

**HB**

**119**



ALASKA STATE LEGISLATURE  
House of Representatives

Committee Assignments:

Judiciary Committee, Chairman  
Labor & Commerce Committee, Member  
Legislative Council, Member  
Special Committees:  
Economic Development, Member



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REPRESENTATIVE NORMAN ROKEBERG

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FAX COVER SHEET

DATE: 2.26.01

TO: Legal Services

FAX: 2029 VOICE: 2450

RE: 22-LS0528/F

MESSAGE: Please create a committee substitute

for House Judiciary with the following amendments.

These amendments have been adopted, so

we just need a final.

Thanks.

Heather x4990

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: 2

#1

Suggested Amendments to CSHB 119 and CSSB 84:

clarity purposes of section

Page 3, line 15:

Following "utility" insert "or the state"

Page 3, line 18:

Following "utility" insert "or the state"

goes with subsection (4) pg. 3, line 24

Page 3, line 30:

Following "(5)" insert "in addition to the powers of eminent domain in AS 42.05.631,"

Page 3, line 31:

Following "materials" insert "within the boundaries of the power project purchased by the agency from the Alaska Energy Authority"

Page 4, line 1:

Following "agency" delete "within the boundaries of the power project purchased by the agency from the Alaska Energy Authority"

This language has been suggested by the Attorney General's office.



# Alaska State Legislature

*Representative Peggy Wilson  
Putting Alaska's Families First*

## SPONSOR STATEMENT HB 119

Last spring, the Legislature passed truly historic legislation creating the Power Cost Equalization Endowment and authorizing the sale of the Four Dam Pool Projects to the local utilities and communities. The PCE Endowment was funded by an appropriation from the Constitutional Budget Reserve and from proceeds from the sale of the Four Dam Pool projects. These bills (HB 446 & HB 447) were signed into law by Governor Knowles last May.

The Four Dam Pool Utilities and the State have been diligently working to complete this complex transaction by December 31, 2001. At closing, the proceeds from this sale will be deposited into the Power Cost Equalization Endowment.

The Four Dam Pool communities and utilities have created a Joint Action Agency (JAA), which will become the owners of the Four Dam Pool Projects. However, during the legal review of this new organization, a variety of technical issues were raised concerning the tax and regulatory status of the JAA, the powers of the JAA, and the relationship between the JAA and its member utilities.

HB 119 will resolve these issues so that the sale of the Four Dam Pool projects can be completed as envisioned and the Power Cost Equalization Endowment can be fully funded.

More specifically HB 119 addresses the following four issues.

### **1. Federal Tax Status of Joint Action Agency**

Although the Joint Action Agency was formed by specific authorizing legislation, because its members are both municipal and cooperative utilities its characterization for federal tax purposes is uncertain. Obtaining favorable federal tax status as a "government entity" is essential for the Joint Action Agency to operate on a tax-exempt basis and have the ability to issue tax-exempt bonds and to provide maximum flexibility to allow local ownership of the individual projects in the future. A key factor relied on by the Internal

Revenue Service in determining whether an entity has governmental status is the nature and scope of the entity's condemnation or eminent domain powers. Currently the Joint Action Agency legislation is silent as to the Joint Action Agency's condemnation powers. To achieve the necessary federal tax treatment for the Joint Action Agency, Section 6 of HB119 amends AS 42.45.310 to specifically grant to the Joint Action Agency the eminent domain powers granted to the State and municipalities in order to carry out the Joint Action Agency's authorized purposes. This expanded condemnation power may be exercised, however, only within the boundaries of the power projects the Joint Action Agency purchases from the State.

## **2. State Tax Status of Joint Action Agency**

The Joint Action Agency's tax status under Alaska law is a central factor to determining the federal tax status of the Joint Action Agency. State law currently provides that the Joint action Agency is "subject to state and local taxes to the extent any of the public utilities forming the agency is subject to that particular tax." The impact of this provision and the tax status of the Joint Action Agency under Alaska law are not clear, as the JAA is comprised of both cooperative member utilities and municipal member utilities. Section 9 of HB119 amends AS 42.45.310 to exempt the Joint action Agency from all forms of state and local taxation, other than amounts that are payable under the electric cooperative tax as a result of retail power sales by the Joint Action Agency.

## **3. Potential Liability of Member Utilities for Claims against the JAA**

State law currently provides that the Joint Action Agency will have "a separate and distinct legal existence from the public utilities" that form the Joint Action Agency. However neither AS 42.45.300 or AS 42.45.310 includes language that specifically insulates the public utilities that form the JAA from liability for claims against the Joint Action Agency. Given reported Alaska case law on shareholder liability and the absence of specific protections in the Joint Action Agency statute, there is some risk that claims against the JAA might also be asserted against the member utilities. To ensure that the Joint Action Agency is treated for all purposes as a separate and distinct legal entity from its member utilities, Section 6 of HB 119 amends AS 42.45.310 to include provisions similar to those contained in other Alaska statutes to expressly protect the member utilities from any liabilities of the Joint Action Agency. Section 13 of HB 119 also adds a new section AS 42.45.320 to the JAA statute to limit the individual liability of directors and officers of the Joint Action Agency, consistent with other Alaska statutory provisions.

## **4. Exemption from Regulatory Commission of Alaska Regulation**

Because the JAA is granted the powers of a "public utility" under AS 42.05, it is not entirely clear whether the JAA is fully or only partially exempt from regulation by the RCA under AS 42.05. To create consistency within AS 42.05 with respect to the regulation of the Joint Action Agency, Sections 1, 2, 3, and 4 of HB 119 make conforming amendments to existing statutory provisions and add a new subsection (o) to

AS 42.05.711 to provide that the Joint Action Agency is exempt from all RCA regulation with respect to its ownership and operation of and the power sales from the existing Four Dam Pool projects. This general regulatory exemption is, however, limited in duration and stays in place only until such time as the indebtedness incurred by the Joint Action Agency to the State in connection with the acquisition of the projects is retired.

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 119(L&C)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 02/21/2001 8:45 a.m. Dept. Affected: DCED  
 Title: Public Utility Joint Action Agencies BRU: RCA  
 Component: RCA  
 Sponsor: Representative Wilson  
 Requester: House Labor & Commerce Component Number: 2417

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The proposed legislation will not cause any increase to the agency's budget.

Prepared by: G. Nanette Thompson Phone 907-276-6222  
 Division: Chair, RCA Date/Time 02/21/2001 8:45 a.m.  
 Approved by: Commissioner Deborah B. Sedwick Date 2/21/2001  
 Agency: Department of Community & Economic Development

For distribution information, call the Governor's Legislative Office

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 119(L&C)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 02/21/2001 8:45 a.m. Dept. Affected: DCED  
 Title: Public Utility Joint Action Agencies BRU: AEA  
 Component: AIDEA O&M  
 Sponsor: Representative Wilson  
 Requester: House Labor & Commerce Component Number: 1948

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The bill provides amendments to 2000 legislation that authorized the sale of the Four Dam Pool projects. The bill will have no fiscal impact on AIDEA or AEA.

Prepared by: Robert G. Poe, Jr., Executive Director Phone 907-269-3000  
 Division: AIDEA & AEA Date/Time 02/21/2001 8:45 a.m.  
 Approved by: Commissioner Deborah B. Sedwick Date 2/21/2001  
 Agency: Department of Community & Economic Development

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**DATE:** February 23, 2001

**TO:** Laura Glazer  
**COMPANY:** Senator Pete Kelly's Office  
**CITY/STATE:** Anchorage, AK

**FAX NUMBER:** 1-907-465-5241

**FROM:** Michael E. Schrader

**DOCUMENT:** Section by Section Summary of HB 119 and SB 84  
Four Dam Pool Power Agency

**PAGES:** 3 (including cover)

AN ORIGINAL OF THIS FAX WILL \_\_\_ WILL NOT XX FOLLOW.

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Forwarded to you at the request of Bob Evans.

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S E A T T L E

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**Section 1** amends the state municipal code to provide that joint action agencies established under AS 42.45.310 are not subject to municipal regulation as utilities even though they are exempt from regulation under AS 42.05.

**Section 3** makes a conforming amendment to AS 42.05.711(1) by adding a reference to the new subsection (o) enacted in Section 4.

**Section 4** adds a new subsection (o) to AS 42.05.711 to provide that joint action agencies established under AS 42.45.310 are exempt from RCA regulation with respect to the ownership, operation and power sales from a power project purchased from the AEA. The exemption from RCA regulation is, however, limited in duration and stays in place only so long as the joint action agency's wholesale power sales agreement is not subject to RCA review under AS 42.05.431. **Section 2** makes a conforming amendment to AS 42.05.711(b) by adding a reference to new subsection (o) in AS 42.05.711.

**Section 5** is a clerical amendment to correct an omission in last year's bill.

**Section 6** amends AS 42.45.310(c) to provide that debts, obligations and liabilities of a joint action agency are not the responsibility of any of the public utilities that form the agency or the State. The amendment also provides that a joint action agency has the powers of a public utility and the immunities of a public utility. New paragraph (c)(5) provides that a joint action agency may, in addition to its condemnation powers as a public utility under AS 42.05.631, exercise the power of eminent domain and a declaration of taking under AS 09.55.240 to 09.55.460 to acquire land or materials to carry out the authorized purposes of the agency within the boundaries of the power project purchased from the State.

**Section 7** amends AS 42.45.310(d) to require that the board of directors of a joint action agency file the joint action agency agreement with the Department of Community and Economic Development.

**Section 8** amends AS 42.45.310(e) to be consistent with other changes made in the bill.

**Section 9** repeals and reenacts AS 42.45.310(f) to address the tax-exempt status of bonds and other obligations of the joint action agency and of real and personal property and the assets, income and receipts of a joint action agency. Provision, as reenacted, provides exemption to joint action agency from all State and local taxation other than amounts payable under electric cooperatives tax (AS 10.25.540 to 10.25.570) based on retail power sales by agency.

**Section 10** makes editorial changes to AS 42.45.310(g), including changing reference from "financial aid" to "financial assistance."

**Section 11** amends AS 42.45.310(h) to remove the limitation that a joint action agency is a political subdivision only for purposes of AS 38.05.810.

**Section 12** adds a definition of "agency agreement" or "agreement" to AS 42.45.310.

Section 13 adds a new section concerning liability, indemnification and insurance for officers, directors, employees and agents of joint action agencies.

Subsection (a) provides that a protected person (defined as a director, officer, employee or agent of a joint action agency in (d)(4) of this section) is not individually liable for conduct within the scope of the person's duties unless the person's belief that the conduct was in the agency's best interest is unreasonable.

Subsection (b) requires the agency to indemnify a protected person who is a party to a contested matter arising out of the person's duties for the joint action agency unless the person's belief that the conduct was in the agency's best interest is unreasonable.

Subsection (c) permits a joint action agency to purchase liability insurance.

Subsection (d) defines "agency," "conduct," "contested matter," "expenses" and "protected person."

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**BACKGROUND AND SUMMARY  
RELATED TO HOUSE BILL 119 AND SENATE BILL 84 CONCERNING  
FOUR DAM POOL POWER AGENCY**

Background

Alaska House Bill 446, signed in to law by Governor Knowles in May, 2000 (ch 60, SLA 2000, effective July 1, 2000), created the Power Cost Endowment and authorized the sale of the Four Dam Pool projects to a joint action agency ("JAA") to be funded by the utilities that purchase power from the projects (the "Member Utilities"). Upon enactment of House Bill 446, the representatives to the Four Dam Pool's Project Management Committee ("PMC"), Ater Wynne LLP as counsel to PMC, counsel to the individual utilities and other professional advisors to the PMC commenced work on a number of fronts and began working with representatives of the Alaska Energy Authority and others on behalf of the State of Alaska to complete the sale and transfer of the Four Dam Pool Projects and the funding of the PCE endowment by the December 31, 2001 closing date.

House Bill 446 included provisions which created a new section AS 42.45.310 in Article 6, Chapter 45 of Title 42 of the Alaska Statutes. This new section supplemented an existing section AS 42.45.300 (which allowed public utilities to form joint action agencies) to allow the Four Dam Pool purchasing utilities to form a JAA to acquire, own, operate and manage the Four Dam Pool projects. The five Member Utilities have, pursuant to these statutory provisions, now entered into a JAA Agreement creating the "Four Dam Pool Power Agency." During the negotiation of the terms of the JAA Agreement among the Member Utilities a variety of issues were raised concerning the legal and tax status of the JAA, the powers of the JAA and the relationship between the JAA and its Member Utilities. While most of these issues were addressed by specific provisions in the JAA Agreement, others resulted from the absence of specific legal authority or general uncertainty under Alaska or federal law and, therefore, could not be resolved by agreement among the Member Utilities. These remaining legal issues are addressed by the provisions contained in House Bill 119 and Senate Bill 84 (collectively referred to herein as the "JAA Bill").

The House Labor and Commerce Committee held an initial hearing on the JAA Bill on Monday, February 12<sup>th</sup>. A number of issues were raised and concerns were expressed regarding certain provisions of the JAA Bill at the hearing, including the absence of testimony in support of the JAA Bill by the AEA or the Regulatory Commission of Alaska ("RCA"). Following the February 12<sup>th</sup> Committee hearing, members of the Labor and Commerce Committee, representatives of the PMC, the AEA, the RCA, the Attorney General's Office and Legislative Counsel have worked together to address and resolve issues raised by the initial form of the JAA Bill, resulting in a revised JAA Bill in the form of the attached Committee Substitute. It is the understanding of the PMC and its representatives that this revised JAA Bill is supported by the AEA, the RCA and the Attorney General's Office.

The corrections and additions to existing law contained in the JAA Bill are intended to clarify the federal and state tax status of the JAA, ensure that the JAA is a limited liability entity and confirm the nature

124618/1/MP26/032394-1005

P O R T L A N D  
S E A T T L E

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and extent of the RCA's authority to regulate the JAA. A detailed explanation of these corrections, additions and issues follows:

Federal Tax Status of JAA

Although the JAA has been formed pursuant to specific authorizing legislation, because the Member Utilities are both municipal and cooperative utilities its characterization for federal tax purposes is uncertain. Obtaining favorable federal tax status as a "governmental entity" is essential for the JAA to operate on a tax-exempt basis and to provide maximum flexibility to allow local ownership of the individual projects in the future.

A review of the business objectives of the Member Utilities is important to understanding why the JAA's attainment of governmental status is important. The business objectives of the Member Utilities are as follows:

1. Avoidance of a JAA level tax on income of the JAA derived from operation of the Four Dam Pool projects.
2. Avoidance of a JAA level tax on income of the JAA derived from sale of any of the Four Dam Pool facilities.
3. Avoidance of any pass-through of income of the JAA to the cooperative Member Utilities.
4. Avoidance of any restrictions on the terms and price of a sale of any of the Four Dam Pool facilities to any of the Member Utilities.
5. Avoidance of any restrictions on the ability of the JAA to distribute its assets to the Member Utilities on dissolution in a manner that would be decided by the Member Utilities at a subsequent date.

Treasury Regulations define a "political subdivision" as "any division of any State or local government unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the units." Regulations Section 1.103-1(b). By ruling, the Service has held that limited amounts of a sovereign power are insufficient to confer governmental status; the Service has refused to view entities as governmental that possess the limited eminent domain powers frequently conferred on investor-owned utilities and certain quasi-public universities, particularly if there are any private interests involved, as is the case with the JAA because of the cooperative Member Utilities. The private letter ruling in which the Service's position was most clearly articulated specifically held that the private involvement of members in the actions of an exempt electric cooperative precluded the coop from being treated as a governmental agency, despite the possession of certain powers of eminent domain. See Private Letter Ruling 9149007. The Service has been more inclined to conclude that eminent domain powers are substantial if title to the property passes on commencement of the action (as it does under Alaska's declaration of taking proceeding) than when it passes only at the conclusion of the legal proceeding. Compare PLR 9725038 with *Philadelphia National Bank v. United States*, 666 F.2d 834 (3rd Cir. 1981), cert den. 457 U.S. 1105. Given that the Service more closely scrutinizes entities in which private interests are involved, it is particularly important that the JAA have full eminent domain powers. See PLR 9725038.

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Under AS 42.45.300, a joint action agency, such as the JAA, is granted the powers of a public utility under AS 42.05, which include a limited power of eminent domain under AS 42.05.631 but not the full powers of eminent domain possessed by the state and by municipalities under AS 09.55.240 through 09.55.460 (which include the authority to file a declaration of taking under AS 09.55.420). Both AS 42.45.300 and AS 42.45.310 are silent as to the Agency's eminent domain powers. AS 42.45.310(d) does authorize the members forming the JAA to define its powers, and there is some possibility that this provision would allow the members to delegate their powers of eminent domain to the JAA, but it is unclear, under Alaska law and local law, whether the city Member Utilities have the power to make such a delegation. As a result, the JAA arguably possesses only the eminent domain powers of public utilities. In a request to the Service asking it to rule that the JAA is governmental, there is significant risk that it might refuse to do so because the facts presented would be extremely close to those analyzed in Private Letter Ruling 9149007.

If, however, it were possible to obtain, by statute, full eminent domain power, either by an express grant of such power by the Legislature or by delegation of such powers to the JAA from the city Member Utilities, then the JAA would have a much better chance of obtaining a favorable private letter ruling from the Service. A change in AS 42.45.310 would present a stronger case than a delegation of eminent domain power by the city Member Utilities, because even if it can be concluded (i) that current AS 42.45.310 implicitly authorizes the cities to delegate their powers of eminent domain to the JAA, and (ii) that such powers can permissibly be delegated under state and local law, these powers, by statute, may only be exercised within the boundaries of the cities themselves (AS 29.35.030), and the Service could view these limitations as precluding governmental status, given the location of the generating facilities and the expected scope of operations of the JAA.

If the JAA is, by statute, given the same powers of eminent domain that are possessed by political subdivisions of the State of Alaska, the JAA has an excellent chance of receiving a private letter ruling from the Internal Revenue Service that the JAA will be treated as a governmental unit for federal tax purposes and federal tax law should not interfere with the accomplishment of any of the business goals. To enhance the ability of the JAA to achieve the necessary federal tax treatment, Section 6 of the JAA Bill amends AS 42.45.310 to specifically grant to the JAA the eminent domain powers granted to the State and municipalities by AS 09.55.240 to 09.55.460.

#### Proposed JAA Eminent Domain Powers

As noted above, under AS 42.45.300, a joint action agency, such as the JAA, is granted the powers of a public utility under AS 42.05. These powers include the limited power of eminent domain under AS 42.05.631, but not the full powers of eminent domain possessed by the state and by municipalities under AS 09.55.240 through 09.55.460. The difference in the eminent domain powers granted to public utilities and those granted to the state and municipalities is procedural in nature i.e., the state and municipalities can exercise their condemnation powers through the filing of a declaration of taking under AS 09.55.420. To address concerns regarding the scope of the JAA condemnation powers, in granting state and municipal eminent domain powers to the JAA, Section 6 of the JAA Bill limits the exercise of those powers to the acquisition of land and materials necessary "carry out the authorized purposes of the joint action agency within the boundaries of the power project purchased by the agency from the Alaska Energy Authority."

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State Tax Status of JAA

Paragraph (f) of AS 42.45.310 currently provides that the JAA is "subject to state and local ad valorem, income, or excise taxes that may be assessed or levied against property, assets, income, and receipts . . . [and] the electric cooperative tax" only to the extent "any of the public utilities forming the agency is subject to the particular tax." This provision was intended to maintain the *status quo* with respect to the tax treatment of the JAA and its Member Utilities, given the different tax treatment under Alaska law of the cooperative Member Utilities and the municipal Member Utilities. The impact of this provision and the tax status of the JAA under Alaska law, however, is not clear. The JAA's tax status under Alaska law is also a central factor in determining the federal tax status of the JAA.

Section 9 of the JAA Bill amends AS 42.45.310 to exempt the JAA from all forms of state and local taxation, other than the electric cooperative tax. It is the understanding of the PMC that the Member Utilities are currently exempt from state and local taxation, other than the electric cooperative tax, in the case of the cooperative Member Utilities. Under Section 9 of the JAA Bill, only JAA revenues derived from the retail sale of electric power would be subject to the electric cooperative tax contained in AS 10.25.540 to 10.25.570.. The exempt status of the JAA is consistent with the tax treatment of Alaska port authorities under AS 29.35.670.

Potential Liability of Member Utilities for Claims Against JAA

Paragraph (c) of AS 42.45.310 currently provides that the JAA will have "a separate and distinct legal existence from the public utilities" that form the JAA. Unlike other Alaska statutes that provide for the formation of corporations and other limited liability entities, however, neither AS 42.45.300 or AS 42.45.310 includes language that specifically insulates the public utilities that form the JAA from liability for claims against the JAA. Given reported Alaska case law on shareholder liability and the absence of specific protections in the JAA statute, there is some risk that claims against the JAA might also be asserted against the Member Utilities. To ensure that the JAA is treated for all purposes as a separate and distinct legal entity from its Member Utilities, Section 6 of the JAA Bill amends AS 42.45.310 to include provisions similar to those contained in other Alaska statutes to expressly protect the Member Utilities from any liabilities of the JAA. The language contained in Section 6 of the JAA Bill is similar to that contained in AS 29.35.605(c) and AS 29.35.650 relating to port authorities. *See also, e.g.,* AS 42.40.690(a) (providing that the debts and liabilities of the Alaska Railroad Corporation are to be paid from ARC assets and are not obligations of the State).

Section 14 of the JAA Bill also adds a new section AS 42.45.320 to the JAA statute to limit the individual liability of directors and officers of the JAA. The language of Section 14 is consistent with other Alaska statutory provisions and, specifically, is based on AS 10.25.145 defining the liability of officers and directors of electric and telephone cooperatives.

Tax-Exempt Bonding Authority

If the JAA is classified as a "governmental entity" for federal tax purposes, the JAA would have the ability to issue tax-exempt bonds if the bonds satisfied each of the many requirements imposed by the Internal Revenue Code of 1986 (the "Code"). The enabling legislation does not give the JAA any priority rights, over other Alaska entities, to issue tax-exempt debt.

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The Code generally permits the issuance of two distinct types of tax-exempt bonds to finance power generation, transmission, and distribution assets: (1) governmental bonds, which may finance facilities that are owned by governmental entities and may provide power or transmission services only to governmental entities and the general public, and (2) local furnishing bonds, which may finance facilities that are owned either by governmental or non-governmental entities and may provide power and transmission services to private entities, such as for-profit corporations and non-profit cooperatives.

Governmental bonds do not require an allocation of bond volume cap and are not limited by federal tax law as to the amount that can be issued, either on a state-by-state or on a national basis.

Local furnishing bonds do, however, require an allocation of volume cap. If the JAA were to conclude in the future that the Code permits it to issue local furnishing bonds for certain purposes and desires to issue tax-exempt bonds for those purposes, it would be able to do so only if it applied for, and received, an allocation of bond volume cap from the State's private activity bond allocating committee. The JAA enabling legislation does not give the JAA any preferential rights to a volume cap allocation. The JAA would be required to stand in line with other Alaska issuers and be subject to the same standards as other issuers and projects for a volume cap allocation.

#### Exemption from RCA Regulation

Because the JAA is granted the powers of a "public utility" under AS 42.05, it is not entirely clear whether the JAA is fully or only partially exempt from regulation by the RCA under AS 42.05. Under the Alaska Public Utilities Regulatory Act, AS 42.05, the RCA is granted broad powers to regulate public utilities engaging or proposing to engage in a utility business in the State of Alaska. This regulatory authority is not unlimited, however, and the AEA and certain utilities are, or may elect to become, exempt from regulation by the RCA.

Pursuant to the Regulatory Act's exemption provisions, four of the five Member Utilities are currently exempt from most types of regulation by the RCA. AS 42.05.711(b) & (g). The Regulatory Act also exempts the Long-Term Power Sales Agreement between the State and the Member Utilities ("PSA") and any amendments thereto from review and approval by the RCA. This PSA exemption, as provided for in last year's enabling legislation, stays in place until such time as all indebtedness incurred by the JAA in connection with the acquisition of the Four Dam Pool projects is retired. AS 42.05.431(e).

To create consistency within the Regulatory Act with respect to the regulation of the JAA, Sections 1, 2, 3 and 4 of the JAA Bill make conforming amendments to existing statutory provisions and add a new subsection (o) to AS 42.05.711 to provide that the JAA is exempt from all RCA regulation with respect to its ownership and operation of and the power sales from the existing Four Dam Pool projects. This general regulatory exemption is, however, like the PSA exemption from RCA review and approval, limited in duration and stays in place only until such time as the indebtedness incurred by the JAA to the State in connection with the acquisition of the projects is retired. Upon final payment of the JAA indebtedness, the JAA will be required to obtain a certificate of public convenience and necessity and amendments to the PSA will be subject to RCA review and approval.



**City of  
Ketchikan**

334 Front Street  
Ketchikan, Alaska 99901  
Phone 907-225-3111  
Fax 907-225-5075

**FEB 19 2001**

February 9, 2001

Representative Norman Rokeberg  
State of Alaska, House of Representatives  
State Capitol, Room 118  
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

**Re: House Bill No. 119 - Joint Action Agency Legislation**

I am writing in support of the above referenced legislation, which would correct several deficiencies in Alaska Statutes relative to the operation of the Joint Action Agency (JAA) created to operate hydroelectric projects purchased from the State of Alaska.

As you are aware, landmark legislation that provides for the energy needs of tens of thousands of Alaskans was adopted during the 2000 legislation when House Bills 446 and 447 were enacted by the Legislature and signed into law by Governor Knowles last May. The bills provided for the sale of the Four Dam Pool hydroelectric projects to the Purchasing Utilities (including the City of Ketchikan d/b/a Ketchikan Public Utilities) and the creation of a \$187,000,000 endowment to generate funding for Power Cost Equalization (PCE) programs. The legislation provided for the creation of a JAA comprised of the Purchasing Utilities to manage the hydroelectric projects and established a closing date of December 31, 2001.

Since the date that this critically important legislation was signed into law by Governor Knowles, the Purchasing Utilities have expended significant time and resources in anticipation of the closing. During the negotiation of the terms of the JAA Agreement among the Purchasing Utilities, a variety of issues were identified concerning the legal status of the JAA; the powers of the JAA; and the relationship between the JAA and its member utilities. These issues are addressed below.

Although the JAA has been established pursuant to the specific authorizing legislation, its classification for federal tax purposes is unclear due to its members being both municipal and cooperative utilities. Obtaining favorable tax status as a "governmental entity" is essential for the JAA to operate on a tax-exempt basis and to provide flexibility to sell individual projects in the future if it is determined appropriate to do so.

One of the key factors relied on by the Internal Revenue Service in determining whether an entity has governmental status is the nature and scope of the entity's condemnation or eminent domain powers. Currently the JAA legislation is silent as to whether the JAA's condemnation powers are limited to those granted generally to public utilities by AS 42.05.631, or whether they extend to those granted to its member municipal utilities. In order to achieve the necessary federal tax treatment for the JAA, legislation is required to specifically grant to the JAA the eminent domain powers granted to the State and municipalities by AS 09.55.240 to 09.55.460. Section 7 of HB 119 achieves this desired effect.

Secondly, the authorizing legislation provides that the JAA is "subject to state and local ad valorem, income, or excise taxes that may be assessed or levied against property, assets, income, and receipts . . . [and] the electric cooperative tax" only to the extent "any of the public utilities forming the agency is subject to the particular tax." Given the different tax treatment under Alaska law of the cooperative member utilities and the municipal member utilities, the impact of this provision and the tax status of the JAA under Alaska law are not clear. The uncertainty of the JAA's tax status under Alaska law is also a factor in determining the federal tax status of the JAA. As a result, legislation is necessary to provide the JAA a broad exemption from all forms of state and local taxation. Section 10 of HB 119 accomplishes this intent.

The statute authorizing the formation of the JAA provides specifically that the JAA will have a "separate and distinct legal existence from the public utilities" that form the JAA. However, unlike other Alaska statutes that provide for the formation of corporations and other legal entities, the statute authorizing the formation of the JAA did not include broad language that specifically insulates the public utilities that form the JAA from liability for claims against the JAA. Given recent reported Alaska case law on shareholder liability and the absence of specific protections in the JAA statute, there is some risk that claims against the JAA might also be asserted against member utilities. In order to ensure that the JAA is treated for all purposes as a separate and distinct legal entity from its member utilities, Section 14 of HB 119 includes provisions similar to those contained in other Alaska statutes which would expressly protect the member utilities from any liabilities of the JAA.

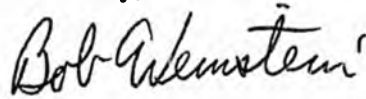
Lastly, as a result of the JAA being granted the powers of a "public utility" under AS 42.05, it is not clear that the JAA is exempt from regulation by the Regulatory Commission of Alaska (RCA). Because of the relationship of the JAA to its member utilities and the fact that the member utilities are either regulated (Kodiak Electric Association, Inc.) or exempt from regulation (Copper Valley Electric Association, Inc. and the Cities of Ketchikan, Petersburg and Wrangell) it is necessary to confirm that the JAA is not subject to RCA regulation under AS 42.05 and is not required to obtain a certificate of need and convenience under AS 42.05.221. Sections 1, 2, 3 and 4 of HB 119 accomplish this objective.

Page Three

If the goals established by the Legislature and the Governor as set forth in House Bills 446 and 447 are to be accomplished, the provisions of HB 119 discussed above are required to insure a successful divestiture of the Four Dam Pool hydroelectric projects and the establishment of a long-term, viable PCE Endowment. On behalf of the Ketchikan community, I strongly urge your support of this legislation.

Should you have any questions on this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Bob Weinstein".

Bob Weinstein  
Mayor

cc: Governor Tony Knowles  
Senator Robin Taylor  
Representative Bill Williams  
Ketchikan City Council Members



# Copper Valley Electric Association, Inc.

P.O. Box 45 • Glennallen, Alaska 99588 • Telephone: 907-822-3211 • Facsimile: 907-822-5586 • Valdez: 907-835-4301

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February 9, 2001

Representative Lisa Murkowski  
Chair, Labor and Commerce Committee  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Murkowski:

Copper Valley Electric Association, Inc., is a member of the Four Dam Pool Project Management Committee and a party to the Joint Action Agency that will be purchasing the Project from the state of Alaska.

House Bill 119 introduces necessary technical amendments to the original legislation to allow divestiture to move forward. Divestiture of the Four Dam Pool Projects and the creation and funding of the Power Cost Equalization Endowment Fund are vital to the economic future of the state.

Copper Valley Electric Association encourages the Labor and Commerce Committee to support and move this important legislation forward so the many benefits of HB 446 and HB 447 may be realized.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Kildal".

Paul M. Kildal, President  
CVEA Board of Directors

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**CVEA's Mission:** Be the energy supplier of choice.

**Goals and Objectives:** Reduce power cost to Customers, Increase energy sales, Develop new income producing products and services, and Build member relations through Customer satisfaction and grassroots support.



## CITY OF PETERSBURG

P.O. BOX 329 • PETERSBURG, ALASKA 99833

TELEPHONE (907) 772-4511

TELECOPIER (907) 772-3759

February 9, 2001

Representative Lisa Murkowski, Chair  
Labor & Commerce Committee  
State Capital  
Juneau, AK 99801-1182

Dear Ms. Murkowski:

The City of Petersburg supports passage of HB 119, short titled Public Utility Joint Action Agencies. This bill will fix deficiencies in divestiture legislation passed into law with the Four Dam Pool Sales Agreement of 2000. We urge your favorable attention to this legislation.

Thank you very much for your efforts.

Sincerely,

Theodore M. Smith  
Mayor



# SOUTHEAST CONFERENCE

*Working for strong economies, healthy communities, and a quality environment in Southeast Alaska*

February 16, 2001

Representative Peggy Wilson  
Room 409  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Wilson:

This is to offer support for House Bill 119, which will address certain technical problems with prior legislation authorizing Joint Action Agencies, the vehicle by which the Four Dam Pool will be sold to the member utilities. We agree that the ambiguities in the law could create problems for The Four Dam Pool JAA, and we support a smooth transition of that entity into a Joint Action Agency. We know time is of the essence for the Four Dam Pool to conclude their transition by the end of this year, so we are hopeful you will be successful in this effort to pass legislation this session.

Thank you for your efforts on behalf of member communities.

Sincerely,



Loren Gerhard  
Executive Director



## VALDEZ CONVENTION & VISITORS BUREAU

P.O. Box 1603 • Valdez, Alaska 99686 • Ph.: 907-835-2984 • Fax: 907-835-4845 • E-mail: valdezak@alaska.net

February 5, 2001

Senator Georgianna Lincoln  
Alaska State Legislature  
Juneau, Alaska

Dear Senator Lincoln:

Last year the 21<sup>st</sup> Alaska Legislature passed HB 446 which authorized the sale of the Four Dam Pool and created an endowment fund for Power Cost Equalization.

I understand from speaking with Robert Wilkinson at Copper Valley Electric Association that certain technical amendments to the legislation are required prior to the time the utilities can close on the purchase of the projects.

Further, I understand these amendments are to overcome federal and state tax issues, liability protections for the utilities, and finally to clarify to what extent the Regulatory Commission of Alaska provides oversight.

I urge you to support these technical amendments so the intent of this historic legislation may be realized.

Respectfully submitted,

Lisa Von Barga  
Executive Director



**OFFICE OF THE MAYOR**

February 9, 2001

**Representative Lisa Murkowski**  
Chair, Labor and Commerce Committee  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Murkowski:

The City of Valdez, its residents and businesses rely on Copper Valley Electric Association to provide safe, reliable electric service. Last year, the Alaska Legislature passed legislation that Governor Knowles signed in April 2000, authorizing the state to divest of the Four Dam Pool hydroelectric facilities and create an endowment fund to support the Power Cost Equalization Program.

Recently, House Bill 119 has been introduced and is scheduled to be heard by the Labor and Commerce Committee on Monday, February 12. The purpose of HB 119 is to make technical amendments to the original legislation (HB 446 & HB 447), and that these amendments must transpire prior to the Utilities consummating the purchase of the Four Dam Pool Projects.

As we understand it, these amendments are designed to overcome federal and state tax issues, liability protections for the utilities, and finally to clarify to what extent the Regulatory Commission of Alaska provides oversight.

The City of Valdez urges the Labor and Commerce Committee to move HB 119 forward so the benefits of divestiture may be realized.

Sincerely,

**Bert Cottle, Mayor**  
City of Valdez

**CITY OF CRAIG  
RESOLUTION NO. 01-04**

**THAT THE REGULATORY COMMISSION OF ALASKA ENSURES THAT THE SALE OF THE FOUR DAM POOL INITIAL PROJECT IS SUCCESSFUL AND ENSURES THAT THE POWER COST EQUALIZATION PROGRAM IS FULLY FUNDED AS INTENDED**

**WHEREAS, the City of Craig, Alaska, is concerned about the cost of electric power faced by its citizens;**

**WHEREAS, the cost to generate electric power for the citizens of the City of Craig is three to five times greater than the cost in urban communities of Alaska;**

**WHEREAS, the State of Alaska has provided financial assistance to rural Alaskan communities such as the City of Craig to cope with the substantially higher cost of electric power, to encourage Alaska's economic growth and to bring a modern standard of living to all Alaskans beginning with the enactment in 1980 of the Power Production Cost Assistance Program;**

**WHEREAS, the citizens of the City of Craig benefit from the financial assistance from the State of Alaska provided to offset the higher cost of electric power;**

**WHEREAS, the financial assistance from the State of Alaska is presently provided through a Power Cost Equalization (PCE) Program;**

**WHEREAS, the PCE Program does not have a permanent source of funds;**

**WHEREAS, the Alaska Legislature has enacted House Bill 446 and Governor Knowles has signed House Bill 446 which authorizes the Alaska Energy Authority to sell the Four Dam Pool Initial Project and which authorizes the establishment of a Trust Fund that will provide a permanent source of funds for the PCE Program;**

**WHEREAS, the Alaska Legislature has enacted House Bill 447 and Governor Knowles has signed House Bill 447 which appropriates the funds from the sale of the Four Dam Pool Initial Project to the Trust Fund;**

**WHEREAS, the municipalities of Ketchikan, Wrangell and Petersburg and the cooperatives of Kodiak Electric Association, Inc., and Copper Valley Electric Association, Inc., have informed the Regulatory Commission of Alaska (RCA) that the sale of the Four Dam Pool Initial Project and the permanent funding for the PCE Program may be in jeopardy if the RCA does not take immediate action on behalf of Kodiak Electric Association, Inc.; and**



PO Box 9  
Glennallen Alaska 99588-0009  
Ahtna Building, Room 209  
Mile 115, Richardson Highway  
Glennallen Alaska



Phone 907-822-5001  
Fax 907-822-5009  
E-Mail [cvedc@alaska.net](mailto:cvedc@alaska.net)  
Web: [www.alaskaeconomicdevelopment.org](http://www.alaskaeconomicdevelopment.org)

February 5, 2001

Senator Georgianna Lincoln  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Dear Senator Lincoln,

In 2000, the Alaska Legislature passed legislation, that was signed Governor Knowles, that authorized the State to divest of the Four Dam Pool hydroelectric facilities and create an endowment fund to support Power Cost Equalization.

According to Robert Wilkinson, CEO at Copper Valley Electric Association, there are certain technical amendments required to that legislation that must transpire prior to the utilities consummating the purchase of the projects.

Further, these amendments are to overcome federal and state tax issues, liability protections for the utilities and finally to clarify to what extent the Regulatory Commission of Alaska provides oversight.

On behalf of the Copper Valley Economic Development Council, I urge you to support these technical amendments so the intent of this historic legislation may be realized.

Sincerely,

Larry Dickerson  
Executive Director



ADOPTED AUGUST 1972

# CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381  
FAX: (907) 874-3952

February 12, 2001

The Honorable Lisa Murkowski  
Chair, Labor and Commerce Committee  
State Capital  
Juneau, Alaska 99801-1182

Dear Representative Murkowski:

As Mayor of Wrangell I am expressing my full support for the passage of HB 119.

The passage of this bill will strengthen both the Divestiture effort and the State's Presentation with regard to the KEC-KPU lawsuit.

Additionally, the technical changes addressed in this bill are necessary for Divestiture to become a reality.

Sincerely,

Fern Neimeyer  
Mayor, City of Wrangell

# Alaska State Legislature

Representative Peggy Wilson  
Putting Alaska's Families First

Date: February 15, 2001

To: Representative Norman Rokeberg  
Chairman House Judiciary Committee

From: Representative Peggy Wilson *PW*

Re: HB 119 "An Act exempting joint action agencies from regulation by the state or municipalities; relating to the relationship between a joint action agency and the public utilities that form the joint action agency; relating to powers and immunities of a joint action agency; requiring filing of the joint action agency agreement; relating to the financial affairs of a joint action agency; declaring certain joint action agencies to be political subdivision for certain purposes; relating to liability and indemnification of officers, employees, and agents of joint action agencies; and defining 'agency agreement' as used with reference to joint action agencies."

This is a formal request to schedule HB 119 for a hearing in front of House Judiciary.

I thank you for taking the time to work with us on HB 119. As you know last year's legislation authorizing the formation of the Joint Action Agency and Sale of the Four Dam Pool projects imposed a deadline for the completion of this complex transaction of December 31, 2001. Your assistance in facilitating the completion of this sale in a timely manner is greatly appreciated.

If you have any questions please don't hesitate to contact me.