

**ALASKA STATE LEGISLATURE**  
**JOINT COMMITTEE ON LEGISLATIVE BUDGET AND AUDIT**  
Anchorage, Alaska  
August 26, 2003  
1:37 p.m.

**MEMBERS PRESENT**

Representative Ralph Samuels, Chair  
Representative Mike Hawker  
Representative Vic Kohring (via teleconference)  
Representative Jim Whitaker (via teleconference)  
Representative Beth Kerttula  
Representative Bill Williams, alternate (via teleconference)

Senator Gene Therriault, Vice Chair (via teleconference)  
Senator Ben Stevens  
Senator Con Bunde  
Senator Gary Wilken (via teleconference)

**MEMBERS ABSENT**

Representative Reggie Joule, alternate

Senator Lyman Hoffman  
Senator Lyda Green, alternate

**COMMITTEE CALENDAR**

APPROVAL OF MINUTES  
EXECUTIVE SESSION  
REVISED PROGRAM - LEGISLATIVE (RPLs)  
AUDIT REQUESTS  
OTHER COMMITTEE BUSINESS

**WITNESS REGISTER**

CHERYL FRASCA, Director  
Office of Management & Budget (OMB)  
Office of the Governor  
Juneau, Alaska  
POSITION STATEMENT: Presented the RPLs to the Joint Committee on Legislative Budget and Audit.

JANET CLARK, Director  
Division of Administrative Services  
Department of Health & Social Services (DHSS)

Juneau, Alaska

POSITION STATEMENT: Presented information and answered questions pertaining to RPLs 06-4-0011, 06-4-0042, 06-4-0059, 06-4-0062, 06-4-0063, 06-4-0064, and 06-4-0065.

RICHARD McMAHON, Chief  
Lands Records Information  
Division of Support Services  
Department of Natural Resources (DNR)  
Anchorage, Alaska

POSITION STATEMENT: Testified on RPL 10-4-5022.

MR. NICO BUS, Acting Director  
Division of Support Services  
Department of Natural Resources (DNR)  
Juneau, Alaska

POSITION STATEMENT: Testified on RPL 10-4-5023.

NANCY SLAGLE, Director  
Division of Administrative Services  
Department of Transportation & Public Facilities (DOT&PF)  
Juneau, Alaska

POSITION STATEMENT: Presented information and answered questions pertaining to RPL 25-4-3287.

DAVID TEAL  
Legislative Fiscal Analyst  
Legislative Finance Division  
Juneau, Alaska

POSITION STATEMENT: Provided information to the Joint Committee on Legislative Budget and Audit, testifying on RPL 25-4-3287.

PAT DAVIDSON, Legislative Auditor  
Division of Legislative Audit  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Provided information on the audit request regarding the University of Alaska, and clarified questions regarding other audit issues.

TINA CUNNING  
State-Federal Issues Program Manager  
Commissioner's Office  
Alaska Department of Fish & Game (ADF&G)  
Anchorage, Alaska

POSITION STATEMENT: Provided information and answered questions pertaining to navigable waters and RS 2477s.

BOB LOEFFLER, Director  
Division of Mining, Land and Water  
Department of Natural Resources (DNR)  
Anchorage, Alaska

POSITION STATEMENT: Provided information pertinent to navigable waters and RS 2477s.

#### **ACTION NARRATIVE**

##### **TAPE 03-7, SIDE A**

Number 0001

**CHAIR RALPH SAMUELS** called the Joint Committee on Legislative Budget and Audit meeting to order at 1:37 p.m. Members present at the call to order were Representatives Samuels, Hawker, and Kerttula, Senators Ben Stevens and Bunde. Representatives Kohring, Whitaker, Williams and Senators Therriault and Wilken were on line via teleconference.

##### **APPROVAL OF MINUTES**

Number 0005

REPRESENTATIVE HAWKER made a motion to approve the minutes of July 9, 2003. There being no objection, the minutes from the meeting of July 9, 2003, were approved as read.

##### **EXECUTIVE SESSION**

Number 0007

REPRESENTATIVE HAWKER made a motion to move to executive session for the purpose of discussing confidential audit reports under AS 24.20.301. There being no objection, the committee went into executive session.

CHAIR SAMUELS brought the committee back to regular open session at approximately 2:15 p.m.

Number 0012

REPRESENTATIVE HAWKER made a motion for the preliminary statewide single audit, audit control number 1030017-03, to be released to the appropriate agencies for response, and for the final release of the 0240003-03 report. There being no objection, the audits were released for response.

**REVISED PROGRAM - LEGISLATIVE (RPLs)**

Number 0020

REPRESENTATIVE HAWKER moved that the committee approve RPL 06-4-0011, Increase Real Choices Federal Grant, Department of Health and Social Services (DHSS).

CHAIR SAMUELS objected for purposes of discussion.

Number 0025

CHERYL FRASCA, Director, Office of Management & Budget (OMB), Office of the Governor, explained that because DHSS's reorganization doesn't allow for the transfer of sufficient federal authorization to the newly formed Division of Senior and Disabilities Services, this request [for \$500,000] in federal receipts [will rectify] the situation.

Number 0032

REPRESENTATIVE KERTTULA asked if the existing filled non-permanent program coordinator [position] was being paid from the same \$75,000 as the personal services position.

JANET CLARK, Director, Division of Administrative Services, Department of Health & Social Services (DHSS), responded that it was the same \$75,000.

CHAIR SAMUELS removed his objection and asked if there were any further questions.

REPRESENTATIVE KERTTULA asked if existing money was paying for the coordinator position or if additional funds were needed.

MS. CLARK explained that in FY03, approximately \$150,000 was spent for this particular grant. Two errors were made in the budget development: federal authority wasn't transferred from the previous Division of Mental Health & Developmental Disabilities to the new division, and additional federal authority wasn't requested. As the grant amount was larger than what was budgeted, this \$500,000 provides for correction of those two mistakes.

Number 0049

SENATOR THERRIAULT commented that rather than making a transfer, additions were being made to the overall authorization. He asked if there was an over appropriation of authorization, and whether insufficient federal funds had been transferred to the newly formed division.

MS. CLARK explained that funds were in separate appropriations and couldn't be transferred; the department wouldn't spend the funds unless an additional federal grant was received.

SENATOR THERRIAULT inquired if the request was "dollar for dollar" and asked what amount of the old authorization would be restricted.

MS. CLARK said she could provide the specific dollar amounts, but her understanding was that about \$150,000 was spent and was in the budget.

SENATOR THERRIAULT noted that the information could be forwarded to David Teal. He offered that perhaps in the supplemental [budget], a reduction might be made to areas where there might be a surplus of federal authorization.

Number 0072

SENATOR BUNDE asked if the \$10,000 in travel pertained to travel for state employees or was for others who testify on policy.

MS. CLARK responded that this travel amount was for state employees.

SENATOR BUNDE commented that this seemed like a lot of trips.

MS. CLARK replied that this was an estimate and that she didn't know how many trips were indicated by this amount.

Number 0078

CHAIR SAMUELS asked if there was any objection. There being none, the motion to approve RPL 06-4-0011 carried.

Number 0080

REPRESENTATIVE HAWKER moved that the committee approve RPL 06-4-0042, Temporary Medicaid FMAP [Federal Medicaid Authorized Percentage] Relief, DHSS.

CHAIR SAMUELS objected for purposes of discussion.

Number 0082

MS. CLARK explained that four different RPLs are associated with the FMAP increase that the state received from the Congressional Jobs and Tax Relief Reconciliation Act ("Tax Reconciliation Act") of 2003. Under the Tax Reconciliation Act, to assist states experiencing economic difficulty, [U.S. Congress] "Congress" increased the federal match rate for Medicaid. In Alaska, that rate was increased by 2.95 percent, resulting in a total of approximately \$22 million in additional federal receipts for the current fiscal year. Governor Murkowski took that into account in the general fund vetoes that were done in June, and counted on the FMAP increase as a way to save general fund money. Alaska's rate is now 61.34 percent, up from 58.39 percent. Ms. Clark pointed out a typographical error in the RPL; the amount indicates 59.38 rather than the correct amount of 58.39.

SENATOR BUNDE asked, "How many times are we going to spend that money?" noting that the governor had already taken this into account and that continuation [of the higher reimbursement rate] was not anticipated.

MS. FRASCA replied that the money won't be spent again because the reduction was already considered in the veto process; the savings have already been achieved. She said that because it's not expected that Congress will continue to reimburse at this rate, that hole will need to be covered in FY05, either through other reductions or increased revenues. At the time the veto reduction was made, there was recognition that this was a one-time savings; budget planning for FY05 is being made with this in mind.

Number 0116

REPRESENTATIVE KERTTULA referred to the FMAP's effective date of April, 2003, and asked if, other than the veto, those funds were taken into account or received.

MS. FRASCA explained that Congress did not pass the legislation until after adjournment of the legislative session; this is a retroactive effective date.

REPRESENTATIVE KERTTULA commented that this would create a gap for the following year.

Number 0125

CHAIR SAMUELS removed his objection and asked if there was any further objection. There being none, the motion to approve RPL 06-4-0042 carried.

Number 0127

REPRESENTATIVE HAWKER moved that the committee approve RPL 06-4-0059, Non-Primary Health Care Facilities Improvements, DHSS - CIP [capital improvement project].

CHAIR SAMUELS objected for purposes of discussion.

MS. CLARK testified that this request for \$3,650,000 was a capital item. She said the department has requested funds from the Denali Commission for a number of capital projects already authorized by the commission. The Denali Commission was looking for an agency to implement these capital grants to healthcare facilities and DHSS is familiar with such facilities. In FY04, the department agreed to administer these grant projects; it's expected that in FY05, the Denali Commission will again work with the department, and the budget will reflect those projects. She said regarding the FY04 grants, there was some question that "we seem to be doing this for free." She continued that Commissioner Gilbertson wants to develop a closer working relationship with the Denali Commission and if this becomes a permanent part of the capital grant process, these costs will be addressed through the indirect cost plans to ensure that there is appropriate reimbursement for administrative work. At this point, she said, timing is a consideration, and at the request of the Denali Commission, DHSS had agreed to [administer the grants].

SENATOR BUNDE asked which grantee would provide the 50 percent match required of the grant recipient.

MS. CLARK said a list of the grantees was included in the committee packet, and noted that many of those were local community hospitals.

SENATOR BUNDE asked if operating costs, after the capital improvement, would be the responsibility of the grantee as well.

MS. CLARK replied that this was correct.

CHAIR SAMUELS removed his objection and asked if there were any further questions.

Number 0159

REPRESENTATIVE KERTTULA asked if administrative costs would be charged towards mental health expenditures.

MS. CLARK responded, "For FY04, that's correct."

REPRESENTATIVE KERTTULA asked if there would be mental health expenditures in the following fiscal years.

MS. CLARK said, "No."

CHAIR SAMUELS asked if there was any objection. There being none, the motion to approve RPL 06-4-0059 carried.

Number 0166

REPRESENTATIVE HAWKER moved that the committee approve RPL 06-4-0062, Temporary Medicaid FMAP Relief, DHSS.

CHAIR SAMUELS objected for purposes of discussion.

Number 0169

MS. CLARK told the committee that this was the second of the four appropriations related to the FMAP increase; the explanation given for the previous RPL regarding the increase in the federal Medicaid match rate for FY04 is applicable to this RPL as well.

Number 0176

CHAIR SAMUELS removed his objection. He asked if there was any further objection. There being none, the motion to approve RPL 06-4-0062 carried.

Number 0177

REPRESENTATIVE HAWKER moved that the committee approve RPL 06-4-0063, Medicaid - Private Hospital ProShare, DHSS.

CHAIR SAMUELS objected for purposes of discussion.

Number 0181

MS. CLARK explained that in the FY04 budget, the department saved \$17 million through the Medicaid private hospital ProShare program. She pointed out that ProShare funds that could be earned in the current quarter of FY03 were not factored into the budget. This request for \$21,084,000 in federal receipts allows for payments to be made at a higher level than was budgeted; this, in turn, frees up between \$10 and \$15 million in general funds that the department has suggested be used to offset potential decreases in FairShare, another Medicaid program, which is currently under administrative appeal. She said this request was a way to earn more federal money and free up some general funds.

Number 0200

REPRESENTATIVE HAWKER asked if general funds were being generated due to ProShare's funding of certain activities through medical providers, thereby allowing for partial claim reimbursement.

MS. CLARK confirmed that this was correct.

REPRESENTATIVE HAWKER continued that there was an even greater opportunity to do this than was identified in the original budget process, and asked if general fund savings generated by routing the support for certain activities through a qualifying ProShare structure would occur within the DHSS budget.

MS. CLARK confirmed that this was correct and said, "It will be generated in different components that house a number of different grant programs in our department."

Number 0222

REPRESENTATIVE HAWKER asked if there was a high degree of comfort that savings would be between \$10 and \$15 million.

MS. CLARK said that the department had detailed information and the amount was close to \$14 million. She said that the amount of saved general funds would be restricted in the accounting system so that it couldn't be spent, thereby ensuring its availability.

REPRESENTATIVE HAWKER said he would like the Joint Committee on Legislative Budget and Audit to include a legislative intent recommendation with this RPL, indicating that the freed-up general funds be embargoed/restricted, so that those general fund monies don't just disappear into the DHSS system as a "de-facto supplemental unrestricted budget, but that they in fact be held, should we wish to reconsider them, that we consider that money later in the supplemental budgeting process for potential reallocation, should we determine that we want to put this money to work in the [DHSS] budget."

CHAIR SAMUELS questioned the consideration of this as an amendment to the RPL.

REPRESENTATIVE HAWKER said he would state this as "an amendment for intent."

CHAIR SAMUELS asked if there was any objection. There being none, the amendment was adopted.

Number 0258

SENATOR BUNDE asked, "What are the chances that these are one-time funds and is that part of your consideration, that we freed it up this week, but next week, that federal money is gone?"

MS. CLARK replied that nothing lasts forever, but said that at this point, the state's plan for this program has been accepted by the federal government, and is consistent with regulation. She said she assumed that the program could continue for four quarters, but asked, "Which year are you in?" She stated that there was no indication that the basic underlying policy of the program would be discontinued. She noted that analysis would still need to be generated for the FY05 budget.

SENATOR BUNDE said he was glad that these programs could be used to benefit the state, but noted concern for the federal government deficit.

Number 0287

SENATOR STEVENS asked for clarification of the second "budgetary issue" which read as follows [original punctuation provided]:

A total ProShare payment of \$61.9 million is available in SFY04 - federal match is \$37.8 million. Of the \$37.8 million federal match required, \$21 million in

additional federal authority is needed by the Health Care Services to utilize 100% of the available proportionate share funds.

Number 0300

MS. CLARK responded that there was excess federal authority in healthcare services, and the \$21 million was the net increase needed to make the program work.

SENATOR STEVENS asked if this net increase would appear on Medicaid services that were actually approved in the budget.

MS. CLARK said this was correct.

SENATOR STEVENS asked about the third budgetary issue: "DHSS grant funds are utilized as state match with no change in funding to the grantees." He wondered if this referred to using other grant funds, asking if this was what "no one really wants to talk about."

MS. CLARK said the payment methodology for grant programs was being changed in this program.

SENATOR STEVENS asked if this grant fund included state matching or if it referred to federal grant funds.

Number 0321

MS. CLARK said that Medicaid requires a 40 percent state match. She explained that previously, a program such as a mental health provider grant was 100 percent funded by general funds, but this was changed to a Medicaid payment with a 60/40 split. She said that grant funds still need to pay the state match, but the 60 percent that was paid in the state's 100 percent was now freed up to be a federal payment.

SENATOR STEVENS asked about FairShare.

MS. CLARK replied that FairShare is a program for tribal entities, and "we get 100 percent match for that program."

SENATOR STEVENS asked if this was a matter of using the 60 or 100 percent.

MS. CLARK said, "That's correct."

Number 0341

REPRESENTATIVE KERTTULA asked if FairShare's status was at about \$53 million.

MS. CLARK responded that a decision about Fairshare's status hadn't been made yet, even though there is an administrative appeal; there are discussions about whether to settle or to continue litigation.

Number 0355

MS. FRASCA told the committee that Commissioner Gilbertson recently talked with [U.S. Secretary of Health & Human Services] Tommy Thompson about this issue, and legal counsel was involved in the discussion.

REPRESENTATIVE KERTTULA asked if there was a timeline on the decision.

MS. CLARK replied that there wasn't a required timeline on the decision.

REPRESENTATIVE KERTTULA asked if there was an appeals deadline involved, and upon receiving an answer [from an unidentified speaker], she relayed her understanding that there was no appeals deadline involved.

Number 0384

SENATOR THERRIAULT referred to Representative Hawker's previous amendment regarding funds being embargoed or accounted for, and questioned whether the expenditure had been made and if general funds had already been freed up.

MS. CLARK responded that the expenditures are freed up as the grant payments are paid out. She continued that this is done on a quarterly basis, and the department is in the process of estimating this to restrict how the funds are held. She said that it's complicated because the money is sent to hospitals and the hospitals then pay the grantees. The department will be in a good position to restrict general funds that would have gone out in grant payments after the federal FY03 closeout period, which ends this week.

SENATOR THERRIAULT commented that doing this on a quarterly basis makes sense. He asked if a distribution had been made on

the new ProShare money, thereby freeing up some general funds. He asked if any general funds had been used in other areas within the department.

MS. CLARK said that the first quarter grant payments had been made, and she was unsure if this was at the higher payout [rate].

REPRESENTATIVE KERTTULA asked if other states were doing this.

MS. CLARK confirmed that other states have done this and said that states are "scrambling to try to bridge their own fiscal gaps."

CHAIR SAMUELS removed his objection. He asked if there was any further objection. There being none, the motion to approve RPL 06-4-0063 carried.

Number 0407

REPRESENTATIVE HAWKER moved that the committee approve RPL 06-4-0064, Temporary Medicaid FMAP Relief, DHSS.

CHAIR SAMUELS objected for purposes of discussion.

MS. CLARK said this was the third in the series of four RPLs related to the raise in the state's Medicaid amount by approximately 3 percent. She said this request for \$290,800 in federal funds was a request from The Office of Children's Services.

Number 0418

CHAIR SAMUELS removed his objection. He asked if there was any further objection.

SENATOR STEVENS responded by noting that the amount being requested didn't equal the vetoed amount. He directed the committee's attention to [the amount indicated] on page 17, line 29, "Residential Child Care," indicating a difference of [\$403,300].

MS. CLARK said that in addition to this veto, there were other items the governor vetoed in reductions to grant programs.

SENATOR STEVENS asked if [those items] "showed up on that line?"

MS. CLARK replied, "That's correct, in Residential Child Care," adding that this was just one of several vetoes.

SENATOR STEVENS commented that there was a net loss of general funds on that line and said, "But we don't know where that shows up, or what agency gets it."

MS. FRASCA said she would need to see the veto letter.

SENATOR STEVENS said that the RPL indicates that appropriation authority was on page 17, line 29 [of CCS SSHB 75], and falls under Residential Child Care. The amount is [\$403,300] while the RPL only requests that \$290,800 be put back in; he questioned why the amounts differed.

MS. CLARK responded that Residential Child Care included a number of vetoes.

SENATOR STEVENS asked if the cumulative effect was about \$403,000.

MS. CLARK said that was correct and that \$290,800 was a portion of that total amount.

Number 0459

CHAIR SAMUELS asked if there were any further objections. There being none, the motion to approve RPL 06-4-0064 carried.

REPRESENTATIVE HAWKER moved that the committee approve RPL 06-4-0065, Temporary Medicaid FMAP Relief, DHSS.

CHAIR SAMUELS objected for purposes of discussion.

MS. CLARK said this request, the fourth in the series of four, was from the Division of Behavioral Health, requesting \$3,029,900. The explanation is the same as for the previous three RPLs.

Number 0472

CHAIR SAMUELS removed his objection. He asked if there was any further objection. There being none, the motion to approve RPL 06-4-0065 carried.

REPRESENTATIVE HAWKER moved that the committee approve RPL 10-4-5022, Alaska Oil & Gas Exploration, Development, and Permitting Project, Division of Natural Resources (DNR) - CIP.

CHAIR SAMUELS objected for purposes of discussion.

Number 0479

MS. FRASCA explained that this provided additional authority for a federal grant from the [Federal] Department of [Energy.] She noted that on page 3 of the request, the additional authority was spread between the Alaska Oil & Gas Conservation Commission, DNR, and the [Alaska] Department of Fish & Game (ADF&G). The total additional authority was \$503,702 even though the total grant was for almost \$1.4 million. The departments have existing capital project authority for approximately \$738,000 of the grant amount, she said.

REPRESENTATIVE KERTTULA asked about the amount being taken for the [Alaska Coastal Management Program (ACMP)], and wondered what the timeline was.

Number 0510

RICHARD McMAHON, Chief, Lands Records Information, Division of Support Services, Department of Natural Resources (DNR), testified that with new legislation on the [ACMP], there was enough definition to move forward with the coastal questionnaire process and to move on that project.

REPRESENTATIVE KERTTULA asked how many other agencies would be involved in the project.

MR. McMAHON replied that the ACMP is now the Office of Project Management and Permitting (OPMP) within DNR and it will take the lead with that component and work with various agencies.

REPRESENTATIVE KERTTULA commented that this was a lot of money to spend in [FY]04, considering that the system hasn't yet been devised.

MR. McMAHON responded that this RPL was for the capital budget, even though last year it came in under the operating budget. He stated that it is a five-year grant through the Department of Energy and that "we have the flexibility to move at the appropriate pace."

REPRESENTATIVE KERTTULA asked if it made sense to do this now so that the grant could be taken advantage of, knowing that it wouldn't all be spent. She asked, "We'll see how it's being spent as it goes along?" and upon receiving confirmation that this was the case, she said, "This alleviates a lot of my concern about how it was going to happen."

Number 0560

CHAIR SAMUELS removed his objection. He asked if there was further objection. There being none, the motion to approve RPL 10-4-5022 carried.

Number 0563

REPRESENTATIVE HAWKER moved that the committee approve RPL 10-4-5023, State Fire Suppression Cooperators and Reimbursable Agreements, DNR.

CHAIR Samuels objected for purposes of discussion.

MS. FRASCA testified that this RPL would increase DNR's fire suppression and fire activity component, granting authority to receive receipts from other states to assist with firefighting efforts. Traditionally these receipts have been received directly from the federal government, but now, receipts will be received from western states in the Northwest Compact.

REPRESENTATIVE HAWKER asked if the federal authority would be restricted.

Number 0596

MR. NICO BUS, Acting Director, Division of Support Services, Department of Natural Resources (DNR), replied that federal receipts would be restricted so the amount wouldn't be spent beyond the reimbursement.

Number 0605

CHAIR SAMUELS removed his objection. He asked if there was any further objection. There being none, the motion to approve RPL 10-4-5023 carried.

REPRESENTATIVE HAWKER moved that the committee approve RPL 25-4-3287, Port Security Grant Program, Department of Transportation & Public Facilities (DOT&PF) - CIP.

CHAIR SAMUELS objected for purposes of discussion.

Number 0613

MS. FRASCA explained that this would allow for the receipt of \$2,650,000 from the U.S. Department of Homeland Security for improvement to ports in Alaska and also to Bellingham, Washington. She said that the answer to her question as to why Bellingham was included was that Alaska would bear the cost if the improvements were desired by the state. She mentioned that the lease is currently being negotiated, so perhaps a better deal could be struck.

CHAIR SAMUELS asked if there was a timeline involved. [Tape ends.]

**TAPE 03-7, SIDE B**

Number 0637

NANCY SLAGLE, Director, Division of Administrative Services, Department of Transportation & Public Facilities (DOT&PF) replied, "[We have] some time restrictions put upon us by the USCG [United States Coast Guard] concerning development of security plans and implementation of those plans." The USCG has identified that these items need to be in place by July 1, 2004.

CHAIR SAMUELS asked when the lease in Bellingham would expire.

MS. SLAGLE relied that the lease would be up in October, 2004.

Number 0645

SENATOR BUNDE asked for clarification of the available match funding from the Chenega Terminal Modification project {"Chenega"}.

MS. SLAGLE explained that the TSA [Transportation Security Administration] grant being received requires a general fund match. STIP [Surface Transportation Improvement Program] funding was originally going to be used for Chenega but instead, it has been decided that Shakwak funds, federal highway monies not requiring a match, will be used instead. Therefore, the match monies associated with that particular project are now available to be used for this TSA grant.

Number 0659

REPRESENTATIVE KERTTULA referred to the last legislative session and noted that the legislative intent for Shakwak money had to include an investment plan for the federal receipts, to create an efficient and effective transportation system. She asked if this had been done, could the Shakwak funds be legitimately transferred to fund Chenega. She also asked, "What happens to the STIP money that we aren't using for Chenega?"

MS. SLAGLE said that she would investigate the investment plan for the Shakwak federal receipts. She said if the STIP monies are not used for Chenega, there is a lot of demand for those funds. She noted that the intent language is attached to the appropriation for the Alaska Marine Highway System (AMHS) and that she would investigate whether this intent language pertained to both projects.

REPRESENTATIVE KERTTULA asked for a specific answer regarding the intent language. She said her bottom line was that she did not want to see "Chenega falling out" and wanted assurance that this would not happen.

MS. SLAGLE related her understanding that "it was not going to fall out" and that work would continue towards that terminal project.

Number 0690

DAVID TEAL, Legislative Fiscal Analyst, Legislative Finance Division, explained that the intent language is confusing because it is at the allocation level rather than at the appropriation level. He said that Chenega was going to use surface transportation money but is now going to use Shakwak money and that both appear in the budget as federal receipts so "you can't tell the difference between them." He said, the question becomes, if Shakwak money is going to be used at Chenega, what project won't be done because of this transfer of Shakwak money.

SENATOR BUNDE noted that the state rebuilt the dock facility for the community of 150 or 200 people and now more money is being spent in modifications, for "how much per capita?" He commented, "So, if it falls out, and I don't hear it, nothing happened."

MS. FRASCA said she could report back to the committee on the status of Chenega.

MR. TEAL said the intent language indicates that [DOT&PF] will provide the plan for spending the Shakwak money, but doesn't have to provide that until the next [legislative] session.

REPRESENTATIVE KERTTULA said this had been voted in the budget and that she was hearing that "Chenega's not going anywhere, it's simply a matter of changing the funding source."

Number 0720

CHAIR SAMUELS removed his objection. He asked if there was any further objection. There being none, the motion to approve RPL 25-4-3287 carried.

SENATOR BUNDE commented on the difficulty in accessing the RPLs online and requested early receipt of hard copies of the RPLs.

CHAIR SAMUELS confirmed that hard copies would be received from the administration and distributed to committee members in a timely fashion.

MR. TEAL asked about continuing to distribute PDF versions of the RPLs, once data processing solved the downloading difficulties.

CHAIR SAMUELS confirmed that members would receive copies, in one form or another.

MR. TEAL said that RPLs would be distributed to committee members at least one day before a scheduled meeting.

#### **AUDIT REQUESTS**

Number 0747

REPRESENTATIVE HAWKER moved that the committee approve the audit request for additional information and for a follow-up on matters pertaining to the University of Alaska.

Number 0750

CHAIR SAMUELS said that he had received many verbal requests to audit the University of Alaska and the attempt was made to limit this audit to something manageable, with the result being to review the audit that was done 10 years ago, and to review travel and distance education.

CHAIR SAMUELS asked if there was any objection to this audit request.

Number 0761

SENATOR THERRIAULT asked for clarification as to whether this was a request for a completely new audit or a request for the auditors to update portions of the previous audit.

CHAIR SAMUELS referred to the memorandum of August 12, 2003, in the packet, as it outlines the specifics of this request.

Number 0771

PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, told the committee that the request was to update the recommendations as well as the calculations of unit costs that were identified in the audit from 10 years ago. She said that items [3 and 4] were new issues that were not related to that previous audit.

CHAIR SAMUELS inquired as to the starting date for this request.

MS. DAVIDSON predicted that this audit would begin in approximately 6 - 8 months.

CHAIR SAMUELS asked how long it would take to complete the audit.

MS. DAVIDSON replied that the length of time depended on how good the data was. She referred to the report from 10 years ago, wherein one of the recommendations was to improve upon the utilization of existing management information systems. She reported that at that time data accuracy and availability was not "in very good shape," and that she predicts that this would be a "substantial audit to do."

REPRESENTATIVE HAWKER asked Senator Therriault if the scope and the motion were understood.

SENATOR THERRIAULT referred to the memo, saying that it directed the legislative auditor to conduct an audit.

MS. DAVIDSON, in response to a question from Chair Samuels, said the 1993 audit was available online, and that she could send copies of it to committee members. She pointed out that the

downloaded version from 10 years ago utilized a different word processing software system and the numbers in the appendices were unclear; she said that she would be making those corrections.

Number 0812

CHAIR SAMUELS asked if there was any objection to the approval of the audit. There being none, it was so ordered.

#### **OTHER COMMITTEE BUSINESS**

Number 0825

TINA CUNNING, State-Federal Issues Program Manager, Commissioner's Office, Alaska Department of Fish & Game (ADF&G), told the committee that in 1989 the legislature audited the state agencies' role related to management and assertion of ownership on waterways in the state; this audit resulted in a recommendation that the agencies establish a policy team to work on navigability issues. The state's [Navigability and Access Team] is co-chaired by DNR, ADF&G, and the Department of Law (DOL). She mentioned Senator Therriault's interest in ensuring that applications related to navigability were able to be filed for RS [Revised Statutes] 2477s under the recordable disclaimer [of interest] process recently adopted by the BLM [Bureau of Land Management].

Number 0841

SENATOR THERRIAULT explained that a previous meeting with the administration indicated that a proposal of the contractual arrangement would be received, and as of yesterday this had not been received. He mentioned the need for specification of "scope of work, how much it's going to cost, what are the deliverables of the contract" and so forth. He said he received a draft copy of the document shortly before the meeting and wondered what to expect regarding a formal proposal.

MS. CUNNING said that it was agreed that a work proposal would be put together. However, in August, four days after the last meeting, Dick Mylius, the co-chair from DNR, went on extended vacation; he is due back next week. She said that there has not been time to put together a formal proposal.

CHAIR SAMUELS asked about the timeline involved for entering into the contract.

Number 0868

BOB LOEFFLER, Director Division of Mining, Land and Water, Department of Natural Resources (DNR), said that with respect to navigability, they were "ready to move forward," but there was uncertainty regarding integrating the issues involved with RS 2477s; he added that they would know more within the next month.

MS. CUNNING explained that the legal land status research needing to get done was the same whether a ribbon was a waterway or an RS 2477 trail, although the RS 2477s require research on the actual location and the historic use. Based on the six recordable disclaimers [of interest] that DNR and ADF&G have already prepared and filed with BLM, a manpower estimate for each application has been done. The estimate of how many [rivers] could be done in the remaining one and one-half years of the CIP is based upon the Joint Committee on Legislative Budget and Audit's \$400,000 appropriation.

MR. LOEFFLER said that this was approximately 40 to 50 navigable rivers.

SENATOR THERRIAULT wondered if the committee should authorize the chairman to enter into a contract of up to \$400,000 or if the committee should wait to receive a formal proposal; he expressed concern that valuable time not be lost.

CHAIR SAMUELS noted that the next [Joint Committee on Legislative Budget and Audit] meeting would be in approximately four to six weeks.

MS. CUNNING stated that position descriptions couldn't be drafted until there was knowledge that something was being authorized. She noted that the sooner research was conducted and people were trained, the sooner the projects could be underway. She mentioned that currently a very cooperative relationship exists with BLM and the desire is to get as much done as possible while the administration is helpful.

Number 0909

SENATOR THERRIAULT said he understood the sensitive nature of the RS 2477s, noting that he met with [Secretary of the Interior] Gail Norton about two weeks ago. He said that the work done on navigability questions and recordable disclaimers could assist her in expressing to Congress that the recordable

disclaimer process not be eliminated. He said he wouldn't want Congress to overreact and eliminate a viable and usable mechanism pertaining to navigable waters.

Number 0922

SENATOR STEVENS referred to the handout in the packet which reads: "2. Between February and August, 2003, the state filed 6 recordable disclaimer of interest applications with BLM on waters already determined navigable. The first six applications averaged 6 weeks staff time each." He asked how many staff were working on this.

MR. LOEFFLER replied that this involved joint staff, from DNR and ADF&G.

SENATOR STEVENS asked, "operating under what agreement?" He asked if this was under the direction of the commissioner.

MR. LOEFFLER said, "Yes."

SENATOR STEVENS asked why a contract was needed to continue work that has already been done?

MS. CUNNING replied that staff had been borrowed from existing projects and because of backlogs created during this period, no more work [on the project] was being done.

SENATOR STEVENS reflected that this contract was between agencies to loan each other [staff].

MR. LOEFFLER said the contract is between the Joint Committee on Legislative Budget and Audit and the agencies; the tasks required by the committee would be performed.

Number 0938

SENATOR THERRIAULT explained that some suspicion has grown between the two branches of government over the past few years. Even with the new administration, the feeling was that if money is allocated, it should really be focused on efforts that "we felt have been lacking for a number of years." He said that in effect, the Joint Committee on Legislative Budget and Audit is purchasing the services of state agencies to work on behalf of the legislature.

SENATOR THERRIAULT compared this to a situation from a number of years ago when the Knowles Administration wanted money for gas pipeline work. The legislature was leery of the amount requested by the administration, so by steering the money through the Joint Committee on Legislative Budget and Audit, a fairly tight watch was kept on the contract. He relayed that only about 50 percent of the money appropriated was used and the remaining money was available for reappropriation. The amount appropriated to the Joint Committee on Legislative Budget and Audit was only about 50 percent of what the administration originally requested. He pointed out that by exerting some control, the committee can make sure that the funds are really focused on navigability and RS 2477s rather than being absorbed by the agencies and being spent on other issues.

REPRESENTATIVE HAWKER expressed concern that the focus on navigable waters would result in the work product moving [away from focusing on RS 2477s].

MR. LOEFFLER replied that the issues are separable; money spent on navigability is thus spent, and money spent on RS 2477 is spent on RS 2477s and the link between them, other than both using recordable disclaimers, is weak. To the extent that money is spent on one, it's not being spent on the other, he said.

Number 0988

REPRESENTATIVE HAWKER expressed concern about investing the entire appropriation on navigability and slighting the RS 2477 assertions.

MR. LOEFFLER said the avenue for RS 2477s is uncertain, while the avenue for navigable waters is open, clear, and helpful. He said the next step for RS 2477s was being figured out - whether [there will be] litigation or not. Reserving money for RS 2477s is a question for the legislature.

Number 1007

SENATOR THERRIAULT noted that the Senate took the lead on this issue for a number of years. Due to the discussions taking place in Congress right now, he predicted that there will probably be limited success with RS 2477s. He said if the power to extend money for both navigability and RS 2477s was approved, the departments could move on whatever front offered the chance for the most success. He suggested perhaps moving ahead on RS 2477s that weren't currently controversial.

SENATOR THERRIAULT continued that when the House approved the Department of Interior's budget, the language indicated that none of the [Department of] Interior's money could be used for recordable disclaimers on RS 2477s. It's unclear whether this focuses on roads or trails or whether it applies to navigability as well. He mentioned relying on U.S. Senator Ted Stevens to clarify or eliminate that provision so that it would still be available for navigability. He noted that there are many lakes and navigable rivers in Alaska and there is clear criteria coming from the [Gulkana River case] on what is navigable. He said that Congress needs to acknowledge that, "Yes, most water bodies in Alaska are navigable; yes, the underlying surface belongs to the state; yes, we need to move along with the process to clarify which are state and which are federal." Senator Therriault said he wouldn't be opposed to a motion giving the power to enter into the contract. He specified that monthly reports would be desired; quarterly reports, at the very least, regarding "what we're getting for our money," and if the product was not a good one, the contract should be discontinued until things are "back on track."

Number 1070

SENATOR THERRIAULT moved that the committee approve \$400,000 so that Chair Samuels could enter into a contract with the state agencies, to move forward, and assert state ownership of navigable waterways and the underlying properties, and also on RS 2477s.

REPRESENTATIVE HAWKER objected for purposes of discussion. He said he supports the motion but was concerned that, despite the obstacles, he didn't want to lose sight of the RS 2477s; he didn't want this contract, in any way, to be indicative of abandonment of those pursuits. Having said that, he removed his objection.

SENATOR STEVENS asked if there was a process in place for the prioritization of the filings.

Number 1088

MS. CUNNING replied that the [Navigability and Access Team] had developed a process, and she noted DOL's help in identifying priorities. She explained that the team looked at the original estimated 200 waterways for which the state filed a notice of intent to sue to Quiet Title in the early 1990s. Under former

Governor Hickel, it was determined which of those waterways were likely to be navigable, and hopefully would not need court action, but that process fell apart. She said that those 200 waterways are useful because there is sufficient evidence to compile quality recordable disclaimer applications. The prioritization of those 200 is based on several factors, such as filing the simplest ones so that the BLM process can get underway without involving complex controversial issues.

MS. CUNNING said the Black River ("Black") was filed first because, along with the Kandik and the Nation [Rivers], it was one of three rivers for which quiet title was originally sought, through the court system. The court granted title on the Kandik and Nation [Rivers] but in the [9th Circuit Court of Appeals] title wasn't granted the Black, even though it was clearly navigable, because BLM didn't take a position. When the recordable disclaimer process was modified to allow for filing for navigable waters, there was already a court history on the Black; the state filed an application for a recordable disclaimer of interest with BLM and BLM now has to take a position one way or another. The comment period closed about two weeks ago and BLM is going through comments to see if any other claim of interest exists on that submerged land. If there is no valid claim of interest, the presumption is that the recordable disclaimer will be granted.

MS. CUNNING continued that after the Black, the next five rivers were grouped by location. She pointed out that it takes a lot of staff effort to research a particular area, so it is efficient to file for the Klutina [River and Lake] and the Tazlina [River and Lake] at the same time. She said that another criteria used in filing is to avoid conservation system units, National Parks and Refuges, until a process is established. She said that with the initial six rivers, a clear process should be established. She mentioned that the Wood River System is mostly within state land and therefore a complex process of determining if the upper-most extent of the waterway is navigable is not necessary. She stated that as the choices become more complex, more guidance will be desired from the DOL.

Number 1173

REPRESENTATIVE HAWKER, in response to a question from Chair Samuels, confirmed that his objection was removed.

CHAIR SAMUELS asked if there was any further objection. There being none, the motion carried.

SENATOR THERRIAULT said he presumed that Pat Davidson would be involved with drafting a binding contract which would delineate the deliverables, timelines, and so forth.

SENATOR GARY WILKEN referred to Chair Samuels' letter of August 19th to Scott Goldsmith (ph) regarding the cost of education, and asked that the letter be distributed to committee members in preparation for the next Joint Committee on Legislative Budget and Audit meeting. He also asked Ms. Davidson for a status report on communication with the state's travel office.

MS. DAVIDSON replied that she knew of no specifics other than the Division of Finance's receipt of the letter [issued in early August from Senator Therriault's office].

Number 1227

SENATOR THERRIAULT referred to a previous meeting which addressed [RPL 08-4-0019, Temporary Tax Relief Payments]. He said he was disappointed in a committee member's one-sided [opinion/editorial] article accusing him and other committee members of "thievery" and of "gutting proposal." He said committee members could have disagreements but there were aspects of the article that were incorrect; he said he hoped this would not happen in the future.

Number 1247

REPRESENTATIVE KERTTULA replied that she stood by her article and would be happy to discuss it further with Senator Therriault.

SENATOR THERRIAULT said, "There are parts of that op/ed [opinion/editorial] piece that are just flat lies, and that's all there is to it."

REPRESENTATIVE KERTTULA said, "I disagree and you and I can talk about that [outside of the meeting]."

SENATOR WILKEN said he would like to be included in that conversation.

SENATOR STEVENS referred to [RPL 06-4-0042, Temporary Medicaid FMAP Relief]. [Tape Ends.]

**TAPE 03-7, SIDE A [Beginning of tape was recorded over.]**

SENATOR STEVENS continued by referencing the attached Federal Register in the committee packet [June 17,2003, page 35890], second column, third paragraph from the bottom, "The Jobs Growth Tax Relief Reconciliation Act" which provides \$10 billion for other temporary state relief payments, based on population. He stated that population was the only criteria for distribution given by the federal government.

CHAIR SAMUELS said, "So noted."

Number 1279

REPRESENTATIVE HAWKER stated that Ms. Davidson had asked for clarification on a motion made and approved at the previous Joint Committee on Legislative Budget and Audit meeting. The motion authorized the department to pursue a lease renewal for office space. He asked that the solicitation for a new lease be not only to solicit, but also to enter into a new lease contract, in accordance with the discussion from the meeting of [July 9, 2003].

Number 1287

REPRESENTATIVE HAWKER moved that the committee authorize the legislative auditor to both solicit and award a lease for office space in Anchorage.

CHAIR SAMUELS asked if there was any objection. There being none, it was so ordered.

**ADJOURNMENT**

There being no further business before the committee, the Joint Committee on Legislative Budget and Audit meeting was adjourned at approximately 4 p.m.