

**ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE**

April 7, 2017
10:12 a.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Shelley Hughes, Vice Chair
Senator Gary Stevens

MEMBERS ABSENT

Senator Kevin Meyer
Senator Berta Gardner

COMMITTEE CALENDAR

SENATE BILL NO. 80

"An Act relating to telecommunications services for certain disabled subscribers; and providing for an effective date."

- MOVED CSSB 80(L&C) OUT OF COMMITTEE

SENATE BILL NO. 95

"An Act relating to the mariculture revolving loan fund and loans and grants from the fund; and providing for an effective date."

- MOVED SB 95 OUT OF COMMITTEE

SENATE BILL NO. 62

"An Act repealing the certificate of need program for health care facilities; making conforming amendments; and providing for an effective date."

- HEARD & HELD

CONFIRMATION HEARINGS

- ADVANCED NAMES OF GOVERNOR APPOINTEES TO BOARDS AND COMMISSIONS

PREVIOUS COMMITTEE ACTION

BILL: SB 80

SHORT TITLE: TELECOMMUNICATIONS: DISABLED SUBSCRIBERS

SPONSOR(s): SENATOR(s) COSTELLO

03/08/17 (S) READ THE FIRST TIME - REFERRALS
03/08/17 (S) L&C, FIN
03/23/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/23/17 (S) -- MEETING CANCELED --
04/04/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/04/17 (S) Heard & Held
04/04/17 (S) MINUTE(L&C)
04/07/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 95

SHORT TITLE: MARICULTURE REVOLVING LOAN FUND

SPONSOR(s): SENATOR(s) STEVENS

03/16/17 (S) READ THE FIRST TIME - REFERRALS
03/16/17 (S) L&C, FIN
04/05/17 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)
04/05/17 (S) Heard & Held
04/05/17 (S) MINUTE(L&C)
04/07/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 62

SHORT TITLE: REPEAL CERTIFICATE OF NEED PROGRAM

SPONSOR(s): SENATOR(s) WILSON

02/17/17 (S) READ THE FIRST TIME - REFERRALS
02/17/17 (S) L&C, FIN
04/06/17 (S) L&C AT 9:00 AM BELTZ 105 (TSBldg)
04/06/17 (S) Heard & Held
04/06/17 (S) MINUTE(L&C)
04/06/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/06/17 (S) -- MEETING CANCELED --
04/07/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SORCHA HAZELTON, Staff
Senator Mia Costello
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Described the changes in the CS for SB 80, version J.

DAVID MORGAN, Economic Director
Alaskan Institute for Economic Growth
Anchorage, Alaska

POSITION STATEMENT: Detailed the economic impacts of Certificate of Need during his testimony on SB 62.

BECKY HULTBERG, President/CEO
Alaska State Hospital and Nursing Home Association
Anchorage, Alaska

POSITION STATEMENT: During the hearing on SB 62, testified that ASHANHA does not support the full repeal of Certificate of Need laws but believes that a full review is warranted.

ACTION NARRATIVE

[10:12:53 AM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 10:12 a.m. Present at the call to order were Senators Hughes, Stevens, and Chair Costello.

SB 80-TELECOMMUNICATIONS: DISABLED SUBSCRIBERS

[10:13:39 AM](#)

CHAIR COSTELLO announced the consideration of SB 80. She stated that this is the second hearing and the intent is to adopt a committee substitute (CS), take members' questions, and look to the will of the committee.

[10:14:21 AM](#)

SENATOR HUGHES moved to adopt the work draft CS for SB 80, labeled 30-LS0631\J, as the working document.

CHAIR COSTELLO objected for an explanation of the changes.

[10:14:33 AM](#)

SORCHA HAZELTON, Staff, Senator Mia Costello, explained that version J for SB 80 incorporates changes discussed in public testimony during the last bill hearing. It incorporates person first language and the suggestion to change the phrase "organizations representing the deaf, hard of hearing, and speech disabled" to "organizations whose principle purpose is to provide these services".

These changes are found on page 1, line 8; page 1, line 12; page 2, line 5; and page 2, lines 8-9.

SENATOR HUGHES asked if the CS clarifies that new companies that have not been charging customers this surcharge would be brought under this umbrella, and, if so, are those companies aware of that.

MS. HAZELTON said yes, and pointed to page 1, line 6, that says the commission shall adopt regulations requiring telecommunication utilities to provide services. She also clarified that the subscriber pays the surcharge, not the utility. She said the purpose of changing the terminology from "telephone" to "telecommunications" is to allow the RCA to change their regulations more frequently than state statute.

SENATOR HUGHES asked if new companies will fit under the bill or if it will apply to existing companies, but change their rates.

MS. HAZELTON said there shouldn't be any new companies.

[10:17:20 AM](#)

CHAIR COSTELLO removed her objection and announced that the CS for SB 80, version J, is adopted.

[10:17:29 AM](#)

SENATOR HUGHES moved to report the CS for SB 80 from committee with individual recommendations and attached fiscal note(s).

CHAIR COSTELLO announced that CSSB 80(L&C) is reported from the Senate Labor and Commerce Standing Committee.

[10:17:40 AM](#)

At ease

SB 95-MARICULTURE REVOLVING LOAN FUND

[10:18:58 AM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 95. She stated that this is the second hearing and intent is to take questions from committee members and look to the will of the committee.

[10:19:26 AM](#)

SENATOR GARY STEVENS, sponsor of SB 95, remarked that the more he learns about the bill the more exciting it becomes, because of the tremendous potential to expand mariculture in Alaska's

clean ocean water. The committee heard about the possibility of developing shellfish and seaweed farms and algae as a fuel source. He highlighted that Julie Decker [Alaska Fisheries Development Foundation] envisions this being a billion-dollar industry in 30 years, which will greatly enhance the state economy.

CHAIR COSTELLO said she agrees and signed as a cosponsor. "I think it's a great economic diversification and economic development bill."

SENATOR HUGHES said she, too, appreciates the bill and is selfishly looking forward to the day when it's possible to get local shellfish in grocery stores.

[10:20:40 AM](#)

SENATOR HUGHES moved to report SB 95 from committee with individual recommendations and attached fiscal note(s).

CHAIR COSTELLO announced that without objection, SB 95 is reported from the Senate Labor and Commerce Standing Committee.

[10:20:53 AM](#)

At ease

CONFIRMATION HEARINGS

[10:21:49 AM](#)

CHAIR COSTELLO reconvened the meeting and announced the next order of business is to conclude the committee's review of governor appointees to boards and commissions. Finding no one who wanted to testify on any of the appointments the committee had reviewed, she closed public testimony. She asked members if they had any questions before the names were reported from committee. She clarified that reporting the names from committee was merely a step in the process.

SENATOR HUGHES thanked all the appointees for being willing to serve.

CHAIR COSTELLO asked Senator Hughes to read the forwarding language.

[10:23:28 AM](#)

SENATOR HUGHES read the following:

In accordance with AS 39.05.080, the Labor and Commerce Committee has reviewed the attached nominees and recommends the appointments be forwarded to a joint session for consideration. This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals.

[The names were forwarded from the Senate Labor and Commerce Committee.]

[10:23:51 AM](#)

At ease

SB 62-REPEAL CERTIFICATE OF NEED PROGRAM

[10:24:48 AM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 62. She stated that this is the second hearing and the intention is to conclude invited testimony, take members' questions, and hold the bill in committee for further review.

[10:25:31 AM](#)

DAVID MORGAN, Economic Director, Alaskan Institute for Economic Growth, stated that he lives in Anchorage, was chair of the municipal health care commission for six years, and served on the state health care commission for 4.5 years representing primary care clinics. He is completing his doctoral thesis on cost drivers, was a contributor to the Commonwealth North study on the budget for 2017, and a principal on the health care assessment.

MR. MORGAN said that his testimony today would detail the economic impacts of Certificate of Need. He noted that he provided a document from the Federal Trade Commission that includes studies looking at cost drivers and costs. He noted that markets in several states equate Certificate of Need with added costs for new construction and new equipment. It also adds time whenever entities that hold CONs try to stop competition from coming into their area.

He said the history that Senator Wilson provided yesterday did not include the Hill-Burton Act of 1946. That legislation provided money for hospital construction and paid it off by giving charity care at cost. This changed in 1974 and it became unnecessary for the federal government to provide money to build the hospitals.

MR. MORGAN reviewed the number of states that do and do not have a CON program and said that Puerto Rico, the U.S. Virgin Islands, and the District of Columbia should also be included in the count. He advised that one of the addendums to the report he submitted from the National Governors Association details each CON program in each state. He added, "so there's no need to go into 50 programs, we're talking about Alaska."

CHAIR COSTELLO said the committee has the document you provided.

MR. MORGAN said what we've really found, especially with the advent of the Affordable Care Act is that a lot of what happens with Certificate of Need is a duplicate process that has increased costs. With changes in the Medicare payment system, outpatient ancillary services have made the issue of building facilities that sit empty a thing of the past. "The sheer cost and process and the market itself has made redundancy uneconomical and financially unviable."

He posited that decisions on building new facilities or buying new equipment should be left to the economics of each institution rather than subject to a state view. The Bureau of Economics of the Federal Trade Commission has detailed that restricting new construction, adding to the price, and time delays has reduced price competition between facilities and helped keep prices high. It's a barrier, and that's why organizations like the Alaska Association of Health Underwriters are sending non-emergency cases (especially surgery) out of state. Even with the cost of travel and accommodations, they can get services at less than half the price at quality institutions like the Cleveland Clinic, major institutions in Seattle, and the Mayo Clinic.

MR. MORGAN said that virtually every step in the building process (especially in Anchorage) public hearings are required to get any kind of licensing, permitting, and zoning so the public does have input.

He pointed out that the interests of the community oftentimes do not consider outside factors like transportation, marketing, or institutional prestige. He cited an anecdotal example of the speed of ambulance service in midtown Anchorage and highlighted that a Certificate of Need was denied for a small emergency center intended to stabilize patients before transferring them to a facility on the other side of town.

MR. MORGAN advised that included with his written testimony, he provided 84 documents from the Federal Trade Commission and a list he compiled of all the other programs

Addressing the question Senator Stevens posed yesterday, he said he found a study that compares states that have Certificate of Need or don't have it and whether they have a public utility review commission to review hospitals and ancillary care rates and payer mix. What's interesting, he said, is that in 2016 just Indiana had an individual insurance premium rate change that was negative three percent without the CON.

CHAIR COSTELLO asked him to send the document to her office and she would share it with the committee. She asked the members to submit any questions in writing and her office would get the responses from Mr. Morgan.

[10:38:00 AM](#)

At ease

[10:38:16 AM](#)

CHAIR COSTELLO reconvened the meeting and invited Ms. Hultberg to testify.

[10:38:44 AM](#)

BECKY HULTBERG, President/CEO, Alaska State Hospital and Nursing Home Association, stated that ASHANHA does not support a full repeal of Certificate of Need, but does support a review of the CON program to determine if it is accomplishing its intent, if it is adequately enforced, and if changes are warranted. The process should be collaborative and informed by data. She is not aware of any provider group that would oppose such a review.

Referring to testimony yesterday that implied that hospitals would revoke privileges if a provider supported the repeal of the CON program, she clarified that hospital administrators do not grant medical privileges. She explained that privileges are granted or revoked through a physician-led process that focuses on qualifications, work performance, and education of the applicant.

[10:40:42 AM](#)

MS. HULTBERG delivered a PowerPoint presentation on Certificate of Need. She displayed the following list of six key questions that should be answered through the CON process: 1) What problem are we trying to solve; 2) Will repealing CON address this problem; 3) What critical purpose does CON serve; 4) What

happens to our health care system and to our state budget if we get CON wrong; 5) Given other factors in the market, is now the time to repeal CON; and 6) What information would we need to make this decision? She said the forgoing questions need to be factored in as we work our way through the complicated but important issue for our health care infrastructure.

She displayed a U.S. map showing which states have experienced rural hospital closures since 2010. She said Alaska is fortunate that it has not had any small hospital closures but there is always that potential. She advised that comments about the profitability of hospitals in Alaska are frequently referring to hospitals in the Railbelt, whereas the majority of ASHANHA's membership are small rural hospitals, some of which are tribal. Hospitals in Kodiak, Seward, Valdez, Homer, Petersburg, Wrangell, Ketchikan, and Cordova are small non-tribal, critical-access hospitals that have fewer than 25 beds. Those hospitals are most at risk for closure in the current reimbursement environment. They have thin margins and a less than great payer mix. She highlighted that most hospitals in Alaska are owned by the community they serve. She reported that just four hospitals in Alaska are owned by an outside entity, and one of those has a significant investor presence by the local foundation.

[10:42:16 AM](#)

MS. HULTBERG said the challenges local hospitals face include: lower inpatient volumes; Medicare cuts, and Medicaid cuts. She displayed a chart showing \$856 million in cuts to Medicare reimbursement for Alaska hospitals over 15 years. She reminded members that to keep the budget flat, the administration is reducing Medicaid rates by five percent, starting July 1, 2017. Addressing Medicaid reimbursement, she explained that ASHANHA's hospitals and nursing homes are reimbursed based on cost. The forthcoming reductions place providers that have a high percentage of Medicaid patients in the position of operating in a cost minus environment, which is not sustainable.

She said the goal of the Certificate of Need program is to restrain the growth of health care costs. The methodology is that competition reduces prices which will lower overall costs in the health care market. Increasing competition through the repeal of CON will lower prices and restrain costs. But what must also be analyzed, she said, is the impact of CON on quality, access to care for underserved populations, and the use of CON as a tool for public accountability and transparency. She said the current CON process provides a level of visibility on costs and facility growth that would not be available otherwise.

[10:44:35 AM](#)

CHAIR COSTELLO asked if she is aware of any of the methods to cover indigent populations that the previous testimony mentioned, should CON be scaled back or repealed.

MS. HULTBERG said typically it would be a direct subsidy to a hospital or facility that sees a high percentage of underserved. "That would be like the Medicare or Medicaid DSH [Disproportionate Share Hospital] funds or those types of payments."

[10:45:20 AM](#)

MS. HULTBERG discussed the existing competition in the current CON program. She said that in most markets, small outpatient imaging or surgery centers already have significant competition due to the physician office exemption, lax enforcement, and the ability to move facilities. CON has limited high-cost, capital intensive surgery centers, expensive hospital expansions, and has limited the development of skilled nursing facilities. "To imply that there is not competition right now, is a significant misunderstanding of the market," she said.

SENATOR HUGHES asked for an explanation of the physician office exemption.

MS. HULTBERG said a private physician's office is exempt from the Certificate of Need requirements. For example, a physician could put an MRI machine in their private office.

SENATOR HUGHES asked if the exemption applies even if the cost of the machine reaches or exceeds the dollar threshold.

MS. HULTBERG said she would follow up with information to clarify that.

[10:46:59 AM](#)

MS. HULTBERG addressed the question of whether the repeal of CON addresses cost problems. She displayed a list of seven primary factors driving health care costs from Mack, M. (2016). What drives rising health care costs? Government Finance Review. 26-32. 1) Fee-for-service system, which rewards volume of procedures, incentivizing overtreatment; 2) prescription drugs; 3) new medical technology, and our use of new medical technology; 4) aging population; 5) unhealthy lifestyles; 6) high administrative costs; and 7) service provider consolidation (not much of a factor in Alaska). She said Certificate of Need

is not on the list because the things driving health care costs are primarily related to the fee for service structure of the system. What should be on the list, she said, is the third-party payment system. The consumer isn't purchasing the service and thus is disconnected from the cost of the service. She highlighted that lack of competition in the health care market is not commonly cited as a driver of health care costs. Findings from Elhauge, E. (2010). "The Fragmentation of U.S. Healthcare: Causes and Solutions" underscores that, she said.

MS. HULTBERG said the Commonwealth Fund looked at the differences between U.S. health care costs and other countries and found that high U.S. health care costs are directly related to the fee-for-service system, the third-party payer system, and the use of high-priced medical technology. She agreed with the testimony from the person from the Mercatus Center that increasing competition will result in more hospitals, surgery centers, and MRI machines in Alaska. However, we need to ask if more is better because physical infrastructure must be paid for by someone, she said. She pointed to a chart showing the number of sophisticated diagnostic imaging machines per million population and the number of exams per 1,000 population for the U.S. and other countries. She noted that the U.S. is only behind the technologically advanced country of Japan. She noted that Canada has 8.8 MRI machines per million population, whereas the U.S. has 35.5. Clearly the U.S. utilizes expensive technology at a far greater rate than Canada, she said.

[10:49:33 AM](#)

MS. HULTBERG displayed a chart titled "Health care vs. a normal market" that demonstrates from an economic perspective why health care does not behave like a normal market. It has different assumptions and yields different outcomes than a normal market.

She displayed a supply demand graph that shows what happens when the supply (of surgery centers for example) increases in a market. Price often falls but quantity increases which creates the Starbucks phenomenon. When there is a Starbucks on every corner, you drink a lot more coffee and spend more money, even if the per unit price for coffee is a little less.

[10:50:24 AM](#)

MS. HULTBERG said that because health care is not a normal market, competition can sometimes increase both volume and price, leading to higher costs for the individual and the health care system. She displayed a graph that demonstrates this

circumstance. The supply of surgery centers increased, and the demand curve moved too so the price went up and the quantity consumed also went up. In this scenario the total cost almost doubled. She noted that the source for this graph is in a subsequent slide. She reiterated that it's important to think about whether traditional assumptions hold true in the health care market.

[10:51:48 AM](#)

She offered to provide copies and suggested members read the study the Lewin Group conducted when Illinois looked at eliminating its Certificate of Need program. She read the following from the study:

"The traditional arguments for CON are empirically weak... However, given the potential for harm to specific critical elements of the health care system, we would advise the Illinois legislature to move forward with an abundance of caution. Nontraditional arguments for maintaining CON deserve consideration, until the evidence on the impact that specialty hospitals and ambulatory surgery centers may have on safety net providers can be better quantified." (p. iii)

MS. HULTBERG displayed the following list of benefits of CON: 1) promotes and ensures access for underserved populations; 2) may prevent oversupply of services, equipment and facilities; 3) may restrain oversupply of facilities, which can lead to overuse of services (supply-induced demand); 4) may protect high-volume procedures that affect quality (e.g. NICU); 5) provides a vehicle for health care cost transparency and public input into the health planning process; and 6) manages major capital expenditures, protecting the Medicaid budget

[10:52:41 AM](#)

She stated that there is government interest in the public involvement through the CON process because of the role of the government as a payer. She highlighted that the State of Alaska has a fiscal interest in this issue and the fiscal note is large because the state will pay for the capital and operating costs-through the Medicaid program-of any new facility that is constructed.

MS. HULTBERG said the Emergency Medical Treatment and Active Labor Act (EMTALA) mandates that hospitals treat anyone who comes to an emergency room, regardless of their ability to pay.

That is why Alaska hospitals have such high figures for uncompensated care. [The slide shows the following for uncompensated care: 2011: \$85,047,723; 2012: \$90,025,771; 2013: \$94,475,540; 2014: \$89,001,149; 2015: \$72,594,126]

She said she found the McDonald's Burger King example from yesterday somewhat amusing. The testifier pointed out how ridiculous it would be if McDonald's had to get a CON to compete with Burger King. But, she asked, what would the competitive market look like if the federal government required Burger King to give away its hamburgers for free, but didn't require the same of McDonald's? That is basically the impact of EMTALA in the health care market, she said.

She pointed out that hospitals subsidize many services that do not generate revenue or do not cover costs. Examples include: sexual assault response (forensic nursing); subspecialty services for children; homeless services (medical respite); primary care (Mountain View, senior clinics); community health (school programs, etc.) She said a lot of the critical services that a community takes for granted are paid for by hospitals. Hospitals also must maintain infrastructure and staffing for 24-hour emergency services. These services are provided because hospitals have positive margins on other services. CON repeal-and loopholes in the CON statute-allows profitable services and payers to migrate outside of the hospital, leaving hospitals with fewer resources to provide needed community services.

[10:54:47 AM](#)

MS. HULTBERG said it's really about what we value. What is the value of the community services that are provided? What is the value of having certain specialty services in the community that are subsidized by hospitals? What services do you want available in your hospital in the event of a medical emergency? What is the value of rural hospitals to their communities? These are the things that are at risk if the CON program is changed. She said it's also about who gets care. CON laws protect access to care for: the poor; the very sick; those without commercial insurance (Medicare, Medicaid, uninsured); rural areas; and urban neighborhoods with high populations of uninsured.

She listed the following six key questions about CON: 1) what problem are we trying to solve; 2) will CON repeal address this problem; 3) what critical purpose does CON serve; 4) what happens to our health care system and our state budget if we get CON wrong; 5) given other factors in the market, is now the time

to repeal CON; and 6) what information would we need to make this decision?

[10:56:05 AM](#)

MS. HULTBERG concluded her comments stating that loopholes and the lack of enforcement in the current CON law are very dissatisfying for many ASHANHA members. We think it is appropriate to have a conversation about whether the law is working as intended and how it could be strengthened or changed, she said. ASHANHA does not support a full repeal of the CON program. Alaska's unique provider environment and its unique rural communities must be part of the conversation. The conversation should be informed by data and the issue should be addressed with a stakeholder group to ensure that all perspectives are heard and that there is a thorough understanding of any unintended consequences of the decision.

CHAIR COSTELLO thanked Ms. Hultberg and held SB 62 in committee.

[10:56:58 AM](#)

CHAIR COSTELLO adjourned the Senate Labor and Commerce Standing Committee meeting at 10:56 a.m.