

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

February 9, 2011

3:35 p.m.

**MEMBERS PRESENT**

Senator Joe Paskvan, Co-Chair  
Senator Thomas Wagoner, Co-Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Bert Stedman  
Senator Lesil McGuire  
Senator Hollis French  
Senator Gary Stevens

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Senator Cathy Giessel

**COMMITTEE CALENDAR**

SENATE BILL NO. 42

"An Act relating to the procurement of supplies, services, professional services, and construction for the Alaska Energy Authority; establishing the Alaska Railbelt energy fund and relating to the fund; relating to and repealing the Railbelt energy fund; relating to the quorum of the board of the Alaska Energy Authority; relating to the powers of the Alaska Energy Authority regarding employees and the transfer of certain employees of the Alaska Industrial Development Export Authority to the Alaska Energy Authority; relating to acquiring or constructing certain projects by the Alaska Energy Authority; relating to the definition of 'feasibility study' in the Alaska Energy Authority Act; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 42

SHORT TITLE: POWER PROJECT; ALASKA ENERGY AUTHORITY

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/11 (S) READ THE FIRST TIME - REFERRALS  
01/19/11 (S) RES, FIN  
02/09/11 (S) RES AT 3:30 PM BUTROVICH 205

**WITNESS REGISTER**

SARAH FISHER-GOAD, Executive Director  
Alaska Energy Authority (AEA)  
Department of Commerce, Community and Economic Development  
(DCCED)  
Anchorage, AK  
**POSITION STATEMENT:** Commented on SB 42.

CHRIS RUTZ, Procurement Manager  
Alaska Energy Authority  
Department of Commerce, Community and Economic Development  
(DCCED)  
**POSITION STATEMENT:** Commented on SB 42.

BRIAN BJORKQUIST  
Senior Assistant Attorney General  
Department of Law  
Juneau, AK  
**POSITION STATEMENT:** Answered questions on SB 42.

**ACTION NARRATIVE**

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**CO-CHAIR JOE PASKAVAN** called the Senate Resources Standing Committee meeting to order at 3:35 p.m. Present at the call to order were Senators Wielechowski, Stevens, French, Stedman, Co-Chair Wagoner, and Co-Chair Paskvan.

**SB 42-POWER PROJECT; ALASKA ENERGY AUTHORITY**

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**CO-CHAIR WAGONER** moved to bring SB 42 before the committee. There were no objections, and SB 42, version A, was before the committee.

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**SARAH FISHER-GOAD**, Executive Director, Alaska Energy Authority (AEA), said SB 42 authorizes the AEA to construct and own new energy projects, hire staff, and adopt its own procurement code.

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MS. FISHER-GOAD said the cornerstone of SB 42 is for AEA to construct and own new energy projects. Alaska's energy policy target is to reach 50 percent of electricity generation through renewable energy resources by 2025. To achieve this goal they must pursue and invest now to develop capacity for a major hydroelectric project. In November 2010, AEA issued a preliminary decision document identifying a hydroelectric project on the Susitna River as a recommended project to pursue. AEA presented its findings and provided an overview to this committee in January. She said Bryan Carey, AEA's hydroelectric project manager, did that presentation. Without the authority to construct and own new projects in SB 42, AEA would not be able to go forward with the Susitna Hydroelectric project. With its passage, they will file a preliminary permit with the Federal Energy Regulatory Commission. She said most of her testimony would be with respect to outlining the history of AEA and a few of the other components of the legislation.

AEA was created by the State Legislature in 1976; it is a public corporation and a component unit of the state of Alaska. Their mission is to reduce the cost of energy in Alaska. The board of directors of the Alaska Industrial Development and Export Authority (AIDEA) is also the board of directors of AEA. There are seven members - five public and the commissioners of the Department of Commerce, Community and Economic Development (DCCED) and Department of Natural Resources (DNR).

Through the 1980s AEA worked to develop the state's energy resources as a key element in diversifying Alaska's economy. A number of large-scale projects were constructed: the Four Dam Pool Project was constructed in the 80s and sold in 2002 and the Larson Bay Project which was transferred to the City of Larson Bay in the fall of 2010. The Bradley Lake Hydroelectric Project and the Alaska Intertie are the two assets that AEA still currently owns and they provide Interior Alaska with cheaper energy.

MS. FISHER-GOAD related that in 1993 the board of directors of AIDEA became the board of directors of AEA. AEA has continued to exist as a separate legal entity and but it lost the ability to have employees and to construct or acquire new energy projects. AIDEA personnel provide the management and support for AEA programs.

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SENATOR MCGUIRE joined the committee.

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MS. FISHER-GOAD said the 1993 legislation required AEA to enter into contracts with public utilities and other entities to the maximum extent feasible to carry out AEA duties for the ongoing operation and maintenance of the AEA-owned operating assets. This continues to occur with the oversight responsibility retained by AEA. For example, Homer Electric provides through a contractual basis the services to manage the Bradley Lake Hydro project.

In 1999, the rural energy programs that were previously administered by the former Division of Energy, in the Department of Community and Regional Affairs, were transferred to AEA for administration. This was part of a larger reorganization that took parts and pieces of the department and moved them to other agencies. Many of them remained with DCCED, but some went to the Department of Labor and Workforce Development (DOLWD). The Division of Energy programs were incorporated into the Alaska Energy Authority. These programs were originally part of AEA prior to the 1993 reorganization. So, in 1993 AEA became a very stripped down agency with the operation and management of the assets it owned. The Division of Energy program, PCE, the alternative energy programs and the rural energy technical assistance programs were in this division.

The next change that happened in this "evolution" between AIDEA and AEA was in 1998 when the board of directors appointed a separate and independent AEA executive director; currently she is that person and while she is an employee of AIDEA, she doesn't report to the AIDEA executive director. Prior to this point, AIDEA and AEA had one-and-the same executive director. Legislation in 2008 added some energy development programs to AEA - the Renewable Energy Fund and Grant Recommendation Program - and again in 2010, AEA established the Emerging Energy Technology Fund.

As the Governor's Energy Report noted in January, Ms. Fisher-Goad said, AEA has become a key agency for the planning of energy infrastructure and financing. Currently they do this by issuing grants through these various programs, such as the Renewable Energy Fund. They also manage construction of many rural energy infrastructure projects and continue to provide technical assistance and training to local power plant and bulk fuel operators. AEA, in partnership with RCA, manage the Power Equalization Program.

The appointment of an AEA director separate from the AIDEA executive director would provide AEA distinct leadership and the focus to manage and pursue energy projects and programs that are important to Alaska. Her predecessor, Steve Haagenson, was instrumental in developing and publishing the Energy Pathway that was released last year. The appointment of two executive directors has also allowed AIDEA to develop a strategic plan and focus on economic development opportunities that are also important to Alaska. Since 2008, AEA and AIDEA have two very distinct missions being pursued independently with the leadership of two people rather than one person trying to move two very important missions along by himself.

Providing the ability for AEA to hire employees is the natural next step in providing further differentiation between AIDEA and AEA. This would not be a complete separation of the two agencies; as sister agencies there will still be shared services and operations, and both agencies will continue to be housed in the same building. She explained that the two agencies rely on some very important systems that if they were separated would be very difficult and expensive to duplicate - the database for AEA and AIDEA loan programs, an enterprise system going beyond providing the accounting functions for both agencies, and the database for AEA's PCE program.

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SB 42 also allows AEA to create subsidiary corporations for the purposes of acquiring, constructing, owning, maintaining and operating power projects. This option could be used to limit potential liability of AEA or to strengthen the financial viability of a project. At this point, it's an option that is very important to have as they pursue a large project like Susitna. SB 42 also allows AEA to adopt its own procurement regulations distinct from the State Procurement Code. AEA would be required to adopt regulations governing procurement that must reflect competitive bidding principals and provide vendors reasonable and equitable opportunities to participate in the procurement process, and must include procurement methods to meet emergency and extraordinary circumstances. This amendment to the procurement code would give AEA similar authority over procurement that is currently exercised by the Alaska Housing Finance Corporation (AHFC), the Knik Arm Bridge and Toll Authority (KABATA), and the Alaska Retirement Board.

Another provision in SB 42 creates a new Railbelt Energy Fund, called the Alaska Railroad Energy Fund, and repeals the existing Railroad Energy Fund. AEA would be authorized to use the money

from this fund to conduct feasibility studies, license, permit or acquire, construct or to make grants for power projects and transmission lines and interties that serve the Railbelt region.

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MS. FISHER-GOAD said she would go through the sectional analysis and noted seven fiscal notes, which are summarized in a spreadsheet document.

She said Section 1 amends AS 36.30.015(f) (the procurement code) to allow AEA to adopt its own regulations to govern AEA's procurement of supplies, services and construction. AEA regulations will be required to reflect competitive bidding principles; AEA would be given authority similar to other state corporations such as AHFC and KABATA.

SENATOR WIELECHOWSKI said he had received an email from some contractors who are very concerned about this provision. He asked why the current state procurement code wouldn't work for AEA.

MS. FISHER-GOAD answered that AEA does a lot of work on behalf of grantees that is not subject to the state procurement codes, and some that are. So right now AEA has several different methods of procuring goods and services and this would provide them with one comprehensive procurement code. She said Chris Rutz, AEA Procurement Manager, was online to and could elaborate more what difficulties he sees in trying to manage several different types of procurement.

SENATOR WIELECHOWSKI said that procurement is an issue for some of the contractors out there. He asked for some more compelling evidence as to why they should abandon the current state procurement codes.

MS. FISHER-GOAD explained that it is not about abandoning the current procurement codes.

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CHRIS RUTZ, Procurement Manager, Alaska Energy Authority said they are trying to address situations that aren't currently under the procurement code, which are typically when they act as an agent of communities or other entities and are doing the purchasing for them. He explained, for instance, a rural community could be granted funds for a project and the Denali Commission would ask AEA to do the construction on its behalf. They would follow procedures similar to the code, but

communities are not bound by AS 36.30. If a dispute comes up, for instance over bidder preference, the community should resolve it, not the state. Their procedures are based on AS 36.30 as per a legislative audit that was conducted a few years ago, but the issue of authority is not clear. So, if they had one set of regulations to follow it would help clear up some of the contractors' issues.

SENATOR WIELECHOWSKI said that this is a \$5 billion-plus project and they need to tread very carefully on this procurement issue because it could have a huge impact on local Alaskan businesses.

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MS. FISHER-GOAD continued that section 2 amends AS 37.05.520 to explicitly allow the legislature to appropriate money from the Railbelt Energy Fund to the newly created Alaska Railbelt Energy Fund (AS 42.45.035). She said there was no easy way to just transfer the Railbelt Energy Fund to become an AEA fund.

Section 3 amends AS 39.25.110 to allow AEA to hire an executive director and other staff.

Section 4 adds a new section creating this new Alaska Railbelt Energy Fund as a separate fund in AEA. The Department of Revenue would be the fiduciary as they are with other funds of AEA. This section also will allow AEA to use the money in the fund for power projects, transmission lines and interties serving the Railbelt region.

Section 5 amends AS 44.83.040(a) that defines a quorum is four, not three, AEA directors. The board of directors was the AIDEA board of directors and it was expanded from five to seven members last year in legislation. What was missed is that AEA had a specific statute that defined a "quorum." This just cleans that up by defining a "quorum" as four of those seven members.

Section 6 adds a new subsection, AS 44.83.040(e), allowing the authority to appoint persons as staff in the exempt service under AS 39.25.

SENATOR WIELECHOWSKI asked if it is essential to have exempt employees.

MS. FISHER-GOAD answered that AIDEA employees are exempt and, as they become AEA employees, they would have the same exempt standing.

SENATOR WIELECHOWSKI asked if there are currently AEA employees that are non-exempt.

MS. FISHER-GOAD answered no.

Section 7 amends AS 44.83.080 to acquire and construct the new power projects and to perform feasibility studies, engineering and design with respect to these power projects.

Section 8 adds a new section AS 44.83.085

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SENATOR FRENCH turned to section 7 on page 4, lines 4-7, and asked what "by another person" means in talking about "acquisition or construction of a project to be owned or leased as lessor or lessee by the authority." She thought it was technical.

MS. FISHER-GOAD deferred to Brian Bjiorkquist.

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BRIAN BJORKQUIST, Senior Assistant Attorney General, Department of Law, said the language "or by another person" was taken from pre-1993 statutory language when these powers were taken away from the AEA. He understands this section would provide that AEA, in issuing bonds, could be financing a project that could be owned by another entity.

CO-CHAIR PASKVAN asked if it is necessary to allow a subsidiary entity to fill that role.

MR. BJORKQUIST answered that is not why the language is there. Other provisions make very clear that the definition of "authority" also picks up a subsidiary.

SENATOR MCGUIRE asked if there was any consideration give to legislative approval for the bonds.

MS. FISHER-GOAD replied there was not. When the legislation was developed the issue was providing the level of authority that AEA did have prior to 1993.

SENATOR MCGUIRE returned to page 3, subsection 4, that talks about the Railbelt monies which would have been in part transferred from the legislature. She wanted to hear on the record whether there was any consideration at all that

legislative approval should be considered at that point with respect to the Railbelt energy monies.

MS. FISHER-GOAD answered that they did go back and forth on whether certain projects should have legislative approval. They wanted consistency between funds and the Southeast Energy Fund that was repealed and reenacted in SB 220 [26th legislature] does not require additional legislative authority.

SENATOR MCGUIRE wanted the committee to think about the fact that this would be a major departure in the practice of the legislature's right to appropriate funds. She asked what projects AEA has managed, under what authority, and what the outcomes were.

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MS. FISHER-GOAD answered that the Denali Commission has granted a considerable amount of money over 10 years to two community projects through AEA. These are rural energy infrastructure projects, whether they are bulk fuel projects or RPSU projects. Since AEA doesn't have the authority to own new projects, the only experience it has in managing and owning to this day is the Bradley Lake Hydroelectric Project. Susitna is a much bigger project, but AEA has hired MWH, an engineering firm, to work on it with the \$10-million appropriation. AEA's project manager has been working with them on the process they would follow once they file for a preliminary permit with FERC. They can follow the Bradley Lake model with respect to partnering the utilities with state ownership and sharing a percentage of the project debt. This is the successful model that people have talked about, and it's appropriate to use it moving forward.

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SENATOR FRENCH returned to page 4, lines 21 and 22, that adds a couple of powers to the types of contracts AEA can enter into, and said he thought there was one too many "constructions."

MS. FISHER-GOAD answered she believed it was a duplication.

She continued with Section 8 that adds a new section to AS 44.83.085 allowing AEA to create subsidiary corporations for the purpose of acquiring, constructing, owning, maintaining, operating, or financing power projects.

SENATOR FRENCH asked why it helps AEA to distance itself from the financial obligations of a project, and more specifically, does the Alaska Railroad have this authority or KABATA?

MS. FISHER-GOAD answered that AHFC legislation last year for gas development created a subsidiary corporation, and AEA and while it's not necessary for the initial steps, it is a good option to have in the future.

SENATOR WIELECHOWSKI returned to page 6, lines 3-5, and asked how it is possible to transfer or spin off the state assets and say that those debts are not the obligation of the Authority.

MS. FISHER-GOAD answered that subsidiary corporations are often times created to insulate the parent corporation from those liabilities.

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MR. BJORKQUIST elaborated that subsidiary corporations are formed to shield the parent corporation; and this line expresses that basic intent.

SENATOR FRENCH said maybe they should go ahead and be explicit about it if they are going to create the Susitna Hydro Now Corporation.

MS. FISHER-GOAD replied that they could explore that option.

MS. FISHER-GOAD continued with section 9 that adds new subsection AS 44.83.090(c) allowing the subsidiaries to exercise powers granted to it by the AEA.

SENATOR WIELECHOWSKI asked if he is reading section 9 correctly in that subsidiaries are exempt from regulation by the RCA.

MS. FISHER-GOAD answered that she believes that is correct.

SENATOR WIELECHOWSKI asked how it is in the best interest of the public and ratepayers to exclude AEA from regulatory oversight.

MS. FISHER-GOAD answered that it does not exclude companies that purchase power. To her understanding that is how the Bradley Lake Project is run. Essentially, the new project would mirror that exemption.

CO-CHAIR PASKVAN clarified that that is the system that is operating now.

MS. FISHER-GOAD answered yes, it is similar.

CO-CHAIR PASKVAN asked if that is accurate.

MR. BJORKQUIST replied yes.

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SENATOR WIELECHOWSKI said he has always had great concern about exempting things like this (a \$5-billion-plus project) from RCA regulations. Once you get to the utility level you lose that oversight over the construction and he didn't know if that protects the ratepayers. It's something that needs more in-depth discussion.

MR. BJORKQUIST said the AEA has an independent obligation to review projects it manages for efficiency and that type of thing, and AS 44.83.396(e) requires the RCA do that for other projects. So, part of the reason AEA-owned projects are exempt is so there is no duplicative state oversight over some of those functions.

SENATOR WIELECHOWSKI referred to the fiscal note and said sometimes he does not see efficiency in government agencies. He'd like to trust, but have RCA verify by having oversight.

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CO-CHAIR WAGONER asked what oversight FERC has on this project.

MR. BJORKQUIST answered that this project would be FERC-licensed, and therefore FERC would have certain oversight over the it just like any other of their projects.

SENATOR WIELECHOWSKI said that was a good point, and asked if FERC has oversight over the rates that are set.

MR. BJORKQUIST replied that FERC has some ability to effect what the rates are, but it doesn't regulate the rates that are charged by a hydroelectric project.

CO-CHAIR WAGONER said the power company sells power, but the utilities will have the rates that are reviewed by the RCA.

MR. BJORKQUIST replied yes; the RCA would have regulation over the rates that the utilities charge to their customers.

CO-CHAIR PASKVAN said asked Mr. Bjorkquist to more fully develop whether there is consumer advocacy oversight of the wholesale rate charged to the utilities.

MR. BJORKQUIST answered that he is not prepared to give a more detailed response. There are certain components that FERC has in regards to oversight.

CO-CHAIR PASKVAN said the committee would be very interested in understanding if there were to be massive overruns, if there was an ability to control that through oversight as opposed to just passing it on to the consumer.

SENATOR WIELECHOWSKI said he would be interested in hearing what FERC and the RCA would actually regulate and in seeing a side-by-side breakdown of what they are getting themselves into.

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MS. FISHER-GOAD continued with section 11 that adds AS 44.83.396(f) to include subsidiary-owned projects in the operation of a power project.

Section 12 amends AS 44.83.990(3) by defining "feasibility study" to include the new power projects.

Section 13 repeals the Railbelt Energy Fund - AS 37.05.520, Section 14 has revisor's instructions and section 15 is a transition section of certain state employees from AIDEA to AEA by providing a deadline of 12/31/2011.

Section 16 is a conditional effective date for the repeal of the Railbelt Energy Fund referring back to section 13, which would occur when the balance of the fund is appropriated and transferred to the new Alaska Railbelt Energy Fund or appropriated and expended for other purposes.

There is an immediate effective date for all sections except what is provided in section 16.

SENATOR WIELECHOWSKI asked why they would want to abolish the Railbelt Energy Fund.

MS. FISHER-GOAD answered that it is not their intent to abolish the Railbelt Energy Fund, and if there was a really easy way to transfer the Railbelt Energy Fund to AEA's statutes, they would have done that. Repealing one fund and creating a new one in AEA statutes was a way to accomplish that. The new fund is called the *Alaska* Railbelt Energy Fund to distinguish easily between the two.

SENATOR FRENCH recalled that the fund is at \$67 million.

MS. FISHER-GOAD answered she thought it was at \$65.7 million. The fund has more cash than that, but that is what is currently not obligated.

SENATOR WIELECHOWSKI said that expenditures under the Railbelt Energy Fund have to be appropriated by the legislature now, and making this change would give those powers to the AEA.

MS. FISHER-GOAD answered the recreation of the Railbelt Energy Fund into AEA as the Alaskan Railbelt Energy Fund mirrored what happened with the newly created Southeast Alaska Energy Fund. Money going into that would not need further appropriation. AEA has other funds with other levels of oversight, and that is why they are going through the process of discussing these issues. The Renewable Energy Fund is probably the example of a fund and program they have the least control over because they go through the recommendation process. Then the legislature appropriates money to the fund. Then AEA manages the projects - rather than money into the fund and AEA managing the projects. So, there is a variety of ways that this can be accomplished and at different levels of oversight.

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MS. FISHER-GOAD said that concluded the sectional analysis and offered to go through the fiscal note summary with the committee. Most of the fiscal notes deal with costs associated with the transition of staff from AIDEA to AEA. There is the shared-services concept between the agencies. Now, since it's all AIDEA staff, interagency receipts pay for them. AEA pays for work that AIDEA is doing through a reimbursable service agreement. AIDEA owns the building that they are all located in. Currently all maintenance is paid by AIDEA. They are not planning on "charging rent" to AEA. However, the facility costs would be a shared cost based upon the number of employees that are AEA versus AIDEA. AEA would pick up approximately \$142,000 of the facilities expense that AIDEA currently bears. The goal of the fiscal notes on AEA's side was to keep AEA's operating budget status quo. So, the money saved from facilities would be able to be used in operations.

She said they asked for one new AIDEA position in Finance that is needed to accommodate some increased work load, and they think continuing to have shared services is cost effective. Finance bears the brunt of the additional costs that would be created by this separation, but both agencies have increased

workloads as well as increased workloads from the reorganization.

She said there are two fiscal notes for the same component; one fiscal note is the transfer in of the AIDEA positions and the addition of one position for an AEA loan officer, which they don't want to be a shared position. The second fiscal note is what would be needed for a project office to pursue a large project. They used some standard numbers for leasing costs and contractor space. She said she would be happy to sit down and discuss these costs in more detail, and assured the committee that they had taken a very fiscally responsible view point in developing this fiscal note.

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CO-CHAIR PASKVAN held SB 42 in committee for further discussion. There being no further business to come before the committee, he adjourned the meeting at 4:43 p.m.