

SENATE BILL NO. 84

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATORS TAYLOR, Austerman , Lincoln

Introduced: 2/12/01

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act exempting joint action agencies from regulation by the state or municipalities;**
2 **relating to the relationship between a joint action agency and the public utilities that**
3 **form the joint action agency; relating to powers and immunities of a joint action agency;**
4 **requiring filing of the joint action agency agreement; relating to the financial affairs of a**
5 **joint action agency; declaring certain joint action agencies to be political subdivisions**
6 **for certain purposes; relating to liability and indemnification of officers, employees, and**
7 **agents of joint action agencies; and defining 'agency agreement' as used with reference**
8 **to joint action agencies."**

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

10 *** Section 1.** AS 29.35.070(a) is amended to read:

11 (a) The assembly acting for the area outside all cities in the borough and the
12 council acting for the area in a city may regulate, fix, establish, and change the rates

1 and charges imposed for a utility service provided to the municipality or its inhabitants
 2 by a utility that is not subject to regulation under AS 42.05 unless that utility is
 3 exempted from regulation under AS 42.05.711(a), [OR] (d) - (k), or (o), or is
 4 exempted under regulations adopted under AS 42.05.810 from complying with all or
 5 part of AS 42.05.141 - 42.05.721.

6 * **Sec. 2.** AS 42.05.711(b) is amended to read:

7 (b) Except as otherwise provided in this subsection and in (o) of this section,
 8 public utilities owned and operated by a political subdivision of the state, or electric
 9 operating entities established as the instrumentality of two or more public utilities
 10 owned and operated by political subdivisions of the state, are exempt from this
 11 chapter, other than AS 42.05.221 - 42.05.281 and 42.05.385. However,

12 (1) the governing body of a political subdivision may elect to be
 13 subject to this chapter; and

14 (2) a utility or electric operating entity that is owned and operated by a
 15 political subdivision and that directly competes with another utility or electric
 16 operating entity is subject to this chapter and any other utility or electric operating
 17 entity owned and operated by the political subdivision is also subject to this chapter.

18 * **Sec. 3.** AS 42.05.711(l) is amended to read:

19 (l) A person, utility, joint action agency established under AS 42.45.300, or
 20 cooperative that is exempt from regulation under (a), [OR] (d) - (k), or (o) of this
 21 section is not subject to regulation by a municipality under AS 29.35.060 and
 22 29.35.070.

23 * **Sec. 4.** AS 42.05.711 is amended by adding a new subsection to read:

24 (o) A joint action agency established under AS 42.45.300 is exempt from
 25 regulation under this chapter.

26 * **Sec. 5.** AS 42.45.300 is amended to read:

27 **Sec. 42.45.300. Joint action agencies.** Two or more public utilities may form
 28 a joint action agency for the purpose of participation in the design, construction,
 29 operation, and maintenance of a generating or transmission facility and to secure
 30 financing for carrying out the design, construction, operation, and maintenance of the
 31 facility. A joint action agency may request the Alaska Industrial Development and

1 Export Authority to issue revenue bonds for projects of the agency. [A JOINT
2 ACTION AGENCY HAS THE POWERS OF A PUBLIC UTILITY UNDER
3 AS 42.05.]

4 * **Sec. 6.** AS 42.45.310(a) is amended to read:

5 (a) Two or more public utilities that purchase power from a power project
6 acquired or constructed as part of the former energy program for Alaska and owned by
7 the Alaska Energy Authority under AS 44.83.396 may form a joint action agency
8 under AS 42.45.300 and under this section to purchase the power project from the
9 Alaska Energy Authority if the purchase and sale of **the** project has first been
10 authorized by law.

11 * **Sec. 7.** AS 42.45.310(c) is amended to read:

12 (c) The agency is **a body corporate and politic and** an instrumentality of the
13 public utilities that form the agency, but has a separate and independent legal
14 existence from the public utilities. **A debt, obligation, or liability of the agency does**
15 **not constitute a debt, obligation, or liability of a public utility. A liability**
16 **incurred by the agency shall be satisfied exclusively from the assets or revenue of**
17 **the agency, and a creditor of the agency or any other person does not have any**
18 **right of action or claim against a public utility, because of a debt, obligation, or**
19 **liability of the agency. The agency has the powers of a public utility under**
20 **AS 42.05 and the immunities of a public utility, including those under**
21 **AS 09.65.085; however, the agency is exempt from regulation under AS 42.05 and**
22 **is not required to obtain a certificate of public convenience and necessity under**
23 **AS 42.05.221.** In addition to the powers **granted to the agency** [AUTHORIZED]
24 under AS 42.45.300, **this section, and the agency agreement,** the agency has the
25 power

26 (1) to adopt bylaws of the agency;

27 (2) to sue and be sued;

28 (3) to carry out the authorized purposes of the agency; [AND]

29 (4) subject to (e) of this section, to issue revenue bonds and **other**
30 **obligations** [SECURE FINANCING] that are not obligations of either the state or the
31 public utilities that **are parties to** [FORMED] the agency **agreement** to provide

1 financing to carry out the authorized purposes of the agency; **and**

2 **(5) to exercise the powers of eminent domain and declaration of**
 3 **taking to acquire land or materials under the procedures set out in AS 09.55.240 -**
 4 **09.55.460 to carry out the authorized purposes of a joint action agency.**

5 * **Sec. 8.** AS 42.45.310(d) is amended to read:

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. **After the public utilities that are parties**
 9 **to the agency agreement adopt and execute the agreement, the board of directors**
 10 **of the agency shall file the agency agreement with the Department of Community**
 11 **and Economic Development. In the agreement, the public utilities forming the**
 12 **agency may grant to the agency any right, power, or privilege held or possessed**
 13 **by one or more of the public utilities. The agency** [SUBJECT TO (c) OF THIS
 14 SECTION, THE] agreement [ESTABLISHING THE AGENCY] may define the
 15 powers, functions, and activities of the agency and specify the means by which they
 16 shall be performed. The **agency** agreement may establish the rights and
 17 responsibilities of the public utilities that form the agency. If applicable, the **agency**
 18 agreement **must** [SHALL] provide for

19 (1) apportionment between the public utilities **that are parties to**
 20 [FORMING] the **agency** agreement of responsibility for [PROVIDING FINANCES
 21 TO THE] expenses incurred in the performance of the functions or activities;

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

24 (3) the transfer of personnel and the preservation of employment
 25 benefits; and

26 (4) the rights of the public utilities **that are parties to** [FORMING]
 27 the agency **agreement** to terminate the agreement, subject to (e) of this section,
 28 including resolving disputes if the public utilities are unable, upon termination of the
 29 **agency** agreement, to agree on the transfer of personnel or the division of assets and
 30 liabilities between the parties to the agreement.

31 * **Sec. 9.** AS 42.45.310(e) is amended to read:

1 (e) The public utilities that are parties to [FORMING] the agency
 2 agreement shall [PLEDGE AND] agree with the holders of revenue bonds or other
 3 obligations issued by the agency [FINANCING SECURED UNDER THIS
 4 SECTION], including with a state entity that provides financing to the agency, that
 5 the public utilities and the agency will not terminate the agency or take any other
 6 action that would limit or alter the rights and powers vested in the agency by this
 7 section to fulfill the terms of a contract made by the agency with the holders of the
 8 bonds or other obligations and that the public utilities and the agency will not in any
 9 way impair the rights and remedies of the holders until the bonds or other obligations
 10 [FINANCING SECURED UNDER THIS SECTION], together with the interest on
 11 them with interest on unpaid installments of interest, and all costs and expenses in
 12 connection with an action or proceeding by or on behalf of the holders of the bonds
 13 or other obligations are fully met and discharged. The agency may include this
 14 [PLEDGE AND] agreement of the public utilities and the agency, insofar as it refers
 15 to holders of bonds and other obligations of the agency, in a contract with the holders
 16 and, insofar as it relates to a state entity, in a contract with the state entity.

17 * **Sec. 10.** AS 42.45.310(f) is repealed and reenacted to read:

18 (f) Bonds and other obligations issued by the agency and all interest and
 19 income from them and all fees, charges, funds, revenue, income, and other money
 20 pledged or available to pay or secure the payment of the bonds or obligations or
 21 interest on them are exempt from taxation. The real and personal property of an
 22 agency formed under AS 42.45.300 and this section and the assets, income, and
 23 receipts of the agency are exempt from all taxes and special assessments of the state or
 24 a political subdivision of the state, including the electric cooperative tax
 25 (AS 10.25.540 - 10.25.570).

26 * **Sec. 11.** AS 42.45.310(g) is amended to read:

27 (g) A loan to, investment in, or other financial assistance [AID] provided to
 28 the agency by the state or any political subdivision of the state does not constitute a
 29 violation of AS 37.10.085.

30 * **Sec. 12.** AS 42.45.310(h) is amended to read:

31 (h) An agency formed by, and that continues to include, one or more

1 municipal public utilities is a political subdivision [ONLY] for purposes of
2 AS 38.05.810.

3 * **Sec. 13.** AS 42.45.310(i) is amended by adding a new paragraph to read:

4 (4) "agency agreement" or "agreement" means the written agreement
5 described in (d) of this section between or among the public utilities creating a joint
6 action agency.

7 * **Sec. 14.** AS 42.45 is amended by adding a new section to article 6 to read:

8 **Sec. 42.45.320. Liability, indemnification, and insurance.** (a) A protected
9 person is not individually liable for conduct performed within the scope of the person's
10 duties for the agency. However, the protected person may be held individually liable
11 for conduct if it was not reasonable for the person to believe that the conduct was in,
12 or not contrary to, the best interests of the agency.

13 (b) Unless prohibited by the agency agreement, the agency shall indemnify a
14 protected person who is or may be made a party to a contested matter arising out of
15 acts or omissions within the scope of the person's duties for the agency against
16 expenses actually and reasonably incurred in connection with the contested matter.
17 However, the agency may not indemnify the protected person if the person did not
18 reasonably believe the conduct to be in, or not opposed to, the best interests of the
19 agency. With respect to a criminal action or proceeding, the agency shall indemnify a
20 protected person unless the person had reasonable cause to believe that the conduct
21 was unlawful.

22 (c) An agency may purchase and maintain insurance on behalf of a protected
23 person against liability asserted against the protected person and incurred in an official
24 capacity or arising out of the person's status, whether or not the agency would have the
25 power to indemnify the person against the liability under this section.

26 (d) In this section,

27 (1) "conduct" includes action, inaction, and omission;

28 (2) "contested matter" means a proposed, pending, or completed action
29 or proceeding, whether civil, criminal, administrative, or investigative;

30 (3) "expenses" include attorney fees, judgments, fines, and amounts
31 paid in settlement;

1 (4) "protected person" means a director, officer, employee, or agent of
2 an agency.