MINUTES
SENATE FINANCE COMMITTEE
17 February 1997
8:40 a.m.

TAPES

SFC-97, Tapes 37 and 38, Sides A and B

CALL TO ORDER

Senator Drue Pearce, Co-chair, convened the meeting at approximately 8:40 a.m.

PRESENT

In addition to Co-chair Pearce, Senators Sharp, Phillips, Torgerson, and Parnell were present when the meeting convened. Senators Donley and Adams were not present.

ALSO ATTENDING: Senator Jerry Ward; Nico Bus, Budget Coordinator, Division of Administrative Services, Department of Military and Veteran's Affairs; Annalee McConnell, Director, Office of Management and Budget, Office of the Governor; Janet Clarke, Director, Division of Administrative Services, Department of Health and Social Services; Fred Fisher, Director, Division of Administrative Services, Department of Law; Barbara Ritchie, Deputy Attorney General, Civil Division, Department of Law; Mike Greany, Director, Division of Legislative Finance; Susan Taylor, Fiscal Analyst, Division of Legislative Finance; and aides to committee members and other members of the legislature.

VIA TELECONFERENCE: Chris Christensen, Staff Counsel, Alaska Court System, Sitka.

SUMMARY INFORMATION

SB 83 SUPPLEMENTAL & OTHER APPROPRIATIONS

SB 83 was HEARD and HELD in committee for further consideration.

FY 97 supplemental requests for the Departments of Military and Veteran's Affairs, Health and Social Services, Law, and Natural Resources, and the Alaska Court System were discussed by the above-listed individuals. Co-chair Pearce announced the meeting would be recessed until Monday, 24 February 1997 at 8:30 a.m. The committee will continue hearings on the supplemental requests.

#sb83
SENATE BILL NO. 83

"An Act making an appropriation for management fees for the constitutional budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska); and providing for an effective date."

DEPARTMENT OF MILITARY AND VETERAN'S AFFAIRS

NICO BUS, BUDGET COORDINATOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF MILITARY AND VETERAN'S AFFAIRS (DMVA) pointed out that there were additional DMVA items in Section 4 and explained that Section 3 was a $1 million request for the disaster relief fund. He noted that the department had been using up unobligated balances over the past couple of years, but needed supplemental money for the fund in order to be prepared for the remainder of the year.

Senator Sharp asked whether the disaster relief fund could be mixed and matched with money made available for the Miller Reach fire and whether that was disaster or forestry money. Mr. Bus replied that the funds were both; there had been a specific supplemental request for the fire and there had also been a supplemental request in FY 96 for the disaster relief fund that carried into FY 97. He added that the available balance had since been used up by other disasters declared in the fall.

Mr. Bus continued that Section 4(d) was a request for $100,000 in general funds for radio equipment. The department needed to communicate between the different emergency-response organizations when it coordinated disasters. Specifically, there had been problems with the radio for the Miller Reach fire. The request would allow the department to purchase a portable console that would enable better communications. The long-term solution would be a work group between state, federal, and municipal agencies to learn the right frequencies, for example.

Senator Phillips asked whether the discussed item was typically RP or single source, and whether additional problems were anticipated. Mr. Bus replied RP; he did not foresee problems with telecommunications.

Mr. Bus turned to Section 7, a request for $220,000 for an emergency-alert system for the Division of Emergency Services. The system would be used to alert the general population of any disaster; the alert would transmit to all the different radio and television stations via satellite.

Co-chair Pearce asked how much other states had to pay to upgrade

to the system. Mr. Bus replied that each state was in a different situation; Alaska was unique because of geographics and the make-up of its radio and television stations. He recalled that the cost ranged between $5,000 and $50,000 for other states. He offered to provide further specific information through handouts, including a graphic display.

Co-chair Pearce asked whether the federal government was told that the system would cost Alaska more than other states. Mr. Bus believed so. He offered to follow up with more detail.

Senator Parnell asked when it was first known that Alaska would have to make the expenditure. Mr. Bus replied that the department had been aware for two years; the item did not get in the budget and a federal mandate made it necessary to have the system as soon as possible.

Senator Parnell asked whether the item had been submitted as part of the governor's FY 97 capital request. Mr. Bus believed it had been.

ANNALEE MCCONNELL, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET (OMB), OFFICE OF THE GOVERNOR, testified that the item was one of those flagged throughout the year because of a federal deadline; it had been submitted the previous year and then again in the current year. She added that there were a number of technology and emergency communications projects the previous year that she felt needed to be revisited. She wanted to go ahead rather than wait until FY 98 because of the nature of the emergency communications difficulties and the federal deadline.

Co-chair Pearce referred to the $1 million appropriation for the disaster relief fund and queried the base-level budget for the operations in the area. Mr. Bus replied that the FY 98 base budget for the Division of Emergency Services would be $585,000. He added that the funding had been reserved out of the disaster relief fund, but further analysis revealed that there was not enough money available.

Co-chair Pearce asked what the balance would be if only base-level operations were done. Mr. Bus answered that after the $1 million, there would be $105 million, assuming no further disasters. He added that $585,000 would be reserved for FY 98.

Ms. McConnell pointed out that in the FY 98 budget, disaster relief and funding of the Division of Emergency Services had been considered. Modification was being proposed for FY 98. She noted that OMB would be open to discussion with the legislature regarding a different arrangement for funding both fire suppression and disaster needs. She stressed that the supplemental request was needed because of the coming flood season.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

JANET CLARKE, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (DHSS), informed the committee that the request in Section 5(a) was for $939,000 for the adult public assistance program. The program provided financial assistance to approximately 11,500 elderly, poor, blind, and disabled people per month. The program was closely linked to the supplemental security income program (a federal program) and followed most of the same rules. The program had not had the volatile swings in caseload experienced by other programs such as Aide for Dependant Children (AFDC). The adult public assistance program experienced stable growth throughout the 1990s, ranging from 7 to 9.1 percent.

Ms. Clarke pointed out that the previous year's request was reduced by $1.3 million. The department anticipated needing $939,000 to continue making payments for the program. She added that the program was an entitlement program and the payment standard was set by state law.

Senator Phillips clarified that the amount was approximately $11,500 per month. He thought the figure had previously been around $8,000. He wondered whether there was another category of people included in the exemption. Ms. Clarke replied that there were 7,000 disabled people and 4,000 elderly. She offered to get more information.

Senator Sharp queried mandates related to Social Security Insurance (SSI) in the previous year’s budget. Ms. Clarke replied that the department had not been aware of changes when considering the previous year’s budget. The department had built in a small reduction in its request to reflect the estimated amount of people that would not use adult public assistance. She noted that the supplemental request could be reduced, depending on the amount of people that would not qualify. She stressed that the department was taking a conservative approach to the number of people that would not receive the assistance.

Senator Sharp thought the numbers would drop off for those disabled because of drug or alcohol use. Ms. Clarke replied that the people described were included in the $100,000 reduction in the request. She added that the situation would be monitored closely; the supplemental could be reduced.

Co-Chair Pearce asked what other fund balances were in the appropriation for adult public assistance. Ms. Clarke replied that the other programs in the assistance payment appropriation included AFDC and the general lease assistance appropriations. After consideration, the department did not believe there were

balances available to cover the shortfall. She pointed to an anticipated in-depth review based on the quarterly federal-revenue report and noted that the department would have a more accurate idea of the balance at the end of February.

Ms. Clarke turned to Section 5(b), a $10 million request for federal funds for the Indian Health Service (IHS). She explained that the department had decided to come to the legislature rather than Legislative Budget and Audit for the component because of the significance of its size. She detailed that the component was 100 percent federally funded within the medical assistance program and paid for Medicaid recipients using IHS facilities. She added that in FY 96, the Healthcare Financing Administration had agreed to raise the rates for IHS facilities, resulting in a significant increase in federal funds in FY 97 and a supplemental for FY 96 because the provision was made retroactive to January 1. The department had discovered that it had not raised authority enough to pass it on to the IHS facilities. In addition, increased utilization of the program had been underestimated.

Ms. Clarke continued that the Medicaid program was a 50 percent state/federal match program; the more the state could encourage Medicaid recipients to use IHS facilities, the federal government would pay 100 percent. The long-term plan to contain costs included encouraging more use of the facilities.

Senator Sharp asked whether there would be offsets because of the 50/50 share. Ms. Clarke replied that the rate the Healthcare Financing Administration agreed to pay IHS facilities had basically doubled; the rate went from around $500 per day for inpatient care to $1,000 per day, which was more in keeping with the normal market rate. She noted that there was not an increment increase in FY 97 for the department and that usually there was growth in the amount required to pay for hospitals and nursing homes. There was not an increment in FY 98 because of the savings due to the increased federal receipts.

Ms. Clarke turned to Section 5(c), $1 million for the foster care program. She detailed that the program was established in statute and was available so that the department could arrange for the care of every child in its custody. She noted that foster care was not for children in trouble or juvenile delinquents, but for those who were victims of abuse and neglect. The request was in three parts. The governor's request the previous year was $200,000 over what the Conference Committee funded and accounted for part of the shortfall.

Ms. Clarke detailed that the second item related to a discovery made during the previous nine months related to troubled and high-cost children. She noted that depending on the geographic differential, foster-care payments ranged from $25 to $30 per day;

some of the payments were supplemented. She argued that the program was fairly cost-effective compared to a hospital or an institutional setting, which could cost up to $800 per day.

Ms. Clarke relayed that the third component was related to the department underestimating the utilization of the foster care program. She detailed that in the early 1990s, there were significant supplemental requests for foster care; re-evaluating the program had resulted in several years of reduced costs. The steady 5 percent growth rate did not continue for FY 97.

Ms. Clarke presented a profile of a high-cost foster child prepared by the division to help understand the increased costs. The profile described "Frank," a child with an attachment disorder who came to the department at the age of six. School staff had described him as frequently absent, physically dirty, and having many bruises and scars on his body. Investigation revealed that Frank had been severely abused physically and sexually abused by his parents. He was placed in a foster home, but had to be removed after he killed the foster family's pet cat and tried to smother their baby. Two other foster placements ended similarly. There were also fire-setting incidents. Frank was placed in a group home. At age twelve, he became unmanageable and assaulted staff with a knife stolen from the kitchen. He was transported to a psychiatric bed at a community hospital, and then to a private facility in Anchorage. He had been in the private hospital longer than was authorized by Medicaid. The Division of Family and Youth Services was paying for Frank's care out of the foster care budget until a suitable place could be found for him. While normal in-patient psychiatric costs can be $800 per day, the department had negotiated a cost of $300 per day with the private facility, but the rate was still high.

Co-chair Pearce queried what had happened to the parents. Ms. Clarke offered to find out.

Senator Sharp asked when the budget responsibility would be transferred to another mental health budget. Ms. Clarke replied that there had been activity working with the mental health board and the Alaska Mental Health Trust Authority to look at different models of care. One suggestion was more secure facilities than group homes at around $50 per day. She noted that division staff was looking for a middle solution for the children.

Senator Sharp thought the suggestion distorted the notion of budgeting for foster care because of the symptoms being treated. He asked whether the second and third foster sets of parents had been told about Frank's problems. Ms. Clarke did not know. She offered to get more details.

Senator Phillips asked whether Frank would be in an institution

for the rest of his life, given past experience. Ms. Clarke replied that in the past, such young people were sent out-of-state, which propelled the Alaska youth-initiative program; funding was provided from the Department of Education, the Division of Mental Health, and the Division of Family and Youth Services. The intent of the program was to keep young people out of institutions and provide "wrap-around" services. She noted that the department had been finding that the situation for the described young people was becoming more severe. Some of the placements were not working out. She did not know whether the child would be in an institution for the rest of his life.

Senator Parnell pointed to backup materials stating that the division had experienced escalated numbers of children with severe emotional and behavioral needs. He questioned whether foster care was changing and what was happening to cause the escalation. Ms. Clarke answered that she was not qualified to assess the trends. She thought the discussion regarding whether a child in custody was a Division of Family and Youth Services child or just a child with a lot of needs, including mental health needs. She noted that the department could be bound by appropriations and categorical funding; coming up with ways to break down the barriers was challenging. She offered to get more information about trends.

Senator Parnell queried the extent of the problem. Ms. Clarke replied that the foster-care budget was $10.8 million, while a single child with significant problems could cost up to $200,000. She offered to get more information about the extent of the problem.

Senator Sharp noted that the increase would be around 10 percent. He asked whether any portion of the foster-care budget was covered by federal funds or match funds. Ms. Clarke responded that there were significant federal dollars, including Title IV(e) funds for qualifying foster kids.

Senator Sharp queried the availability of matching funds for the million dollar request. Ms. Clarke responded that part of the FY 97 request was an increase in the federal share; it was already built into the budget. The increment in federal funds was already received. She pointed out that Title IV(e) was not a strict-match program; it was available only for kids who were considered eligible. For those who qualified, there was a 50 percent match requirement. In Alaska, approximately 40 percent of kids in foster care qualified for the funds; the state received 50 percent.

Ms. Clarke turned to Section 5(d), a request for $685,000 for the McLaughlin Youth Center. The center had a 150-bed capacity; during the fall it had housed around 180. For January, the average number of clients escalated to 192 kids. She reported that the crowding was mainly occurring in the detention unit, not the long-term

open-campus unit. The detention unit currently had a 35-bed capacity, but occupancy had been 70 to 90 kids. In addition, increased staff was required because of the overcrowding.

Ms. Clarke pointed to backup materials with a chart illustrating the changing population at McLaughlin Youth Center that had necessitated higher requests for funding. In the past, there had been seasonal downturns during the summers. She noted a small dip during the previous summer, which did not correspond with the typical large dips of the past. For funding purposes, the department had anticipated the usual significant summer reduction, which did not occur. Another concern was the increased need for staff to keep the facility safe as well as increased needs for food and other commodities.

Senator Parnell wondered whether there had been a time when the residence was not staffed around the clock. Ms. Clarke replied that the facility had always been staffed 24 hours each day. The backup materials were alluding to overtime costs needed in the past because of the inability to fill positions. She noted that there were different kinds of kids in the center, including older kids that preyed on younger kids, and girls, who needed to be separated from the boys.

Senator Parnell pointed to backup materials saying that when the center was not over capacity, some of the posts could be manned during daylight hours and not at night. He asked for background information. Ms. Clarke replied that the described situation had probably occurred in July 1993.

Senator Sharp asked how many positions were added. Ms. Clarke answered that on-call staff had been added, not permanent staff. She added that the on-call staff was becoming like permanent staff and the issue would have to be revisited.

Senator Sharp hoped that overtime would be replaced as much as possible. Ms. Clarke agreed.

DEPARTMENT OF LAW

FRED FISHER, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF LAW, informed the committee that Section 6(a) was a request for a lapsed-date extension for an amount pertaining to outside counsel contracts for oil and gas litigation support. He detailed that under AS 37.25, a valid obligation or encumbrance existing on June 30 was automatically re-appropriated for the subsequent fiscal year. He noted that the issue pertained to what could be done to the amounts validly encumbered as of June 30. He pointed to an apparent disagreement between the agency and the legislative auditor as to whether the contracts for litigation support were severable after the fiscal year. At the end of FY 96,

only the amounts associated with two contracts for outside counsel services were encumbered and were involved in the lapsed-date extension. All other amounts remaining unexpended or that were encumbered for other purposes as of the time were lapsed. The amount constituted about $1.9 million. He pointed out that the legislature had adopted similar language the previous year allowing the department to extend the lapse date for FY 95 through the end of FY 96.

Senator Parnell referred to the disagreement between the department and the legislature regarding the mechanism and asked whether the department would use the mechanism in the future. Mr. Fisher believed the department would not use the mechanism again after the present year.

BARBARA RITCHIE, DEPUTY ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF LAW, agreed that the current usage was the last time. She testified that the department intended to continue bringing down the oil and gas budget to reflect the ramping down of case activity.

Co-chair Pearce noted that legal staff had informed the committee that it would need a three-quarter vote on the particular section of the supplemental budget because the funding source was the Constitutional Budget Reserve (CBR) and had been for a number of years. She understood that staff had asked Mr. Baldwin to offer other ideas, but she had not seen anything. She pointed out that the title of the bill would need to change to include the CBR appropriation provision.

Co-chair Pearce asked Ms. Clarke from DHSS to address the ratification section before continuing with the Department of Law (Section 11, subsection 3, accounting system ratifications).

Ms. Clarke provided background regarding ratifications. When the state converted to the current accounting system, there were a number of negative allocations that continued on the books. The Department of Health and Social Services had not cleaned up the negatives, although the items had been paid. The previous spring, a report by OMB showed over $6 million for DHSS. There were positive allocations negating negative allocations; however, the positive would lapse and the negative would remain. The last items [in Section 11] included an over-expenditure caused by the use of a field warrant.

[SFC-97, Tape 37, Side B]

Ms. Clarke detailed that there were several ways to pay expenses. One was using a general warrant. A field warrant did not have the same control; a field warrant was certified and issued, and the information was input after the fact. In the example, the warrant

was $0.07 over after the fact. She assured the committee that DHSS had dropped the use of field warrants by 85 percent since 1989 and 1990 [when the problems occurred].

Ms. Clarke added that many over-expenditures were related to revenues that did not come in. For example, an item for a Medicaid facility (Harborview) reflected inaccurate expectations of payments from federal sources.

Co-chair Pearce queried a $191,000 item from 1995. Ms. Clarke answered that the item was a recommendation in the FY 96 legislative audit, requesting receipt of a ratification. She reported that the item had been paid and was a revenue shortfall. The shortfall was the result of a failure to report and claim eligible expenditures. The department had a two-year window; for some reason, out of the millions of dollars that were claimed, the item did not get claimed on time for the federal share. The federal share in the appropriation was significantly higher.

Co-chair Pearce clarified that the $191,000 represented a portion of the federal share that had not been claimed by the department. Ms. Clarke explained that for matching information systems, Medicaid usually got 90 percent federal participation. The department had large appropriations in the past when the system was brought up; the one item was not claimed on time for a portion of the activity.

Co-chair Pearce asked what the department was doing to assure that the shortfall was not repeated. Ms. Clarke answered that the item was a capital item and that the department was much more adept at claiming operating funds. She added that DHSS was building claiming procedures to make sure that the capital items were identified up-front.

Co-chair Pearce turned attention back to the Department of Law. She noted that there were two other sections, subsection (b); subsection (c) was already gone. She turned to judgments and claims.

Ms. Ritchie explained that the section reflected the $97,072 for judgments and claims that the department had processed at the time the bill was prepared; since that time there had been a few more.

Senator Parnell referred to the list of judgments and claims and asked whether the amounts were judgment or settlement amounts. Ms. Ritchie replied that most of the items were judgment amounts. Items that were settlement amounts for the most part had been affirmed by the court involved and signed off as a judgment.

Senator Parnell asked whether the items were fixed and queried interest calculations. Ms. Ritchie answered that the interest

calculation was from whenever the judgment became interest-bearing through June 30, 1997, in order to estimate when the payment would be made. She noted that other than interest beyond June 30, the amounts would not change.

Co-chair Pearce requested an explanation of each item. Ms. Ritchie went through the list:

1. Judgment totaling $4,690.03 related to the Knowles case, litigation regarding the CBR. The amount reflected the resolution of the remaining issues in the litigation, including the attorney fees incurred in connection with the enforcement and verification work done after entry of the court's order. The work was done to ensure that the proper funds were being deposited into the CBR. The payment would be made to the attorney firm for the plaintiff, Pope and Katcher.
2. Kenai Peninsula Borough School District v. State of Alaska Department of Labor judgment at $1,327.51 (total and interest). The case involved a woman who was determined by the department to be entitled to unemployment insurance; the decision was appealed by the school district that determined she was ineligible for the benefit. The Department of Law opposed the motion for attorney fees and costs and the court disallowed the costs but awarded attorney fees in the amount reflected.
3. O'Callaghan v. Coghill judgment at $28,248; $31,519 with interest through June 30 payable to Max Gruenberg. The litigation related to the change to the blanket primary rule to close the primary. The state of Alaska prevailed in superior court; the Alaska Supreme Court reversed the ruling and reinstated the open blanket primary rule. The plaintiffs had requested $40,000 in attorney fees; the department defended against that, taking the position that nothing was owed. The court ordered attorney fees in the amount of $25,000. The department did not contest the amount awarded to O'Callaghan although it did object to costs, which were not granted.

Senator Parnell queried the total awarded. Ms. Ritchie replied that the award was for nearly $27,000 in attorney fees to the Alaska Voters for Open Primaries (represented by Max Gruenberg), and costs at $1,400.

Ms. Ritchie continued with the list:

4. Alaska v. Native Village of Venetie at $13,109.12 (including interest) to the Alaska Legal Services Corporation. The award was by the U.S. district court for costs that arose out of the first of three Venetie cases. Venetie I was the adoption case and was remanded out of the ninth circuit back

to the district court for a trial on tribal status in Indian country. Venetie I was consolidated with Venetie II, the tax case which was also remanded. Following the trial, the judge held that Venetie had established the criteria for common-law status as an Indian tribe, a different ruling than what later happened in the Fort Yukon case where Judge Holland determined that Fort Yukon was a tribe based upon its inclusion on the Bureau of Indian (BIA) list of tribes first published in 1993. The amount represented costs; the entire attorney fees award was disallowed by the district court. The court determined that Alaska Legal Services was not allowed because what they were actually asserting was an issue related to sovereign powers, which was not an issue to which they were entitled to fees under federal law. The attorneys were asserting a deprivation of constitutional rights under 42 U.S.C. 1983, which would entitle them to fees. The court disagreed and said the case was about sovereign powers and not entitled to fees. She corrected the earlier number to $11,000 for costs.

Co-chair Pearce clarified that the money was going to Alaska Legal Services. Ms. Ritchie agreed, and added that the money was for the costs associated with the trial when the case was remanded from the ninth circuit.

Senator Parnell asked who Alaska Legal Services represented in the case. Ms. Ritchie answered that the Native Village of Venetie was represented. Senator Parnell asked why; he thought the organization represented indigent Alaskan citizens. Ms. Ritchie offered to check. She noted that the village was represented; two individually named plaintiffs were Nancy Joseph and Margaret Solomon. She added that the attorney fees issue was under appeal.

Senator Torgerson asked whether Alaska Legal Services was allowed by Alaska statute to represent a village. Senator Parnell noted that individuals were named. Ms. Ritchie agreed that there were individual plaintiffs in the adoption case where the individuals were seeking to have the state recognize a tribal adoption. The issue was whether the tribe had the power and whether the state was required to recognized the adoption. She offered to get more information.

Ms. Ritchie continued with the next item on the list:

5. Phoolan v. United Fishermen, the litigation that arose from the fish initiative. The plaintiffs challenged the lieutenant governor's certification of the fish initiative for placement on the November 1996 ballot. The superior court upheld the certification, the plaintiffs appealed to the Alaska Supreme Court, which reversed the decision and enjoined the lieutenant governor from placing the initiative

on the ballot. The issue in the case was whether the initiative called for an appropriation. The state prevailed in its opposition to the plaintiffs' request for public interest litigant status and also prevailed in its opposition to the co-defendant FISH, Inc.'s request for public interest status. The department successfully challenged the request for full attorney fees as public interest litigants, resulting in savings of $16,000. The department was also successful in opposition to FISH, Inc.'s attempt to shift all liability for costs and fees to the state; as a result the state was responsible for only half the costs and attorney fees. The state's co-defendant, FISH, Inc., was liable for the other half. Therefore, the amount for fees and costs was around $1,300 with the interest.

Senator Phillips queried the attorney fees. Ms. Ritchie replied that the amount of $1,350 would be payable to Arthur Robertson of Soldotna. She thought that Av Gross represented the sponsors of the initiative and Arthur Robinson represented the group that did not want the initiative on the ballot. The state was represented by Jim Baldwin and Sarah Felix.

Ms. Ritchie continued with the next item on the list:

6. McClosker v. State, Department of Revenue, amounting with interest to $1,411.15. The case came from an appeal of a permanent fund dividend determination. The amount would be payable to a lawyer in Fairbanks. In the case, the Department of Revenue denied a 1994 permanent fund dividend application for a woman's son; she appealed, and it was determined that the department had applied the wrong regulation. When the case was appealed, the error was apparent, but the appellant had already incurred full fees and costs at about $3,100. The department did not pursue the case further, as the error was apparent. There was an award of attorney fees and costs of $1,300.

Senator Sharp queried the source of the funds. The department believed the funds came from the permanent fund. Senator Sharp thought the amount should be paid as part of the administration of the permanent fund as it was caused by an erroneous rejection. Mr. Fisher (?) replied that the department could look into the issue.

Ms. Ritchie continued with the list:

7. Alaska Public Employees Association v. State of Alaska, an attorney fees award of $1,000 entered by the state supreme court. In the case there was an arbitration award some years ago that would require that the Department of Environmental Conservation (DEC) enable Mr. Long to have certain duties with respect to pipeline terminal oversight; DEC appealed

the decision to superior court, which prevailed. Further appeal to the Alaska Supreme Court reversed the ruling, indicating that the arbitrator's award should have been upheld. The court entered an award of $1,000 for attorney fees.

Co-chair Pearce asked whether Mr. Long was back on the job. Ms. Ritchie answered that she did not know, but believed he was.

Ms. Ritchie continued:

8. National Education Association v. Mark Boyer. The case began several years ago in 1991. The National Education Association (NEA) brought a class-action suit against the Public Employees Retirement System (PERS) and Teachers Retirement System (TRS), challenging the statutes relating to medical benefits and the automatic cost-of-living increases, as well as the failure of various commissioners of administration under Governors Cooper and Hickel to award discretionary cost-of-living increases. The department filed motions for summary judgment on the statutory issues and prevailed; however, they were not able to obtain summary judgment on the discretionary cost-of-living increases. On the cost-of-living issue, the department ended up in settlement negotiations with the parties at the urging of the state superior court and was able to reach a settlement. Any resolution of the case required court approval, since it was a class-action suit. As part of the resolution, the TRS and PERS systems agreed to pay NEA's attorney fees relating to the case in the amount of $7,500. The case was major and involved potentially significant liability for the retirement systems; significant effort was put into trying to defend the case and resolve the issues. The retirement systems prevailed on the statutory issues; as part of the settlement, the plaintiffs agreed not to appeal the superior court's rulings on the summary judgment with respect to those issues. The rulings were binding on virtually every member of the PERS and TRS systems, which were liable for about $7,500 in attorney fees. Since the potential liability was much greater, the department felt the resolution was beneficial.

Senator Phillips queried the names of the players. Ms. Ritchie replied that the attorney in the NEA case was Don Clocksin.

Senator Sharp asked whether PERS and TRS would pay the bill. Ms. Ritchie answered in the affirmative. She continued with the list:

9. Capital Information Group v. State of Alaska Office of the Governor. The lawyers in the case for the Capital Information Group included Greg Erickson, Jeff Bush, and

Doug Pope. Ms. Ritchie represented the state. The case arose in 1993 in Governor Hickel's administration. The Capital Information Group had requested under the Public Records Act that the governor's office provide certain documents related to budget development and proposed legislation prior to the governor making decisions about the issues. The Office of the Governor denied access to the records, asserting deliberative process and executive privilege, because the items were prepared by the department heads and the governor's policy advisors for the governor's consideration in setting policy with respect to budget decisions and whether particular pieces of legislation should go to the legislature. The Capital Information Group appealed the initial decision to the chief of staff in the governor's office; the appeal was denied, and the group brought suit. In the superior court the group initially sought an injunction, which was denied; petition to the Alaska Supreme Court was also denied. A motion for summary judgment in superior court on the deliberative process/privilege issue was affirmed in total and held that the process was properly invoked with respect to both types of documents. The Capital Information Group appealed to the Alaska Supreme Court, which decided that the legislative documents were covered by the executive deliberative process/privilege. She noted that the case was useful in that it further articulated the scope of the privilege beyond what had been articulated before. Regarding the budget documents, the court pointed to a certain provision in the Executive Budget Act related to all documents that departments must submit to the OMB to be incorporated into the governor's proposed budget and determined that documents were public once submitted to OMB. The court said that the statutory provision balanced deliberative process and privileges with public interest and disclosure. The legislature had already achieved that balance and had decided that public disclosure was appropriate. Therefore, the court said the legislature had the authority to adopt the statute. The documents were now public once they were submitted to OMB. Capital Information Group was a public-interest litigant in the case, and so was entitled to full reasonable attorney fees. They initially claimed a total of $36,000 in fees ($16,000 before the supreme court and a little over $20,000 before the superior court); the issue was resolved through settlement and $10,000 was paid for the supreme court work and $10,000 for the superior court work. The state prevailed on one of the issues: the appellate in the supreme court had largely focused on the budget documents, so the larger percentage of the supreme court work reflected concentration on the budget issue.

Co-chair Pearce queried the lower court request for a temporary

restraining order (TRO). Ms. Ritchie replied that an injunction was being sought; they were trying to require the executive branch to release the documents.

Senator Phillips asked for the definition of "public interest litigant" and wanted to know who could use it. Ms. Ritchie replied that in the cited instance, case law was on point with respect to the ability of the press to establish itself as a public interest litigant. She offered to get more information.

Senator Sharp summarized his understanding of the case and asked how a case could be expanded as it worked through the process. Ms. Ritchie replied that the case was not expanded. The Capital Information Group initially sought two things: legislative proposals that came to OMB from various department heads pre-session, and budget impact memoranda (OMB had issued certain allocations to each department asking the impact of getting a given amount of money and recommendations). In the development of the budget, volumes of information were produced. The superior court viewed the request as continuing; the state was required to maintain and catalog all the information. In that way, the request expanded the process. In the final analysis, however, both the supreme court and superior court focused back on the budget impact memoranda that had been requested by OMB.

Senator Torgerson asked the definition of "submitted" (related to the information becoming public when it was submitted to OMB). He wondered whether the process referred to hard copy, email, or conversation. Ms. Ritchie replied that the court ruling did not answer to that level of detail; following the decision, the Department of Law discussed the interpretation with OMB. The statute stipulated that OMB ask for information in putting together the budget, and once the information came to OMB, it was public. She did not think it mattered at that point whether the information was paper or electronic. She noted that the statutes were created before the proliferation of electronic technology, but she did not think it mattered. Once the information went to OMB, the governor would use the material for the proposed budget. Prior to the information being received, there would be discussions related to the budget.

Senator Torgerson wondered what the actual submission meant. He had heard recently from different agencies that not much was put on paper because they did not want the information released. He believed OMB was involved in putting together individual department budgets, but the information was not submitted on paper. He asked whether a policy had been developed regarding submission. Ms. Ritchie reported that during the current year, the documents were submitted to OMB around mid-November. She believed the governor had delayed his presentation to the public considerably as a result of the court decision. She did not think

the amount put in writing differed from other years, although the ruling affected what the statute meant.

Co-chair Pearce questioned why information a department gave to OMB should not be confidential until the governor reviewed it. She opined that that would affect the budget process and prevent open discussion. As the budgets got tighter, departments would have to prioritize and might not be willing to do so if the information was made public. She wanted to know the legal reason for the court decision. Ms. Ritchie replied that the state had made similar arguments and that the court had applied similar analysis with respect to the legislative documents. Regarding the budget documents, the court held that the materials met the threshold requirements for the privilege, that they were pre-decisional and deliberative. She believed that absent the statute (AS 37.07.050(g)), the court would have held that those were deliberative documents in the same manner that the legislative proposals were at the time.

[SFC-97, Tape 38, Side A]

Ms. Ritchie continued to describe the timing of the process. She thought that getting input from the commissioners was part of the process. The difference was the existence of the statute and the Executive Budget Act, which stipulated that the information became public once it was forwarded to OMB (the information required to be submitted by departments to OMB). The court held that the legislature had the authority to adopt the statute. The state argued that the statute violated separation of powers because it superseded the deliberative process privilege; with the statute, there was not deliberative process privilege in the same manner as with other documents (with respect to the budget documents). The court held that the legislature had the authority under the Alaska Constitution "to allocate executive department functions and duties among offices, departments, and agencies of the state government." In addition, the enactment of the statute allocated executive branch functions; it was within the power of the legislature to enact the statute, and in doing that, the legislature had already applied the balancing test with respect to the need for a deliberative period of time and the need for public access to the information.

[Unidentified speaker] described her related experience. When discussing the budget process at the state level with staff, she would point out that the budget documents were submitted to OMB and then decisions would be made about the various items. She noted that it wasted time to submit items that would be rejected. In a previous job as the director of the municipality of Anchorage, she had worked to get information more informally before having departments prepare the detail. She agreed that ideas might not be brought forward that had to be put on paper.

She opined that a more creative process could be more productive and that in the first year, verbal information was encouraged (this was before the Capital Information Group case). She agreed that the resolution of the lawsuit had heightened the need to figure out how to go through the process in a way that both meets the state supreme court requirements and meets the practical workings of government.

Co-chair Pearce referred to early testimony by Ms. Ritchie regarding public-interest litigants. She understood that the courts felt that the press had an ability to get to information that was available to all. She queried the parameters of a group such as the Capital Information Group related to information. Ms. Ritchie responded that the Capital Information Group had a publication with subscribers. The issue in the case was the Alaska Budget Report. She pointed out that there were criteria related the numbers of subscribers; the Capital Information Group met criteria for qualifying as "press." The concept for the press being a public-interest litigant was that they were seeking information on behalf of the public who were their readers. She offered to get more information on public-interest status.

Co-chair Pearce asked whether there was provision in the law for reporting versus analyzing or interpreting. Ms. Ritchie answered that she did not believe so. She continued with the list:

10. [Case name unintelligible] for $2,000 plus interest attorney fees award. The state's lawyer was Robert Royce, who handled most of the human-rights appeals that end up in court. The lawyer for the appellant was Christian Bataille from Fairbanks. In the case, the plaintiff had appealed a human rights commission determination that dismissed two of his administrative complaints; the allegation was on age discrimination. The case was appealed to superior court; the determination was that the complaints probably should not have been dismissed. The amount of attorney fees awarded was half the amount requested.
11. An appeal from the Alaska Commercial Fisheries Entry Commission by Mr. Eckert. The commission had declared Mr. Eckert ineligible to apply for a commercial fisheries entry permit. The decision was based on a 1978 hearing. The commission did not issue its final decision until 1994. In the meantime, Mr. Eckert had been issued a temporary permit and had been fishing. The issue was whether he had established eligibility to file an application for the permit in 1972. The lawyer was from Fortier and Mikko in Anchorage. Judge Roland from the superior court decided that the notice that was issued to Mr. Eckert in 1976 was not sufficient notice and did not give him enough information. The case was remanded to the commission for a hearing. The superior court did not reach the other issues.

Co-chair Pearce asked whether it was normal for the commission to give a temporary permit to anyone who has appealed the denial of a permit. She wondered whether he was denied a permit. Ms. Ritchie answered that he was determined ineligible to apply for a permit, but he was issued a temporary one. She did not know normal practice.

Co-chair Pearce thought the question was interesting and wondered why a permit would be granted while eligibility for one was being determined.

Senator Torgerson queried the chain of events. Ms. Ritchie responded that the issue in 1972 was whether the claimant was eligible to apply. He was given an initial hearing in 1976, and a re-hearing in 1978; the commission finally issued its decision in 1994 and that was appealed to superior court.

Senator Torgerson thought a lot of time had passed.

Ms. Ritchie continued with the list:

12. Michael Brown v. State was a case that arose out of an appeal of a child-support determination. The lawyer was Kenneth Kirk in Anchorage; Rhonda Butterfield represented the state. The amount was entered by Judge Wolverton for attorney fees against the state. The Child Support Enforcement Division had administratively modified the plaintiff's out-of-state child-support order and raised the obligation substantially. Mr. Brown did not appeal at that time; he asked for a modification of child-support award, but did not provide sufficient information needed. The Child Support Enforcement Division began collecting a substantial amount of money from the plaintiff under the new modification award. Mr. Brown filed a lawsuit in superior court, claiming that the agency did not have the statutory authority to modify the court order of child support. The agency argued that he was attempting to appeal administrative decision, but was out of time and had not complied with procedure. The case was pending when the supreme court issued its decision in State [Child Support Enforcement Division] v. Dunning; based upon that decision, the court ruled that the holding of the supreme court applied and granted the relief requested by the plaintiff, holding that the provision in Title 25.27.210 authorized the plaintiff to go to the superior court to challenge the division's decision. Ultimately, the state filed motions for reconsideration but was not successful. The judgment for $2,000 was entered for the plaintiff's attorney fees.
13. Alaska Gun Collectors Association v. State, related to the question of sale or destruction of firearms by the state.

Wayne Anthony Ross was the lawyer. The amount of the fees was $3,000 with $286 in interest. In the case, the parties stipulated to a dismissal on the basis that state law provided that the state may only dispose of forfeited surplus or recovered but unclaimed firearms and ammunition by sale or trade to a federally-licensed firearms dealer and that firearms that were not serviceable or safe would be destroyed. The issue brought by the plaintiff was that they were concerned that the executive branch would be destroying firearms that they felt should be made available either to gun collectors or licensed firearm dealers and that the destruction of the firearms would be inappropriate use of a state asset. Since the filing of the litigation, the legislature had passed the law clarifying how firearms recovered by troopers and police around the state were to be disposed of.

Senator Torgerson asked whether the issue was settled. Ms. Ritchie answered in the affirmative.

14. Carlson v. State. The lawyer for the appellants was Loren Domke and the state lawyer was Steve White. The case had been going on since 1984, was legally complicated, and had been to the Alaska Supreme Court twice. In 1984, certain non-resident commercial fishermen sued the state, claiming that the three-to-one ratio for non-resident fees violated the U.S. Constitution. The state won at the lower court level. The Alaska Supreme Court remanded the case for a determination of the appropriate fee differential under the privileges and immunities clause. The state supreme court held that the fee differential was not inappropriate under the commerce clause; that issue was the issue the plaintiffs sought cert on in the U.S. Supreme Court, which refused to take the case. However, the privileges and immunity issue was back in the superior court for a determination. The court had laid out a formula, and the question would be whether the three-to-one ratio could be justified under it. The state planned to file a series of motions in the case with respect to the issue of refund of back fees, should the state be held liable for any fees; she was optimistic that this would lower potential liability for the state. Hopefully, only a prospective issue would be left. Then, the state would be looking at application of the formula and how that would apply and whether under the formula the ratio laid out in statute could be justified. She warned that the case was still problematic, and that the state was working towards resolution. The item listed represented the attorney fees awarded by the Alaska Supreme Court as a result of the most recent hearing on the issue.

Senator Torgerson asked for clarification. Ms. Ritchie pointed to

the privileges and immunities clause, which basically stipulated that a person who happened to be in the state of Alaska had the same privileges and immunities as a person in another state. She added that the clause was a provision in the U.S. Constitution.

Senator Sharp asked for clarification. Ms. Ritchie replied that the superior court had determined in the most recent hearing that the differential was legal; that got appealed to the Alaska Supreme Court, which found the state on one issue and remanded on the privileges and immunities issue, and laid out the formula looking at the expenses the state had put into the commercial fisheries and whether that could justify the differential. The appellants (the commercial fishers) sought cert before the U.S. Supreme Court on the commerce clause, which was a federal constitutional issue. The appellants felt the issue was inappropriately decided by the Alaska Supreme Court. The U.S. Supreme Court did not take the case, which was the end of the particular issue. However, the privileges and immunities issue was still in superior court. The award being discussed was entered by the Alaska Supreme Court on the second appeal of the case, where it determined that the superior court was incorrect on the privileges and immunities issue, laid out what it felt was an appropriate formula, and remanded the superior court for application of that formula to the facts in the case. She added that the issue was a major accounting issue with respect to the sorts of expenses put into the commercial fisheries program.

Senator Sharp thought the appellants might not win anything. Ms. Ritchie responded that the department was hopeful that would happen, but that it was too early to know; the state wanted to get the issues that could be cleared up out of the way.

Co-chair Pearce asked whether there would be more cases with requests before the committee. Ms. Ritchie was not aware of any large requests comparable to the permanent fund appeal the previous year involving $5 million. She promised to keep the committee informed if the department heard of any significant cases.

Mr. Fisher informed the committee that there was another item pending that had been overlooked in production of the original bill, a net-zero supplemental request to change $29,300 in program receipts to zero-fund match. The request related to the Medicaid provider broad unit for FY 97. He explained that there were two issues. First, the federal government had reservations about the use of program receipts to match the program. Second, the unit had had some difficulties generating the amount of program receipts that were originally appropriated. He stated that the item would appear in the near future.

ALASKA COURT SYSTEM

CHRIS CHRISTIANSON, STAFF COUNSEL, ALASKA COURT SYSTEM (via teleconference), testified regarding Section 14, a request for $44,500. He explained that the supplemental request was part of the unfunded impact of welfare-reform legislation on the tribal courts. As originally submitted, the request was for six months of personal-services costs and certain one-time contractual and equipment costs totaling $44,000. He pointed out that he had provided the committee the previous week with a revised supplemental request reducing the item to four months of personal services costs for a total of $32,200. The reduction was a result of new information received the week before that. He detailed that the welfare-reform legislation required the Division of Motor Vehicles (DMV) to revoke occupational licenses and drivers licenses of individuals who were not in substantial compliance with tribal court orders. The matter was a federal mandate. The law applied to occupational licenses when they were being obtained or renewed. However, it applied to all drivers licenses, whether or not they were up for renewal. A person whose license was revoked by DMV could appeal the revocation to the superior court and the court must hold (?) within 20 days. The number of persons not in compliance varied from year to year. He estimated that approximately 15,000 were not in substantial compliance and about 10 percent of those would end up in superior court on appeal. He anticipated a substantial number of cases related to occupational licenses would come to the courts in the near future.

Mr. Christenson listed reasons why the costs on the backup sheet were low. First, the assumption was that each appeal would average only one-half hour of judicial time, which could be a low estimate. The judge had to review the file, conduct an evidentiary hearing, and draft (?). He assured the committee that the process would be done the most cost-effective way possible, including having Anchorage residents come to hearings there, while persons outside Anchorage would participate by telephone. The second reason for the low estimate was that under existing law, a person could file a separate action requesting modification of child support. Such modifications were substantially more time-consuming than appeals. The court system did not know how many have the option.

DEPARTMENT OF NATURAL RESOURCES

NICO BUS, BUDGET COORDINATOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF NATURAL RESOURCES, testified regarding Section 4(e) for $200,000 for emergency repair on Perseverance Trail. He detailed that during the previous fall floods had washed the trail and made conditions dangerous. One person had died trying to cross a section that was iced over. The Department of Natural Resources was asking for a supplemental because an initial attempt to put the item in the capital budget would mean that the bid cycle would

be too late to begin construction before tourist season started. He added that most of the money would go for contracting.

In response to a question, Mr. Bus clarified that the item was for the Division of Parks.

Senator Parnell opined that it was unusual to have a supplemental request for such an item. He asked whether there had ever been a similar request. He referred to a flood that had taken a bridge in 1995 in Chugach State Park, which was only just being addressed, and people had been living there. He asked whether people were living (on or near) the trail. He opined that the item should be a capital project. Mr. Bus replied that there were not people living on the trail, but that it was heavily used by locals and tourists alike, approximately 35,000 people per year. He argued that the trail should be fixed as soon as possible for economic as well as safety reasons.

Senator Sharp queried whether commercial operators paid a fee to use the trail. Mr. Bus answered that they did pay a fee; any commercial operator using state parks had to pay a fee, and the amount was negotiated based on the type of activity. He offered to get more information.

Senator Sharp confirmed that the trail was part of a state park. Mr. Bus detailed that there was no campground, only a trail, and that the trail was the only part under state jurisdiction.

Co-chair Pearce asked whether the state owned the land the trail was on, and the designation of the land around the trail. Mr. Bus answered that the state of Alaska owned the land and that ownership was mixed. He listed the various owners of the land: state, city and borough, and private. The trail system itself was owned by the state Division of Parks.

Senator Parnell noted that in Chugach State Park, volunteers did trail work. He asked whether there were local volunteers or entities that could help with the Perseverance project. Mr. Bus responded that most of the time, the division was good at getting park volunteer organizations to assist with projects. He pointed out that the capital project required significant blasting which had to be contracted out and that the bulk of the money would to for that. He stressed that volunteers would be used where possible.

Co-chair Pearce asked whether the geology of the trail made it safe enough for blasting and whether the trail would wash out in a future storm. Mr. Bus replied that the situation would be evaluated. He was not personally familiar with the geology. The terrain was clearly very steep, and the plan was to set the trail back quite a bit. The current trail was the result of early mining

activity. He distributed backup material illustrating the plans to put the trail on rock.

Senator Parnell queried the amount of money taken by the state in commercial operator fees on the trail. Mr. Bus did not know but offered to get the information. Senator Parnell also wanted to know whether the fees were collected in advance of the year of use. Mr. Bus replied that the fee was against potential revenues and sometimes exceeded expenditures, unless there was a major maintenance situation such as the one described.

Senator Parnell asked when the fees were paid. Mr. Bus replied that the fees were paid at the start of the calendar year when the permit was applied for.

Senator Sharp reported that the pictures in the backup materials changed his view of the problem. He had thought a slide covered up the trail, but it was evident the trail itself had sloughed off and down. He asked whether the damage pictured was the full extent of the damage. Mr. Bus replied that the pictures were of the most visible damage; there was significant deterioration further down the trail. He reported that where the person had died was an even narrower section that experienced icing during the winter. Further down the trail, there was more activity.

Senator Sharp summarized that roughly $200,000 would be used. He asked the estimated length of the trail that would be addressed for that cost. Mr. Bus did not know the exact distance that would be affected.

Senator Sharp asked whether other parts of the trail with deterioration would be addressed. Mr. Bus thought the immediate item was for emergency repair and would not entail upgrading of the rest of the trail.

Co-chair Pearce asked whether the slides had reached the creek. Mr. Bus answered in the affirmative. Co-chair Pearce queried possible permitting challenges because of the stream. She did not think the permitting could be done in the projected timeline. Mr. Bus answered that the supplemental item would provide the money to get the process started as soon as possible. He thought that waiting for the capital budget would mean missing the summer season for work.

Co-chair Pearce asked who would get the necessary permits. Mr. Bus replied that the state would have to do the permitting.

Senator Phillips asked why the Perseverance Trail was different than another trail going to glaciers, which had washed out in 1995.

Senator Parnell wondered whether the area had been posted off-limits. Mr. Bus replied that the trail had been closed immediately after the floods, but that closing the trail did not keep people from using it. He underlined concerns about liability.

Senator Parnell was concerned about the use of volunteers because of the timeline. He thought there was an inconsistency because Mr. Bus had indicated that volunteers were going to be used, but there was not enough time to organize the volunteer work. Mr. Bus clarified that volunteers would be used but that they were only available at certain times. The blasting had to be addressed first. The state wanted to be in control of the process.

Senator Parnell asked whether the permitting referred to had been evaluated. Mr. Bus believed the division had looked into the issue but he did not know.

Senator Parnell questioned the timing of plans. He asked whether commercial operators were being advised not to pay fees. Mr. Bus answered that if the trail was not open they would not authorize the commercial operators to use it. He emphasized that the supplemental fund would give them the best chance to start the process early.

Co-chair Pearce noted that the rest of the supplemental items would be carried over.

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ADJOURNMENT

The meeting was adjourned at 11:00 a.m.