

MINUTES
SENATE FINANCE COMMITTEE
February 27, 2001
9:04 AM

TAPES

SFC-01 # 26, Side A
SFC 01 # 26, Side B
SFC 01 # 27, Side A

CALL TO ORDER

Co-Chair Dave Donley convened the meeting at approximately 9:04 AM.

PRESENT

Senator Dave Donley, Co-Chair
Senator Pete Kelly, Co-Chair
Senator Gary Wilken
Senator Alan Austerman
Senator Lyman Hoffman
Senator Loren Leman
Senator Donald Olson
Senator Lyda Green
Senator Jerry Ward

Also Attending: NICO BUS, Administrative Services Manager, Division of Support Services, Department of Military and Veterans Affairs and Department of Natural Resources; KAREN REHFELD, Director, Education Support Services, Department of Education and Early Development; KEN BISCHOFF, Director, Division of Administrative Services, Department of Public Safety; DEVON MITCHELL, Debt Manager, Treasury Division, and Executive Director, Alaska Permanent Fund Corporation, Department of Revenue; KATHRYN DAUGHHETEE, Director, Division of Administrative Services, Department of Law; REMOND HENDERSON, Director, Division of Administrative Services, Department of Labor and Workforce Development; PAUL GROSSI, Director, Division of Workers' Compensation, Department of Labor and Workforce Development; BARBARA RITCHIE, Deputy Attorney General, Civil Division, Department of Law; KURT PARKAN, Deputy Commissioner, Department of Transportation and Public Facilities; JANET CLARKE, Director, Division of Administrative Services, Department of Health and Social Services; BOB LABBE, Director, Division of Medical Assistance, Department of Health and Social Services.

SUMMARY INFORMATION

SB 73-SUPPLEMENTAL APPROPRIATIONS/AMEND APPROP.
SB 74-FAST TRACK SUPPLEMENTAL APPROPRIATIONS

The Committee heard details regarding budget requests from the Department of Military and Veterans Affairs, Department of Education and Early Development, Department of Natural Resources, Department of Public Safety, Department of Revenue, Department of Law, Department of Labor and Workforce Development, Department of Transportation and Public Facilities and Department of Health and Social Services. The bills were held in Committee.

HB 117-SUPPLEMENTAL APPROPRIATIONS: FAST TRACK

This bill was scheduled but not heard.

#SB73
#SB74

SENATE BILL NO. 73

"An Act making supplemental appropriations and making and amending other appropriations; and providing for an effective date."

SENATE BILL NO. 74

"An Act making supplemental and other appropriations; and providing for an effective date."

Co-Chair Donley announced that no amendments would be taken at this meeting, but the Committee would begin consideration of amendments to the fast-track supplemental budget the next day.

The following items are included in SB 74 in the sections indicated.

Department of Military and Veterans Affairs

Section 5

Department of Military and Veterans Affairs

Disaster Relief Fund Budget Request Unit (BRU)

Core services funding not provided in base budget and 50.0 increment for satellite imaging to assist in search and rescue operations

\$680,000 general funds

NICO BUS, Administrative Services Manager, Division of Support Services, Department of Military and Veterans Affairs and Department of Natural Resources, testified that the past several years the Division of Emergency Services has been funded from the disaster relief fund and that fund source is almost depleted.

Co-Chair Donley noted this supplemental request is an on-going operating cost.

Mr. Bus affirmed and added that supplemental budget requests for this division have been submitted for the past several years as part of the funding process.

Co-Chair Donley asked if this is a replenishment of the disaster relief fund.

Mr. Bus explained that the appropriation would be deposited into the disaster relief fund then drawn from that account to pay for operating staff and imaging expenses.

Co-Chair Donley wanted to know if this request includes funding for staff in the upcoming fiscal year.

Mr. Bus affirmed and explained that this is the method the department has been directed to take by the legislature. He commented that the department would prefer to include this in the regular operating budget.

Department of Education and Early Development

Section 6(a)

Department of Education and Early Development
Foundation BRU

Use balance in foundation program resulting from October student count to offset shortfall in pupil transportation.
-\$1,913,100 general funds

KAREN REHFELD, Director, Education Support Services, Department of Education and Early Development, stated this is an adjustment to the actual school count and the amount school districts spent and received in federal impact aid.

Section 6(b)

Department of Education and Early Development
Pupil Transportation BRU

Current estimate of projected shortfall for pupil transportation
\$2,111,400 general funds

Ms. Rehfeld testified the department underestimated the amount necessary to reimburse school districts for pupil transportation costs already incurred in the current fiscal year.

Co-Chair Donley asked if the \$1.913 million is a "moving target" and if the amount could change.

Ms. Rehfeld replied this is the amount estimated at this date. She noted that after the March 1 deadline for receipt of federal impact aid, a more accurate figure would be available.

Co-Chair Donley asked when the updated figure would be known.

Ms. Rehfeld answered the calculations should be completed within a couple of weeks after the March 1 deadline.

Section 6(c)

Department of Education and Early Development
Child Care Assistance and Licensing BRU
Increase federal Child Care Development Funds
\$5,500,000 federal funds

Ms. Rehfeld informed this request is for the Division of Early Development. She noted that these funds were incorrectly accounted as excess inter-agency receipt authorization and added that there is an increase in the amount of federal funds available for the Child Care Development Funds.

Co-Chair Donley again questioned the reason this item is included in the supplemental since the funds would not be expended in the current fiscal year.

Ms. Rehfeld responded that of the \$5.5 million, approximately \$3.4 million relates to the fund source. She explained that this amount is reflected as inter-agency receipts because up until this year, the Department of Health and Social Services was the lead agency for the Child Care Development Fund and the federal authorization is included in that agency's budget. She continued that when the budget transfer of these funds was made in the FY 01 operating budget to the Department of Education and Early Development, not enough transfer authorization was given to allow for carry-forwards from the previous fiscal year as well as grant receipts.

Ms. Rehfeld also noted an additional \$2 million federal funds available to the department for live-change efforts and outreach activities that could be utilized in the current fiscal year.

Senator Austerman referred to Section 6(b) and asked if the \$2.1 million is available as a result of the pupil transportation shortfall of FY 01.

Ms. Rehfeld affirmed.

Senator Austerman wanted to know if this request is to fund contracts currently in effect.

Ms. Rehfeld affirmed.

Section 6(d)
Department of Education and Early Development
Special and Supplemental Services BRU
Increase federal Title I and Special Education funds.
\$4,700,000 federal funds

Ms. Rehfeld spoke to the significant increases in federal funds available for programs relating to Title One and special education. She pointed out these funds are in the form of grants to the school districts for the current year.

Co-Chair Donley wanted to know how the department determines which school districts receive the grants.

Ms. Rehfeld spoke to the specific allocations within the federal grants program that are based on the number of students living in poverty and the number of students receiving certain public services. She stated there is a formula used to make determinations for the allocation of the funds.

Co-Chair Donley asked if the department has any discretion or if the guidelines are strictly set.

Ms. Rehfeld answered that the formulation guidelines are established by federal regulations or statute and are predetermined.

Co-Chair Donley requested a list of the grant recipients.

Department of Natural Resources

Section 7
Department of Natural Resources
Fire Suppression BRU
Fund fixes fire suppression costs that were not in base budget and variable costs incurred through fall fire season.
\$4,768,400 general funds

\$5,981,700 federal funds

NICO BUS stated this is a "routine request" and explained that each year, the legislature funds approximately \$3 million to cover estimated costs for the start of the fire season. After the summer fire season is completed, he said, the department reports to the legislature the actual expenditures from July through December and requests supplemental funds for anticipated expenditures relating to fire activity in May and June.

Mr. Bus pointed out that the amount of federal funds is high because the department was able to send many Alaskan firefighters to other states to assist in their fires. He stated this helped to offset some of the in-state fixed costs.

Senator Wilken asked for an explanation of the declaration of a disaster emergency because of insufficient money. He said he questioned the timing.

Mr. Bus explained that each year the state spends an average of \$12 million on fire suppression although the legislature only approves approximately \$3 million in the original operating budget. When the funds are depleted, he continued, the department must declare a disaster in order to utilize additional funds to fight the fires.

Senator Wilken asked if this is an annual event.

Mr. Bus responded that it is actually a monthly event as a result of recent legislation that requires the department to update the disaster declaration every 30 days.

Senator Wilken asked if a disaster declaration is necessary to access money unavailable in the normal budget process.

Mr. Bus replied that the statute authorizes the department to access any available funds once the disaster has been declared. He noted the declaration becomes the method that allows the department to continue fighting fires.

Senator Wilken requested a copy of a disaster declaration.

Senator Leman asked how the department accounts for the cost of fires fought on federal land.

Mr. Bus detailed the state is divided into two zones, northern and southern. He stated that the state fights all fires in the southern zone and determines actual land ownership afterwards. If the fire occurred on federal land, he informed, the state bills the federal

government for reimbursement of the firefighting efforts. He also noted that if the fire was located on Native-owned land, the United States Bureau of Indian Affairs reimburses the state.

Senator Leman asked if the current budget shortfall would be adjusted to account for costs that the federal government would reimburse.

Mr. Bus assured that the federal funds would be reimbursed and that most of the costs were incurred by fighting fires in the Lower 48.

Senator Austerman asked if the total firefighting budget is \$12 million annually and how much of the total amount is federal funds.

Mr. Bus detailed the initial appropriation of \$3.1 million general funds and \$5 million federal funds at the start of the fiscal year.

Senator Austerman asked the total expenditure at the end of the fiscal year.

Mr. Bus answered that the average federal reimbursement is approximately \$5.5 million for firefighting activities.

Senator Austerman calculated the annual cost to be between \$17 and \$18 million.

Senator Wilken created a timeline and recalled that \$7 million was appropriated in the FY 00 supplemental budget to pay the cost of fighting fires in that fiscal year. He remembered that \$3 million was funded in the FY 01 regular operating budget. On September 22, 2001, he noted, a disaster emergency was declared, which allowed access to \$10,750,000 to cover expenditures for the remainder of FY 01. He wanted to know how the cost to fight fires for the remainder of the fiscal year was known in September.

Mr. Bus replied that the department is required by statutes to follow a financial plan, that fixed costs are already identified and that the remaining fire activity for the calendar year is estimated. He detailed the process of calculating the federal and state obligations, the payroll, vendor expenses, etc., to determine a financial plan. He pointed out that by December, fires are not expected to occur before April or May of the following year.

Senator Wilken clarified that the supplemental request is not for the cost of the actual firefighting expenses, but rather an estimate of those costs. He understood the supplemental is to reflect the actual cost of firefighting.

Mr. Bus replied that as of January 19, 2001, the department has expended \$5,450,000 and that fixed costs are known for the remainder of the fiscal year. He stated that spending adjustments would be made. He detailed the process of ratification conducted at the end of the fiscal year and referred to Section 19(b) of the bill.

Section 13
Department of Natural Resources
Recorders Office BRU
Increased costs of Palmer and Fairbanks Recorder's Office leases, which expire this fiscal year.
\$100,000 general funds

Mr. Bus informed that the Palmer Recorder's Office lease has expired. He stated that the Department of Administration agreed that the office should be combined with another located in Palmer and that this has been done. He listed the initial cost of \$26,000 for "build outs" and \$24,000 for moving costs including utility connections.

Mr. Bus added there is a similar situation in the Fairbanks office with the lease expiring in May. He estimated \$50,000 would be expended in that effort.

Section 19(b)
Department of Natural Resources
Fire Suppression BRU
AR 37313-00 Fire Suppression
\$4,299,492.91 general funds

Mr. Bus stated this is the final accounting for FY 00 and reflects the actual amount expended in May and June of 2000.

Senator Austerman returned to Section 13 and wanted to know if the Department of Administration handles leases for all agencies and if that department would submit a supplemental request for the cost of increased leases in facilities across the state.

Mr. Bus responded that normally when Department of Administration renews a lease, it incurs the cost. In this event, he noted, the Department of Natural Resources requested a negotiated lease because new walls, electrical and other improvements were required and that the Department of Natural Resources is responsible for these expenses. He explained this is because the costs could not be calculated into the square footage rate. He pointed out that because of the negotiated lease, the cost per square foot was reduced from \$1.25 to \$1.08.

Section 9(a) and (b)

Various Agencies

Increased Fuel Costs BRU

Increased fuel costs in various agencies for heating, vehicles, aircraft, ferries, etc. due to higher oil and gas prices.

\$2,123,000 general funds

\$ 457,600 International Airports Revenue Funds

Mr. Bus testified this item is to cover increased fuel costs for the Division of Parks. He listed that \$16,000 is needed for facilities, and \$37,000 for park vehicles. He noted the park rangers is the only department program which additional funds are requested to cover the increases in fuel costs.

Department of Public Safety

Section 9(a) and (b)

Various Agencies

Increased Fuel Costs BRU

Increased fuel costs in various agencies for heating, vehicles, aircraft, ferries, etc. due to higher oil and gas prices.

\$2,123,000 general funds

\$ 457,600 International Airports Revenue Funds

KEN BISCHOFF, Director, Division of Administrative Services, Department of Public Safety, spoke of the increased operating costs for the Division of Fish and Wildlife. He added that fuel costs have also increased for aircraft operated by the Alaska State Troopers.

Section 14(a)and(b)

Department of Public Safety

Fire Service Training BRU

Technical fund source change from statutory designated program receipts to receipt supported services to fully fund a Fairbanks Fire Service Training positions.

\$0.0

Mr. Bischoff explained the advantage of changing the funding source from fees charged for courses. He characterized the situation as "a chicken and an egg" because fees could not be collected until the program is established and the program needs funds to become established. He detailed the request is to utilize revenue from building plan review fees to start the program during this fiscal year.

Section 18
Various Agencies
Miscellaneous Claims and Stale-dated Warrants BRU
Stale-dated warrants and miscellaneous claims.
\$ 85,500 general funds
\$141,100 federal funds

Mr. Bischoff listed the Department of Public Safety portion of this item as \$11,000 for billings received after the two-year stale date period for which the department has authorization to pay the claims.

Section 14(c)
Department of Public Safety
Capital BRU
Change scope of prior Crime Lab capital appropriation to allow currently needed work.
\$0.0

Mr. Bischoff explained this request it for authorization to allow an existing appropriation to be used as matching funds to receive \$1,250,000 federal funds.

Co-Chair Donley asked if this is a language change to the original budget to obtain additional federal funds.

Mr. Bischoff affirmed and explained it would reduce the amount of state funds required to operate the crime lab

[Pause on the record.]

Co-Chair Donley requested the witness further explain this to staff at a later time.

Senator Green asked if the change of program receipts requested in Section 14(b) would apply in future years.

Mr. Bischoff replied this is a one-time request to receive the funds in the current fiscal year.

Department of Revenue

Section 15
Department of Revenue
Municipal Bond Bank Authority BRU
Funding for costs of additional municipal bond sales.
\$58,000 Muni Bond Bank Receipts

DEVON MITCHELL, Debt Manager, Treasury Division, and Executive Director, Alaska Permanent Fund Corporation, Department of Revenue, detailed the increased activity in the current year. He informed that the bond bank budget is "demand driven" and is based on the number of communities that request funding for loans. He noted the existing allocation of \$450,000 has not changed for several years.

Department of Law

Section 19(a)(7)
Department of Law
AR 13907-00 AHFC Outside Counsel
\$340.83 federal funds

KATHRYN DAUGHHETEE, Director, Division of Administrative Services, Department of Law, explained that this is an old reimbursable services agreement (RSA) that the department is unable to collect the revenue. She stated that the department had a contract for outside council on behalf of the Alaska Housing Finance Corporation (AHFC) dating from FY 97. She explained that the file was closed and discarded and the department was unable to produce a bill for the \$340.83 for expenditures made by the department. She noted the total amount of the contract was \$300,000 and that this items is minor.

Department of Labor and Workforce Development

Section 11
Department of Labor and Workforce Development
Workers' Compensation/Second Injury BRU
Increase Second Injury Fund authorization for unanticipated increases in claim sizes and expansion of payouts resulting from recent court decisions.
\$325,700 Second Injury Fund

REMOND HENDERSON, Director, Division of Administrative Services, Department of Labor and Workforce Development, testified that the department is required to make some lump-some payments and needs authorization from the legislature to do so.

Section 19(a)(2)
Department of Labor and Workforce Development (for former Department of Community and Regional Affairs)
C&RA/1 Stop BRU
AR 52901-99 1-Stop/AJCN Staff Sup
\$249.68 general funds

Mr. Henderson stated this item was "inherited" from the former Department of Community and Regional Affairs. He explained it as a correction of an over-receipt and that the Department of Labor and Workforce Development needs authorization to receive the additional federal funds.

Department of Law (cont.)

Section 10
Judgments and Claims
Law BRU
Judgments and claims.
\$478,700 general funds

Co-Chair Donley stated that members could pose questions on particular items.

Item #1: Stephen H. Williams Planned Parenthood of Alaska, et al. vs. State of Alaska
Description: Unconstitutionality of statute limiting partial birth abortions-Superior Court Award.
Date: 4/15/98
Award: \$81,588.00 plus \$27,507.45 interest as of 2/2/01, totaling \$109,095.45

BARBARA RITCHIE, Deputy Attorney General, Civil Division, Department of Law, testified that the Alaska superior court awarded the plaintiff attorney fees. She noted that the Criminal Division of the department handled this case for the state. She stated this case related to the constitutionality of a partial-birth abortion statute passed by the legislature. She informed that the court found the statute violates the Alaska Right to Privacy and Right to Due Process and the state appealed this ruling to the Alaska Supreme Court. The appeal was dismissed, she said, after the United States Supreme Court issued a decision in a case involving almost identical statutes in the State of Nebraska, which found the Nebraska statute unconstitutional under the federal constitution.

Co-Chair Donley asked if the fees followed the standard guidelines provided under Civil Rule 82, or if they are higher.

Ms. Ritchie believed that because this case involved public interest litigants, the award qualified for reimbursement of full reasonable attorneys fees.

Co-Chair Donley asked for comparison of the amount that would have been awarded under Civil Rule 82 and the amount awarded in this case and other public interest litigant cases.

Ms. Ritchie stated she would provide details to the Committee.

Senator Wilken asked why the interest is so high in this first case compared to the other judgments in the budget request.

Ms. Ritchie explained the interest rate is calculated from the date of the award in April 1998. She noted the judgment is not presented to the legislature until the case is complete and meanwhile, interest is accruing on the original judgment.

Senator Lemman remembered attorney rates of \$275 per hour paid for judgments the previous fiscal year, which he thought was too high.

Ms. Ritchie responded that the hourly rate of appellate work is \$195 per hour, which is what was awarded in this case. She stated the rate for work done in the superior court ranges from \$110 and \$180 per hour. She said the reason the rates vary is because Planned Parenthood had more than one attorney working on the case. She assured these rates are within the normal range in Alaska.

Co-Chair Donley asked if any of the remaining cases involve settlements for fees other than attorney fees.

Item #7: Overly vs. State of Alaska

Description: Settlement in whistleblower case

Date: 9/12/00

Award: \$55,000, with no interest accrued as of 2/2/01

Ms. Ritchie explained this is a recommended settlement in an employment case. She noted that part of the agreement provides that no interest is paid. She detailed the case brought by Lieutenant Colonial Overly of the Alaska National Guard, who allegedly suffered discrimination and retaliation after whistle blowing. She explained that this case is "fact specific" and that it depends upon "who said what to whom" in that one party considered actions to be insubordinate while another party did not.

SFC 01 # 26, Side B 09:50 AM

Ms. Ritchie told the Committee that management in this case took disciplinary action against the employee accused of causing the retaliation, and that this action was reviewed beforehand by their attorneys as well as attorneys in Washington D.C.

Ms. Ritchie noted the whistle blowing involved alleged misuse of

government assets and hiring practices. She informed that this case was settled and therefore, it remains undetermined whether the charges meet the criteria set for whistle blowing.

Ms. Ritchie relayed that the Inspectors General from the military evaluated the case and concluded the plaintiff had suffered "some measure" of retaliation. She spoke of a concern that exposure of the issue "could be significant. She also noted the plaintiff is still employed by the Alaska National Guard and that the state could get a better settlement figure in this situation than if the employee discharged from the service and filed a claim on those grounds.

Senator Hoffman asked what actions the department took to correct the misconduct of the employee causing the retaliation.

Ms. Ritchie replied this was a situation where management thought it took appropriate steps with regard to the employee. She shared that the Department of Law attorney who worked on the case issued a memorandum stating that further action should not be taken because of the risk of a lawsuit brought by this employee.

Co-Chair Donley commented that the advice the Alaska National Guard received from their attorneys was unacceptable because it would cost the state \$55,000.

Ms. Ritchie responded that the National Guard has in-house council that does not work for the Department of Law. She pointed out these attorneys do not litigate cases, and the Department of Law became involved with the lawsuit was filed.

Co-Chair Donley questioned the legal advice or the actions taken by the National Guard in this instance.

Ms. Ritchie reiterated there was a sequence of events that occurred in this situation. She detailed the process of the plaintiff bringing a complaint before the Air Force Board and ultimately deciding to file a lawsuit.

Co-Chair Donley requested the Alaska National Guard be available at next hearing to explain the case further. He stressed that the departments involved in these claims should be addressing the Committee rather than just the Department of Law.

Ms. Ritchie said she would make the request. She cautioned that an executive session could be required since the case is still pending.

Co-Chair Donley agreed.

Item #9: Northern Alaska Environmental Center and Sierra Club NAEC/Sierra Club vs. State of Alaska

Description: Challenge to the Department of Natural Resources' right of way permitting process for an electric transmission line-Superior Court award

Date: 10/19/00

Award: \$57,250.41, plus \$3,187.20 interest as of 2/2/01, totaling \$60,437.61

Senator Hoffman noted that no changes in statutes, regulations or policy are recommended. He pointed out that the matter is therefore still open for liability.

Co-Chair Donley agreed.

Ms. Ritchie stressed that a whistle blower statute is in place and that the department does not consider this statute to be flawed. She cautioned that it is difficult to legislate how to evaluate people's motives.

Co-Chair Donley commented that a factual case could be built that proves an employer's action was not taken for improper motives, such as retaliation against a whistle blower.

Ms. Ritchie replied that she would further study the matter.

Item #11: Tara Logsdon, Golter and Logsdon Bennett vs. State of Alaska

Description: Modification of child support in a "switched custody"

Date: 7/28/00 and 8/24/00

Award: \$1,103.39, plus \$80.88 interest as of 2/2/01, totaling \$1,184.27

Ms. Ritchie stated this item relates to a standard \$1,000 attorney fees and court costs awarded to a plaintiff who prevails in the appeals process.

Item #14: Alaska State Employees Association (ASEA)/AFSCME Local 52 vs. State of Alaska

Description: Whether certain firefighters are required to be members of the Alaska Air National Guard

Date: 11/17/00

Award: \$4,813.00, plus \$237.36 interest as of 2/2/01, totaling \$5,050.35

Co-Chair Donley noted this claim is for a small amount.

Department of Transportation and Public Facilities

Section 9(a) and (b)

Various Agencies

Increased Fuel Costs BRU

Increased fuel costs in various agencies for heating, vehicles, aircraft, ferries, etc. due to higher oil and gas prices.

\$2,123,000 general funds

\$ 457,600 International Airports Revenue Funds

KURT PARKAN, Deputy Commissioner, Department of Transportation and Public Facilities, testified the department's portion of this request amounts to \$800,000 general funds and \$457,600 International Airports Revenue Funds to apply to the three regions. He stated the funds would cover costs for maintenance and operations of state facilities as well as the Marine Highway System (MHS).

Co-Chair Donley asked if the cost increases have been determined using the actual fuel prices.

Mr. Parkan answered this has been done. As an example, he stated the department estimated a fuel cost of \$1.03 per gallon to operate the MHS. He said that instead, the department paid almost \$1.18 per gallon for the first six months of the fiscal year. He noted that in the Northern and Central Regions, the fuel costs have been approximately 58-60% higher than projected.

Section 17(a)

Department of Transportation and Public Facilities

Central Region Facilities BRU

Retrofit or replace fuel day tanks in Central Region to avoid Court Plaza-type fuel spills.

\$34,000 general funds

and

Section 17(b)

Department of Transportation and Public Facilities

Northern Region Facilities BRU

Retrofit or replace fuel day tanks in Central Region to avoid Court Plaza-type fuel spills.

\$236,000 general funds

Mr. Parkan explained that after the oil spill in the Court Plaza Building in Juneau, the department surveyed the day tank systems in state-owned facilities in the Northern and Central Regions. He

related that tanks with similar faulty switches were identified in several facilities. He said it was determined these should be addressed before another spill occurred. He also noted that there was another spill in a building in the Northern Region. He spoke of the need for better monitoring systems on the tank switches.

Co-Chair Donley asked if the department considered using the 470 Fund to cover the cost of these upgrades.

Mr. Parkan said it had not.

Co-Chair Donley requested this be done.

Senator Hoffman asked if the survey was done on smaller buildings.

Mr. Parkan affirmed and listed facilities in Quartz Creek, Kodiak, Dutch Harbor, and Bethel in the Central Region, and Shishmaref, Saint Mary's and facilities located along the Railbelt in the Northern Region. He noted that most of the facilities identified are located in rural areas.

Section 17(c)
Department of Transportation and Public Facilities
Northern Region Facilities BRU
Operating costs for the Harborview Development Center.
\$93,000 general funds

Mr. Parkan stated this item reflects costs incurred in past year, including fuel increases not included in Section 9. He told of preparations in converting the facility to separate the hospital portion from the unused state-portion. He detailed the discovery of asbestos, and necessary roof repairs, an emergency generator and a fire alarm system that were required by the state fire marshal. He pointed out that the department has been "handed the responsibility" of the Harborview facility and has had to spend funds from the department's maintenance budget to address the aforementioned problems.

Senator Ward understood adequate funds were allocated in the regular budget to make Harborview self-sufficient with the goal of either closing the state-owned portion of the facility completely or finding a different owner.

Mr. Parkan agreed and stressed that the intent is to dispose of the facility with the hospital section operated by the City of Valdez. He described how the original \$235,000 appropriation has been used for utilities and some of the repairs.

Senator Ward requested a blueprint of the existing facility in its current layout. He referred to one he saw two years prior and wanted to know how much of the facility remains unoccupied.

Mr. Parkan replied he would provide a blueprint and gave verbal description of the hex portion of the facility that had been used by the Department of Health and Social Services for developmentally disabled and the portion used as a hospital, with a corridor connecting the two. He noted the kitchen and dining room areas are no longer needed.

Senator Ward questioned why the state continues to spend public money for upkeep of an empty building while other buildings are under funded.

Mr. Parkan responded that the department would not disagree with that point.

Co-Chair Donley asked the consequences of not funding this request.

Mr. Parkan replied the funds would have to be taken from elsewhere in the department's budget.

Co-Chair Donley hoped the department would not do that. He preferred the department "give some warning" to the Legislative Budget and Audit Committee or the Legislative Council if overspending for a specific function is necessary.

Mr. Parkan agreed and noted the matter had been discussed with the Alaska Representative of the district in which the facility is located.

Department of Health and Social Services

Section 8(a)

Department of Health and Social Services

Medicaid BRU

Medicaid caseload growth of 7% and higher average cost per month, particularly for hospital and pharmacy costs.

\$ 9,124,700 general funds

\$50,642,700 federal funds

\$11,412,900 Statutory Designated Program Receipts

JANET CLARKE, Director, Division of Administrative Services, Department of Health and Social Services, referenced wall charts prepared to show some of the factors impacting the cost of the Medicaid program. She instructed how the program is divided into four groups: children, adults, disabled and elderly.

BOB LABBE, Director, Division of Medical Assistance, Department of Health and Social Services, addressed the first group, children, referring to a chart showing the increase in the number of eligible participants due to expansions in the program. He noted it is expected the growth would level out.

Senator Ward asked about the action that caused the large increase in the cost of that action.

Mr. Labbe replied the action followed federal legislation that created child health insurance program block grants to the states to increase the eligibility from 130 percent of the poverty level to 200 percent. He noted more applications were received as a result of this change that was implemented in March 1999.

Senator Ward asked the actual cost of this increase.

Ms. Clarke responded that she would have to calculate the exact amount. She assured that state receives an enhanced match rate of 72 percent in federal funding to address the increased participation.

Senator Ward estimated the amount to be in the millions of dollars. He voiced concern about the impact on the state's budget once the federal funds are discontinued. He opined that returning to the 130 percent poverty level qualification is one option.

Mr. Labbe explained that since the state receives federal funding at the higher match rate because of the percentage of poverty level increase, that level could not be reduced. He also pointed out that Alaska receives additional federal funds resulting from other states not expending the block grants allocated to them. He did not anticipate these grants would go away.

Senator Ward asked if the number of participants increased from 35,000 to 55,000 because of the change to the qualifying poverty level percentage.

Mr. Labbe replied the annual number of children qualifying under the new criteria is from 15,000 to 16,000 more than would have been covered under the old rules. He noted outreach efforts that are a part of the new program also accounts for some of the increase. He spoke of marketing this program called Denali KidCare and the streamlined application process that makes enrollment easier. He stated that this process has also resulted in participation of children who qualified under the previous percentage.

Senator Ward asked the number of new participants that would have qualified for the program at the 130 percent poverty level criteria.

Mr. Labbe answered that about half of the new participants would have qualified under the previous rules.

Co-Chair Kelly asked how the department predicted that the growth rate would even out.

Mr. Labbe recounted a previous expansion to the Medicaid program implemented in the early 1990s when the qualification was raised from 70 percent of the poverty level to 133 percent. He cited the increase in participation for the first three years after implementation after which the growth rate leveled off. He ascertained this was due to market saturation.

Co-Chair Kelly spoke to earlier legislation that proposed to reduce the qualification level to 130 percent, when it was discovered that the level could be reduced no further than 158 percent of the poverty level. He asked the reason for this.

Mr. Labbe replied the level could be reduced to 133 percent for children up to age six and 100 percent for children six years and older.

Co-Chair Kelly understood poverty levels for Alaska are calculated with an additional 25 percent of the national average.

Mr. Labbe affirmed and noted this was a choice made through state statute.

Mr. Labbe stressed that children are the least expensive clients the program serves. He cited \$2,000 to \$2,500 a year is spent for the average child versus \$13,000 to \$15,000 per year spent for a disabled person.

Senator Wilken requested additional information about the expected growth rates. He also wanted to know if there is any indication that Denali KidCare is replacing other insurance.

Mr. Labbe replied there is no evidence showing this. He assured that existing insurance coverage disqualifies a child from the Denali KidCare. He further explained that a child is not eligible for the program for a period of one year after discontinuation of any insurance. He noted the department is already seeing a slowing in the growth of the number of new participants in this program.

Senator Leman reminded how the legislature was initially "sold" on the poverty level percentage increase. He remembered that the legislature was warned that not participating in the expansion would appear to the U.S. Congress to be a "bad faith effort". He asked if the state has actually benefited from the lower general fund match requirement, given the "incredible" increase in participation.

Mr. Labbe was unsure and said he would have to research the matter. He remembered that the match rate increase from 50 percent to 60 percent was part of the arrangement. He noted that the state saved approximately \$30 million on the first year this program was implemented.

Senator Leman requested the information. He stated, "I think I probably speak for several others-this growth is troubling especially when you look at the costs associated with it."

Co-Chair Kelly noted the income level is higher in Alaska than in the rest of the country.

Mr. Labbe agreed and detailed how the federal poverty level is adjusted for Hawaii and Alaska. He stated that the poverty level in Alaska is set at 125 percent of that for states in the Lower 48.

Senator Green shared that she has seen literature marketing the Denali KidCare program at the U.S. Post Office and other public government facilities and asked the cost of this outreach effort. She commented that she had not predicted that this program would be secondary to any other insurance coverage. She was unable to locate any statements to show that Denali KidCare was designed to serve children who have no other insurance. She asked if this were a federal policy.

Mr. Labbe spoke to the different levels of eligibility for the Denali KidCare program based on age and income in relation to the poverty level. He stated that a child with insurance and an income above 150 percent of the poverty level would not qualify, while a child living below 150 percent would qualify for the Medicaid program if they already have insurance. Those children with no insurance and living below 150 percent of the poverty level, he said, would be included in the block grant and the state would receive a higher match percentage for funds spent for this group.

Mr. Labbe shared that the original intent was a premium system or other form of cost sharing system for those participants living above the 150 percent poverty level. However, he informed that the federal government would not allow this method. He pointed out that

the regular Medicaid program does not consider existing insurance coverage as a factor in participation.

Senator Green asked about participants in the Medicaid program that were transferred to the Denali KidCare program to allow the state to receive a higher percentage of federal funds.

Mr. Labbe responded that this was not allowed and that children eligible for Medicaid could not be placed in the Denali KidCare program instead. He qualified there are many complicated rules governing the program and offered to detail them further.

Co-Chair Kelly commented that if the income requirement were raised, children who had qualified for Medicaid would instead qualify for Denali KidCare and the state could receive a higher match rate. He opined that there is more incentive to serve those with higher incomes and a less immediate need than those with possibly a greater need. He assured he does not blame the department for this since the federal government established these rules.

Mr. Labbe agreed and noted the intent of the federal requirements is to prevent states from serving Medicaid eligible participants under the new program and subsequently collecting federal funds based on the higher match rate.

Senator Green asserted that some other states are able to charge participants for a portion of the cost and asked why this could not be done in Alaska.

Mr. Labbe answered that because the block grant program is a part of Medicaid, the Medicaid rules must be complied with.

SFC 01 # 27, Side A 10:37 AM

Mr. Labbe continued that some states have been able to implement a form of cost sharing using state funds other than Medicaid matching funds. He pointed out that other states have done extensive demonstration projects working with Medicaid that expand eligibility, and he described these. He qualified that these projects have to show they are "budget neutral" for the federal government in that the federal cost does not increase. He stressed that he worked personally with representatives of the federal office to try to devise a method for cost sharing and learned that without federal statutory changes, this was not allowable.

Mr. Labbe then addressed the adult group of Medicaid participants. He described these participants as parents of families who receive temporary assistance as well as pregnant women. He noted a downward trend in the number of these participants due to the welfare reform efforts and the subsequent increase in the number of people going off of welfare. He pointed out these participants are eligible to continue receiving Medicaid benefits for 12 months after discontinuing welfare if they have employment. He stressed that the decreasing trend would level off as welfare reform is concluded.

Mr. Labbe next referenced a wall chart indicating the growth trends of the number of elderly Medicaid participants. He noted that although there are fewer participants in this group, the trend continues to rise, as there are more seniors in the population and more that more would access this program over time. He pointed out that these clients are among the most expensive to serve with an average cost of \$10,000 per year. He stated that these participants typically have Medicare as primary insurance, which covers hospitals and physician expenses but does not include long-term care or prescription drugs. He also informed that the state is required to pay the Medicare premium for these participants, which equals an additional \$6 to \$7 million each year.

Co-Chair Kelly asked what year would have a sharp incline in the number of these participants with the aging of baby boom generation.

Mr. Labbe could not give an exact answer, citing income requirements as one reason. He explained that people tend to have higher incomes at the time of their retirement. As people age further, he said, nursing home care is more often necessary. He also noted the phase-out of the Longevity Bonus Program would also result in an increase in the number of Medicaid participants.

Mr. Labbe next told of the disabled Medicaid participants, referencing another wall chart. He noted this category of participants includes both children and adults. He stressed that the program incurs the greatest cost in caring for this group of participants. He informed that while many of these participants qualify and receive Medicare benefits, many others do not. He described the continual upward growth of the number of Medicaid participants in this group and the expectation that this would not change. He compared the increasing costs incurred by participants in this group.

Co-Chair Kelly chaired the remainder of the meeting.

Ms. Clarke detailed the specifics influencing the cost increases,

citing another wall chart that shows the number of checks issued each week. She examined the "check writes" of FY 00 and FY 01, to date, indicating that issuances exceeded \$10 million six times in FY 00 compared to 14 times in the first half of FY 01. She assured that the department makes every effort to correctly estimate upcoming expenses. However, she stated that \$22 million supplemental funds were needed for FY 00 and that the baseline was not adjusted when making projections for FY 01.

Co-Chair Kelly wanted to know the amount requested for these expenses in the regular operating budget versus the amount the legislature appropriated.

Ms. Clarke replied that the legislature appropriated the full amount requested but that that figure was based on the lowest case scenario.

Co-Chair Kelly asked if the governor's budget request historically used a low case scenario.

Ms. Clarke replied that this had not been necessary in the past because of the amount of federal funds received except during the early 1990s when the program had a significant increase.

Ms. Clarke continued explaining the supplemental request is a combination of the funding in the original budget based on a low case scenario, costs that went above the projections and the continuing increase of weekly expenditures.

Senator Green requested additional information about Planned Parenthood et al versus the State of Alaska relating to Medicaid funding for abortion services. She stated that the court ordered the department to fund these services and gave it permission to reallocate funds to do so. She asked where this money was originally appropriated.

Ms. Clarke offered for the attorney who argued this case on behalf of the state to speak to the Committee about the legal technicalities. She summarized that the court ruled that the funds were to be taken from within the Medicaid program.

Co-Chair Kelly asked if general funds directed by the legislature to be used as matching funds to receive federal funds, were used to cover the abortion services expenses.

Ms. Clarke affirmed.

Co-Chair Kelly gave a history of the situation saying the

legislature attempted to remove public funding of abortions from budgets because abortion is a divisive issue. However, he stated, the court ruled this was not permissible under the former General Relief Medical program. He informed that the judge in this case stipulated that any time public funds are spent for other pregnancy related services, money must also be available for abortion services. In response, he said, the legislature created a new program "following the court's directive" using funds that are not for pregnancy related services. He continued that as a result of this, the court held the commissioner held in contempt of court for following the legislature's directive. He asserted this is a separation of powers issue independent of the pro-life/pro-choice arguments. He said this is because the judge ruled that the legislative power to appropriate money is no longer valid.

Ms. Clarke pointed out that the judge never actually found the commissioner in contempt of court but instead ordered the department to pay for the abortion services. She stated that the rest of Co-Chair Kelly's statement is accurate.

Co-Chair Kelly understood the department is uncomfortable complying with the judge's order because of the separation of powers issue.

Ms. Clarke agreed and told of the efforts undertaken in support of the legislature's action. She remarked that although the department does not necessarily agree with the legislative decision, the department "believed" it was carrying out the legislative directive.

Co-Chair Kelly requested the attorney address the issue before the Committee. Co-Chair Kelly opined, "Judge Sen Tan is just one step away from sitting at the head of this table and appropriating money for the legislature because he has completely crossed the separation of powers." He warned, "I think we're going to have a big debate over this if we don't find a way to cure it." He hoped the department would assist the legislature in this effort.

Senator Green spoke to her frustration that the state should be able to impose similar restrictions as the federal government does in prohibiting federal Medicaid funds to be used to pay for certain abortion services under the Hyde Amendment. She stressed that general funds allocated to be used, as matching funds for federal Medicaid funding, should not be reallocated.

Ms. Clarke noted this was one of the arguments the department made to the court.

Ms. Clarke referenced another wall chart that showed the amount

paid out to date for abortion services and the projected amount needed for the remainder of the fiscal year. She listed the total amount as \$217,300.

#

ADJOURNMENT

Co-Chair Kelly adjourned the meeting at 10:59 AM