

CS FOR SENATE BILL NO. 84(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/22/01

Referred: Finance

Sponsor(s): SENATORS TAYLOR, Austerman, Lincoln

A BILL

FOR AN ACT ENTITLED

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

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

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

12 (a) The assembly acting for the area outside all cities in the borough and the

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

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

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

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

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

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

20 (l) A person, utility, **joint action agency established under AS 42.45.310**, or
 21 cooperative that is exempt from regulation under (a), [OR] (d) - (k), or (o) of this
 22 section is not subject to regulation by a municipality under AS 29.35.060 and
 23 29.35.070.

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

25 (o) A joint action agency established under AS 42.45.310 is exempt from
 26 regulation under this chapter, including the requirement to obtain a certificate of
 27 public convenience and necessity under AS 42.05.221, for the operation of, sale of
 28 power from, and other activities related to the power project the joint action agency
 29 purchases from the Alaska Energy Authority until the wholesale agreement and any
 30 related contract assigned by the authority becomes subject to review or approval by
 31 the commission under AS 42.05.431. The exemption provided by this subsection

1 extends to repairs and improvements to the power project the joint action agency
 2 purchases from the authority but does not extend to any other power project or other
 3 activity of the joint action agency.

4 * **Sec. 5.** 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. 6.** 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.** In addition to the powers **granted**
 21 **to the agency** [AUTHORIZED] under AS 42.45.300 **and this section**, the agency has
 22 the power

23 (1) to adopt bylaws of the agency;

24 (2) to sue and be sued;

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

26 (4) subject to (e) of this section, to issue revenue bonds and **other**
 27 **obligations** [SECURE FINANCING] that are not obligations of either the state or the
 28 public utilities that **are parties to** [FORMED] the agency **agreement** to provide
 29 financing to carry out the authorized purposes of the agency; **and**

30 **(5) to exercise the powers of eminent domain and declaration of**
 31 **taking to acquire land or materials under the procedures set out in AS 09.55.240 -**

1 **09.55.460 to carry out the authorized purposes of a joint action agency within the**
 2 **boundaries of the power project purchased by the agency from the Alaska**
 3 **Energy Authority.**

4 * **Sec. 7.** AS 42.45.310(d) is amended to read:

5 (d) The agency is created by a written agreement among the public utilities
 6 forming the agency. Each public utility forming the agency shall adopt the terms of
 7 the agreement by ordinance or resolution. **After the public utilities that are parties**
 8 **to the agency agreement adopt and execute the agreement, the board of directors**
 9 **of the agency shall file the agency agreement with the Department of Community**
 10 **and Economic Development.** Subject to (c) of this section, the **agency** agreement
 11 [ESTABLISHING THE AGENCY] may define the powers, functions, and activities
 12 of the agency and specify the means by which they shall be performed. The **agency**
 13 agreement may establish the rights and responsibilities of the public utilities that form
 14 the agency. If applicable, the **agency** agreement **must** [SHALL] provide for

15 (1) apportionment between the public utilities **that are parties to**
 16 [FORMING] the **agency** agreement of responsibility for [PROVIDING FINANCES
 17 TO THE] expenses incurred in the performance of 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 **that are parties to** [FORMING]
 23 the agency **agreement** to terminate the agreement, subject to (e) of this section,
 24 including resolving disputes if the public utilities are unable, upon termination of the
 25 **agency** agreement, to agree on the transfer of personnel or the division of assets and
 26 liabilities between the parties to the agreement.

27 * **Sec. 8.** AS 42.45.310(e) is amended to read:

28 (e) The public utilities **that are parties to** [FORMING] the agency
 29 **agreement** shall pledge and agree with the holders of revenue bonds or other
 30 **obligations issued by the agency** [FINANCING SECURED UNDER THIS
 31 SECTION], including with a state entity that provides financing **to the agency**, that

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

13 * **Sec. 9.** AS 42.45.310(f) is repealed and reenacted to read:

14 (f) Bonds and other obligations issued by the agency and all interest and
 15 income from them and all fees, charges, funds, revenue, income, and other money
 16 pledged or available to pay or secure the payment of the bonds or obligations or
 17 interest on them are exempt from taxation. The real and personal property of the
 18 agency and the assets, income, and receipts of the agency are exempt from all taxes
 19 and special assessments of the state or a political subdivision of the state, except that
 20 electricity sold at retail by an agency is subject to the electric cooperative tax
 21 (AS 10.25.540 - 10.25.570).

22 * **Sec. 10.** AS 42.45.310(g) is amended to read:

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

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

27 (h) An agency formed by, and that continues to include, one or more
 28 municipal public utilities is a political subdivision [ONLY] for purposes of
 29 AS 38.05.810.

30 * **Sec. 12.** AS 42.45.310(i) is amended by adding new paragraphs to read:

31 (4) "agency agreement" or "agreement" means the written agreement

1 described in (d) of this section between or among the public utilities creating a joint
2 action agency;

3 (5) "parties to the agency agreement" means those public utilities that
4 initially form the agency and,

5 (A) in the event of a permitted withdrawal of a public utility
6 from the agency in accordance with the terms of the agency agreement, those
7 public utilities that remain parties to the agency agreement; and

8 (B) if authorized by law, includes an additional public utility
9 that becomes a party to the agency agreement.

10 * **Sec. 13.** AS 42.45 is amended by adding a new section to article 6 to read:

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

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

25 (c) An agency may purchase and maintain insurance on behalf of a protected
26 person against liability asserted against the protected person and incurred in an official
27 capacity or arising out of the person's status.

28 (d) In this section,

29 (1) "agency" means a joint action agency formed under AS 42.45.310;

30 (2) "conduct" includes action, inaction, and omission;

31 (3) "contested matter" means a proposed, pending, or completed action

1 or proceeding, whether civil, criminal, administrative, or investigative;

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

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