

ALASKA STATE LEGISLATURE  
JOINT COMMITTEE  
LEGISLATIVE BUDGET AND AUDIT  
December 19, 2002  
1:15 P.M.

MEMBERS PRESENT

Senator Gene Therriault, Chair  
Senator Dave Donley  
Senator Lyman Hoffman  
Senator Randy Phillips  
Senator Gary Wilken (teleconferenced) (alternate)

Representative Reggie Joule (teleconferenced)  
Representative Ken Lancaster (teleconferenced)  
Representative Bill Williams (teleconferenced)(alternate)  
Representative John Davies (alternate)

MEMBERS ABSENT

Representative Hugh Fate, Vice Chair  
Representative John Harris  
Representative Eldon Mulder

Senator Jerry Ward

COMMITTEE CALENDAR

OTHER COMMITTEE BUSINESS

REVISED PROGRAMS (RPLs)

RPL 02-03-0066  
02-03-0067  
06-03-0265  
08-03-0134 (CIP)  
08-03-0135  
10-03-4043  
11-03-0620 (CIP)  
25-03-6601 (CIP)  
25-03-6602 (CIP)

EXECUTIVE SESSION

AUDIT REPORTS

Release of Preliminary Audits for Agency Response  
Release of Final Audits to Public

WITNESS REGISTER

HEATHER BRAKES, Legislative Assistant to  
Senator Gene Therriault  
Alaska State Legislature

Capitol Building, Room 121  
Juneau, Alaska 99801-1182  
Telephone: (907) 465-6590

DAVID TEAL, Director  
Legislative Finance Division  
Alaska State Legislature  
P.O. Box 113200  
Juneau, Alaska 99811-3200  
Telephone: (907) 465-3795

PAT DAVIDSON, Director  
Legislative Audit Division  
Alaska State Legislature  
P.O. Box 113300  
Juneau, Alaska 99811-3830  
Telephone: (907) 465-3830  
POSITION STATEMENT: Introduced the audit reports

TED POPELY, Majority Counsel  
Majority Legal Office  
State Capitol, Room 116  
Juneau, Alaska 99801  
Telephone: (907) 465-3439  
POSITION STATEMENT: Spoke on the Amicus Briefing

JEFF JEFFERSON, Attorney  
Nordstrom, Steele & Jefferson  
215 Fidalgo Avenue, Suite #201  
Kenai, Alaska 99611  
Telephone: (907) 283-9187  
POSITION STATEMENT: Briefing on the Amicus Briefing

DAN SPENCER, Director (teleconferenced)  
Division of Administrative Services  
Department of Administration  
P.O. Box 110208  
Juneau, Alaska 99811-0208  
Telephone: (907) 465-5655  
POSITION STATEMENT: Introduced RPL #02-3-0066 and RPL #02-3-0067

STEVE ASHMAN, Director  
Division of Senior Services  
Department of Administration  
3601 C Street #310  
Anchorage, Alaska 99503-5984  
Telephone: (907) 269-3666  
POSITION STATEMENT: Spoke to RPL #02-3-0067

JANET CLARKE, Director (teleconferenced)  
Division of Administrative Services  
Department of Health and Social Services  
P.O. Box 110650

Juneau, Alaska 99811-0650  
Telephone: (907) 465-1630  
POSITION STATEMENT: Introduced RPL #06-03-0265

GREG WOLF, Director  
Division of International Trade & Market Development  
Department of Community & Economic Development  
550 West 7<sup>th</sup> Avenue, #1770  
Anchorage, Alaska 99501  
Telephone: (907) 269-8115  
POSITION STATEMENT: Introduced RPL #08-03-0134

TOM LAWSON, Director  
Division of Administrative Services  
Department of Commerce & Economic Development  
P.O. Box 110803  
Juneau, Alaska 99811-0803  
Telephone: (907) 465-2505  
POSITION STATEMENT: Spoke to RPL #08-03-0134

NICO BUS, Administrative Services Manager (teleconferenced)  
Division of Support Services  
Department of Natural Resources  
400 Willoughby Avenue, 5<sup>th</sup> Floor  
Juneau, Alaska 99801-1724  
Telephone: (907) 465- 2406  
POSITION STATEMENT: Introduced RPL #10-03-4043

STEVE GILBERTSON, Lands & Resources Manager  
City and Borough of Juneau (CBJ) (teleconferenced)  
155 South Seward Street  
Juneau, Alaska 99801  
Telephone: (907) 586-5252  
POSITION STATEMENT: Spoke to RPL #10-03-4043

KEVIN BROOKS, Director (teleconferenced)  
Division of Administrative Services  
Department of Fish and Game  
P.O.Box 25526  
Juneau, Alaska 98111-5526  
Telephone: (907) 465-5999  
POSITION STATEMENT: Introduced RPL #11-03-0620 (CIP)

NANCY SLAGLE, Director (teleconferenced)  
Division of Administrative Services  
Department of Transportation and Public Facilities  
3132 Channel Drive  
Juneau, Alaska 99801-7898  
Telephone: (907) 465-3911  
POSITION STATEMENT: Introduced RPL #25-03-6601 (CIP)

JAMES ARMSTRONG, Coordinator  
Anchorage Metropolitan Area Transportation Study (AMATS)  
P.O. Box 196650

Anchorage, Alaska 99501  
Telephone: (907) 343-7996  
POSITION STATEMENT: Spoke to RPL #25-03-6601 (CIP) &  
#25-03-6602 (CIP)

CINDY HEIL, Section Manager  
Division of Air & Quality Control  
Department of Environmental Conservation  
555 Cordova Avenue  
Anchorage, Alaska 99501  
Telephone: (907) 269-7579  
POSITION STATEMENT: Spoke to RPL #25-03-6602 (CIP)

**TAPE LBA 02-12, SIDE A**

CHAIR GENE THERRIAULT called the Joint Committee on Legislative Budget and Audit meeting to order at 1:15 P.M. on December 19, 2002. Members present at the call to order were Senators Therriault, Donley, Hoffman, and Phillips. Members present on teleconferenced line were Senator Wilken and Representatives Lancaster, Williams, and Davies.

OTHER COMMITTEE BUSINESS

Amicus Briefing - Audit Request

CHAIR THERRIAULT stated that the discussion on the briefing would be taken out of order. He notified members that there is a pending Court deadline of December 20<sup>th</sup>, 2002.

TED POPELY, Majority Counsel, Majority Legal Office, stated that the matter before the Committee was a potential participation as an amicus by the Legislative Budget and Audit (LBA) Committee. He pointed out that LBA was one of two authorized committees by statute to litigate concerns of this sort in a matter that is presently pending before the Superior Court in Anchorage. The case is called Grimm and McGahan vs. Wagoner and the State of Alaska.

The concern originates around a filed election challenge. The plaintiffs have challenged under AS 39.50.060, failures to disclose financial matters by Senator-elect Wagoner. Interpretation of the statute could result in his not being seated in office.

Mr. Popely continued, the reason the LBA Committee has been requested to participate in the matter results from the proposed interpretation and the strict reading of the statute. He emphasized the restrictive reading of the statute. If successful, it would result in a mandatory disqualification of Senator Wagoner from office.

The State of Alaska believes that the interpretation is overly restrictive, as does the defending party. Therefore, an Amicus Curiae (Friend of the Court brief) has been requested.

Mr. Popely stipulated that he thought that there would be a motion asking that LBA participate as an amicus in the case, placing that view on record.

CHAIR THERRIault noted that he had recommended, Mr. Popely to make contact with outside legal counsel regarding this matter. Legislative Council is the other body that has statutory authority to enter into this type of case. Currently, the Chair of that Committee is out of State. Given the pending December 20<sup>th</sup> deadline, the LBA Committee must consider the matter.

TED POPELY interjected that he had requested the national law firm Keesal, Young & Logan, to begin to research and prepare an amicus brief, pending a vote by the LBA Committee. That firm has agreed to take on the case, with the word that, if the vote is successful, that firm would then invoice the Committee for their work completed.

CHAIR THERRIault asked for an estimate on the proposed work. He understood that the expense would result from the preparation of the briefing.

TED POPELY explained that the general practice for an amicus filing of this type would simply be to file the brief, which should be relatively short in length. The brief would require some research, billed at an hourly rate of \$200/hour. The briefing would be done at the Superior Court level, the Trial Court level and at the Supreme Court level if the matter is appealed. He predicted that the cost would be less than \$20,000 dollars.

SENATOR HOFFMAN inquired if there was any written documentation indicating that the State believes the opinion is overly restrictive.

TED POPELY replied that he had had extensive conversations with counsel for Mr. Wagoner and that they had conversations with the State of Alaska. He noted that Mr. Wagoner's counsel, Jeff Jefferson, was on line. Mr. Popely understood that the State intended to file its own brief. That action would indicate that it is overly restrictive.

SENATOR HOFFMAN asked which portion of the disclosure, did the other party claim to be too restrictive.

TED POPELY responded that the facts of this case lend to an interpretation of these considerations. He understood that the specifics of the case involved failure to disclose

membership in a condominium association out of State. That type of involvement does not involve serious financial income-producing matters. It does not matter whether the complaint is material or nonmaterial, but rather the long-term effect. The Court has no discretion as to whether or not to accept or reject the contention. Under current law, if there was a nondisclosure of any kind, it could result in disqualification from office. He advised that the number of people currently holding any office that would be subject to this removal by such a complaint would be staggering.

CHAIR THERRIault responded to Senator Hoffman. He noted that up to this point, the Alaska Public Officers Commission (APOC) has interpreted the law and allowed people to make amendments to their filings and then fined them, depending on the degree of severity. The allegation in this particular case is that there is no room for interpretation.

SENATOR HOFFMAN asked how this would affect cases currently pending.

TED POPELY explained that the effect would be to have the Court interpret the law. That is the role of the Court. Participating in the litigation would change nothing. The Court is being requested to give an appropriate interpretation of existing law. Mr. Popely acknowledged that there are a variety of standards that will be argued by individual parties during this case. There are a number of options with respect to the willfulness of the nondisclosure. The issue at stake is regarding whether it should be a strict liability standard.

CHAIR THERRIault interjected that legislation could be introduced next legislative session to address these concerns; however, the deadline for action on this specific case is in one day, December 20<sup>th</sup>.

JEFF JEFFERSON, Attorney, Nordstrom, Steele & Jefferson, Kenai, clarified that there are two issues involved in the present litigation, which have potential to not be cured through statutory change. One involves a question of authority as to who makes the decision regarding the seating of a member in the Alaska Legislature. The plaintiffs in this claim, take the position that the statute in question, AS 39.50.060(b), is available to be used by private citizens at any time, utilizing the Court system to impose a mandatory disqualification and removal from office of any official or elected official who has been found to have failed to make a required disclosure, without regard as to whether it is material or intentional.

Mr. Jefferson discussed that the statute is available to citizens up and through the time of certification. At the moment that certification occurs, the Legislature has

another statute on the books, which does not result from a referendum, which defines a ten-day period and particular criteria upon which a challenge to the election could occur. If a disclosure is identified after certification, it would be up to the Legislative body to act, as they have the constitutional authority to determine the qualifications of their members. He stressed that this is not an APOC issue, but rather a legislative separation of powers concern.

Mr. Jefferson noted that as counsel for Mr. Wagoner, he advocates that the will of the people in this case be respected, and that to the degree that there is ambiguity in the statute, suggests that an unintentional, nonmaterial representation, such as failing to identify a disclosure should not result in a mandatory removal from office of any public official.

He stated rather, they advocate that the Courts should have the ability to look at both the violation as well as the materiality of the violation when fashioning a remedy of removal from office. That action would be consistent with APOC regulations. He added that after the motives are decided, that the matter will be taken up on a petition to the Alaska Supreme Court.

Mr. Jefferson noted that an unfavorable interpretation of the statute would have a number of immediate effects. The personnel at APOC advise that there could be up to fifteen current legislators who have in fact missed the 30-day grace period and did not make the required disclosures within the time required by the statute. Those officials would all be subject to removal from office.

Additionally, there is concern is that this interpretation could result in an immediate "gold rush" to the APOC office and that every non-successful candidate would start an examination and investigation into the financial disclosure of the prevailing party.

SENATOR PHILLIPS asked what had been left out of Mr. Wagoner's disclosure.

JEFF JEFFERSON explained that the alleged:

- Disclosure on his ownership of a condominium in Palm Desert, California; and
- Listed a rental property in Kenai as a source of income but listed it under Dorothy and Tom Wagoner rather than the business license name of Wagoner Enterprises.

SENATOR PHILLIPS asked how the plaintiff found out about those concerns.

JEFF JEFFERSON stated that two residents asserted their complaint as public interest litigants. They are promoters and supporters of Mr. Wagoner's opponent.

SENATOR HOFFMAN recalled that Mr. Jefferson had mentioned that the ruling could affect up to ten candidates. He asked how that number had been determined. He asked if there was a list available regarding those legislators.

JEFF JEFFERSON responded that the APOC personnel provided that number.

SENATOR HOFFMAN questioned whom was being deposed when that information came out.

JEFF JEFFERSON responded that Nancy Freeman, the Legislative Financial disclosure law administrator, provided the information. She is the candidate's administrator and it was her testimony, stating that the number would include judges, board and commission members and legislators.

SENATOR DONLEY asked Mr. Popely how the request should be handled at this time.

TED POPELY explained that a Committee member needs to move that the Committee retain Keesal, Young & Logan, to research, draft, and file an amicus brief in support of the interpretation given by Jeff Jefferson, Counsel for Mr. Wagoner.

SENATOR DONLEY thought it was not proper to write a memorandum in support of litigants without knowing exactly what the litigants were going to argue. Instead, he recommended that the Committee be very specific about the position that they are seeking to advocate, rather than rely on a third party to develop it.

Senator Donley stated that there is a:

- Separation of powers question; and
- Reasonable interpretation of the existing statutes without getting into the facts of the case.

CHAIR THERRIault agreed with Senator Donley, adding that the Legislature would be the only body addressing the separation of powers issue.

TED POPELY acknowledged that was correct; however, he pointed out the difficulty with that, depending on who becomes the project director, the law would need to be applied to the facts or there would be no argument. He observed that he was confused on how to address this.

CHAIR THERRIAULT noted that if the concern was the plaintiffs' contention of the meaning of the law, there remain issues of law and of fact.

TED POPELY understood. He stated that it would strengthen the Committee's argument if they refer to facts that are found to be egregious. He acknowledged that this is a political issue that the Legislature does not want to "tread on" because there are candidates involved.

SENATOR DONLEY agreed.

TED POPELY understood the sensitivity to the issue. He thought that there could be a way to direct the project in a manner that is sensitive while also addressing the law, the separation of powers, and Legislative interest with a legal interpretation of the statute without getting involved with the facts regarding the Committee's concern. He thought that it could be drafted in a manner to avoid any appearance of political or electoral bias.

He suggested that if the Committee voted for this, he would work with them to direct an effort to narrow it. Given present time constraints, there is no time to create a draft, circulate it, have another Committee hearing and decide whether to file.

SENATOR HOFFMAN asked if action could be delayed until it reaches the Supreme Court level.

TED POPELY replied that was an option; however, a stronger position would be at the appellate level rather than the trial level. The greatest chance of achieving the goal would be to appeal now.

SENATOR HOFFMAN suggested that the stakes are very "high" for this case.

CHAIR THERRIAULT asked how Senator Donley felt regarding Mr. Popely ability to represent appropriate "sensitivity" regarding the Committee's concerns.

SENATOR DONLEY replied that Mr. Popely is a capable attorney and that he would be capable of doing what was appropriate. He requested something in writing to layout concerns regarding the separation of powers.

SENATOR PHILLIPS asked about the maximum proposed charges in the amount of \$20,000 dollars and if that amount would take the State all the way to the Supreme Court.

TED POPELY replied it could. He added that the body could ask the law office to cap their fees in any way directed.

He added that he had asked the firm if they could achieve the State goals within those financial constraints, and they indicated that they could while still doing an adequate job.

SENATOR PHILLIPS MOVED that the law firm of Keesal, Young & Logan begin research, writing, and filing an amicus brief on behalf of the Legislative Budget and Audit Committee in the matter of Grimm vs. State, Case Number 3AN-02-12950 Civil, and to provide such further advice as the project directors deem necessary. The firm would prepare and file an amicus brief at the Trial Court level, and again if the matter is further appealed to the Alaska Supreme Court. He added that Ted Popely would be the majority counsel and serve as project director, and that the project should not exceed \$20,000 dollars.

CHAIR THERRIault pointed out that the way in which the motion was made, the \$20,000 dollars would be the total expenditure.

SENATOR DONLEY indicated that he felt "uneasy" with the motion. Senator Donley OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR:           Senators Therriault, Phillips, Wilken  
                          Representatives Lancaster, Williams, Davies  
OPPOSED:           Senators Donley, Hoffman

Senator Ward and Representatives Joule, Fate, Harris, and Mulder were not present for the vote.

The MOTION PASSED (6-2).

CHAIR THERRIault requested that Mr. Popely speak with Senator Donley and attempt to incorporate his concerns.

TED POPELY agreed he would.

REVISED PROGRAM RECEIPT

**RPL Number:       02-03-0066**

Department of Administration  
Division of General Services

**\$65.0       Federal Surplus Property Revolving Fund**

SENATOR PHILLIPS MOVED that the Committee approve RPL #02-03-0066.

**TAPE CHANGE LBA 02-12, SIDE B**

DAN SPENCER, Director, Division of Administrative Services, Department of Administration, advised that the Department was requesting \$65.0 dollars of Surplus Revolving Funds authorization to be used for increased program participant compliance reviews, to replace obsolete and problematic inventory and tracking software. During FY 2003, a federal audit team reviewed the State's federal surplus property program. During the exit interview, the auditors indicated that increased program participant compliance audits as well as improved tracking and inventory control are critical to fulfill the obligations under federal regulations. The improvements would allow the program to better serve program's customers.

There being NO OBJECTION, RPL 02-03-0066 was adopted.

**RPL Number: 02-03-0067**

Department of Administration  
Division of Senior Services

**\$625,000 Federal Receipt Authority - Operating**

SENATOR PHILLIPS MOVED that the Committee approve RPL #02-3-0067.

DAN SPENCER stated that the request was for grant awards to non-profit, tribal, and governmental entities that benefit and support senior programs statewide for nutrition, transportation, support and family caregiver services. Increased Federal Fiscal Year (FFY) 2002 and anticipated FFY 03 funding from the U.S. Department of Health & Human Services, Administration on Aging, Older Americans Act (OAA) and the U.S. Department of Agriculture (USDA) is available and would be used for the grants.

CHAIR THERRIault pointed out that in the support documentation, the Department has indicated that there will be no requirement for adjustment in FY04.

DAN SPENCER acknowledged that was correct, however, the Department will probably need additional federal receipt authority and that amount has not yet been determined.

SENATOR HOFFMAN asked how much the match would be.

DAN SPENCER responded that normally there is a 15% match requirement. The Department has sufficient funds to cover that.

SENATOR DONLEY asked who had already received the funds.

DAN SPENCER advised that information could be provided to Committee members; however, he did not have it on hand, adding that it is "quite a list". There is a lot of money in grants available for a variety of organizations.

SENATOR DONLEY asked how the list had been determined.

STEVE ASHMAN, Director, Division of Senior Services, Department of Administration, responded that the funds were allocated under the Alaska Commission on Aging and two are existing grantees. Some of the funds were used to supplement existing programs to avoid weight list for meal service and transportation. Some of the other funds were used to expand services on a temporary basis. The total budget is about \$6.7 million dollars and is administered to the grantees through a competitive federal program bidding process. The allocation process is determined by geographical locations.

In response to further questioning by Senator Donley, Mr. Ashman explained that the formula amount had been distributed except under emergency circumstances. The Commission does have latitude to move funds out of other areas for emergency situations. There must be a federal plan on how to allocate those funds. If there is more than one group, the Division goes through the "Request for Proposal Process".

CHAIR THERRIALT asked if North Star Council on Aging was one of the grantees.

STEVE ASHMAN replied that they were one of the grantees.

SENATOR DONLEY commented that he would vote to approve the request because of Mr. Ashman's reputation of "doing a good job". He was curious how the grants are administered, if they are administered fairly, and the percentage taken off the top to cover administrative costs.

SENATOR HOFFMAN requested a list of the grantees.

STEVE ASHMAN noted that he did have a list, however, he was not sure if it was all encompassing. There are eighty-six grantees throughout the State of Alaska. Forty-one of those are under the nutrition transportation and support services and touch virtually every major community in the State.

There being NO OBJECTION, RPL 02-03-0067 was adopted.

**RPL Number: 06-03-0265**

Department of Health & Social Services  
Division of Family & Youth Services

**\$1,050,000 Federal - Operating**

JANET CLARKE, Director, Division of Administrative Services, Department of Health and Social Services, explained that the purpose of the Title IV-E Pass-Through project was to assist in obtaining federal reimbursement for Indian child welfare. The project's principle objective is to increase the capacity of organizations to provide case management services to Alaska Native children who are in foster care or at risk of foster care placement. The Department requests additional expenditure authority from federal receipts from the Department of Health and Human Services to maintain continuity of financial resources for tribal organizations.

SENATOR PHILLIPS asked if future general funds were expected.

JANET CLARKE explained that what occurs in the Title IV match requirements is that the organization themselves must provide the match. That is calculated on a quarterly basis. State general fund dollars are not involved in this pass-through program and that State general funds are not expected.

SENATOR PHILLIPS MOVED that the Committee approve RPL #06-03-0265.

There being NO OBJECTION, RPL #06-03-0265 was adopted.

**RPL Number: 08-03-0134 (CIP)**

Department of Community & Economic Development  
Division of Community & Business Development

**\$744,907.00 Federal - (Capital)**

SENATOR PHILLIPS MOVED that the Committee approve RPL #08-03-0134 (CIP).

GREG WOLF, Director, Division of International Trade & Market Development, Department of Community & Economic Development, mentioned the State's goal of establishing relations with the Russian Far East. That goal has been successful; however, the long-term goal of establishing and then expanding development and trade with Alaska continues. Since 1997, the Department and the Division have assumed coordination of the infrastructure projects, which tend to involve multifaceted interests from Russian governmental and private entities, Alaska's governmental entities and private businesses, and the U.S. Federal government.

The U.S. government, through its U.S. Agency office, has funded the infrastructure projects for International Development (USAID) via a Federal grant to the Department for continuation of the infrastructure projects within the Sakhalin Region.

The projects include:

- Finance Development
- Education & Training
- Sakhalin Environmental Management
- Airport Operations & Management

SENATOR HOFFMAN asked what the time period would be.

GREG WOLF responded that the grant would be for two-years. The timing of the grant is based on the federal fiscal year, which comes to a close after the Legislative session ends. He concluded that decisions were needed before the next Legislative session begins in late January.

There being NO OBJECTION, RPL #08-03-0134 (CIP) was adopted.

**RPL Number: 08-03-0135**

Department of Community & Economic Development  
Division of Community & Business Development

**\$50,000 Statutory Designated Program Receipts -  
FY03 Operating Budget**

SENATOR PHILLIPS MOVED that the Committee approve RPL #08-03-0135.

GREG WOLF noted that Alaska hosted the 7<sup>th</sup> annual West Coast-Russian Far East Ad Hoc Working Group meeting in Anchorage in mid-September. The conference, comprised of prominent Alaskans active in the international arena, covered these issues:

- Russian Far East business, trade, finance, energy, natural resources & economic development;
- Alaska/U.S.-Russian Far East aviation, travel, infrastructure & tourism;
- Education & cultural exchanges;
- Developing government & business partnerships;
- Finding practical ways to pursue cross-border projects that bring measurable results to partners on both sides of the political divide; and

- Enhancing regional Alaska/West Coast-Russian Far East relations.

If the request is approved, it will allow DITMD to receive the reimbursement from the Foundation for Russian American Economic Cooperation (FRAEC), and pay the vendor for use of the conference facilities. This is a bookkeeping issue.

CHAIR THERRIAULT pointed out that the fiscal analyst had pointed out that when the RPL was submitted, invoices had not been paid by the State. It could have been possible to send the invoice to FRAEC for payment. The Department has now paid the invoices and there is little alternative to the proposed reimbursement process. Analysts indicated that there is no technical problem with use of the SDPR funds for that purpose.

TOM LAWSON, Director, Division of Administrative Services, Department of Commerce & Economic Development, stated that in terms of following the Administrative manual, once the contract was entered into with the hotel, the only appropriate process would be to seek authorization to bring in the extra money. It would not have been appropriate, after entering into the contract, to send the bill to FRAEC.

There being NO OBJECTION, RPL #08-03-0135 was adopted.

**RPL Number: 10-03-4043**

Department of Natural Resources  
Parks & Recreation Access (2136)

**\$553,000 Federal/U.S. Fish & Wildlife Service - Operating**

SENATOR PHILLIPS MOVED that the Committee approve RPL #10-03-4043.

NICO BUS, Administrative Services Manager, Division of Support Services, Department of Natural Resources, advised that the Department was requesting to receive a National Coastal Wetlands Conservation Grant from the U.S. Fish & Wildlife Service (USF&WS), Department of Interior. Funding for the project "will be passed through" to the City and Borough of Juneau (CBJ) for the purchase of a parcel of wetland acreage near Herbert River. The match would be provided by CBJ, and it would be a one-time grant under a program that allows federal disbursement of funds to specific state agencies (not directly to local governments or other entities).

CHAIR THERRIAULT stated that he had heard concern that there was a "division within the community" regarding this

exchange. He asked if the request was a time-sensitive issue.

STEVE GILBERTSON, Lands & Resources Manager, City and Borough of Juneau, responded that the landowner had a "sizeable" investment in the property and is anxious to get some return from it. There is a permit to log the property through the Department of Natural Resources, however that would destroy the value of the land that CBJ is attempting to protect. CBJ is trying to put the land acquisition package together as soon as possible. It will still have to go before the City Assembly and there will be a public hearing. CBJ has received a lot of support for the project. The grant application was made in the summer of 2002 and was recently approved. There has been support from the State Parks Advisory Committee, the City Parks Advisory Committee, the Wetlands Review Board and other community groups. The project fits well within the City's comprehensive plan.

SENATOR PHILLIPS asked what type work had been done on the acreage by Channel Construction.

STEVE GILBERTSON responded that Channel Construction has begun clearing a portion of the property in preparation for a rock quarry. Additionally, they were looking at permits to extract gravel from the property. Based on what the owner intended to do, there has been community support to protect the property because it is surrounded by so much public land that is already used a lot. As part of the transaction, Channel Construction is contemplating taking gravel from the City's gravel pit, taking care of the City's match.

CHAIR THERRIault asked the intended City and Borough schedule for their meeting.

STEVE GILBERTSON responded that it was CBJ's intent to go to the City Assembly by January 13<sup>th</sup>, 2003 with the grant and recommendations for the City's contribution.

CHAIR THERRIault reiterated that there has been some dissent in the local community. He recommended that City Assembly action should be taken before coming to the Legislature.

NICO BUS commented that the situation is a "Catch-22". The City and Borough of Juneau cannot take any action until the State has received authority to receive the grant. The Borough will not be paid the money, as it is a reimbursement grant. The money must be spent and then the State can reimburse them. The Federal government cannot give this money without Legislative authority. He emphasized that coming before the LBA Committee is the first step in that process.

CHAIR THERRIAULT asked if action could be taken "pending" contingent action.

STEVE GILBERTSON replied that was possible, however, it would depend on what time the State approval would come through. The owner is anxious to have completion of the land acquisition this winter.

SENATOR DONLEY MOVED that RPL #10-03-4043 be TABLED for future consideration and a time determined by the Chair of the Committee.

There being NO OBJECTION, RPL #10-03-4043 was TABLED.

**RPL Number: 11-03-0620 (CIP)**

Department of Fish and Game  
Division of Wildlife Conservation

**\$50,000 Statutory Designated Program Receipts -  
Operating Budget**

SENATOR PHILLIPS MOVED that the Committee approve RPL #11-03-0620 (CIP).

KEVIN BROOKS, Director, Division of Administrative Services, Department of Fish and Game, explained that the Department has been advised that the City & Borough of Juneau (CBJ) Ordinance 2002-18(AH) has appropriated \$50 thousand dollars to help fund the construction of the Juneau Hunter Education Facility. Funds will be transferred from CBJ to the Department.

CHAIR THERRIAULT asked if the \$50 thousand dollars would add the additional space to the building or just put the foundation in.

KEVIN BROOKS replied that it would provide the footprint for the archery course. It would not pay for the entire facility. The funding would be part of the full contract. The original amount with the addition of the \$50 thousand dollars would cover the entire expense.

SENATOR DONLEY noted that he had supported the range in Fairbanks. He added that he was skeptical of the proposed project, pointing out that there has been little support from the Department for an indoor facility in Anchorage. He pointed out that Anchorage has harsher winters than Juneau does. He added that CBJ is contributing less than 10% of the project cost. He reiterated his "concern" with the proposed project.

SENATOR DONLEY OBJECTED to the approval of RPL #11-03-0620 (CIP). He MOVED to TABLE the consideration to a future time when the Capital Budget was being discussed.

KEVIN BROOKS interjected that the indoor facility will proceed. The requested money would only enhance the project and would allow for the City and Borough of Juneau to contribute some funds. There has already been much debate. He listed the available facilities that currently exist in Anchorage and Fairbanks. He reiterated that the facility in Juneau is moving forward because the contract is currently underway. It makes more sense to make the change at this point in the building contract than to try and retrofit the project.

SENATOR HOFFMAN pointed out the request authorizes the State to receive the \$50 thousand dollars that CBJ contributes. He reminded members that the money would help to diversify the facility. He recommended that it should be approved.

CHAIR THERRIALT asked if the project was "too far down the line" to be revisited.

KEVIN BROOKS replied that the project is currently under construction.

SENATOR DONLEY maintained his opposition.

A roll call vote was taken on the motion.

IN FAVOR: Senators Hoffman, Wilken, Therriault  
Representatives Joule, Lancaster, Davies  
OPPOSED: Senators Donley, Phillips

Senator Ward and Representatives Fate, Harris, Mulder and Williams were not present for the vote.

The MOTION PASSED (6-2) and RPL 11-03-0620 (CIP) was adopted.

**RPL Number: 25-03-6601 (CIP)**

Department of Transportation & Public Facilities  
Central Region

**\$1,337,300 Federal Receipts - Capital**

SENATOR PHILLIPS MOVED that the Committee approve RPL #25-03-6601 (CIP).

NANCY SLAGLE, Director, Division of Administrative Services, Department of Transportation and Public Facilities, stated that the request was for authority to receive and expend

federal funds related to an air quality project for the Municipality of Anchorage - Anchorage Metropolitan Area Transportation Solutions (AMATS) Program.

The request would allow expeditious implementation of the recently completed Transit Route Restructure Study, which showed that minor changes in the transit routes with some limited additional service would increase transit rider-ship in Anchorage. Anchorage is a serious non-attainment area regarding air quality standards for carbon monoxide (CO). Increased transit rider-ship is one strategy to improve Anchorage's air quality. The citizens of the Municipality of Anchorage would benefit from the new service, provided through a Federal Highway Administration (FHWA) program to address Congestion Mitigation and Air Quality (CMAQ) concerns. The funds would be used to add bus drivers to cover the expanded routes.

SENATOR HOFFMAN asked Anchorage's status on air quality control.

JAMES ARMSTRONG, Coordinator, Anchorage Metropolitan Area Transportation Solutions (AMATS) Program, responded that Anchorage currently has a "serious, non-attainment". There was one accident last year. Part of the challenge is to implement funded ideas to protect from future accidents. He explained the process of measurements and scores when providing for a maintenance plan.

SENATOR HOFFMAN asked where the match would come from.

JAMES ARMSTRONG explained that it comes from existing AMATS money and that funds would need to be "shuffled".

There being NO OBJECTION, RPL #25-03-6601 (CIP) was adopted.

**RPL Number: 25-03-6602 (CIP)**

Department of Transportation & Public Facilities  
Central Region

**\$454,900 Federal Receipts - Capital**

SENATOR PHILLIPS MOVED that the Committee approve RPL #25-03-6602 (CIP).

JAMES ARMSTRONG explained that the Department was requesting authority to receive and expend federal funds related to an air quality project for the Municipality of Anchorage - Anchorage Metropolitan Area Transportation Solutions (AMATS) Program.

The request would allow continued implementation of the Engine Block Heater Program (EBHP) through the winter. Anchorage is a serious non-attainment area for air quality standards for carbon monoxide (CO). The Engine Block Heater program provides low cost engine block heaters to Anchorage drivers so they may plug in their cars during the cold weather. Research shows that plugging in a car prior to a morning start-up decreases the initial CO output. Air quality in Anchorage is more degraded in certain neighborhoods, especially those with no or low garage use. The program would include free timers to automatically turn on the block heater at the optimum time to allow a warm engine start. The program has proven extremely popular with Anchorage citizens.

SENATOR HOFFMAN asked if it was older model vehicles that had a higher CO out-put.

JAMES ARMSTRONG responded that anyone could use the service and that there would be no income requirements.

SENATOR DONLEY pointed out that the money could only be used for projects that produce air quality.

SENATOR PHILLIPS asked if there was a guarantee of the number of people who would be using this service.

JAMES ARMSTRONG explained that when a person signs up for the program, they must agree to certain stipulations.

CINDY HEIL, Section Manager, Division of Air & Quality Control, Department of Environmental Conservation, explained when the Department uses Congestion Management/Air Quality (CMAQ) monies, there must be a public/private partnership agreement. A database will be developed. The party will be locked into the program and would be contacted often during the winter months.

SENATOR PHILLIPS noted he was not "thrilled" about the program. He claimed that it was another "give a way" program.

SENATOR HOFFMAN asked if it would affect people without a garage.

CINDY HEIL responded that a garage is essential.

JAMES ARMSTRONG spoke to the problems that trigger accidents.

SENATOR PHILLIPS OBJECTED to passage of the request.

A roll call vote was taken on the motion.

IN FAVOR: Senators Hoffman, Wilken, Therriault, Donley  
Representatives Joule, Lancaster, Davies  
OPPOSED: Senator Phillips

Senator Ward and Representatives Fate, Harris, Mulder and Williams were not present for the vote.

The MOTION PASSED (7-2).

There being NO further OBJECTION, RPL #25-03-6602 (CIP) was adopted.

#### EXECUTIVE SESSION

SENATOR PHILLIPS made a motion, in accordance with Title 24 and 44, to MOVE into Executive Session for the purpose of discussing confidential items and personnel matters under Uniform Rule No. 22 and for the purposes of discussing confidential audit reports under Alaska Statutes 24.20.301. There being NO OBJECTION, the Committee went into Executive Session at 2:50 P.M.

CHAIR THERRIAULT requested that Pat Davidson, Legislative Auditor, the Legislative Finance Staff, Representative Hawker-new LBA Committee Chair, and Committee Staff, Heather Brakes be present for the Executive Session.

The Committee resumed Open Session at 3:20 P.M.

#### **TAPE LBA 02-13, SIDE A**

#### AUDIT REPORTS

SENATOR PHILLIPS MOVED to release the final audit reports as public:

- DCED/Board of Marine Pilots
- DEC/Board of Storage Tank Assistance

There being NO OBJECTION, the audits were released for public response.

SENATOR PHILLIPS MOVED to release the following preliminary audits to the agencies for response:

- DCED/Regulatory Commission of Alaska
- DNR/Division of Agriculture
- UA & DOA/Retirement Incentive Program

There being NO OBJECTION, the preliminary audit reports were released for agency response.

SENATOR PHILLIPS MOVED that the Committee approve the following audit requests:

- DEC/Village Safe Water Program
- DOTPF/Force Account Projects

CHAIR THERRIault asked Ms. Davidson if she had worked with the above-mentioned audits and if the "scope was clear".

PAT DAVIDSON, Director, Legislative Audit Division, responded that she had. The request for the Village Safe Water program was to look at the following specific concerns as outlined by Senator Lyda Green:

- Excessive time being charged for the work;
- Prime contractors billing markup on the work; and
- The bidding/procurement process used in the communities involved.

There being NO OBJECTION, the audit requests were approved.

#### OTHER COMMITTEE BUSINESS

##### Redistricting Invoices

CHAIR THERRIault asked about the redistricting invoices. Staff responded that they had not had an opportunity to look at those invoices yet as they had been received two days prior to the scheduled meeting. He noted that the invoices would be held until the next meeting in middle January 2003.

##### Steering Committee - Veteran's Home Study

CHAIR THERRIault named the members for the Veteran's Home Study Steering Committee. Membership would consist of be Pat Davidson, David Teal, Representative Fate, and Senator Therriault. He added that the Committee would be open if other members were interested in participating. An additional member will be needed to represent interests of the Administration.

HEATHER BRAKES noted that the current Administration had recommended Laddie Shaw.

CHAIR THERRIault asked if he would still be in place with the new Administration. He requested that the names be determined and submitted to help evaluate the two proposals. He added that the full Committee would not be deciding the

contract. Authorization exists for the Steering Committee to make the decision.

ADJOURNMENT

CHAIR THERRIAULT adjourned the Legislative Budget and Audit Committee at 3:27 P.M.