

ALASKA LEGISLATURE

2352

HOUSE and SENATE FINANCE COMMITTEE FILES,

2001 - 2002

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SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

APR 24 2001

SENATE FINANCE
COMMITTEE

DATE: 3/14/01

FURTHER:

DATE TURNED IN TO OFFICE: 25 April 01

Finance Committee considered SENATE BILL NO. 83

"An Act relating to construction of highways by the Department of Transportation and Public Facilities."

and recommends:

- be replaced with CS SB 83 (FIN)
- adopt previous CS forthcoming
- 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#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOT SPF	3/14/01		✓	1

APPROPRIATION - no fiscal note

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

APR 24 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 83
(S) Publish Date: 3/16/01

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title: Construction of Highways by DOT&PF BRU: Construction & CIP Support
Sponsor: Sen. Cowdery Component: All Regional Components
Requester: Senate Finance Component Number: _____

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
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
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
FUND SOURCE	0.0	0.0	0.0	0.0	0.0	0.0
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

If approved, SB 83 would prohibit the department from using state forces to construct (Force Account Construction or FAC) highway projects if the value of the project was greater than \$250,000. The majority of projects that are considered for Force Account Construction are federally funded. Federal provisions require that prior to approval of a force account project, the state must determine that this method will result in cost savings.

Since it is not possible to determine which projects will be considered for FAC over the next six years, we will base the projected savings on Calendar Year 2000. The estimated savings on 2000 Force Account projects (greater than \$250,000) was \$20,000,000. Assuming the amount of Force Account projects remains constant over the next six years, the lost savings would total \$120,000,000. This is \$120,000,000 in additional projects that would not be constructed during this six-year period if Force Account Construction were prohibited as proposed by SB 83.

Prepared by: Mark O'Brien, Chief Contracts Officer Phone 465-6990
Division: Contracting, Procurement and Appeals Date/Time 3/14/01 12:29pm
Approved by: Joseph L. Perkins, Commissioner Date 03/14/2001
Agency: DOT&PF

For distribution information, call the Governor's Legislative Office

SENATE FINANCE COMMITTEE
2004 COMMITTEE ACTION

4/24

Bill Number	SB 83		
Amendment			
Motion	pass		
<u>Motion by</u>	Donley		
<u>Objection by</u>	Hoffman		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Hoffman			✓
Senator Leman	✓		
Senator Olson			✓
Senator Ward	✓		
Senator Wilken	✓		
Senator Austerman	✓		
Senator Green			
Co-Chair Donley	✓		
Co-Chair Kelly	✓		
<u>Tally</u>			
Yea	6		
Nay	2		
Absent	S. Green		
MOTION	PASSES		

CS FOR SENATE BILL NO. 83(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR COWDERY

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to construction of highways by the Department of Transportation and
2 Public Facilities."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 19.10.170(a) is amended to read:

5 (a) Except as provided in AS 44.33.300, it is the general policy of the state to
6 require the construction of all highways under bid contract in accordance with
7 AS 36.30 (State Procurement Code). However, subject to the provisions of (b) of this
8 section, the department may perform the work notwithstanding any other
9 provisions of law

10 (1) when the estimated cost of a construction project is less than
11 \$100,000; or

12 (2) when
13 (A) it appears to be in the best interests of the state; and
14 (B) the estimated cost of a construction project is \$500,000

#1

#2

1
2
3

or less, or no responsive and responsible bidder submits a bid [THE
DEPARTMENT MAY PERFORM THE WORK NOTWITHSTANDING
ANY OTHER PROVISIONS OF LAW].

|

SENATE FINANCE COMMITTEE
4 1341 2001 COMMITTEE ACTION

Bill Number	SB 83		
Amendment	# 1		
Motion	adopt		
Motion by	Kelly		
Objection by			
Removed			
Second Objection by			
Committee Member	Y	Vote	N
Senator Austerman			
Senator Green			
Senator Hoffman			
Senator Leman			
Senator Olson			
Senator Ward			
Senator Wilken			
Co-Chair Donley			
Co-Chair Kelly			
Tally			
Yea			
Nay			
Absent			
MOTION	PASSED		

Conceptual amendment :

page 1, line 10 after "less,"
 insert:

"or the department has not obtained
 a responsive bid"

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	SB 83		
Amendment	#2		
Motion	Austerman adopt		
<u>Motion by</u>	Austerman		
<u>Objection by</u>	Ward		
<u>Removed</u>	yes		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Green			
Senator Hoffman			
Senator Leman			
Senator Olson			
Senator Ward			
Senator Wilken			
Senator Austerman			
Co-Chair Donley			
Co-Chair Kelly			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	PASSED		

Conceptual amendment:

page 1, line 10

delete: "\$250,000"

insert: "\$500,000"

ALASKA STATE LEGISLATURE
SENATE DISTRICT I

Interim:
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Toll Free: 1-888-269-3879

John J. Cowdery
Senate Transportation Committee, Chair
World Trade and State & Federal Relations
LEGISLATIVE COUNCIL, RULES, JUDICIARY

March 8, 2001

Sponsor Statement SB 83

SB 83 amends AS 19.10.170(a) to require that no highway construction project that exceeds \$250,000 may be done in house by force account. Current law would still require that any project that exceeds \$100,000 in value and proposed to be constructed in house would require a written finding of fact.

**Force Account/Public Interest Findings
Summary 1998-2000
(In Thousands)**

Force Account Summary for 1998-2000				
	Total	Labor (In House)	Other (Private)	(Notes)
1998	\$7,898.7	\$4,958.6	\$2,940.1	
1999	\$9,920.0	\$5,217.3	\$4,702.7	(5% increase)
2000	\$15,767.9	\$7,846.6	\$7,921.3	(50% increase)
3-Year Total	\$33,586.6	\$18,022.5	\$15,564.1	
The Portion of Force Accounting used for M/O				
	Total	Labor (In House)	Other (Private)	(Notes)
1998	\$5,709.2	\$4,066.9	\$1,642.3	
1999	\$9,920.0	\$5,217.3	\$4,702.7	
2000	\$12,056.0	\$6,975.6	\$5,080.4	
Total	\$27,685.2	\$16,259.8	\$11,425.4	

NOTE: In three years, 1998-2000, DOT&PF kept \$18M in house for force accounts. Of the \$18M, \$16.3M was used for M/O projects.

MAINTENANCE & OPERATIONS
NORTHERN REGION

ST. MARY'S AIRPORT ROAD REHABILITATION

PUBLIC INTEREST FINDING
9/11/00

This Public Interest Finding is to allow the use of State forces to accomplish construction of project STP-0200 (3) / 66880, St. Mary's Airport Road Rehabilitation. State forces will be a combination of local hire (new hire Non-perm State employees) and existing State employee's used as leadmen. There will be maximum utilization of local available personnel and equipment. This work will be performed using force account methods.

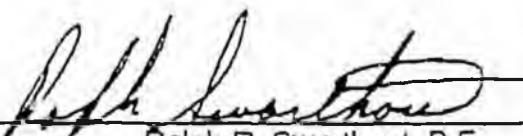
The project includes the rehabilitation of approximately 8.1 km of access road from the St. Mary's Airport to the post office in the city of St. Mary's. The existing road will be reconstructed to provide a two lane road 7.2 m from shoulder to shoulder. Asphalt surface treatment with high float emulsion will be applied to the entire length of the project. Work shall be as outlined in the final PS&E.

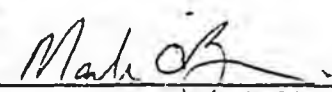
This project was developed by the Northern Region Design Section, approved by the Pre-Construction Engineer and accepted for construction by the Regional Director. The project will be constructed under the direction of a full time employed State Engineer in responsible charge of this project.

The legislative authority for the work on the Non-NHS route is (Federal 90.97%) 103/95/48/8; 139/98/76/16; 2/99/66/25 and (State 9.03%) 2/99/26/27.

Engineer's estimate in the final PS&E is \$3,526,739.50. The attached cost effective analysis demonstrates a revised estimate of \$2,999,514.44 using State forces, a cost savings of 14.9%.

It is hereby found to be in the public interest and consistent with Title 23, Section 635.104(b), of the Code of Federal Regulations to use Federal-aid highway funds (\$2,999,514.44) for force account construction of the St. Mary's Airport Road Rehabilitation project.

Recommended:  9/15/00
Ralph D. Swarthout, P.E. Date
Regional Director, Northern Region

Approved:  9/18/00
Mark O'Brien Date
Chief Contracts Officer, Headquarters

**MAINTENANCE & OPERATIONS
NORTHERN REGION**

ST. MARY'S AIRPORT ROAD REHABILITATION

**Force Account
Cost Effectiveness Analysis
9/11/00**

Data used in this analysis are from the Engineer's Estimate at Final PS&E (pages 3-4), revised Engineer's Estimate using State forces (page 5), labor rate cost analysis (page 6), and Standard Specifications for Highway Construction dated 1988, 109-1.05, Compensation for Extra Work.

The Adjusted Engineer's Estimate broke the Engineer's Estimate items into 3 categories: Labor, Equipment, and Materials by a percentage assigned to each category. Adjustment factors were then applied at applicable rates as follows:

Labor: 63% (as shown on page 6, computed per 109-1.05 #1).
Equipment: 100% (assume Contractor costs and State cost to be computed per 109-1.05 #3).
Materials: 85% (reduced 15% Contractor mark-up per 109-1.05 #2).

Items such as aggregates processing, surveying and mobilization are anticipated to be acquired under contract.

The Adjusted Engineer's Estimate (page 5) demonstrates that use of local State forces would be a cost savings of approximately 14.9% compared to using the competitive bid process, and a benefit to the surrounding communities by using available local hire and equipment.



ENGINEER'S ESTIMATE

STATE OF ALASKA -- DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES -- NORTHERN REGION

Project Number: STP-0200(3) / 66880

Project Name: ST MARTS AIRPORT ROAD REHAB

Item No.	Pay Item	Pay Unit	Unit Price	Quantity	Amount
BASIC BID					
201(4B)	HAND CLEARING	LUMP SUM	5,000.00	ALL REQUIRED	5,000.00
202(4A)	REMOVAL OF CULVERT PIPE	EACH	500.00	5	2,500.00
203(5)	BORROW	CUBIC METER	12.50	135,000	1,687,500.00
301(2)	AGGREGATE BASE COURSE	CUBIC METER	50.00	9,300	465,000.00
302(3)	PROCESSING FOR SUBGRADE MODIFICATION	METER	100.00	400	40,000.00
303(2)	RECONDITIONING	METER	100.00	375	37,500.00
405(1)	HIGH FLOAT ASPHALT SURFACE TREATMENT	SQUARE METER	6.00	60,000	360,000.00
603(17-600)	600 MM PIPE	METER	145.00	126	18,270.00
615(1)	STANDARD SIGN	SQUARE METER	750.00	4.48	3,360.00
615(2)	REMOVE AND RELOCATE EXISTING SIGN	EACH	250.00	1	250.00
615(5)	DELINEATORS, FLEXIBLE	EACH	25.00	494	12,350.00
618(2)	SEEDING	KILOGRAM	25.00	765	19,125.00
639(1)	APPROACHES	EACH	1,000.00	27	27,000.00
640(1)	MOBILIZATION AND DEMOBILIZATION	LUMP SUM	300,000.00	ALL REQUIRED	300,000.00
641(1)	EROSION AND POLLUTION CONTROL ADMINISTRATION	LUMP SUM	10,000.00	ALL REQUIRED	10,000.00
641(3)	EROSION AND POLLUTION CONTROL	CONTINGENT SUM	10,000.00	ALL REQUIRED	10,000.00
642(1)	CONSTRUCTION SURVEYING	LUMP SUM	20,000.00	ALL REQUIRED	20,000.00
642(3)	THREE PERSON SURVEY PARTY	HOURLY	175.00	75	13,125.00
642(4)	SET PRIMARY MONUMENT	EACH	500.00	31	15,500.00
642(10)	MONUMENT CASE	EACH	250.00	31	7,750.00
643(25)	TRAFFIC CONTROL	CONTINGENT SUM	7,500.00	ALL REQUIRED	7,500.00
644(1)	FIELD OFFICE	LUMP SUM	10,000.00	ALL REQUIRED	10,000.00
644(6A)	ENGINEERING TRANSPORTATION	EACH	8,000.00	2	16,000.00
647(1)	HYDRAULIC EXCAVATOR, CRAWLER MOUNTED 1.15 C.M. BUCKET, 130 KW MIN.	HOURLY	100.00	25	2,500.00

FINAL PS&E

AUG 23 2000

Northern Region

Prepared by: John O. [Signature] Date: 8/21/00 checked by: C.F. Date: 8/21/00
 ER11 3 OF 6 08/15/00 - 13:16:35



ENGINEER'S ESTIMATE

STATE OF ALASKA -- DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES -- NORTHERN REGION

Project Number: STP-0200(3) / 66880

Project Name: ST MARYS AIRPORT ROAD REHAB

Item No.	Pay Item	Pay Unit	Unit Price	Quantity	Amount
----------	----------	----------	------------	----------	--------

BASIC BID

647(2)	CRAWLER TRACTOR WITH HYDRAULIC BLADE, 220 KW MIN.	HOUR	100.00	25	2,500.00
Total Basic Bid (BB):					3,092,730.00
Less Construction Engineering 644() Exclusion(s):					-26,000.00
Subtotal Basic Bid Less 644() Exclusion(s) (sBB):					3,066,730.00
Construction Engineering (CE) at 15.0%:					+460,009.50
PROJECT TOTAL (sBB + CE)					3,526,739.50

Prepared by:

Patricia Allen

Date:

8/21/00

Checked by:

C.E.

Date:

8/21/00

ER11

4 OF 6

08/18/00 - 13:14:38

ADJUSTED ENGINEER'S ESTIMATE
 (Using Force Account Methods)
 *** REVISED ***
ST. MARY'S AIRPORT ROAD REHABILITATION

9/11/00

5 OF 6

ITEM	DESCRIPTION	ENGINEER'S ESTIMATE	% BREAKDOWN			ADJUSTMENT FACTOR			ADJUSTED ESTIMATE			ADJUSTED ESTIMATE
			LABOR	EQUIPMENT	MATERIALS	LABOR	EQUIPMENT	MATERIALS	LABOR	EQUIPMENT	MATERIALS	
201(4B)	Island Clearing	5,000.00	70%	25%	5%	63%	100%	85%	2205.00	1250.00	212.50	3,667.50
202(4A)	Removal of Culvert Pipe	2,500.00	40%	50%	10%	63%	100%	85%	630.00	1250.00	212.50	2,092.50
203(5)	Borrow	1,687,500.00	40%	35%	25%	63%	100%	100%	425250.00	500625.00	421875.00	1,437,750.00
301(2)	Aggregate Base Course	465,000.00	40%	35%	25%	63%	100%	100%	117180.00	162750.00	116250.00	396,180.00
302.3	Subgrade Modification	40,000.00	40%	60%	0%	63%	100%	85%	10080.00	24000.00	0.00	34,080.00
303.2	Reconditioning	37,500.00	40%	60%	0%	63%	100%	85%	9450.00	22500.00	0.00	31,950.00
405.1	High Float Asphalt Surface Treatment	960,000.00	50%	25%	25%	63%	100%	100%	113400.00	90000.00	90000.00	293,400.00
603	600 MM Pipe	18,270.00	30%	40%	30%	63%	100%	85%	3453.03	7308.00	4658.85	15,419.88
615.1	Standard Sign	3,360.00	45%	15%	40%	63%	100%	85%	852.58	504.00	1142.40	2,599.98
615.2	Remove and Relocate Existing Sign	250.00	75%	15%	10%	63%	100%	85%	118.13	37.50	21.25	176.88
615.5	delineators, Flexible	12,350.00	65%	15%	20%	63%	100%	85%	5057.33	1852.50	2099.50	9,009.33
618.2	Seeding	19,125.00	45%	20%	35%	63%	100%	85%	5421.94	3825.00	5689.69	14,836.63
639.1	Approaches	27,000.00	35%	40%	25%	63%	100%	85%	5953.50	10800.00	5737.50	22,491.00
640.1	Mobilization & Demobilization	300,000.00	30%	70%	0%	63%	100%	85%	56700.00	210000.00	0.00	268,700.00
641.1	Erosion & Pollution Control Admin	10,000.00	75%	5%	20%	63%	100%	85%	4725.00	500.00	1700.00	6,925.00
641.9	Erosion & Pollution Control	10,000.00	75%	5%	20%	63%	100%	85%	4725.00	500.00	1700.00	6,925.00
642.1	Construction Surveying	20,000.00	85%	10%	5%	100%	100%	100%	17000.00	2000.00	1000.00	20,000.00
642.3	Three Person Survey Party	13,125.00	85%	10%	5%	100%	100%	100%	11156.25	1312.50	658.25	13,125.00
642.4	Set Primary Monument	15,500.00	85%	10%	5%	100%	100%	100%	13175.00	1550.00	775.00	15,500.00
642.10	Monument Case	7,750.00	85%	10%	5%	63%	100%	85%	4150.13	775.00	320.38	5,254.50
643.25	Traffic Control	7,500.00	50%	25%	25%	63%	100%	85%	2362.50	1875.00	1593.75	5,831.25
644.1	Field Office	10,000.00	25%	50%	25%	100%	100%	100%	2500.00	5000.00	2500.00	10,000.00
644.6A	Engineering Transportation	16,000.00	0%	100%	0%	100%	100%	100%	0.00	16000.00	0.00	16,000.00
647.1	Excavator, Crawler Mounted, 1 15 C.M., 130 KW Min.	2,500.00	40%	60%	0%	63%	100%	85%	630.00	1500.00	0.00	2,130.00
647.2	Crawler Tractor w/hydraulic Blade 220 KW Min.	2,500.00	40%	60%	0%	63%	100%	85%	630.00	1500.00	0.00	2,130.00

Total Basic Bid: 3,092,730.00
 Less 644.1 & 644.6A: (26,000.00)
 Subtotal: 3,066,730.00
 CENG @ 15%: 460,009.50
 3,526,739.50

Adjusted Total Basic Bid: 2,634,273.43
 Less 644.1 & 644.6A: (26,000.00)
 Subtotal: 2,608,273.43
 CENG @ 15%: 391,241.01

Adjusted Project Total: 2,999,514.44

% Of Original Estimate: 85.1
 % Cost Saving Using Force Account Methods: 14.9

Computed By: J. Prusak 0/11/00

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Northern Region
St. Mary's Labor Cost Comparison
 9/11/00

State Force Account

Average work week is 6 days @ 10 hours/day

For Determining State Rate
 ST= First 7.5 Hrs Not to Exceed 37.5 ST Hrs/Wk.
 ST/OT= Amount Added to ST Until OT is Achieved.
 OT= Over 8 Hrs/Day and Over 40 ST Hrs/Wk.

Computation of State Loaded Rates
 Base x ST Loaded Rate Factor.
 Base x ST/OT Loaded Rate Factor.
 Base x 1.5 x OT Loaded Rate Factor.

- * Loaded Rate Factor Effective 7/17/00.
- ** Base Rates Per Schedule D Effective 7/1/00.

* Loaded Rate Factor		
ST	ST/OT	OT
1.81	1.24	1.24

Position	Quantity	Duties	Wage Group	Base	Loaded Hr Cost Per Person			Hourly Cost x Quantity		
					ST	ST/OT	O.T	ST	ST/OT	O.T
Operator	1	Foreman	61B	28.54	45.85	38.39	53.08	45.85	38.39	53.08
Operator	3	Dozer/Grader	53A	22.15	35.86	27.47	41.20	108.99	82.41	123.60
Operator	2	Roller	65A	20.09	32.34	24.91	37.37	64.68	49.82	74.74
Tx Driver	6	Belly Dump	64A	21.01	33.23	26.06	39.08	202.96	156.30	234.48
Tx Driver	1	Water Tk	64A	21.01	33.83	26.05	30.08	33.83	26.05	30.08
Labor	2	Asphalt/CMP	68A	18.98	30.53	23.51	35.27	61.06	47.02	70.54
Labor	2	General	67A	18.17	28.55	22.53	33.50	58.50	45.06	67.00
State Loaded Crew Cost Per Hour:								673.88	442.05	383.12

Weekly Crew Cost

	HOURS WORKED							Total Hours	Hourly Cost	Weekly Amount
	M	T	W	T	F	S	S			
ST	7.5	7.5	7.5	7.5	7.5	0	0	37.5	373.88	14022.25
ST/OT	0.5	0.5	0.5	0.5	0.5	0	0	2.5	442.05	1105.13
O.T	2	2	2	2	2	10	0	20	383.12	7662.40
State Loaded Crew Cost Per Week:								60	35,891.78	

Contractor Force Account

Average work week is 6 days @ 10 hours/day

For Determining Contractor Rate
 ST= Prevailing Rates Effective 8/01/00.
 OT= Over 8 Hrs/Day and Over 40 ST Hrs/Wk.
 Fringes= Prevailing Rates Effective 8/01/00.

Computation of Contractor Loaded Rates
 Ref: Standard Specifications 108-1.05 d1.

Position	Quantity	Duties	Wage Group
Operator	1	Foreman	A1601-53
Operator	3	Cozar/Grader	A1601
Operator	2	Roller	A1604
Tx Driver	6	Belly Dump	A2104
Tx Driver	1	Water Tk	A2105
Labor	2	Asphalt/CMP	A1203
Labor	2	General	A1201

Hr Cost Per Person		
ST, Base	O.T. Base	Fringes
33.26	50.03	9.02
30.35	46.53	9.02
29.09	43.65	9.02
28.12	42.18	9.85
27.54	41.46	8.86
25.98	38.93	9.74
24.56	38.33	9.74

Hourly Cost x Quantity		
ST, Base	O.T. Base	Fringes
33.26	60.03	9.02
91.05	138.59	27.06
65.10	87.10	18.04
168.72	253.08	53.10
27.85	41.48	9.85
51.99	77.58	17.48
49.10	73.96	17.48

Contractor Crew Cost Per Hour: 479.87 719.88 131.03

Weekly Crew Cost

	HOURS WORKED							Total Hours
	M	T	W	T	F	S	S	
ST	8	8	8	8	8	0	0	40
O.T	2	2	2	2	2	10	0	20
Fringe Hrs	10	10	10	10	10	10	0	60

Ref: Standard Specifications 108-1.05 d1.

a.)	80	479.87	26,792.20
b.)	20	239.99	4,799.80
c.)	60	161.03	9,661.80
d.)	28,792.20	7.13%	2,062.88
e.)	0	0	0.00
f.)	38,966.88	30%	11,689.07

Contractor Loaded Crew Cost Per Week: 56,878.75

- a.) Total Hrs Worked in Work Week x ST Rate
- b.) OT Hrs worked in Work Week x (OT Rate-ST Rate)
- c.) Total Hrs Worked in Work Week x Fringe Rate
- d.) Amount From "a" x Work Comp Rate
- e.) Per-Diem is include in Mob Item & is the same for both Forces
- f.) Sum of "a", "c", "d", "e" @ 30%

*(class code 3516 highway heavy) Effective: 7/07/00

Summary of Labor Costs

State Loaded Crew Cost Per Week: 35,891.78
 Contractor Loaded Crew Cost Per Week: 56,878.75

CONTRACTOR ADJUSTMENT FACTOR: 1.58

Contractor forces are 58% higher than state forces.
 State forces are 37% less than Contractor forces.

**Force Account/Public Interest Findings
Summary 1998-2000
(In Thousands)**

Force Account Summary for 1998-2000				
	Total	Labor (In House)	Other (Private)	(Notes)
1998	\$7,898.7	\$4,958.6	\$2,940.1	
1999	\$9,920.0	\$5,217.3	\$4,702.7	(5% increase)
2000	\$15,767.9	\$7,846.6	\$7,921.3	(50% increase)
3-Year Total	\$33,586.6	\$18,022.5	\$15,564.1	
The Portion of Force Accounting used for M/O				
	Total	Labor (In House)	Other (Private)	(Notes)
1998	\$5,709.2	\$4,066.9	\$1,642.3	
1999	\$9,920.0	\$5,217.3	\$4,702.7	
2000	\$12,056.0	\$6,975.6	\$5,080.4	
Total	\$27,685.2	\$16,259.8	\$11,425.4	

NOTE: In three years, 1998-2000, DOT&PF kept \$18M in house for force accounts. Of the \$18M, \$16.3M was used for M/O projects.

FORCE ACCOUNT / PUBLIC INTEREST FINDINGS

Number	Name	1998 Gov't or.			*1	*2
		M&O	Local Agency	Village Safe Water	Labor \$	Other \$
001	NR NHS Road Pave & Bridge Refurb	X			1,764.0	1,386.0
002	CE NHS Crack Sealing & Bridge Repair	X			670.0	249.3
003	KTN-Cent Bus Dist Sidewalk Imp.		X		134.5	70.3
004	NR Surface Maintenance & Bridge Rehab.	X			1,064.0	* 2
005	Selawik Boardwalk Improvements		X		75.0	310.0
006	Rural Ak. Sanitation Rds.-Chignik Lagoon			X	350.0	450.0
007	SE Gold Rush Centennial Enhancements	X			20.2	7.0
008	SE NHS/Non Pave & Bridge Refurb.	X			500.0	* 2
009	Kongiginak Sanitation Boardwalk			X	250.0	450.0
010	SE Jnu-Hazard Elimination	X			48.7	* 2
011	KTN-Waterfront Promenade		X		82.2	17.5
Totals					\$ 4,958.6	\$ 2,940.1
1999						
001	NR FFY 99 NHS Prev. Maint. & Repairs	X			2,000.0	1,850.0
002	CE Bridge Maint/Repair FY 99	X			284.3	74.8
003	NR FFY 99 Non-NHS Maint. & Repairs	X			836.0	1,064.0
004	CE Crack Seal Program FY 99	X			643.4	224.3
005	SE NHS Pavement Rehab.	X			147.0	653.0
006	CE Asphalt Pave. Surface Refurb. FY 99	X			383.9	399.6
007	Force Account (AMHS) Wireless Com.	X			33.4	135.6
008	SE Non-NHS Pave. Rehab. FY 99	X			600.0	* 2
009	NR Dalton Hwv. Erosion Control	X			15.3	102.7
010	NR Surface Treatment, Brenwick/Craig	X			73.6	129.4
011	CE FY 99, Non-NHS Fed. Crack Seal Pro.	X			200.4	69.3
Totals					\$ 5,217.3	\$ 4,702.7
2000						
001	NR FFY 00 NHS M&O Prev. Maint.	X			2,215.6	1,604.4
002	NR FFY 00 CTP M&O Prev. Maint.	X			1,725.5	1,249.5
003	CE: FY 00 Central Region Crack Seal Crew	X			704.3	189.4
004	SE Non-NHS Pavement Rehab. (FFY00)	X			256.7	376.1
005	SE Road Surface Treatment (FFY00)	X			253.6	552.4
006	CE: Interstate Maint. & Bridge Repair FY00	X			260.4	139.3
007	Proj. #66740, Russian Mission AWOS Pad		X		47.2	* 2
008	Proj. #66740, Russian Mission Air. Clear.		X		122.0	* 2
009	CE: Bridge Maint./Repair Non-NHS FY 00	X			278.0	121.5
010	CE: Cascade Shop Reconstruction	X			82.0	230.0
011	SE Haines-Lutak Rd. Storm Drain	X			207.0	* 2
012	Chefomak Sanitation Boardwalk			X	262.2	1,117.8
013	CE: FY00 Non-NHS Fed. Crack Seal Pro.	X			580.6	227.8
014	SE Haines-Chilkat Lake Rd.	X			310.0	190.0
015	SE Skagway-Taiva River Erosion Control	X			90.0	* 2
016	Married Man's Trail Lighting		X		40.6	22.1
017	SE Wrangell Airport Control Reg. Shelter	X			11.9	0
018	Nunapitchuk Sanitation Boardwalk			X	399.0	1,701.0
Totals					\$ 7,846.6	\$ 7,921.3

Dollar Amounts are in Thousands

- *1 The column for State labor includes State owned equipment charges. And, where applicable, it includes small contracts let to entities that the State oversees under its Force Account work.
- *2 Where only a total estimated cost was available, the costs were included in the "Labor" column total. This results in an inflated estimate of the Labor costs associated with Force Account projects.

Saint Marys Force Account Project

- DOTPF is planning a 3.5 million dollar force account project this coming summer in Saint Mary's.
- This project in violation of AS 36.30.305 - \$100,000 procurement limit.
- This force account project will build a road from the village of Saint Marys approximately 8 miles to the airport.
- Using a force account project to attempt to cure an economic problem in the village of Saint Marys —due to a poor fishing season.
- State DOTPF will be hiring villagers as state employees and DOT will have to train these workers to operate heavy equipment.
- DOTPF will not be paying a Davis Bacon wage scale.
- Alaskan contractors will be denied an opportunity to bid on this project.
- There is no justification for this action.

Associated General Contractors of Alaska
Legislative Priorities
2001

Long Term Fiscal Plan - It is in the best interests of the State that the legislature and administration adopt a long-term fiscal plan that deals with the issue of falling petroleum revenues, the permanent fund, and new economic incentives. Part of this plan should include an increase in the gasoline tax and a dedication of those funds to underwrite the costs of highway maintenance.

Matching funds for transportation projects - The transportation infrastructure of Alaska is currently inadequate and requires continued planning, upgrades, and expenditures to assure the citizens of Alaska are provided with essential services. The economic benefit derived from this investment far exceeds the matching funds required to secure the federal matching funds. Accordingly the legislature is encouraged to continue providing full funding of the federal highway matching funds.

Funding for vocational/technical education - A majority of Alaska's high school graduates do not go to college yet the State's high school curriculum is oriented to college preparation. The legislature should adopt a more balanced funding approach to better prepare those students not pursuing post-secondary education for the world of work.

Pre-judgment interest on claims - Construction claims frequently represent differing opinions between the owner and the contractor regarding whether or not particular work was included in the bid documents at bid time. Since resolving these differences takes time and since the contractor incurred costs to complete the work, the contractor should be entitled to interest on the claim settlement from the time the claim was filed until payment.

Definition of design build - Design/build is a project delivery system that is widely used in private construction and is starting to gain acceptance in public construction. The Alaska procurement code does not contemplate or define design/build construction and therefore all such use by public entities is performed under the term "alternative procurement procedures". Due to the uncertainty as to the use and applicability of the design/build delivery system in the public sector, it is in the best interests of all parties that its use and definition be clearly set forth by the legislature.

Privatization of work done by State employees and limiting use of force accounting. Considerable work is undertaken each year by State workers that could be performed more efficiently in the private sector. Governmental employees involved in these activities should be transferred to more traditional governmental roles. In addition the utilization of force accounting should be significantly restricted. Force accounting is a project delivery system that trades accountability for convenience. Primarily used in rural Alaska, it is normally restricted to small projects. However recent attempts to increase its applicability to larger projects suggest that guidelines and procedures regarding its use are appropriate.

Native Village of Scammon Bay

100 Front Street PO Box 126 Scammon Bay, Alaska 99662-0126

Phone (907) 558-5425 Fax (907) 558-5134 E-mail: scammonbay@aitc.org

March 8, 2001

Senator Pete Kelly
119 N. Cushman Street Ste. 201
Fairbanks, AK 99701

Dear Pete,

We, the people of Scammon Bay, strongly and wholeheartedly oppose Senate Bill # 83. We need jobs for local residents during construction projects in our villages because we are in an economically depressed area in Alaska. The Governor of Alaska has declared our region, and economic disaster area for the last 3 years. We need to find jobs from any source for our people. The best sources are from those projects that are happening right in our communities.

Sincerely,



Andrew Kasayuli Sr.
President

Fax# (907) 452-4378
Phone# (907) 456-1383
P.O. Box 70752 Fairbanks, AK 99707



FAX

To: **Senator Pats Kelly**

From: **Jeff Alling**

Attention:

Total # of Pages: 1

Fax: (907) 465-5241

Date: 3-30-01

Phone:

CC:

Re: **Force Account Construction**

- Urgent
- For review
- Please Comment
- Please Reply
- Please Recycle

Dear Senator,

We strongly support Senate Bill 83 to limit the state's ability to engage in force account construction.

Sincerely,

Jeff Alling

This fax is intended for the sole use of the individual and entity to whom this fax is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. You are hereby notified that any dissemination, distribution or duplication of this fax by anyone other than the intended addressee or designated agent is strictly prohibited. If you receive this fax in error, please notify the firm immediately by calling the number on this fax cover sheet and send the original fax to us by mail to: P.O. Box, Fairbanks, AK 99707.

AURORA ELECTRIC DATATEL

April 2, 2001

The Honorable Senator Pete Kelly
Alaska State Senate

Re: Force Account Construction

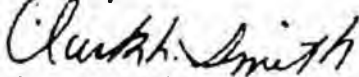
Dear Mr. Kelly:

Associated Builders & Contractors of Alaska along with Aurora Electric/DataTel has adopted a position in opposition to "Force Account Construction." As you know "Force Account Construction" is where the state hires its own forces to perform construction work, bypassing the competitive bid process. Where federal funding is involved, the state has justified this practice to federal agencies by citing the reduced project cost of wages realized by avoiding Davis-Bacon regulations, in effect, the state is paying sub-standard construction wages on government work, eliminating opportunities for private sector employers who would be required to conform to Davis-Bacon regulations on that same work.

In addition village residents hired for force account construction will be required to join Local 17 (State Employees Union). Once on the state payroll, there is strong likelihood they will remain in some capacity after the project is complete. If done "Force Account" local residents will be paid substantially less than the prevailing wage (Davis-Bacon), which in effect would be not only unjust but discriminatory. Administrative costs will be "buried" in some other state account. The state will likely purchase equipment excess to future needs and current equipment would be subject to abnormal wear. There will be no incentive for cost control and innovation as is routine in the competitive bid process. Last year the legislature spent significant resources of time and money to conduct a study on privatization. An increase in "Force Account Construction" flies in the face of the privatization goal.

Senate Bill 83 will limit the state's ability to engage in "Force Account Construction."
Thank-you for your attention in this matter, we are looking forward in hearing from you.

Sincerely,



Clark L Smith
Business Development
Aurora Electric/DataTel
1118 E 70th Avenue
Anchorage, Alaska 99518

dist. by Sen. Olson

CE2 Engineers, Inc.

MEMORANDUM

TO: Ron Clarke, Governor's Office **By Fax to:** 465-3552

FROM: Chuck Eggener, P.E., CE2 Engineers

SUBJECT: CE2 Engineers - Force Account Construction History and 10-year Association with the City of St. Mary's

DATE: July 31, 2000

FOR MARK - 5 pages

St. Mary's City Manager, Walton Smith, asked me to provide you with some information about our firm and its association with the City of St. Mary's.

CE2 Engineers, Inc. (CE2) is an Alaskan owned engineering and force account construction management company with 40 employees specializing in design engineering and construction management services exclusively for rural Alaska. The firm was formed in 1985. We have been the City Engineer for St. Mary's since 1990.

Since its founding CE2 has managed force account construction for more rural Alaskan projects than any other private sector firm, both in dollar volume and number of successful projects. Over the past 15 years, we have managed construction for \$130 million of projects in over 40 rural Alaskan communities, including \$7 million of construction in St. Mary's.

Our staff includes six design engineers, 14 construction superintendents, three procurement specialists, two expeditors, two construction surveyors, two mechanics, two construction accountants, drafters and other support personnel. See the attached Organizational Chart.

CE2 has teamed with rural Alaskan communities to construct all types of projects including roads, water and sewerage systems, community buildings, waste heat improvements, bulk fuel facilities, etc. The attached Table of Rural Projects highlights our experience and states the construction value of the projects completed in each community.

CE2 and the City of St. Mary's have worked together for ten years to build approximately \$7 million of force account projects in the community including an ISTEA roads project funded by DOT, a water supply dam, water treatment plant, water storage tank, several miles of water and sewer lines, water and sewage pumping stations, retail fuel facilities, waste heat improvements, building improvements and several other types of projects.

Typically CE2 designs these projects, then works with the City to procure materials, equipment and services, arrange logistics, etc. When materials arrive in St. Mary's CE2 personnel direct local construction crews hired by the City, ensure quality control, approve vendor invoices, etc. and generally assist the City manage and complete the project. After project completion CE2 provides record drawings and assists the City with project closeout.

P.O. Box 232946 • Anchorage, AK 99523-2946 • (907) 349-1010 • Fax: (907) 349-1015

Received Jul-31-00 02:48pm

From-9073491015

To-City of St. Mary's

Page 01

928-F 00/10 P-01/05 T-308

907-498-2718

Jul-31-00 03:51pm From-City of St. Mary's

Ron Clarke
Page 2 of 2
July 31, 2000

The firm currently has term contracts with the Department of Community and Economic Development (DCED) to provide force account construction management services for rural fuel tank farms. CE2 also has a term contract with the Alaska Native Tribal Health Consortium (ANTHC) to provide design engineering and force account construction management services for rural sanitation projects, which typically require some road construction. In addition, CE2 is in the fourth year of providing design engineering and force account construction management services for a \$25 million dollar, six year utility upgrade project in downtown Nome, which includes water, sewer, storm drain, road reconstruction and paving.

CE2 recently teamed with the City of Hooper Bay to construct a \$3.4 million sanitation roads project funded by Federal Highways under the same program that is funding the St. Mary's Airport Road Rehabilitation Project. The 3.5 mile Hooper Bay project is 98% complete. ADOT's Central Region has been quite satisfied with the work. Mike Tooley, P.E., is ADOT's project manager for Hooper Bay. Mike can be reached at 269-0450.

The bottom line is that the City of St. Mary's, with assistance from CE2 Engineers, can easily manage and execute the St. Mary's Airport Road Rehabilitation Project. St. Mary's has proven that it can successfully complete large force account construction projects, including road projects, and CE2 Engineers has a decade long construction management relationship with the City. CE2 also has experience with force account construction of a similar \$3.4 million roads project in Hooper Bay.

As an aside you might mention to the Governor that CE2 is the firm that, in 1986, test pumped a well, built a well house, installed one mile of above ground watermain and connected approximately 40 homes to temporary water service in Peters Creek - when a leaking fuel tank contaminated several private wells. The Governor was Mayor of Anchorage then. He promised the community the job would be completed in two weeks. We worked around the clock and did it in 10 days. The community held a picnic to honor the Mayor.

We've been around construction for a long time and know what can be done. The City is well qualified to complete the St. Mary's Airport Road Rehabilitation Project and the local people need the jobs.

If I can provide additional information, please call me at 349-1010.

P.O. Box 232946 • Anchorage, AK 99523-2946 • (907) 349-1010 • Fax: (907) 349-1015

Received Jul-31-00 02:40pm From-9073491015 To-City of St. Mary's Page 02

9:51pm From-City of St. Mary's 907-438-2719 T-308 P.02/05 F-875

TABLE OF RURAL PROJECTS COMPLETED BY CE2

* INDICATES COMMUNITY WHERE WORK WAS DONE IN THE LAST FIVE YEARS.

(IP) INDICATES WORK "IN PROGRESS"

COMMUNITY

COMMUNITY	Boardwalk/Bridge	Booster Pumping Station or Wellhouse	Bulk Fuel/Retail Fuel	Dam Improvements	Force Main and/or Vacuum Sewer	Gravity Wastewater Collection	Infiltration Gallery	Intake Pump Station	Lagoon	Lift Station	Mech. Wastewater Treatment Works	Ocean/River Outfall	Planning and Feasibility Studies	Road Improvements	Septage or Honebucket Disposal Facility	Septic Tank/Drainfield	Waste Heat Recovery	Water Distribution	Water and/or Sewer Services	Water Storage Tank System	Water Transmission Line	Well	Total Construction Value (Millions)
* Akiachak															(IP)								5
Aniak																							1
* Brevig Mission																					(IP)		5
* Chefornak																							3
Chignik Bay																							2
Chignik Lagoon																							2
* Cold Bay																							6
* Donlin Creek																							1
* Gambell																							9
* Healy Lake																							1
* Hooper Bay																							5
Huslo																							2
Ivanof Bay																							1
* Kolzebue																							6
* Lwr Yukon SD																							4
McGrath																							1
* Mountain Village																							6
* Nelson Lagoon																							2
Nanana																							4
* Noatak																							8

Almost all of these projects were constructed by Force Account methods with CE2 providing complete construction management services.

TABLE OF RURAL PROJECTS COMPLETED BY CE2

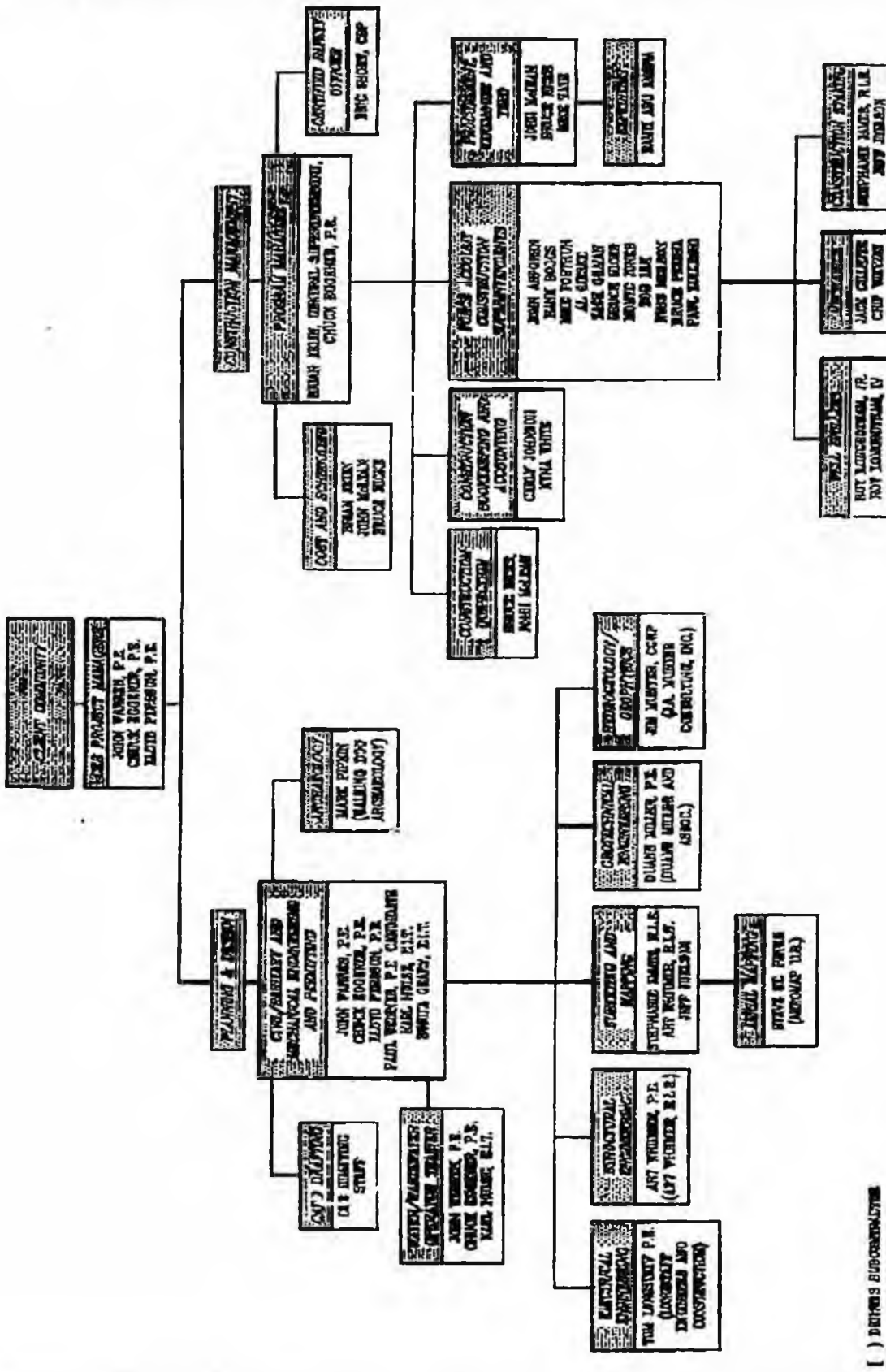
* INDICATES COMMUNITY WHERE WORK WAS DONE IN THE LAST FIVE YEARS.

(IP) INDICATES WORK "IN PROGRESS"

COMMUNITY

	Boorwalk/Bridge	Booster Pumping Station or Wellhouse	Bulk Fuel/Retail Fuel	Dam Improvements	Force Main and/or Vacuum Sewer	Gravity Wastewater Collection	Infiltration Gallery	Intake Pump Station	Lagoon	Lift Station	Mech. Wastewater Treatment Works	Ocean/River Outfall	Planning and Feasibility Studies	Road Improvements	Septage or Honeybucket Disposal Facility	Tanker Tank/Drainfield	Water Heat Recovery	Water Distribution	Water and/or Sewer Tank System	Water Storage Tank	Water Transmission Line	Well	Total Construction Value (Millions)
* Nome																							2.8
* Nunam Iqua																							3.0
Peters Creek																							1.0
* Pitkas Point																							1.0
Platinum																							1.0
* Sand Point																							1.0
* Seldovia																							1.0
* Shishmaref																							1.0
* St. George																							3.0
* St. Mary's							(IP)																1.0
* Shaktoolik																							1.0
* Sleetmute																							1.0
Stebbins							(IP)																1.0
Talkeetna																							1.0
Teller																							1.0
Tuluksak																							1.0
* Wales										(IP)													1.0
* Whitler																							1.0

Almost all of these projects were constructed by Force Account methods with CE2 providing complete construction management services.



CE2 ORGANIZATIONAL CHART

(KEY EMPLOYEES ONLY)

() DESIGN SUBCONTRACTORS

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/12/01

FURTHER: Finance

Date of 5-Day Notice: 2-21-01
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/13/01

Transportation Committee considered SENATE BILL NO. 83

"An Act relating to construction of highways by the Department of Transportation and Public Facilities."

and recommends:

- be replaced with _____ CS _____ (_____)
- 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#

FN forthcoming

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	No REC	AMEND
<i>John H. Taylor</i>			<input checked="" type="checkbox"/>	
<i>Gene Wilber</i>	<input checked="" type="checkbox"/>			
<i>Jim Ward</i>	<input checked="" type="checkbox"/>			
<i>A. J. S. R.</i>		<input checked="" type="checkbox"/>		
<i>Lo</i>				
CHAIR: <i>John H. Taylor</i>	<input checked="" type="checkbox"/>			

SB

84

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
FEB 26 2001
SENATE FINANCE COMMITTEE

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
-----------------------------	------------	------------	------------	------------	------------	------------

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. 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
-----------------------------	------------	------------	------------	------------	------------	------------

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 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

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
-----------------------------	------------	------------	------------	------------	------------	------------

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(u) 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

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Mail Stop 3101

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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



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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

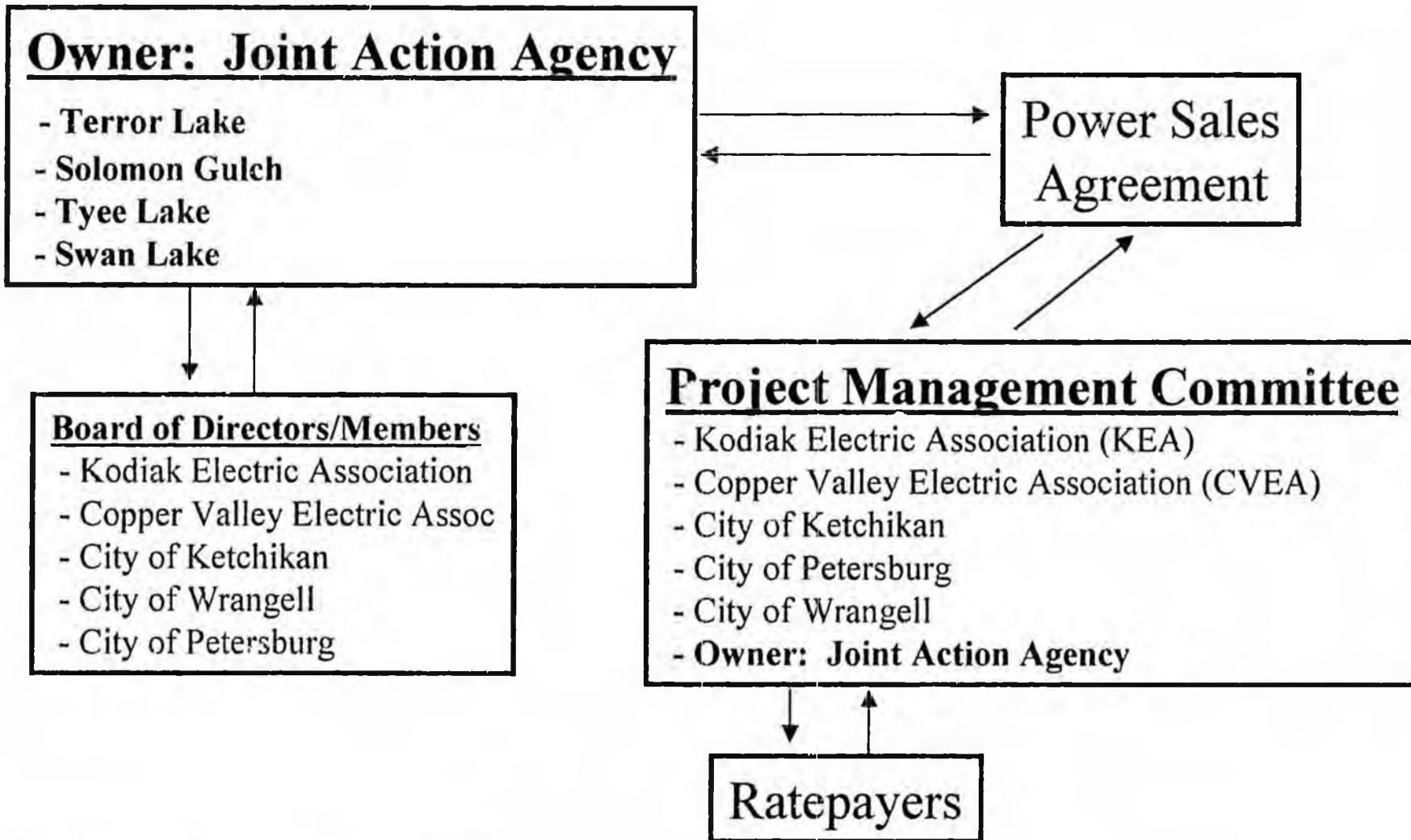
State law currently provides that the JAA will have a "separate and distinct legal existence from the public utilities" that form the JAA. However, neither AS 42.45.300 or AS 42.45.310 includes language that specifically insulates the public utilities that form the JAA from liability for claims against 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

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222 S.W. Columbia
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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

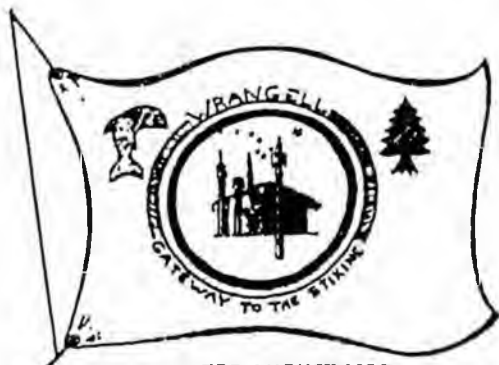
Because the JAA is granted the powers of a "public utility" under AS 42.05, it is not entirely clear whether the JAA is fully or only partially exempt from regulation by the RCA under AS 42.05. Under the Alaska Public Utilities Regulatory Act, AS 42.05, the RCA is granted broad powers to regulate public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

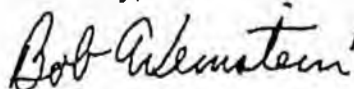
Page Three

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. ...				
John J. ...	✓			
John J. ...	✓			
John J. ...			✓	
John J. ...				
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 Peterborough, 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

SB

86

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 25, 2001

FURTHER REFERRALS:

Date of Committee Action: 5/2/01

The FINANCE Committee considered:

CSSB 86(FIN)

CS FOR SENATE BILL NO. 86(FIN)

TEACHER EMPLOYMENT & SUBJECT EXPERTISE

"An Act relating to employment of teachers who have subject-matter expertise; and providing for an effective date."

Recommends it be replaced with _____ CS _____ () [] Same Title [] New Title
For Senate Bills with new title: [] Technical Title [] New Title: HCR _____

- [] attach amendments
[] add new referral to _____ Committee
[] Letter of Intent _____ Committee

List of Abbrev. For Depts.: ADM CED COR CRT EED DEC DFG GOV IISS LAA LAW LWF MVA DNR DPS REV DOT UA

Table with 5 columns: FN#, List by Dept(s), Fiscal, Indet., Zero. Title: NEW FISCAL NOTES. Subtitle: *For Chief Clerk's Office Use Only.

Table with 5 columns: List by Dept(s), FN #, Fiscal, Indet., Zero. Title: PREVIOUS FISCAL NOTES. Includes handwritten entry 'EED' in the first row.

Table for signing with recommendations. Columns: Printed Last Name, DP, DNP, NR, AM. Includes handwritten signatures and names like 'HARRIS', 'DUNN', 'CRIST', 'MOSES', 'Langston', 'Hudson', 'FOSTER', and 'William'.

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1
 Bill Version: SB 86
 (S) Publish Date: 4/11/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
 Title: An Act relating to employment of teachers who BRU: Teaching & Learning Support
have subject-matter expertise Component: Teacher Certification
 Sponsor: Senator Kelly
 Requester: Senate HESS Component Number: 1240

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						
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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)

This bill adds a new section, 14.20.015, that allows for exceptions from some teacher certification requirements for persons hired as subject matter expert teachers. Someone hired as a subject-matter teacher must still meet specific criteria: must have at least a baccalaureate degree, must have majored in the subject matter that person will be teaching, must have at least five years of work experience in that subject matter, must pay the fees required for criminal background check and certification, and may be required by a district to complete a competency examination.

This is a zero fiscal note for the department.

Prepared by: Barbara Thompson, Deputy Director Phone 465-8727
 Division: Teaching & Learning Support Date/Time 3/15/01 12:00 AM
 Approved by: Bruce Johnson, Deputy Commissioner of Education Date 3/16/01
 Agency: Department of Education & Early Development

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Senator Pete Kelly
District P

CS for Senate Bill 86 (FIN)

Version 22-LS0539\B

“An Act relating to employment of teachers who have subject-matter expertise; and providing for an effective date.”

Alaska is facing a shortage of competent teachers that can provide a quality education for our youth. Senate Bill 86 expands the application pool by including those with subject matter experience and expertise to obtain a teaching certificate.

Under this legislation, local school districts have the authority to hire persons holding at least a baccalaureate degree from an accredited institution. Applicants must major or minor in the area they wish to teach and have at least five years work experience in their subject matter expertise.

SB 86 implements a limited teaching certificate for those subject matter teachers. Subject matter teachers are authorized to teach in a classroom pending they enroll in a post-baccalaureate teaching program. Once the program is completed, subject matter educators are qualified for a regular teaching certificate.

The limited subject matter certificate requires the local school to provide an experienced teacher to mentor the subject matter educator. This will assist the new educator in becoming familiar with the process during the first year of employment. This legislation also requires subject matter educators to pass a competency examination on their area of expertise before they are employed.

SB 86 implements safeguards that require subject matter teachers to submit fingerprints and pay fees for a criminal history background check so that the department can deem applicants suitable for employment.

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Sectional Analysis

“An Act relating to employment of teachers who have subject-matter expertise; and providing for an effective date.”

*** Section 1.**

This section gives the purpose and legislative intent of the bill. It is the findings of (a) this act that (1) there is a shortage of qualified teachers in the state and (2) those subject-matter experts could offer a valuable resource to the classroom. Also, that (3) the state should encourage those individuals with subject-matter expertise become teachers.

It is the purpose of this legislation that (b)(1) the options available to local school districts to improve the quality of instruction offered to the students. Also, the legislation gives school districts the (2) flexibility in the way they provide instruction in subject areas that are considered a local priority or special need.

(c) The intent of the Act is to regulate subject matter educators by use of local school boards and regional educational attendance areas limiting the authority of the Board of Education and Early Development.

*** Sec. 2.** AS 14.20 is amended by adding a new section to read:

14.20.022 (a) This section outlines the requirements for a subject matter limited teaching certificate. The limited certificate is valid only for teaching in the area of expertise for the subject-matter educator.

To be eligible for the limited certificate (b) the person must hold at least a baccalaureate degree from an accredited institution or be approved by the Commissioner. Applicants must (A) have majored or minored in the subject the person will be teaching. The person must also (B) have at least five years work experience in the subject matter. (2) The person wishing to teach must submit fingerprints to the department to be used for a criminal history background check. The department will deem the person suitable for employment under AS 14.20.020 (f).

14.20.022(b)(3) requires subject-matter expertise teachers to be currently enrolled in an approved post-baccalaureate teacher education program at an accredited institution. Once completed during a two-year maximum period, subject-matter expertise teachers will qualify to receive a regular teaching certificate.

14.20.022(b)(4) Applicants must pay a fee to the department under AS 20.020 (c) that covers the criminal history background check, which does not exceed the fee required for the initial regular certificate.

14.20.022(c) requires local school districts to administer a competency examination for subject matter teachers. The examination must be taken prior to employment.

14.20.022(d) limits the subject-matter expertise certificate to one school year and may be renewed for one additional school year upon showing substantial progress towards completion of the teaching education program.

14.20.022(e) requires local school districts to provide a mentoring program for subject-matter expertise teachers. The school district must provide an experienced teacher to mentor the new educator. This will assist to ease the process for the new teacher.

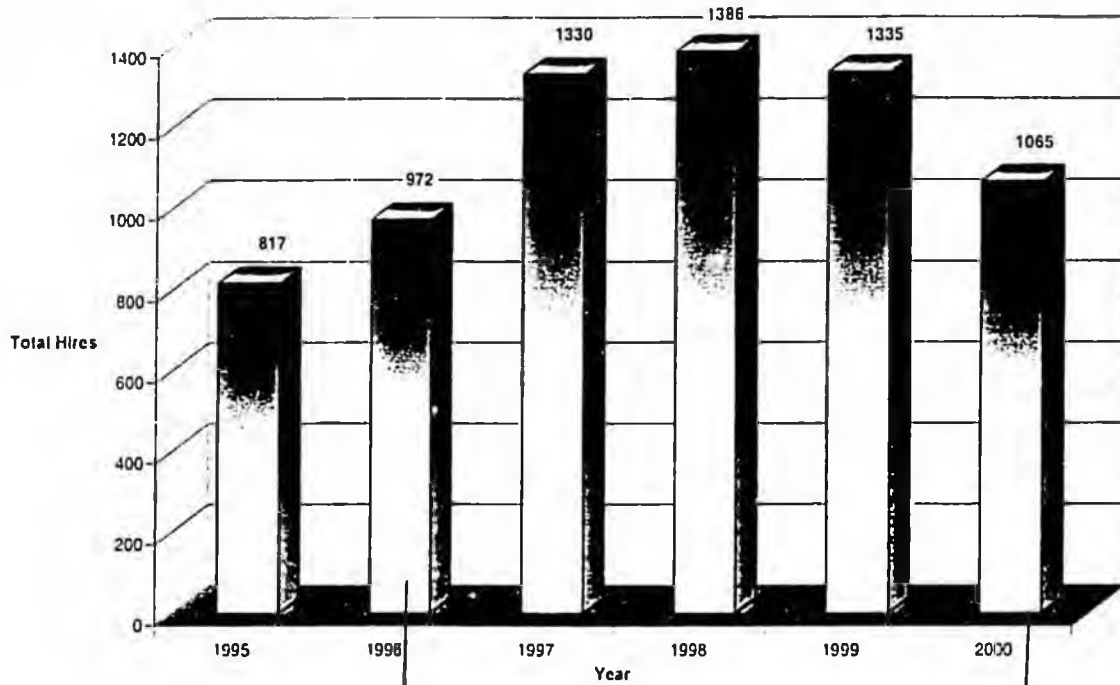
14.20.022(f) states that a person employed by a local school district or regional educational attendance area is considered to be a certified teacher or a certified employee for all purposes of AS 14.25 (teacher's retirement system). Employment under this section counts toward acquiring tenure under AS 14.20.150; however a subject-matter teacher cannot receive tenure until they receive a teaching certificate under AS 14.20.020.

14.20.022(g) allows the Department to adopt regulation necessary to implement this legislation. In this section, (h) refers to a "subject-matter expert teacher" is qualified to teach under (b) of this section.

***Sec. 3**

This establishes an effective date on the bill. This legislation would become effective July 1, 2001.

Total Hires - Six Year Overview



Just a few years ago it seemed everyone wanted to teach in Alaska, now that has changed as the Lower 48 has increased reciprocity and lessened the red tap on certification requirements. In addition adding higher salaries and signing bonuses has drawn many teachers to the Lower 48.

The American Federation of Teachers at <http://www.aft.org/> has some excellent data on salaries and cost of living.

Don't let this number fool you. 88.7 vacancies went unfilled at the start of the school year. Of those 88.7 vacancies 60.2 of them were in Special Education areas.