070, enacted by sec. 4 of this Act) shall be determined as follows:

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

5 (2) for fiscal year 2003 through the fiscal year that begins after the closing date  
6 of the sale of the four dam pool hydroelectric project under the memorandum of  
7 understanding, the amount that may be appropriated annually from the power cost equalization  
8 endowment fund (AS 42.45.070, enacted by sec. 4 of this Act) is seven percent of the market  
9 value of the fund on February 1 of the prior fiscal year;

10 (3) for subsequent fiscal years, the commissioner of revenue shall exclude the  
11 time period and market value of the power cost equalization endowment fund (AS 42.45.070,  
12 enacted by sec. 4 of this Act) before the closing date of the sale of the four dam pool  
13 hydroelectric project in making the determination required under AS 42.45.080(c), enacted by  
14 sec. 4 of this Act.

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

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

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

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

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

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

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

5 (d) In this section,

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

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

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

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

13 (5) "Department of Commerce and Economic Development" means the former  
14 Department of Commerce and Economic Development;

15 (6) "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 (7) "joint action agency" means an agency formed under AS 42.45.310, enacted  
19 by sec. 9 of this Act;

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

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

24 (10) "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 (11) "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 and any amendment to that agreement that substitutes appropriations of

1 \$20,000,000 from the state constitutional budget reserve fund established under art. IX,  
2 sec. 17, Constitution of the State of Alaska, for appropriations from the power project fund  
3 (AS 42.45.010).

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

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

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

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

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

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

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

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

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

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

1     \* **Sec. 18.** (a) If sec. 5 of this Act takes effect under sec. 16 of this Act, sec. 5 of this Act  
2 takes effect on the date of termination of the memorandum of understanding described in sec.  
3 16 of this Act. The executive director of the Alaska Energy Authority shall certify the date  
4 of termination of the memorandum of understanding to the lieutenant governor and the revisor  
5 of statutes.

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

8     \* **Sec. 19.** (a) If secs. 10, 11, and 13 of this Act take effect under sec. 17 of this Act, they  
9 take effect on the day after the closing date of the sale of the four dam pool hydroelectric  
10 project under the memorandum of understanding dated April 11, 2000. The executive director  
11 of the Alaska Energy Authority shall certify the closing date of the sale to the lieutenant  
12 governor and the revisor of statutes.

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

15     \* **Sec. 20.** Section 8 of this Act takes effect July 1, 2002.

16     \* **Sec. 21.** Except as provided in secs. 18 - 20 of this Act, this Act takes effect July 1,  
17 2000.