

SPONSOR STATEMENT HB 119

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

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

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

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

More specifically HB 119 addresses the following four issues.

1. Federal Tax Status of Joint Action Agency

Although the Joint Action Agency was formed by specific authorizing legislation, because its members are both municipal and cooperative utilities its characterization for federal tax purposes is uncertain. Obtaining favorable federal tax status as a “government entity” is essential for the Joint Action Agency to operate on a tax-exempt basis and have the ability to issue tax-exempt bonds and to provide maximum flexibility to allow local ownership of the individual projects in the future. A key factor relied on by the Internal Revenue Service in determining whether an entity has governmental status is the nature and scope of the entity’s condemnation or eminent domain powers. Currently the Joint Action Agency legislation is silent as to the Joint Action Agency’s condemnation powers. To achieve the necessary federal tax treatment for the Joint Action Agency, Section 6 of HB119 amends AS 42.45.310 to specifically grant to the Joint Action Agency the eminent domain powers granted to the State and municipalities in order to carry out the Joint Action Agency’s authorized purposes. This expanded condemnation power may be exercised, however, only within the boundaries of the power projects the Joint Action Agency purchases from the State.

2. State Tax Status of Joint Action Agency

The Joint Action Agency’s tax status under Alaska law is a central factor to determining the federal tax status of the Joint Action Agency. State law currently provides that the Joint action Agency is “subject to state and local taxes to the extent any of the public utilities forming the agency is subject to that particular tax.” The impact of this provision and the tax status of the

Joint Action Agency under Alaska law are not clear, as the JAA is comprised of both cooperative member utilities and municipal member utilities. Section 9 of HB119 amends AS 42.45.310 to exempt the Joint action Agency from all forms of state and local taxation, other than amounts that are payable under the electric cooperative tax as a result of retail power sales by the Joint Action Agency.

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

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

4. Exemption from Regulatory Commission of Alaska Regulation

Because the JAA is granted the powers of a “public utility” under AS 42.05, it is not entirely clear whether the JAA is fully or only partially exempt from regulation by the RCA under AS 42.05. To create consistency within AS 42.05 with respect to the regulation of the Joint Action Agency, Sections 1, 2, 3, and 4 of HB 119 make conforming amendments to existing statutory provisions and add a new subsection (o) to AS 42.05.711 to provide that the Joint Action Agency is exempt from all RCA regulation with respect to its ownership and operation of and the power sales from the existing Four Dam Pool projects. This general regulatory exemption is, however, limited in duration and stays in place only until such time as the indebtedness incurred by the Joint Action Agency to the State in connection with the acquisition of the projects is retired.