

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON ENERGY**

February 1, 2024

10:15 a.m.

MEMBERS PRESENT

Representative George Rauscher, Chair
Representative Tom McKay
Representative Thomas Baker
Representative Stanley Wright
Representative Mike Prax
Representative Calvin Schrage
Representative Jennie Armstrong

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION: ALASKA ENERGY AUTHORITY

- HEARD

EXECUTIVE ORDER: 128

-HEARD AND HELD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

CURTIS THAYER, Executive Director
Alaska Energy Authority
Anchorage, Alaska

POSITION STATEMENT: Provided a PowerPoint presentation, titled "AEA Overview and Programs Update."

CURTIS W. THAYER, Executive Director
Alaska Energy Authority
Anchorage, Alaska

POSITION STATEMENT: Discussed Executive Order 128.

BRANDON BREFCZYNSKI, Deputy Director

Alaska Industrial Development and Export Authority
Anchorage, Alaska

POSITION STATEMENT: Discussed the Alaska Industrial Development and Export Authority's position on EO 128.

EMILY NAUMAN, Director
Office of the Director
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Summarized the Legislative Legal Services' EO 128 Memorandum.

PARKER PATTERSON, Senior Assistant Attorney General
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Discussed the Department of Law's position on EO 128.

ACTION NARRATIVE

[10:15:52 AM](#)

CHAIR RAUSCHER called the House Special Committee on Energy meeting to order at 10:15 a.m. Representatives Baker, Schrage, Wright, Prax, Armstrong, McKay and Rauscher were present at the call to order.

PRESENTATION: ALASKA ENERGY AUTHORITY

[10:17:29 AM](#)

CHAIR RAUSCHER announced that the first order of business would be the Alaska Energy Authority presentation.

[10:18:32 AM](#)

CURTIS THAYER, Executive Director, Alaska Energy Authority, provided a PowerPoint presentation, titled "AEA Overview and Programs Update" [hard copy included in committee packet]. He began on slide 2 and described the six areas that make up the Alaska Energy Authority (AEA), including Railbelt Energy, Power Cost Equalization (PCE) program, rural energy, renewable energy and energy efficiency, grants and loans, and energy planning. He provided a map, which showed AEA's active projects and services throughout the state.

[10:22:39 AM](#)

MR. THAYER moved to slide 4 and explained that the Alaska Energy Security Task Force has had over 60 subcommittee meetings, 11 task force meetings, and over 150 hours of public meetings; 8 energy symposiums have been created with 16 hours of on-demand learning. Six subcommittees have created over 60 preliminary actions including Railbelt, coastal, rural, state energy data, incentives and subsidies, and statutes and regulations. He noted that the task force report is the first major energy security plan created in over 10 years.

[10:24:09 AM](#)

MR. THAYER mentioned that Representative Rauscher and Senator Bishop participated on the task force. He discussed the Bradley Lake Hydroelectric Project, which provides low-cost energy to 550,000 Alaskans. The annual energy production makes up 10 percent of Railbelt energy at 4 cents per kilowatt hour (kWh). The AEA, in partnership with the Railbelt utilities, is studying the Dixon Diversion Project, which would increase the annual energy production of Bradley Lake by 50 percent or the equivalent of up to 28,000 homes. The Dixon Diversion Project would involve directional drilling of a 13-mile tunnel to move water from Dixon Glacier into Bradley Lake. This would offset 1.5 billion cubic feet of natural gas per year. Construction would occur from 2026-2030. He noted problems with transmission line update needs.

[10:27:32 AM](#)

MR. THAYER, in response to committee questions, said that preliminary water studies and permitting are underway. Drilling to test rock formations for the tunnel is needed. The outcome of these efforts will determine whether the project will move forward. He clarified that the permitting process has occurred on the Bradley footprint. He mentioned the Battle Creek project, which was completed on time, on budget, and with similar permitting. He said AEA doesn't anticipate any problems with permitting and is confident that the project will be completed by 2030. He noted that transmission upgrades are needed and work is underway. Increasing water flow through the Dixon diversion, raising the dam, and upgrading the transmission lines would occur simultaneously.

[10:32:36 AM](#)

MR. THAYER moved to slide 7 and reported that AEA owns the 170-mile Alaska Intertie transmission line that runs between Willow and Healy. It is operated at 138 kilovolt (kV), was designed to operate at 345 kV, is a vital link for transferring power between northern and southern utilities, and saves Golden Valley Electric Association customers an average of \$37 million annually. The Intertie provides benefits to Southcentral customers through cost-savings and resilience to unexpected events, like extreme cold. He noted the importance of redundant lines in the event of an emergency.

[10:34:58 AM](#)

MR. THAYER, in response to Chair Rauscher, explained that the Kenai Peninsula has some of the oldest transmission lines. The Intertie was built in the 1980s to a higher standard and can be upgraded more easily. Kenai Peninsula transmission line upgrades would benefit Fairbanks consumers because more power would be able to be moved.

[10:36:36 AM](#)

MR. THAYER moved to slide 8 and described the Power Cost Equalization (PCE) program, which impacts 192 communities, 91 electric utilities, and almost 82,000 Alaskans. The program provides a weighted cost average between Anchorage, Fairbanks, and Juneau, which is about 20 cents per kWh. Anything above the weighted average, PCE pays the difference. Residential customers are eligible for PCE credit up to 750 kWh per month. In 2024, AEA dispersed \$48 million to rural electric utilities for the benefit of our rural communities which is supported by an endowment, not the general fund.

[10:39:11 AM](#)

MR. THAYER, in response to Chair Rauscher, explained that since PCE, by statute, is formulated on the average weighted cost of Anchorage, Fairbanks and Juneau power, if the cost decreased, more money would be freed up by the PCE program to benefit rural Alaska. If the cost of Railbelt energy goes up, then there is a negative impact on the PCE. He described that financial analysis and modelling is done to find cost-benefits, which contribute to public good. Analysis is audited and made available to the public. He clarified that programs like PCE result in a lower cost of energy for Alaskans and don't

necessarily have a hard dollar return like a publicly traded company. He said that AEA has created a digital data library with 8,500 public-facing documents.

[10:47:10 AM](#)

MR. THAYER, in response to committee questions, said that the PCE is funded by an endowment that is managed by the permanent fund. Interest earned by the endowment pays for the PCE program, followed by up to \$30 million in community assistance. He noted that there have been record earnings in recent years, which creates a cascading effect that, up to the next \$25 million, can be used in the bulk fuel loan program, power houses, or renewable energy fund. He explained that prior to legislation from about a decade ago, PCE competed for general fund dollars, which wasn't always enough to pay for PCE. As the endowment has grown, the ability to fully fund PCE has been possible and often, but not always, fund some community assistance. It has taken time for the endowment to reach the point where returns go far enough to fully fund both PCE and community assistance.

[10:52:31 AM](#)

MR. THAYER moved to slide 9 and described that rural Alaska powerhouses are upgraded and maintained by AEA through leveraged federal dollars. He noted 42 active rural power systems upgrade projects and 34 active bulk fuel upgrade projects. Deferred maintenance for rural power systems upgrades and bulk fuel upgrades amounts to \$1.1 billion. He noted that available infrastructure dollars available from the federal government do not qualify for rural Alaska because powerhouses utilize fossil fuels. This is an ongoing challenge for AEA and that state.

[10:56:02 AM](#)

MR. THAYER, in response to Representative Prax, explained that rural powerhouses are owned by the community. He said that AEA steps in when there is an emergency and has strategically placed backup generators around the state. He referred to slide 10 and said that AEA has about \$200,000 in emergency funding. He mentioned that supply logistics is one of the biggest challenges.

[10:58:51 AM](#)

MR. THAYER moved to slide 11 and said that the Renewable Energy Fund Advisory Committee has forwarded a capitalization request of \$32 million for the legislature's consideration to fund 24 projects. Since the beginning of the program, \$317 million has been invested into the Renewable Energy Fund by the state. There are 100 operational projects and 60 projects in development. He reported that about 80 percent of the funding ends up in rural Alaska.

[11:00:53 AM](#)

MR. THAYER, in response to committee questions, explained the challenges and reluctance to open PCE eligibility. He exemplified King Cove, which does not qualify for PCE and was funded \$3.8 million in grants. He said the goal should be to incentivize renewables without penalty from PCE. He said PCE was designed for rural communities to break even.

[11:04:39 AM](#)

MR. THAYER described the Power Project Fund (PPF) loan program on slide 12 and said that recapitalizing will be necessary. The loan offers competitive rates at about 5.4 percent interest, and currently the program is in abeyance until additional capital is secured for the pending applications under review what amount to over \$700,000. He described an outstanding loan on a hydroelectric project. In response to Chair Rauscher, he said that the legislature could capitalize the PPF loan fund. He noted the success of the PPF program, which has no default and projects across Alaska.

[11:08:29 AM](#)

MR. THAYER advanced to slide 13 and described the Grid Resilience and Innovation Partnerships (GRIP). He reported that AEA secured \$206.5 million in federal funding for a high voltage direct current submarine cable to go from Kenai to Beluga. This requires a match of \$206.5 million. This project would create redundancy and reliability for Alaskans on the Railbelt. In response to Chair Rauscher, he reported that AEA would have eight years to complete the project. Funding must be identified but is not necessary to be provided all at once. Unrestricted General Funds or potentially a geo bond may be used. He also mentioned potential reimbursement opportunities from the federal government.

[11:13:57 AM](#)

MR. THAYER, in response to Representative Schrage, said that AEA has worked with utility partners to discuss structure for potential tax-credits to apply to projects to lower the cost to the consumer. Sourcing equipment, workforce, and supply-chain issues create challenges. He said that federal funding is highly competitive and that upfront funding from the state sends a message to the federal government about support for potential match. He noted the governor's support for the project. He explained that if funding was piecemeal overtime and the project was incomplete in the time allotted, the federal government would require a refund.

[11:22:15 AM](#)

REPRESENTATIVE PRAX commented that money is finite and public scrutiny is inevitable with a lack of transparency.

[11:23:25 AM](#)

MR. THAYER described Railbelt transmission upgrades on slide 14. He said that the \$166 million bond financing comes at no additional cost to rate payers. He reported that over the next five years, Alaska will receive \$60 million in federal formula grants through the Grid Resilience Formula Grant Program through the Infrastructure Investment and Jobs Act. He said that \$22 million has already been awarded to AEA to support local utilities. He provided an update to the State of Alaska Electric Vehicle (EV) Infrastructure Implementation Plan on slide 16. He remarked that Alaska had the best EV infrastructure plan in the country and has unlocked millions of dollars towards EV efforts.

[11:26:13 AM](#)

MR. THAYER explained, on slide 17, that AEA is collaborating with the Alaska Housing Finance Corporation (AHFC) to distribute Alaska's allocation of \$74 million with no state match required for home efficiency rebates, home electrification, and appliance rebates.

[11:26:59 AM](#)

MR. THAYER described Black Rapids Training Site (BRTS) Defense Community Infrastructure Pilot Program on slide 18. He said that AEA partnered with Golden Valley Electric Cooperative to acquire funds to extend a transmission line 34 miles along the

Richardson Highway to the (BRTS). On slide 19, he listed other federal funding opportunities, including Energy Efficiency Revolving Loan Fund, State Energy Program, Electric Vehicle Charging Equipment Competitive, and State-Based Home Energy Efficiency Contractor Training Grant Program. He concluded his presentation on slide 20 and explained that the application is pending for \$100 million for the Solar For All Competition. Funding may become available within six to nine months.

[11:31:00 AM](#)

MR. THAYER, in response to Chair Rauscher, said a plan was developed for EV infrastructure before money became available. The alternative fuel corridor from Anchorage to Fairbanks was created and chargers were deployed at site hosts at local facilities. He offered to provide the committee with the 100-page plan for addressing EV implementation throughout Alaska.

[11:32:56 AM](#)

CHAIR RAUSCHER thanked Mr. Thayer for his presentation.

[11:33:28 AM](#)

The committee took an at-ease from 11:33 a.m. to 11:35 a.m.

EXECUTIVE ORDER 128

[11:35:48 AM](#)

CHAIR RAUSCHER announced that the final order of business would be Executive Order 128.

[11:37:05 AM](#)

CURTIS W. THAYER, Executive Director, Alaska Energy Authority, discussed Executive Order (EO) 128. He explained that the governor believes it is in the best interest for an efficient administration to separate memberships of the board of directors for the Alaska Energy Authority (AEA) and the board of directors of the Alaska Industrial Development and Export Authority (AIDEA). He noted that both authorities have different missions and reported that the capital budget for AEA has increased by 1000 percent in the last four years and is expecting to continue to grow. Currently, just one volunteer board oversees two, multi-billion-dollar organizations. A distinct set of expertise is necessary for the governance of each organization. He

mentioned working with the legislature to manage staffing for 68 positions. He described the governor's proposed makeup of the boards regarding specific expertise. Billions of dollars and many projects of the AEA board would benefit from a board that can provide strategic vision.

[11:43:21 AM](#)

REPRESENTATIVE PRAX asked if a bill is necessary.

MR. THAYER responded that the vehicle by which the boards are separated is a decision for the governor and legislators to make.

CHAIR RAUSCHER mentioned a representative from AIDEA will speak to EO 128 from their point of view.

[11:44:51 AM](#)

REPRESENTATIVE SCHRAGE asked whether someone from Legislative Legal Services was available to answer questions.

[11:45:07 AM](#)

CHAIR RAUSCHER affirmed Legislative Legal Services' availability, thanked Mr. Thayer, and welcomed the next speaker.

[11:45:59 AM](#)

BRANDON BREFCZYNSKI, Deputy Director, Alaska Industrial Development and Export Authority, discussed AIDEA's position on EO 128. He said the executive order does not impact AIDEA's mission or statutes.

[11:46:48 AM](#)

REPRESENTATIVE PRAX sought to clarify if AIDEA is in the "banking business," while AEA is in the "electricity business."

MR. BREFCZYNSKI affirmed that AIDEA can lend money for a broader range of efforts beyond AEA.

[11:47:21 AM](#)

REPRESENTATIVE SCHRAGE asked whether there will be fiscal ramifications or employee issues because of EO 128.

MR. BREFCZYNSKI answered there would be no fiscal impact to AIDEA or AEA; shared services between AIDEA and AEA would remain intact.

MR. THAYER agreed and said there is a memorandum of understanding (MOU) that shows how the two organizations operate which will not be affected by the executive order. Shared services are billed according to appropriate agencies. He noted that board members are not compensated. The cost would be \$28,000 to cover per diem.

REPRESENTATIVE SCHRAGE asked about the current structure of the shared AIDEA/AEA board and whether members are appointed.

MR. THAYER explained that the board members are appointed by the governor for two-year terms.

[11:51:29 AM](#)

REPRESENTATIVE SCHRAGE referenced the legal services memo and voiced his concern for the constitutionality of this executive order.

[11:52:34 AM](#)

EMILY NAUMAN, Director, Legislative Legal Services, Legislative Affairs Agency, summarized the Legislative Legal Services' EO 128 memorandum. She said that EO 128 likely exceeds the governor's executive authority under the Alaska Constitution. She cited Article 3, Section 23, which read as follows:

The governor may make changes in the organization of the executive branch or in the assignments of functions among its units which he considers necessary for efficient administration. Where the changes require the force of law, they shall be set forth in executive orders.

MS. NAUMAN explained that governors have used executive orders to transfer functions from one department to another; however, there is little meaningful authority that sheds light on the permissible scope of an executive order. She pointed out that just because an executive order has been implemented in the past, does not mean that it is legally permissible.

MS. NAUMAN said the power of an executive order is not without bounds and one branch of government is prohibited from

encroaching on the existing powers of another branch. She said in the case of EO 128, the EO changes the composition of the board entirely and no where else in law does the board exist. This EO creates new law outside of the scope of a simple reorganization or function change. She said that this is an unconstitutional encroachment on the legislature's lawmaking authority that exceeds the governor's limited power to amend statute as necessary to reorganize the executive branch.

MS. NAUMAN advised that the most appropriate action is to disapprove the executive order. The constitutional method of creating a new board would be through the passing of a bill through the legislative process.

[11:55:49 AM](#)

REPRESENTATIVE SCHRAGE asked to hear from the Department of Law.

MS. NAUMAN, in response to Representative Rauscher, reviewed that EO 128 automatically takes effect if the legislature does not meet in joint session to disapprove it via a resolution within 60 days of the beginning of session, by March 15, 2024.

CHAIR RAUSCHER asked about the monetary value of challenging inaction in court.

MS. NAUMAN said the amount would depend on the action being challenged and noted the potential for hundreds of thousands of dollars in attorneys' fees.

[11:58:00 AM](#)

REPRESENTATIVE PRAX asked about the risk of "lawfare." He suggested moving forward with a bill and avoiding risk.

CHAIR RAUSCHER offered his opinion that the outcome may be the same if a bill was put forward; time and money could be saved by allowing EO 128 to take effect.

REPRESENTATIVE SCHRAGE asked whether there is merit to dividing the boards. He expressed his concern that by allowing EO 128 to take effect, the legislature would cede power to the governor. He further expressed the potential for a lawsuit from a citizen who feels the governor has stepped out of line of the legislative process. By arriving at the result through proper process and scrutiny through a bill, litigation risk may be

eliminated and proper separation of powers would be kept in check.

12:01:00 PM

PARKER PATTERSON, Senior Assistant Attorney General, Civil Division, Department of Law, discussed the Department of Law's position on EO 128. He described a disagreement with the MOU from Legislative Legal Services. He referred to Article 3, Section 23 of the Alaska Constitution, which creates powers of the governor to make changes in the reorganization of the executive branch and the assignment of function among its units. He stated that Section 23 is a grant of positive legislative power to the governor. The governor cannot create or destroy functions, he can only move those functions around existing units of the executive branch. However, he has the power to change the organization of the executive branch, which may entail creating, modifying, or eliminating units. To do so he must create new law through an EO. When an EO creates a new unit, it must set forward the minimum criteria necessary to establish the unit so it can be constituted in function. He emphasized that it is necessary and appropriate for the EO to establish membership and qualifications of members to be appointed. He described similar provision in Michigan's state constitution. He stated that DOL has interpreted that this EO is an appropriate exercise of the governor's power and would pass judicial scrutiny.

12:07:22 PM

REPRESENTATIVE ARMSTRONG asked Mr. Patterson for a memorandum ("memo") that references the Michigan case law that he mentioned.

MR. PATTERSON offered to follow up.

REPRESENTATIVE PRAX asked whether "this is a battle worth fighting given the merits of the underlying issue."

MR. PATTERSON deferred to the governor's office.

REPRESENTATIVE SCHRAGE asked Ms. Nauman about precedent for the validity of EOs.

MS. NAUMAN reiterated that if an EO has been enacted in the past it does not mean that the action is legal or complies with the constitution, and it could still be challenged in court.

REPRESENTATIVE SCHRAGE thanked Chair Rauscher.

12:10:12 PM

CHAIR RAUSCHER announced that EO 128 would be held over.

12:10:47 PM

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Energy meeting was adjourned at [12:11] p.m.