

SB

84

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT FEB 26 2001 SENATE FINANCE COMMITTEE
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DATE: 2/22/01

FURTHER:

DATE TURNED IN TO OFFICE: 02/26/01

Finance Committee considered SENATE BILL NO. 84

PUBLIC UTILITY JOINT ACTION AGENCIES

and recommends:

- be replaced with CS SB 84 (FIN)
- adopt previous CS CS forthcoming (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ ittee

- Senate Bill:**
 same title
 new title
- House Bill:**
 same title
 technical title
 new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DCED/AEA			✓	3
DCED/RCA			✓	2
DCED/AIDEA			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Linda Green</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓		✓	
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>			✓	

FEB 26 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 84
(S) Publish Date: 2/22/01

Revision Date/Time (Note if correction): 2/16/2001 5:09PM Dept. Affected: DCED
Title: Public Utility Joint Action Agencies BRU: AIDEA
Sponsor: Senator Taylor Component: AEA O & M
Requester: Senate Judiciary 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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. In its current form, the bill attempts to provide that a joint action agency formed under AS 42.45.310 will be both a political subdivision and an entity whose liability is limited to the assets and revenues of a joint action agency. AEA is working to finalize the sale of the Four Dam Pool projects to the operating utilities and communities. AEA is concerned that in its current form the legislation is too far reaching and may create uncertainty and potential problems and conflicts related to financial responsibilities, duties of a public/private entity and delegation of unlimited municipal powers.

Prepared by: Robert Poe, Jr. Phone 907-269-3000
Division: Executive Director, AIDEA & AEA Date/Time 2/16/01 5:09 PM
Approved by: Commissioner Deborah B. Sedwick Date 2/16/2001
Agency: Department of Community & Economic Development

For distribution information, call the Governor's Legislative Office

FEB 26 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB 84(JUD)
(S) Publish Date: 2/22/01

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: Senator Taylor
Requester: Senate Judiciary 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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
Division: Chair, RCA
Approved by: Commissioner Deborah B. Sedwick
Agency: Department of Community & Economic Development

Phone 907-276-6222
Date/Time 02/21/2001 8:45 a.m.
Date 2/21/2001

For distribution information, call the Governor's Legislative Office

FEB 26 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB 84(JUD)
(S) Publish Date: 2/22/01

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: Senator Taylor
Requester: Senate Judiciary 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

For distribution information, call the Governor's Legislative Office

SENATE FINANCE
COMMITTEE

Amendment Number: #1

Bill Number: SB 84

Sponsor: Austerman Date: 2/24/01

Logged In By: Mindy

Suggested Amendments to CSHB 119 and CSSB 84:

Page 3, line 15:

Following "utility" insert "or the state"

*Offered by:
Sen. Austerman*

Page 3, line 18:

Following "utility" insert "or the state"

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"

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number <i>SB 84</i>		
Amendment <i>#1</i>		
Motion <i>Austerman</i>		
<u>Motion by</u>		
<u>Objection by</u> <i>None</i>		
<u>Removed</u>		
<u>Second Objection by</u>		
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u> <u>N</u>
Senator Wilken		
Senator Austerman		
Senator Green		
Senator Hoffman		
Senator Leman		
Senator Olson		
Senator Ward		
Co-Chair Donley		
Co-Chair Kelly		
<u>Tally</u>		
Yea		
Nay		
Absent		
MOTION <i>passed</i>		

CS FOR SENATE BILL NO. 84(FIN)

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

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

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 or the state. A
 16 liability incurred by the agency shall be satisfied exclusively from the assets or
 17 revenue of the agency, and a creditor of the agency or any other person does not
 18 have any right of action or claim against a public utility or the state, because of a
 19 debt, obligation, or liability of the agency. The agency has the powers of a public
 20 utility under AS 42.05 and the immunities of a public utility. In addition to the
 21 powers granted to the agency [AUTHORIZED] under AS 42.45.300 and this
 22 section, the agency has 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) in addition to the powers of eminent domain in AS 42.05.631, to
 31 exercise the powers of eminent domain and a declaration of taking to acquire

1 land or materials within the boundaries of the power project purchased by the
 2 agency from the Alaska Energy Authority under the procedures set out in
 3 AS 09.55.240 - 09.55.460 to carry out the authorized purposes of a joint action
 4 agency. *delete "within the boundaries of the power project purchased*
 5 *by the agency from the Alaska Energy Authority!"*

* Sec. 7. 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. Subject to (c) of this section, the agency agreement
 12 [ESTABLISHING THE AGENCY] may define the powers, functions, and activities
 13 of the agency and specify the means by which they shall be performed. The agency
 14 agreement may establish the rights and responsibilities of the public utilities that form
 15 the agency. If applicable, the agency agreement must [SHALL] provide for

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

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

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

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

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

29 (e) The public utilities that are parties to [FORMING] the agency
 30 agreement shall pledge and agree with the holders of revenue bonds or other
 31 obligations issued by the agency [FINANCING SECURED UNDER THIS

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

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

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

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

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

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

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

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

1 (4) "agency agreement" or "agreement" means the written agreement
2 described in (d) of this section between or among the public utilities creating a joint
3 action agency;

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

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

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

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

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

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

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

29 (d) In this section,

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

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

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

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

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

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 23, 2001

SUBJECT: Sectional Summary of CSSB 84(JUD)

TO: Senator Robin Taylor
Attn: Darrell Thomas

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Joint action agencies formed under AS 42.45.310 are a limited group of the potential joint action agencies (JAA's) that might exist. Under AS 42.45.310(a), two or more public utilities that purchase power from a power project acquired or constructed as part of the former energy program for Alaska and owned by the Alaska Energy Authority (AEA) under AS 44.83.396 may form a joint action agency under AS 42.45.300 and under AS 42.45.310 to purchase the power project from the AEA if the purchase and sale of project has first been authorized by law.

Alphabet soup in this sectional:

"AEA" means "Alaska Energy Authority"
"JAA" means "joint action agency"
"RCA" means "Regulatory Commission of Alaska"

Sections 1 - 3 provide that JAA's formed under AS 42.45.310 are not subject to municipal regulation as utilities even though they are exempt from regulation under AS 42.05.

Sec. 4 adds a new subsection to AS 42.05.711 to exempt joint action agencies formed under AS 42.45.310 from regulation by the Regulatory Commission of Alaska (RCA) with respect to the operation of, sale of power from, and other activities related to the power project that the agency purchased from the Alaska Energy Authority. The exemption lasts until the wholesale agreement becomes subject to review or approval by the RCA under AS 42.05.431.

Sec. 5 is a clerical amendment to AS 42.45.310(a), to correct an omission in last year's bill.

Sec. 6 amends AS 42.45.310(c) to provide that debts, obligations, and liabilities of a JAA formed under AS 42.45.310 are not the responsibility of any of the public utilities that form the agency. The amendment also provides that a JAA has the powers of a public utility and the immunities of a public utility. New paragraph (c)(5) provides that a JAA may exercise the power of eminent domain and a declaration of taking to acquire land or materials to carry out the authorized purposes of the agency within the boundaries of the power project purchased by the JAA from the AEA.

Sec. 7 amends AS 42.45.310(d) to require that the board of directors of a JAA formed under AS 42.45.310 file the agency agreement with the Department of Community and Economic Development.

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

Sec. 9 repeals and reenacts AS 42.45.310(f) to exempt from taxation the bonds and other obligations of a JAA formed under AS 42.45.310 and the real and personal property and the assets, income, and receipts of the JAA. The JAA property, assets, income, and receipts are exempt from all taxes of the state or a political subdivision except that electricity sold at retail by an agency remains subject to the electric cooperative tax under AS 10.25.540 - 10.25.570.

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

Sec. 11 amends AS 42.45.310(h) to remove the limitation that a JAA is a political subdivision **only** for purposes of AS 38.05.810.

Sec. 12 adds definitions of "agency agreement" or "agreement" and of "parties to the agency agreement" to AS 42.45.310.

Sec. 13 adds a new section concerning liability, indemnification, and insurance for joint action agencies that are formed under AS 42.45.310.

Subsection (a) provides that a protected person (defined in (d)(4) of this section as a director, officer, employee, or agent of a JAA) 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 persons' belief that the conduct was in the agency's best interest is unreasonable.

Subsection (c) permits a JAA to purchase liability insurance.

Senator Robin Taylor
February 23, 2001
Page 3

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

TC:glc
01-193.glc

Alaska State Legislature

Chairman,
Judiciary Committee

Vice-Chairman,
Administrative Regulations
Revenue Committee

Member,
Transportation Committee
Resources Committee



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

50 Front Street
Suite 203
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor

SPONSOR STATEMENT SB 84

The Twenty First Legislature passed 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. Governor Knowles signed these bills (HB446 & HB447) into law in May 2000. 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.

SB84 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.

SB84 specifically 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

District A:

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E-mail: Senator_Robin_Taylor@legis.state.ak.us

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 SB84 amends AS 42.44.310 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 SB84 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

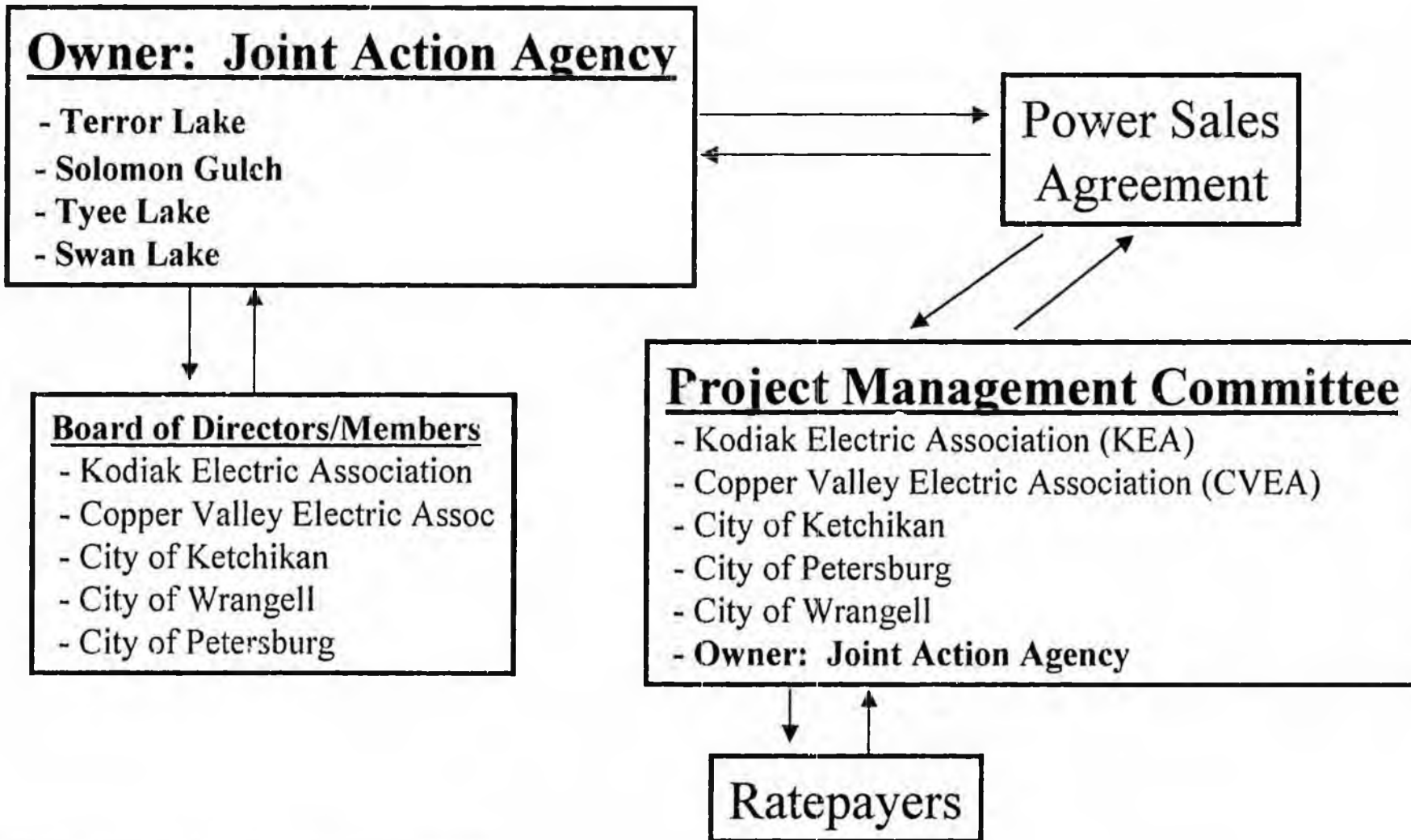
State law currently provides that the JAA will have a "separate and distinct legal existence from the public utilities" that form the JAA. However, neither AS 42.45.300 or AS 42.45.310 includes language that specifically insulates the public utilities that form the JAA from liability for claims against 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 7 of SB84 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 14 of SB84 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 the 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 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 SB 84 make conforming amendments to existing statutory provisions and add a new subsection (o) to AS 42.05.7 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.

Proposed Four Dam Pool Organization



PROVIDED BY: DAVE CARLSON
Divestiture Project Co-Ordinator
Four Dam Pool

Current Four Dam Pool Organization

Owner: State of Alaska

- Terror Lake
- Solomon Gulch
- Tyee Lake
- Swan Lake

Power Sales Agreement

Alaska Energy Authority

- Board of Directors

Project Management Committee

- Kodiak Electric Association (KEA)
- Copper Valley Electric Association (CVEA)
- City of Ketchikan
- City of Petersburg
- City of Wrangell
- **Owner: Alaska Energy Authority**

Ratepayers

PROVIDED BY:

DANE CARLSON
Divestiture Project Co-Ordinator
Four Dam Pool

ATERWYNNE LLP
ATTORNEYS AT LAW

Suite 1800
222 S.W. Columbia
Portland, OR 97201-6618
503-226-1191
Fax 503-226-0079

FACSIMILE TRANSMITTAL

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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 SP 84
Four Dam Pool Power Agency

PAGES: 3 (including cover)

AN ORIGINAL OF THIS FAX WILL ___ WILL NOT XX FOLLOW.

Forwarded to you at the request of Bob Evans.

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."

**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 formed 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 12th. 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 12th 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 Committee Substitute for House Bill No. 119 (L&C) and a Committee Substitute for Senate Bill No. 84 (JUD). 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 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.

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 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.

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.

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."

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.

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

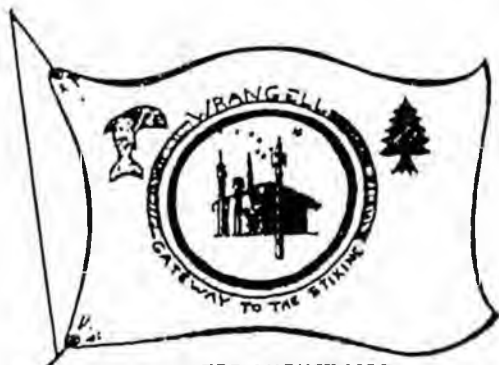
Because the JAA is granted the powers of a "public utility" under AS 42.05, it is not entirely clear whether the JAA is fully or only partially exempt from regulation by the RCA under AS 42.05. Under the Alaska Public Utilities Regulatory Act, AS 42.05, the RCA is granted broad powers to regulate public 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(c).

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

ATERWYNNE^{LLP}

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 FSA will be subject to RCA review and approval.



ADOPTED AUGUST 1972

February 15, 2001

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381
FAX: (907) 874-3882

COPY

The Honorable Robin Taylor
Judiciary Committee
State Capitol
Juneau, AK 99801-1182

Dear Senator Taylor:

As Mayor of Wrangell, I am expressing my full support for the passage of SB 84.

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.

Respectfully,

Fern D. Neimeyer
Mayor/City of Wrangell

**City of
Ketchikan**



COPY

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

February 9, 2001

Senator Robin Taylor
Chair, Judiciary Committee
State of Alaska, Senate
State Capitol, Room 30
Juneau, Alaska 99801-1182

Dear Senator Taylor:

Re: Senate Bill No. 84 - 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

Page Two

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 SB 84 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 SB 84 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 SB 84 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

Page Three

certificate of need and convenience under AS 42.05.221. Sections 1, 2, 3 and 4 of SB 84 accomplish this objective.

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 SB 84 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,



Bob Weinstein
Mayor

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

Kodiak *Electric Association Inc.*

RECEIVED
FEB 16 2001

Ans'd.....

(907) 486-7700

Box 787
KODIAK, ALASKA 99615

COPY

February 13, 2001

Senator Robin Taylor
Chair, Senate Judiciary Committee
State Capital
Juneau, AK 99801-1182


Dear Senator Taylor:

Kodiak 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 Initial Project from the state of Alaska.

I am writing this letter to express my support for Senate Bill 84. This important legislation 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 Kodiak community in particular and the state of Alaska as a whole.

Kodiak Electric Association, Inc. strongly encourages the Senate Judiciary Committee to support and move this important legislation forward so the many benefits of HB 446 and HB 447 may be realized.

Sincerely,



Walter Sapp, President
Kodiak Electric Association, Inc.
Board of Directors



Copper Valley Electric Association, Inc.

P.O. Box 45 • Glennallen, Alaska 99588 • Telephone: 907-822-3211 • Facsimile: 907-822-3586 • Valdez: 907-835-4301

February 15, 2001

E-mail: wilkinson@cvea.org

Senator Robin Taylor, Chair
 Senate Judiciary Committee
 Room 30, State Capitol
 Juneau, Alaska 99801-1182

COPY

SUBJECT: Senate Bill 84, *Four Dam Pool Divestiture*

Dear Senator Taylor:

The purpose of my letter is to express strong support for Senate Bill 84, which in its present form authorizes certain technical amendments to last year's divestiture legislation (HB 446). Copper Valley Electric Association does not view SB 84 as an option or something that would be nice to have. We view this legislation as absolutely essential in order for us to proceed with closing the divestiture transaction.

Specifically, Sections 2 through 4 provide that the Joint Action Agency is exempt from economic regulation by the Regulatory Commission of Alaska. The only utility presently economically regulated by the Commission is Kodiak Electric Association. CVEA, in 1998, chose to opt for local regulation by our elected Board of Directors. In order to do so we conducted a member election to put the question before our members, and the overwhelming results were that 67% of the 36% of members who voted thought local regulation was good idea. Certainly, in my experience since, there is nothing to suggest our members are in any way unhappy with local regulation, and in that same view I do not believe the JAA would benefit from Commission oversight.

Moreover, the overriding goal of the Four Dam Pool Purchasing Utilities is to keep the cost per kilowatt-hour to a minimum. The Utilities have a good track record on that score, and Commission oversight and the attendant expense of being economically regulated would not further serve that goal of cost containment.

Section 7 of the legislation accomplishes a number of important and necessary objectives.

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 grassroots support.

Letters of Support

SB 84
February 15, 2001
Page 2

First, it defines the JAA as a body corporate and politic. This is essential to obtaining a favorable ruling from the IRS that the JAA is tax exempt. Each of the five Purchasing Utilities is already tax exempt and it certainly makes sense that the JAA, the wholesale supplier, be tax exempt as well.

Second, this section provides essential protections for the member utilities from the liabilities of the JAA. These same protections appear in virtually every other Alaska Corporate statute, and it seems an oversight that they are absent from the legislation authorizing the JAA.

Finally, Section 7(c) provides that the JAA is not required to obtain a Certificate of Public Convenience and Necessity from the Commission. Each of the member utilities already has a certificate to serve in their respective geographic area. In addition, the JAA is a wholesale supplier; not a retail supplier of electricity, and the JAA is not selling retail utility service for compensation. Since the individual utilities are already certificated, it seems the requirement for the JAA to be certificated is duplicative and therefore unnecessary.

Section 7 (c)(5) is basically a federal tax issue. If the JAA has the powers set out in the AS 09.55.240-460 as requested in the bill, the likelihood of a favorable ruling from the IRS is significantly improved.

Section 14 addresses protection from liability for individuals acting on behalf of the JAA. Once again, similar protections are found in virtually every other Alaska corporation statute.

Once again, my view is that SB 84 is both necessary and essential in its present form in order for Copper Valley Electric Association to proceed to a divestiture closing. The Four Dam Pool utilities have worked for six years to advance this transaction. What once was only a dream is now on the brink of reality. I urge the Senate Judiciary Committee to move this legislation so that the historic significance we all thought we had achieved last May can be realized.

Thank you. I stand ready to provide more information to you and members of the committee.

Sincerely,



Robert A. Wilkinson
Chief Executive Officer

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/12/01

FURTHER: Finance

Date of 5-Day Notice: 2/15/01
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2-22-01

Judiciary Committee considered SENATE BILL NO. 84

PUBLIC UTILITY JOINT ACTION AGENCIES

and recommends:

- be replaced with _____ CS SB 84 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DCED/AIDEA	2/16/01		0	1
DCED/RCA	2/21/01		0	2
DCED/AIDEA	2/21/01		0	3

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
John J. Taylor				
John J. Taylor	✓			
John J. Taylor	✓			
John J. Taylor			✓	
John J. Taylor				
CHAIR: John J. Taylor	✓			

SENATE FINANCE COMMITTEE

SIGN-IN

SB 84-PUBLIC UTILITY JOINT ACTION AGENCIES

NAME: DAVE CARLSON Subject/Bill No: SB 84

Co./Dept./Title: Four-Dam Pool Phone: 772-4203

Address: Box 669 Petenakwuk AK Zip: 99833

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions