

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

April 23, 2021

1:30 p.m.

**MEMBERS PRESENT**

Senator Mia Costello, Chair  
Senator Joshua Revak, Vice Chair  
Senator Peter Micciche  
Senator Elvi Gray-Jackson

**MEMBERS ABSENT**

Senator Gary Stevens

**COMMITTEE CALENDAR**

SENATE BILL NO. 26

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

- HEARD & HELD

SENATE BILL NO. 17

"An Act relating to the retrofitting of certain public facilities and community facilities; relating to the performance of energy audits on schools and community facilities; relating to the duties of the Alaska Energy Authority and the Alaska Housing Finance Corporation; creating a rapid economic recovery office in the Alaska Industrial Development and Export Authority; and relating to the state energy policy and energy source reporting by state agencies."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 26

SHORT TITLE: REPEAL CERTIFICATE OF NEED PROGRAM

SPONSOR(s): SENATOR(s) WILSON

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS

01/22/21 (S) HSS, L&C  
03/25/21 (S) HSS AT 1:30 PM BUTROVICH 205  
03/25/21 (S) Heard & Held  
03/25/21 (S) MINUTE(HSS)  
04/07/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
04/07/21 (S) Scheduled but Not Heard  
04/08/21 (S) HSS AT 1:30 PM BUTROVICH 205  
04/08/21 (S) Moved SB 26 Out of Committee  
04/08/21 (S) MINUTE(HSS)  
04/09/21 (S) HSS RPT 1DP 3NR  
04/09/21 (S) DP: HUGHES  
04/09/21 (S) NR: BEGICH, REINBOLD, COSTELLO  
04/21/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
04/21/21 (S) Heard & Held  
04/21/21 (S) MINUTE(L&C)  
04/23/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 17

SHORT TITLE: ENERGY EFFICIENCY & POLICY: PUB. BLDGS

SPONSOR(s): SENATOR(s) BEGICH

01/22/21 (S) PREFILE RELEASED 1/8/21  
01/22/21 (S) READ THE FIRST TIME - REFERRALS  
01/22/21 (S) CRA, L&C, FIN  
02/25/21 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
02/25/21 (S) Heard & Held  
02/25/21 (S) MINUTE(CRA)  
03/30/21 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
03/30/21 (S) Heard & Held  
03/30/21 (S) MINUTE(CRA)  
04/08/21 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)  
04/08/21 (S) Moved CSSB 17(CRA) Out of Committee  
04/08/21 (S) MINUTE(CRA)  
04/09/21 (S) CRA RPT CS 1DP 2NR SAME TITLE  
04/09/21 (S) NR: HUGHES, MYERS  
04/09/21 (S) DP: GRAY-JACKSON  
04/23/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

JAIMIE CAVANAUGH, Attorney  
Institute for Justice  
Minneapolis, Minnesota

**POSITION STATEMENT:** Testified in support of SB 26.

ANGELA ERICKSON, Strategic Research Director  
Pacific Legal Foundation

Lexington, Kentucky

**POSITION STATEMENT:** Testified in support of SB 26.

STEVE FRANK, Member

Fairbanks Memorial Hospital Board

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 26.

RYAN SMITH, CEO

South Peninsula Hospital

Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 26.

JESSICA OSWALD, CEO

St. Elias Specialty Hospital

Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 26.

RICK DAVIS, CEO

Central Peninsula Hospital

Soldotna, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 26.

MONIQUE MARTIN, Director

Government Relations & Regulatory Navigation

Alaska Regional Hospital

Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 26.

ROGER STARK, MD, Retired; Health Care Policy Analyst

Washington Policy Center

Seattle, Washington

**POSITION STATEMENT:** Testified in support of SB 26.

LESLIE BECKER, representing self

Ketchikan, Alaska

**POSITION STATEMENT:** Testified in support of SB 26.

PORTIA NOBLE, representing self

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 26.

SENATOR TOM BEGICH

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 17

LOKI TOBIN, Staff  
Senator Tom Begich  
Juneau, Alaska

**POSITION STATEMENT:** Presented a PowerPoint overview of SB 17.

AMBER MCDONOUGH, Account Executive  
Siemens Industry, Inc.  
Anchorage, Alaska

**POSITION STATEMENT:** Testified on SB 17 by invitation.

CHRISTOPHER HODGIN, Energy Program Manager  
Statewide Public Facilities  
Division of Facility Services  
Department of Transportation & Public Facilities  
Anchorage, Alaska

**POSITION STATEMENT:** Testified that the administration supports the concepts discussed in SB 17.

CURTIS THAYER, Executive Director  
Alaska Energy Authority  
Department of Commerce, Community & Economic Development (DCCED)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions about AEA's fiscal note for SB 17.

#### **ACTION NARRATIVE**

[1:30:34 PM](#)

**CHAIR MIA COSTELLO** called the Senate Labor and Commerce Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Revak, Gray-Jackson, and Chair Costello. Senator Micciche arrived during the course of the meeting.

#### **SB 26-REPEAL CERTIFICATE OF NEED PROGRAM**

[1:31:09 PM](#)

CHAIR COSTELLO announced the consideration of SENATE BILL NO. 17 "An Act relating to the retrofitting of certain public facilities and community facilities; relating to the performance of energy audits on schools and community facilities; relating to the duties of the Alaska Energy Authority and the Alaska Housing Finance Corporation; creating a rapid economic recovery office in the Alaska Industrial Development and Export Authority; and relating to the state energy policy and energy source reporting by state agencies."

[1:31:52 PM](#)

CHAIR COSTELLO opened public testimony on SB 26.

[1:32:19 PM](#)

JAIMIE CAVANAUGH, Attorney, Institute for Justice, Detroit, Michigan, stated that the Institute is a national nonprofit public interest law firm that for decades has worked to end CON laws through litigation and legislation. She shared the stories of two clients. The first was a man from Nepal who opened a CPA practice in Louisville, Kentucky. He noticed that there were no home healthcare services for Nepali speakers and decided to open an agency himself. When he filed his CON application, a large incumbent intervened and successfully argued that there was no need for an additional home healthcare agency. He was unable to get a CON certificate. The second story is about an ophthalmologist from North Carolina who wanted to perform surgery out of the facility he owned. The cost of surgery at that doctor's office was under \$1,800 whereas the local hospital charges a \$6,000 facility fee plus the cost of the surgery. Yet the state of North Carolina said there was no need for an additional surgery center so the doctor's patients pay the higher hospital prices.

MS. CAVANAUGH said the foregoing examples highlight how CON laws harm patients and empower incumbent CON holders. She suggested that instead of stacking the deck against new business, Alaska should welcome new healthcare providers. She asked the committee to support SB 26.

[1:35:07 PM](#)

ANGELA ERICKSON, Strategic Research Director, Pacific Legal Foundation, Lexington, Kentucky, stated that this public interest law firm has a strong history of opposing and helping to strike down CON laws across the country. She referenced testimony during the last hearing from a government official who challenged the notion of Alaska potentially having an additional 12 hospitals [if the state repealed its CON laws]. She argued from a central planning standpoint and wanted all current hospitals to figure out the cost.

MS. ERICKSON provided an example of what might happen in the absence of CON laws. In 2017, somebody saw a used ambulance and decided to launch Legacy Medical Transport in Ohio. This non-emergency ambulance transports people to and from doctor appointments and facilities. Within two years, the enterprise grew to seven ambulances. Because the office is just a mile from the Kentucky state line, the business gets many requests to take

Ohioans to appointments in Kentucky. However, Kentucky is a CON state and the company cannot operate there without a CON certificate. When the owner applied for a certificate, incumbents protested claiming he would steal business and the application was denied. He is currently suing the state of Kentucky with help from Pacific Legal Foundation.

MS. ERICKSON argued that CON laws are in direct violation of the 14th Amendment that guarantees that people will not be deprived of a liberty without due process of law. That essentially means that laws must pursue a legitimate public health and safety goal rather than favoring entrenched businesses. She said the committee heard in testimony on Wednesday how CON laws fail that test. She said everyone appreciates what hospitals and healthcare workers have done during the COVID-19 pandemic and repealing Alaska's CON laws acknowledges the expertise and knowledge each has to respond to new conditions.

[1:37:35 PM](#)

STEVE FRANK, Member, Fairbanks Memorial Hospital Board, Fairbanks, Alaska, stated that he is a free market Republican who worked on the Medicaid budget years ago when he served as co-chair of the Senate Finance Committee. He related that the Fairbanks Memorial Hospital is a nonprofit community-owned hospital that offers behavioral health and hospice care in addition to running an emergency department and all the usual services a hospital provides 24/7. This is the only hospital in Fairbanks, but the community also has an ambulatory surgery center. The center operates regular business hours and does not worry about staffing for emergencies or uncompensated care. The hospital has lost about 30 percent of its surgery business to the center leaving it with excess surgery capacity. He said the hospital worries about its viability if additional medical businesses come into the community and take more of the hospital's profitable business without having to offer the low profit or uncompensated care that hospitals are required to maintain. The CON process prevents such unnecessary facilities from entering the market.

MR. FRANK suggested the legislature look at two things as it considers SB 26. First, a comparison to anything in the free market like groceries is irrelevant because the healthcare a hospital provides is not free market. Hospitals are totally regulated. Second, a large percentage of the state's budget already goes to pay for Medicaid and that will increase if another unnecessary healthcare facility comes in and the hospital loses more business. The state compensates the hospital

on a fee per service basis for Medicaid and if the same population is spread over two facilities, the cost per procedure will go up and so will the Medicaid budget. He urged the legislature to carefully look at what eliminating CON will do to the Medicaid budget and what it will do to sole community hospitals. He offered his understanding that since 2016, six CON applications were approved, none denied, and 22 facilities fell under the \$1.5 million threshold. He urged the committee to look at the issue carefully and avoid getting swept up in the rhetoric of the free market.

[1:46:32 PM](#)

RYAN SMITH, CEO, South Peninsula Hospital and Long Term Care, Homer, Alaska, testified in opposition to SB 26. He stated that healthcare is complex and highly regulated. CON laws are one way it is regulated. After the passage of the National Health Planning and Resources Development Act, CON programs established a review process to promote responsive health facility and service development, rational health planning, healthcare quality, access to healthcare, and healthcare cost containment. He asked the committee to hold SB 26 and refer the matter to the Department of Health and Social Services (DHSS) commissioner or an appropriate individual to convene a negotiated rule making process to find solutions and consensus on CON reforms that would stabilize healthcare access in small communities and critical access hospitals. He related that in 2007 he was the CEO of Central Peninsula Hospital in Soldotna and participated in the CON negotiated rule making committee that did reach consensus on needed CON program reforms without repealing the law altogether. He urged the legislature to allow stakeholders to work as Alaskan partners in healthcare to propose needed reforms to Alaska's CON laws.

[1:48:57 PM](#)

JESSICA OSWALD, CEO, St. Elias Specialty Hospital, Anchorage, Alaska, stated that she was testifying in opposition to SB 26. She expressed concern about oversimplifying Alaska's continuum of care issues and warned against relying on outside lawyers and think tanks to advocate for Alaskans and develop healthcare policies for the state. She posited that the existing CON process in Alaska allows for careful consideration of the need and impact of proposed changes to the healthcare system to avoid unintended consequences that could increase costs, reduce access, and further destabilize the system.

MS. OSWALD said St. Elias provides care for acutely, chronically ill patients from ICU through rehabilitation. As federally

required, the length of stay is 25 days or longer. One third of their patients generally have no safe discharge in Alaska because a significant portion of their care is unfunded. St. Elias absorbs those unfunded costs of care with limited offset so destabilizing the existing care model would mean that many of their patients would remain in short term ICUs for months or be sent out of state for care. She also pointed out that when Alaska's trauma centers fill with critical care long stay patients, Alaskans wait longer in emergency rooms and the overall availability of care is further reduced across the continuum. Ending the CON program without understanding the unintended consequences could drive up the cost of care and further limit access.

[1:51:55 PM](#)

RICK DAVIS, CEO, Central Peninsula Hospital, Soldotna, Alaska, related that he has worked in hospital administration in Alaska for 29 years and repealing the CON program has been debated throughout his healthcare career. Proponents always suggest that removing all barriers will allow the free market to work and reduce healthcare costs, but the reality is that healthcare in the U.S. is not a free market. He reported that 70 percent of CPH's patients receive care that is paid for at a fixed rate that is dictated by Medicaid, Medicare, or another government payer. He reminded the committee that hospitals are required by law to see all patients 24X7X365 and accept as full payment what the government chooses to pay. Of the remaining 30 percent of patients, about 10 percent are charity or no pay and 20 percent are workers compensation, other government payers, or insured patients. That 20 percent of patients is what might be called free market and is what hospitals and independent imaging and surgery centers compete for. He pointed out that even then the competition is only for the high margin, elective, 8-5 Monday-Friday care. After hours, weekend, and holiday care is at a hospital and most likely in the emergency room.

MR. DAVIS said he understands the financial reasons for independent imaging and surgery centers limiting access to the 80 percent of the population that is no pay or government sponsored. However, he said there is no way a hospital can survive if it depends solely on that segment of the population and is not able to augment care with elective procedures on insured patients. Allowing independent facilities to cherry-pick care will damage small community hospitals and cause some to close. At the least, it would result in reduction of low margin services such as psychiatric, emergency, and obstetrics, all of which community hospitals generally provide in small

communities. He said the CON law helps keep community hospitals open but he supports the suggestion to convene a negotiated rule making committee to improve, not repeal, Alaska's CON laws.

1:56:19 PM

MONIQUE MARTIN, Director, Government Relations & Regulatory Navigation, Alaska Regional Hospital, Anchorage, Alaska, stated that she was speaking in opposition to SB 26. She refuted the testimony from the last hearing from outside experts who purported to know best about Alaska's healthcare delivery system. She maintained that Alaskans know best about Alaska and its healthcare providers and they are concerned about repealing Alaska's CON program because of what they know about the state's healthcare delivery system.

MS. MARTIN highlighted the work that Alaskans and the legislature have done since 2014 to reduce the cost of healthcare in the state. From 2014 to 2018, uncompensated care decreased 48 percent from nearly \$113 million to \$58.2 million. Additionally, from FY2015 to FY2020 Medicaid covered 54,000 more Alaskans and reforms to the program resulted in the state spending \$89.3 million fewer state general funds dollars. She said this came from working together and through Alaskan-grown innovations such as Alaska's innovative 1332 waiver and the tribal claiming program that allows increased federal participation. She said Alaskan healthcare providers and patient advocacy groups have ideas to reduce healthcare costs in the state and the hospital association has a list of improvements to the CON program. She encouraged the committee to look to Alaska-grown ideas because of what Alaskans working together have already accomplished.

1:59:39 PM

ROGER STARK, MD, Retired; Senior Fellow, Washington Policy Center (WPC), Seattle, WA, advised that WPC is a free market think tank that has offices in Olympia, Seattle, Spokane, and Tri-Cities Washington. He said he listened to all the testimony on SB 26 and wanted to make four points. The most important point is that the federal government repealed the federal requirement for CON in 1987 because it was not saving money in its Medicaid and Medicare programs. Second, those who testified against SB 26 represent existing facilities that do not want competition. He noted previous testimony that two facilities in a small community operate at 50 percent capacity but his perspective is that it offers patients choices. Third is the argument that healthcare is not a free market. That is somewhat accurate but the trend is for patients to use more of their own

dollars through high deductible health plans, health savings accounts, and cash only transactions for things like lasik eye surgery. He said patients need choices in this developing free market. Fourth, the fiscal note for SB 26 indicates that repealing Alaska's certificate of need program would save \$250,000 per year.

[1:59:52 PM](#)

SENATOR MICCICHE joined the committee.

[2:02:15 PM](#)

LESLIE BECKER, representing self, Ketchikan, Alaska, stated that she is a semi-retired healthcare executive with more than 30 years senior management experience working with large hospitals and diagnostic providers in both CON and non-CON states. She said her experience is that CON is a huge detriment to managing healthcare costs, improving quality of care, and enhancing patient access to services. In her view, the free market is critical for any product or service. Competition raises the bar on the level of service provided, lowers costs, and levels the playing field to allow greater access for everyone.

She offered her perspective that logistics ensures that healthcare will always cost more in Alaska. However, the costs do not need to be as high as they are today. She identified CON as one of the key drivers in the exponential growth in healthcare expenses and emphasized that repealing it will not drive up costs. She predicted that if CON is not repealed, medical tourism will continue to flourish throughout the state and a significant number of diagnostic imaging studies and elective surgery cases will continue to be redirected to more efficient and cost-effective centers that happen to be in non-CON states. She advised that the cost of a diagnostic MRI in Ketchikan is \$5,000 compared to under \$1,000 in the Seattle area. This difference compels patients to fly to Seattle for the 30-minute service.

MS. BECKER said that without competition there is no incentive for cost management, efficiency, or patient satisfaction. She pointed out that a high percentage of patients leave Alaska for elective services. She warned that without free market competition, Alaska's level of care will decline and patients will seek lower cost options outside the state for elective care. This will heavily affect the difficult issue of physician recruitment and retention. She said it is time to repeal Alaska's CON laws and let the free market determine success.

CHAIR COSTELLO mentioned that written testimony was welcome.

[2:06:26 PM](#)

PORTIA NOBLE, representing self, Anchorage, Alaska, stated support for SB 26. She said certificate of need laws have limited the supply of facilities and services nationwide. She expressed concern that the CON approval process relies on healthcare planners rather than the needs of Alaskans and those who work in the field. The result is that governments are lobbied by large healthcare monopolies and the free market model is forgotten. She listed what CON laws have done for consumers so far. They have driven up costs to the consumer, lowered the quality of care, eliminated the availability of needed services, and blocked competition in the healthcare market.

MS. NOBLE emphasized that healthcare providers should not need the permission of government to expand their size and scope of practice. She noted that during the pandemic, more than 22 states suspended their CON laws related to hospital beds and essential services. She suggested that it should not take a pandemic for a state to realize that CON laws threaten public health. She concluded that it is time to eliminate laws that harm patients and the spirit of competition.

[2:08:01 PM](#)

CHAIR COSTELLO closed public testimony on SB 26.

[2:08:07 PM](#)

At ease

[2:09:34 PM](#)

CHAIR COSTELLO reconvened the meeting and stated she would hold SB 26 in committee. She reiterated that written testimony was welcome.

**SB 17-ENERGY EFFICIENCY & POLICY: PUB. BLDGS**

[2:09:50 PM](#)

CHAIR COSTELLO announced the consideration of SENATE BILL NO. 17 "An Act relating to the retrofitting of certain public facilities and community facilities; relating to the performance of energy audits on schools and community facilities; relating to the duties of the Alaska Energy Authority and the Alaska Housing Finance Corporation; creating a rapid economic recovery office in the Alaska Industrial Development and Export Authority; and relating to the state energy policy and energy source reporting by state agencies."

[CSSB 17(CRA) was before the committee.]

[2:10:19 PM](#)

SENATOR TOM BEGICH, Alaska State Legislature, Juneau, Alaska, sponsor of SB 17 introduced the legislation paraphrasing the sponsor statement that read as follows:

The State of Alaska is responsible for over \$650 million in energy costs associated with close to 5,000 state owned public facilities. With significant economic headwinds visible on the horizon, reducing the state's energy costs through sound investments in clean energy not only makes good fiscal sense; it also fulfills a legislative promise of bringing renewable energy to Alaskan communities.

In 2010, the Alaska State Legislature passed HB 306, which established a State goal of obtaining 50 percent of our State energy needs from renewable energy by 2025. With some of the highest energy costs in the nation, increasing the share of renewable electricity and heat will save the State money and help insulate costs from volatility in fuel pricing. Also, in 2010, the Alaska Sustainable Energy Act set forth a goal of retrofitting 25% of the state's buildings over 10,000 square feet for energy efficiency by 2020, successfully achieving that goal in 2014.

Building on the successes of the Alaska Sustainable Energy Act, SB 17 extends the energy efficiency retrofit program to schools and community centers which are eligible for the Power Cost Equalization Program. This creates incentives to reform retrofits for buildings which receive State support for their energy bills, which will save the State, school districts, and communities' money.

However, single retrofit projects may not be attractive or profitable to private retrofit enterprises. SB 17 also directs the Alaska Industrial Development and Export Authority (AIDEA) to establish a rapid economic recovery office to facilitate state energy policy and encourage private investment. This new office will review energy audits, identify retrofit and other clean energy projects to be bundled, marketing those projects to and engage with

Department of Transportation and Public Facilities to contract with private investors. This will ensure the benefits of the state's energy policy, clean energy, and energy retrofiting will proliferate into rural communities, rather than just reaching the goal through one large Railbelt project.

SB 17 will provide rapid economic recovery by bringing in new investment to support an Alaska based clean energy industry and reduce the challenges and barriers that may prevent private companies from investing in Alaska's infrastructure development.

2:14:42 PM

LOKI TOBIN, Staff, Senator Begich, Juneau, Alaska, presented a PowerPoint as an overview of SB 17. She explained that the bill amends existing statute to extend the authority of the Department of Transportation and Public Facilities (DOTPF) to use energy performance contracting to help reduce energy costs in public facilities. The legislation will leverage state capacity and expertise to assist the Alaska Industrial Development and Export Association (AIDEA) in establishing an economic recovery office that will help to bundle, market, and support small projects and retrofits that may not be economically viable on their own. Additionally, she said SB 17 asserts an energy policy that will move the state toward the use of more renewable energy resources by 2026.

MS. TOBIN reviewed the history of energy efficient policies leading to SB 17. She related that a goal of House Bill 306 [Chapter 82 SLA 2010] and the Alaska Sustainable Energy Act (AS 44.42.067) was for 25 percent of public facilities [10,000 square feet and larger] to be retrofitted to meet energy goals. The state achieved that goal in 2014.

2:16:01 PM

MS. TOBIN pointed to the graphic on slide 4 that offers an overview of energy service performance contracting. Under SB 17, the Alaska Energy Authority (AEA) or DOT&PF will perform a public facility audit to identify retrofit projects that would result in energy cost savings. The agency would hire an energy service performance company (ESCO) to perform an investment grade audit to guarantee those savings. The agency then will identify a third party lender to fund the retrofit projects. The realized savings will repay the loan and potentially result in real time savings.

MS. TOBINS reviewed the savings realized from energy retrofits bulleted on slide 5. She related that energy retrofits of more than 75 public facilities 10,000 square feet and larger have resulted in [more than \$30 million] in real savings. SB 17 models New Mexico's program that authorized the New Mexico Finance Authority to bundle small projects to achieve economies of scale and take advantage of low interest rates and the tax-exempt bond market for financing.

[2:17:40 PM](#)

MS. TOBIN paraphrased the following sectional analysis for SB 17, version B.

*Section 1.* Establishes legislative intent to outfit public buildings, facilities, and schools with new energy upgrades to ultimately reduce net energy costs by 2026.

*Section 2.* Amends AS 18.56 by adding a section, AS 18.56.865, authorizing the Alaska Energy Authority (AEA) to conduct energy audits of public facilities upon request.

*Section 3.* Amends AS 42.45.110 by adding a new subsection permitting owners of public facilities that use power cost equalization to allow the AEA, the Alaska Housing Finance Corporation, or the Department of Transportation and Public Facilities (DOT&PF) to perform energy audits and retrofits.

*Section 4.* Amending AS 44.42.065 by adding public school buildings to the list of community facilities that the DOT&PF must perform energy audits for every 7 years.

*Section 5.* Amends AS 44.42.06 by including the definition of public school as defined by AS 14.25.220, but not including a charter school as defined by AS 14.03.290.

*Section 6.* Amends AS 44.42.065 by adding a new subsection which authorizes the DOT&PF to coordinate with the AEA to conduct energy audits by request.

[2:19:28 PM](#)

*Section 7.* Amends the date under AS 44.42.067 to which DOT&PF shall retrofit at least 25% of all public facilities to no later than January 1, 2026.

*Section 8.* Amends AS 44.42.067 to include education facilities as well as government and public use facilities in the definition of public facilities and reduces the square foot requirement to 5,000 for public use facilities.

*Section 9.* Adds a new section under AS 44.83, AS 44.83.088 which directs the Alaska Industrial Development and Export Authority (AIDEA) to coordinate with DOT&PF for energy audits on public facilities that use power cost equalization as defined by AS 42.45.110(b). Directs AEA to perform these audits at least once every seven years. Allows the AEA to work with entities that own public facilities to identify sources of funding for audits or retrofits.

*Section 10.* Amends AS 44.88 by inserting a new section, AS 44.88.179, which directs the AIDEA to establish a rapid economic recovery office to facilitate state energy policy and encourage private investment. Directs this new office of rapid economic recovery to review energy audits, identify energy retrofit projects to be bundled, market bundled projects, and engage with DOT&PF to support with the contracting of private investors.

*Section 11.* Adds a new subsection under AS 44.99.115 which establishes a state energy policy target date of 2026 to have at least 50 percent of total energy used by the state to come from clean energy sources and authorizes the AEA to request periodic updates from state facilities on the estimated percent of total energy used obtained from renewable energy sources. This section also includes the previously used definitions of renewable energy, power cost equalization and a state-funded public facility which includes a public school building but excludes a charter school.

[2:22:03 PM](#)

CHAIR COSTELLO asked if the facility must be involved with the Power Cost Equalization (PCE) program.

SENATOR BEGICH answered no. The bill qualifies school district buildings of 5,000 square feet or larger and community or public buildings that are receiving PCE and are 5,000 square feet or larger. The existing statute identifies facilities of 10,000 square feet or larger.

CHAIR COSTELLO asked if there was a reason for excluding charter schools from participation.

SENATOR BEGICH explained that Legislative Legal Services opined that charter schools are excluded because the constitution prohibits the use of public funds for private institutions and charter schools may receive money from private entities. He noted that the same law excludes private schools from participation.

CHAIR COSTELLO asked for confirmation that the public charter schools in Anchorage would not qualify for the program.

SENATOR BEGICH restated his understanding that charter schools are able to receive private funds, which disqualifies them from participation in this program. He noted that the requirement for the building to be 5,000 square foot or larger would also be a limitation. He offered to get a memo from Legislative Legal Services confirming the foregoing and to look for creative solutions to legally include public charter schools if any meet the size limitation.

CHAIR COSTELLO moved to invited testimony.

[2:24:37 PM](#)

AMBER MCDONOUGH, Business Development Manager - Pacific Zone, Siemens Industry, Inc., Energy Performance & Services, Anchorage, Alaska, paraphrased her written testimony that read as follows:

[Original punctuation provided.]

1. Greetings Madam Chair and members of the committee, for the record, my name is Amber McDonough. I am based in Anchorage and am representing Siemens Industry, Inc. I appreciate the opportunity to provide testimony on SB-17 at the invitation of Senator Begich's Office.
2. Background Info:
  - a. I'm an Account Executive for Siemens Industry Inc., Energy & Performance Services; I've been

with Siemens 22 years and supported their energy service company (ESCO) business in AK for 13 years. During this time we have implemented approx. \$40M of energy saving performance contracts (ESPC) in Alaska.

b. An ESCO is a company like Siemens that develops and implements ESPC work. This includes energy efficiency projects as well as distributed energy solutions including renewable power, energy storage and microgrids.

c. An ESPC is at its core a procurement vehicle to fund facility & infrastructure improvements whose savings pay for themselves over time; ESPCs are designed to be budget neutral where the costs of design, development, construction, financing, and the savings guarantee are all funded by energy & operational savings.

d. Guaranteed annual savings are confirmed each year using a formal Measurement & Verification (M&V) Program performed by the ESCO. Should verified savings not be met the ESCO will pay the difference to their clients - payout rates are historically less than 1% of all savings guaranteed.

[2:26:20 PM](#)

CHAIR COSTELLO asked if she had experience with this type of financing in any other state.

MS. MCDONOUGH replied she represents Siemens' business in Alaska, Hawaii, and Guam and she is part of the Pacific group that handles this type of service on the coast from California to Alaska. Siemens Industry provides ESCO services nationally and internationally.

MS. MCDONOUGH continued her testimony:

3. I reviewed and testified on this bill in February and was happy to see some of my suggestions incorporated, especially regarding the type of high-level preliminary audits (ASHRAE Level 1) prescribed by this bill. This will allow energy savings opportunities to be qualified and quantified prior to engaging the services of an ESCO or incurring the costs of more detailed "investment grade" audits needed to secure bank funding.

2:28:21 PM

4. I have three comments on the current version of SB-17:

a. Sec 3 & 9 of the bill seem to limit the beneficiaries of this legislation to schools and facilities that served by utilities that receive power cost equalization (PCE) payments; Would the committee consider opening services up to all communities and public buildings regardless of their PCE status?

MS. MCDONOUGH noted that Senator Begich clarified that the bill includes but does not require PCE participation.

b. Sec. 7. AS 44.42.067(a) is amended to read:  
(a) Not later than January 1, 2026 [JANUARY 1, 2020], the department shall work with other state agencies to retrofit at least 25 percent of all public facilities, starting with those it determines are the least energy efficient, if the department determines that retrofitting the public facilities will result in a net savings in energy costs to the state within 15 years after completion of the retrofits for a public facility and if funding for the retrofits is available. This is a big "if". Bundling loans or authorizing a single bond sale which all community facilities could tap into would address the problem of trying to secure private investors for rural communities and rural education attendance area (REAA) schools; This has been a challenge due to their lack of tax base and revenue sources needed guarantee their ability to repay any debt on their own. If the project bundling is truly intended to create one larger agreement between the State of AK and the financier this would be a big help. For example: I recently investigated viability of providing a supplemental financing for a City of Galena microgrid project, but traditional ESPC lenders felt the community was too small and the lending risk too great to participate.

c. Sec. 10. AS 44.88 is amended by adding a new section to read: Sec. 44.88.179. Rapid economic recovery office. (a) The authority shall create a rapid economic recovery office to facilitate the state energy policy described in AS 44.99.115(b)

and encourage private investment in energy upgrades at state facilities and public schools. What's the best way to do that efficiently? Lately the biggest challenge seems to be perceived risk, even with the more common ESPC projects for state agencies. For example during a typical ESPC development for a state agency process:

i. The technical viability of Agency ESPC projects are jointly developed by the DOT&PF Energy Office Project Managers, the Agency Facility Managers and the ESCO, but each agency's financial Administrative Services Director (ASD) director must ultimately agree to sign off on 3<sup>rd</sup> party loan. [Current State ESPC financing requires 4 signatures in the OMB approval process: DOT&PF Project Manager, client department leader (Agency ASD or Commissioner), Dept. of Revenue, and OMB Director]

ii. The individual Agency Finance Director must be educated on how ESPC works and accept the metrics of the ESCO's savings guarantee. However, beyond that that they must also weigh the risk of whether or not the State will continue to fund their facility's utility budget at the same level for the term of the repayment period.

iii. This has sometimes been a tough sell with the Finance Director putting the go/no go decision responsibility back on the Facility Manager who may then hesitate to approve the much needed upgrades.

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iv. One solution would be for this bill to provide authorization for State OMB to secure a large bond (say \$200M) or set aside a state-wide appropriation budget to fund these future improvements. This would achieve structural efficiencies such as:

1. Paper work reduction - fewer individual loan contracts and legal fees would be required for each ESPC project; perhaps AIDEA/AEA could manage smaller in-state intra-agency or public community loans from the larger pot of secured funding?

2. Lower anticipated interest rates - one larger transaction with a 3<sup>rd</sup> party lender would result in better value than lots of smaller loans with entities of varying credit ratings.
3. Lower perceived risk - this funding would provide a backstop the State's current ESPC program as well as give public Finance Directors, School Superintendents, and Facility Mangers in these smaller PCE communities the confidence they need to tap into these programs. This would also mitigate the individual organization's repayment risk for private lenders.

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CHAIR COSTELLO asked the sponsor if he would like to respond to the testimony.

[2:33:02 PM](#)

SENATOR BEGICH answered yes. He said his office talked about what to do with risk. He noted that a Governor's bill that the committee heard last week has a section about building bonding capacity. Conversations on how to combine the approaches are ongoing. With regard to the "if" clause in bill Section 7, he said that can be fixed. He said the previous committee of referral raised the question about the PCE requirement and he agrees that the provision needs clarification. He said he did not believe the bill prohibits any public or community school buildings larger than 5,000 square feet. The intention is to include PCE funded community buildings because of the direct state-funding connection. He believes that Ms. McDonough was focused on ensuring there are enough projects to bundle to make the financing cost effective. He voiced support for that concept and noted that some of the concepts in SB 17 are addressed more broadly in the Governor's energy independence bill. He offered to work with the committee to mesh the concepts.

CHAIR COSTELLO thanked the sponsor and Ms. McDonough.

[2:35:12 PM](#)

CHRISTOPHER HODGIN, Energy Program Manager, Statewide Public Facilities, Division of Facility Services, Department of Transportation & Public Facilities, Anchorage, Alaska, stated that he did not have prepared testimony but he was available to answer questions.

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CHAIR COSTELLO asked if the administration had a position on SB 17.

MR. HODGIN replied the administration supports the concepts discussed in the legislation.

[2:36:17 PM](#)

CHAIR COSTELLO opened public testimony on SB 17; finding none, she closed public testimony.

CHAIR COSTELLO stated her intention to hold SB 17 for further consideration. She asked the sponsor if he had any closing comments.

SENATOR BEGICH highlighted that Sydney Lindeman provided written testimony and copies were in the packets. He said he looks forward to working with the committee staff, and the administration to move the concepts forward in a well-crafted bill.

SENATOR MICCICHE asked if he talked to AEA about absorbing positions without a fiscal note on the plan. He noted that his support for the bill might hinge on the response.

CHAIR COSTELLO asked Mr. Thayer to respond to Senator Micciche.

[2:38:15 PM](#)

CURTIS THAYER, Executive Director, Alaska Energy Authority, Anchorage, Alaska, advised that AEA's fiscal note identified two new range 16 to 18 analyst positions to monitor the PCE communities in addition to the work in rural Alaska. He said he understands Senator Micciche's position; he too does not want to grow government but in this instance, AEA would need the positions to complete the audits called for in the bill.

SENATOR BEGICH said he looks at it as an investment that will save money over time like putting new windows in a building. He noted that the state saved \$40 million in the last decade under the existing law for buildings 10,000 square foot or greater. That is a quantifiable savings and he anticipates similar levels of savings with SB 17. The ESCOs guarantee that. He said he looks forward to working with the committee staff and the administration to identify the appropriate process to potentially save tens of millions of dollars more than the cost of the legislation in the long run.

[CHAIR COSTELLO held SB 17 in committee.]

2:41:27 PM

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 2:41 p.m.