

**ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE**

January 30, 2024

3:31 p.m.

MEMBERS PRESENT

Senator Scott Kawasaki, Chair
Senator Jesse Bjorkman
Senator Bill Wielechowski
Senator Kelly Merrick

MEMBERS ABSENT

Senator Matt Claman, Vice Chair

COMMITTEE CALENDAR

EO 128 "Separate Membership of the Board of Directors of the Alaska Energy Authority and the Alaska Industrial Development and Export Authority"

-HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

EMILY NAUMAN, Director
Legislative Legal Services
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided the legal memo on EO 128.

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

POSITION STATEMENT: Answered questions about EO 128.

CURTIS THAYER, Alaska Energy Association (AEA)
Executive Director
Anchorage, Alaska

POSITION STATEMENT: Presented a presentation and provided testimony on EO 128 on behalf of the administration.

ACTION NARRATIVE

[3:31:05 PM](#)

CHAIR SCOTT KAWASAKI called the Senate State Affairs Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators, Bjorkman, Wielechowski, and Merrick, and Chair Kawasaki.

EO 128 SEPARATE MEMBERSHIP OF THE BOARD OF DIRECTORS OF THE ALASKA ENERGY AUTHORITY AND THE ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

[3:31:42 PM](#)

CHAIR KAWASAKI announced the consideration of EO 128 "Separate Membership of the Board of Directors of the Alaska Energy Authority and the Alaska Industrial Development and Export Authority."

[3:32:56 PM](#)

CHAIR KAWASAKI said the committee received the Legal Services memo a couple days ago and had not spent much time reviewing it.

[3:33:23 PM](#)

EMILY NAUMAN, Director, Legislative Legal Services, Alaska State Legislature, Juneau, Alaska, provided the legal memo on EO 128. In summary, it is likely a court would find that EO 128 exceeds the governor's authority under the Alaska constitution.

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MS. NAUMAN said the Governor's authority to issue executive orders is acknowledged under Art.III, Section 23 in the state constitution. The Alaska Constitutional Convention Proceedings referenced in the Legislative Legal Services memo indicate that the delegates viewed the power as enabling the governor to amend law as necessary to reorganize the functions of the executive branch. However, the power of the executive branch is not without bounds. Article 2, Section 1 states "The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty. EO 128 removes members of Alaska Energy Authority (AEA) board and replaces those members with a new list of directors, created wholesale in the executive order. The criteria in the list of board members in EO 128 are not appearing elsewhere in law. Because EO 128 composes new members, Legal Services determined that it creates new law.

[3:37:28 PM](#)

CHAIR KAWASAKI asked if Governor Dunleavy could withdraw this order and submit legislation through the Rules Chair of both the House and Senate chambers.

[3:37:57 PM](#)

MS. NAUMAN replied that it would be allowed and believes it is the correct form.

[3:38:53 PM](#)

SENATOR WIELECHOWSKI asked for confirmation that if no action is taken, EO 128 would go into effect despite its unconstitutionality. If someone sought a lawsuit, he wondered what remedies would be available.

[3:39:30 PM](#)

MS. NAUMAN replied that he is correct. The best course of action would be to reject EO 128 in joint session. If the executive order passes and the new AEA board is assembled, it could be subject to lawsuit.

[3:40:53 PM](#)

PARKER PATTERSON, Senior Assistant Attorney General, Department of Law, Juneau, Alaska, answered questions on EO 128.

[3:41:04 PM](#)

SENATOR WIELECHOWSKI asked whether Mr. Patterson agrees with Legal Services' testimony.

[3:41:21 PM](#)

MR. PATTERSON said the Attorney General's Office is in agreement with Legal Services' perspective, but has a slightly different interpretation. This is a unique provision of the constitution, and has only occurred in Michigan's state constitution, which was influential on Alaska's constitution. Precedence was found and the distinction of "new law" determined that the governor has the authority to make new changes to a board's structure, but presupposes that it will require new law. From the Attorney General's point-of-view, the question is whether the governor would be appropriately exercising power to modify the organization of the structure or functions of the board of directors. Making changes to the structure of the organization would be an appropriate exercise of Governor Dunleavy's authority. Governors in the past have exercised authorities in a similar fashion. A previous Alaskan governor created an entirely new commission through an executive order.

The order would be entirely within the text of the constitution.

[3:45:16 PM](#)

SENATOR WIELECHOWSKI questioned Mr. Patterson's agreeance with Ms. Nauman despite her testimony claiming that EO 128 is unconstitutional.

[3:45:30 PM](#)

MR. PATTERSON replied that the Attorney General's office agrees that EO 128 alters the board's structure but its function remains. The Governor could not eliminate a board's function, but could move units between units of the executive branch.

[3:46:31 PM](#)

SENATOR WIELECHOWSKI stated that there is general agreement to make these changes through legislation. He asked if he agreed that it would be a safer approach than risking legal repercussions.

[3:47:20 PM](#)

MR. PATTERSON suggested consulting with the administration on the best path forward. The Attorney General's Office determined EO 128 would be a permissible and legal path forward.

[3:47:59 PM](#)

CHAIR KAWASAKI announced the consideration of a presentation titled "AEA Executive Order 128 Overview."

PRESENTATION: AEA EXECUTIVE ORDER 128 OVERVIEW

[3:48:18 PM](#)

CURTIS THAYER, Alaska Energy Association (AEA), Executive Director, Anchorage, Alaska, presented a presentation and provided testimony on EO 128 on behalf of the administration. He moved to slide 2 and provided an overview of AEA, which is broken down into six areas:

1. Railbelt Energy
2. Power Cost Equalization (PCE)
3. Rural Energy
4. Renewable Energy
5. Grants and Loans
6. Energy Planning

In the last two-and-a-half years, the AEA has been successful in obtaining over \$600 million in federal grants, resulting in over

one thousand percent capital budget growth in the past four years.

[3:51:30 PM](#)

MR. THAYER moved to slide 3 and briefly listed some active AEA projects and services.

[3:51:46 PM](#)

MR. THAYER moved to slide 4 explaining the purpose of EO 128.

[Original punctuation provided.]

Executive Order 128: The "Why"

"As governor, I find that it is in the best interests of efficient administration to separate the membership of the board of directors of the Alaska Energy Authority from the membership of the board of directors of the Alaska Industrial Development and Export Authority." – EO 128

- **Historical:** From 1976 until 1993, AEA was governed by its own board of directors.
- **Distinct Purpose:** The underlying purposes of AIDEA and AEA are fundamentally different. AEA's mission is to reduce the cost of energy in Alaska. Whereas, AIDEA's mission is to provide various means of financing to promote economic growth and diversity.
- **Unique Mission:** In addition to the lowering the cost of energy in Alaska, AEA works to diversify Alaska's energy portfolio, and increase resiliency, reliability, and redundancy – and our mission is growing.
- **Exponential Growth:** AEA's capital budget has increased over 1,000% in the last four years.
- **Distinct Expertise:** A distinctive set of skills and expertise is required for optimal governance. It is common and appropriate for a single-purpose entity to have a governing board made up of experts in the topic area.
- **Staffing:** AEA has 68 PCNs (20 IIJA PCNs pending); AIDEA has 31 PCNs; and Shared Services 15 PCNs.

AEA has 48 PCNs and hopes to add 20, but is already at a larger volume than AIDEA. Between the two services, AIDEA and AEA have some shared services. AEA continues to grow in size.

[3:54:43 PM](#)

SENATOR WIELECHOWSKI asked for a fiscal note for shared PCNs.

[3:55:00 PM](#)

MR. THAYER replied that the fiscal note holds that approximately \$28,500 is needed to cover the cost of the AIDEA Board. AIDEA assumes about 50 percent of costs and pays for certain employee needs.

[3:55:58 PM](#)

SENATOR WIELECHOWSKI asked if AEA expects EO 128 to maintain shared services.

[3:56:14 PM](#)

MR. THAYER said he believes that is the intent of EO 128. At this time, 15 people are sharing services between AEA and AIDEA. Further review is needed on whether the order would lead to a complete separation.

[3:57:02 PM](#)

MR. THAYER moved to slide 5 and provided a rundown of the proposed AEA Board makeup under EO 128.

[Original punctuation provided.]

New AEA Board Makeup.

As proposed in the Governor's EO 128, **AEA's board membership makeup** would include:

(1) the **commissioner of commerce, community, and economic development**

(2) six public members appointed by the governor as follows:

- (A) one member with expertise or experience in **managing or operating an electric utility that is not connected to an interconnected electric energy transmission network**, as that term is defined in AS 42.05.790;
- (B) one member with expertise or experience in **developing energy projects in rural communities**;
- (C) one member with expertise or experience in **managing or operating an electric utility connected to an interconnected electric energy**

transmission network, as that term is defined in AS 42.05.790;

- (D) one member with **financial expertise in large-scale energy project development**; and
- (E) two members with expertise or experience in **finance, energy policy, energy technology, engineering, law, or economics**.

[3:57:52 PM](#)

MR. THAYER moved to slide 6 and highlighted AEA's funding growth.

[Original punctuation provided.]

AEA's Exponential Growth

- AEA has received – **and anticipates a substantial increase in** – federal funding from the Infrastructure Investment and Jobs Act (IIJA) and others, over the next several years.
- **Pipeline of federal funding:**
 - \$84 million** awarded (Energy Efficiency Conservation Block Grant, Department of Defense Grant, State Energy Planning Grant, National Electric Vehicle Infrastructure grant, and Grid Resilience 40101(d) Grant)
 - \$573.5 million** conditionally awarded (Grid Resilience and Innovation Partnerships, Energy Efficiency Reconciliation Loan Capitalization Program, and Home Efficiency and Appliance Rebates)
 - \$104 million** competitive applications pending decision (solar for all, wood innovations grant, and energy future grant, and high-energy cost grant)
- Availability of **tax incentives for clean energy projects** and **direct pay reimbursement available for tax exempt entities for the first time**.
- In addition to **AEA's netbook value of \$1.3 billion**, several **large projects** are underway:
 - \$413 million** to build an undersea High Voltage Direct Current from the Kenai Peninsula to Anchorage
 - \$342 million** for the Dixon Diversion project (Estimated to offset 1.5 billion cubic feet of natural gas per year in Railbelt power generation)

-**\$90 million** for Railbelt transmission upgrades

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MR. THAYER moved to slide 7 and listed AEA's statutory programs:

[Original punctuation provided.]

AEA's Statutory Programs

- **Alaska Energy Security Task Force:** Development of the Governor's Alaska Energy Security Task Force Report submitted in December 2023.
- **New federal funding diversifies AEA's existing statutory programs and projects portfolio including:**
 - Rural Power System Upgrades and Bulk Fuel Upgrades:** AEA continues to manage legacy funding for critical rural energy projects and training programs in partnership with the Denali Commission.
 - Renewable Energy Fund:** AEA also manages this competitive grant program, and has received legislative funding for the last three consecutive fiscal years (over \$37 million).
 - Alaska Intertie:** AEA-owned transmission asset that saves Interior ratepayers nearly \$40 million annually.
 - Bradley Lake Hydroelectric Project:** AEA-owned generation asset that provides 10% of Railbelt's energy.
 - o **Required Project Work** is anticipated to utilize the bond proceeds from the \$166 million bond issuance, which are being planned, and will progress in the next several years (transmission and BESS).
 - o New federal funds for **transmission, grid resiliency, and other power projects** may be leveraged by the bond funds to advance energy projects and reduce the cost of energy in the state.
 - Power Cost Equalization:** AEA manages this annual ~\$45 million program vital for rural Alaskans.
 - Renewable Energy and Energy Efficiency Programs:** To promote Alaska's clean energy sector, AEA manages biomass, hydro, solar, and wind programs and projects across the state.

[4:01:04 PM](#)

MR. THAYER moved to slide 8 showcasing a chart of AEA's status from fiscal year 2021 to fiscal year 2024 in thousands.

[4:01:38 PM](#)

CHAIR KAWASAKI requested testimony from an AIDEA representative for their input on EO 128's potential impact on the AIDEA's operations.

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MR. THAYER replied that an AIDEA representative could provide feedback.

[4:02:12 PM](#)

CHAIR KAWASAKI said the committee would appreciate a comprehensive fiscal note for transfer cost.

[4:02:29 PM](#)

MR. THAYER responded that he would work with the legislative office to provide one.

[4:02:57 PM](#)

CHAIR KAWASAKI mentioned that Senate State Affairs is the first committee to hear an executive order this session, especially one involving substantive changes.

[4:03:37 PM](#)

There being no further business to come before the committee, Chair Kawasaki adjourned the Senate State Affairs Standing Committee meeting at 4:03 p.m.