

**ALASKA STATE LEGISLATURE**  
**HOUSE STATE AFFAIRS STANDING COMMITTEE**

April 15, 2003

8:02 a.m.

**MEMBERS PRESENT**

Representative Bruce Weyhrauch, Chair  
Representative Jim Holm, Vice Chair  
Representative Nancy Dahlstrom  
Representative Bob Lynn  
Representative Paul Seaton  
Representative Ethan Berkowitz  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 243

"An Act establishing state agency program performance management and audit powers in the Office of the Governor for the evaluation of agency programs; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 248

"An Act relating to the annual salary of the chief procurement officer; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 134

"An Act authorizing the Department of Corrections to enter into agreements with municipalities for new or expanded public correctional facilities in the Fairbanks North Star Borough, the Matanuska-Susitna Borough, Bethel, and the Municipality of Anchorage."

- HEARD AND HELD

HOUSE BILL NO. 221

"An Act making it a class C felony to knowingly make a false statement relating to citizenship or residency on an application for voter registration or reregistration."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 266

"An Act relating to elections, questioned ballots and questioned voters, voter registration, training of election officials, preparation of election materials, voter identification, absentee voting, counting ballots, and the primary election; and providing for an effective date."

- BILL HEARING POSTPONED TO 4/17

**PREVIOUS ACTION**

BILL: HB 243

SHORT TITLE: EVALUATION OF AGENCY PROGRAMS

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
04/04/03	0769	(H)	READ THE FIRST TIME - REFERRALS
04/04/03	0769	(H)	STA, FIN
04/04/03	0770	(H)	FN1: ZERO(GOV)
04/04/03	0770	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/10/03		(H)	FIN AT 1:30 PM HOUSE FINANCE 519
04/10/03		(H)	Mtg Postponed Until Adjnt of F/Session
04/15/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 248

SHORT TITLE: SALARY OF CHIEF PROCUREMENT OFFICER

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
04/04/03	0786	(H)	READ THE FIRST TIME - REFERRALS
04/04/03	0786	(H)	STA
04/04/03	0786	(H)	FN1: ZERO(ADM)
04/04/03	0786	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/15/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 134

SHORT TITLE: CORRECTIONAL FACILITY EXPANSION

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

Jrn-Date	Jrn-Page		Action
02/26/03	0306	(H)	READ THE FIRST TIME - REFERRALS
02/26/03	0306	(H)	STA, FIN
03/13/03		(H)	STA AT 8:00 AM CAPITOL 102
03/13/03		(H)	Scheduled But Not Heard
04/01/03		(H)	STA AT 8:00 AM CAPITOL 102
04/01/03		(H)	Heard & Held
04/03/03		(H)	MINUTE(STA)
04/15/03	0996	(H)	COSPONSOR(S): SEATON
04/15/03		(H)	STA AT 8:00 AM CAPITOL 102

**WITNESS REGISTER**

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

POSITION STATEMENT: Testified during the hearing on HB 243.

DAN SPENCER, Director  
Division of Administrative Services  
Department of Administration  
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 248.

JAY HOGAN, Deputy Director  
Office of Management & Budget (OMB)  
Office of the Governor  
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the administration  
to answer questions during the hearing on HB 243.

REPRESENTATIVE BILL STOLTZE  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 134.

MARC ANTRIM, Commissioner  
Department of Corrections  
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on  
HB 134.

JIM LECRONE, Business Agent

Public Safety Employees Association (PSEA)  
Anchorage, Alaska  
POSITION STATEMENT: Testified on HB 134.

DEE HUBBARD  
Sterling, Alaska  
POSITION STATEMENT: Testified in support of HB 134.

**ACTION NARRATIVE**

**TAPE 03-40, SIDE A**  
Number 0001

**CHAIR BRUCE WEYHRAUCH** called the House State Affairs Standing Committee meeting to order at 8:02 a.m. Representatives Holm, Seaton, Dahlstrom, and Weyhrauch were present at the call to order. Representatives Lynn, Berkowitz, and Gruenberg arrived as the meeting was in progress.

HB 243-EVALUATION OF AGENCY PROGRAMS

Number 0091

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 243, "An Act establishing state agency program performance management and audit powers in the Office of the Governor for the evaluation of agency programs; and providing for an effective date."

Number 0103

PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, assisted with the presentation of HB 243. She said the history of the audit function in the executive branch has been "a bit spotty." She continued as follows:

Many of the agencies actually have internal audit shops in their organization; however, most of that work is in support of a federal requirement to monitor "sub-grantees" ... - they're focusing on auditing externally to the department.

We at [the Division of Legislative Audit], for the most part, have been the main audit shop for the State of Alaska. We are an external auditor for both the executive and the judicial branches of government.

Our audit work spans financial audits, performance audits, and sunset audits.

I don't believe that the creation of this would minimize our audit to any degree; however, having [an] ongoing audit group in the executive branch is one of those internal control items that should be functioning in a state.

MS. DAVIDSON concluded that in general she supports [HB 243]. In response to questions by Representative Holm, she said the sunset reviews and the financial audit of the state are mandated by statute. She noted, "The statute also provides for individual legislatures, with the approval of the [Joint Committee on Legislative Budget and Audit, for us to do what we term 'special' or 'performance' audit."

Number 0343

REPRESENTATIVE HOLM opined that an audit should not be an internal audit; rather, it should be an external for internal purposes. He asked if anyone else besides [the Division of Legislative Audit] does auditing of state administration or state functions, for example.

Number 0460

MS. DAVIDSON answered as follows:

Typically, when we get into governmental organizations, the questions that come up have to do with independence. Being in the legislature, having the legislature control our budget, is one of the key functions to ensuring our independence with respect to the ... executive branch or the judicial branch. If you look at it in private industry, private industry CPAs are paid by the agency that they're auditing. In our case that's not what happens.

What an internal audit function could do for the executive branch would be to allow the governor's office to respond to issues that come up within their own agency's factor. To answer your question about external auditing: Primarily, the financial statements of what would be termed "the quasi-corporations of state government" - the [Alaska Permanent Fund], ADA, student loans - those typically

have had their financial audits done by private CPA firms. And a lot of that has to do with [the fact that] they're also bonding agencies.

Number 0552

CHAIR WEYHRAUCH asked if there is a privilege that attaches to an audit, between the auditor and the client. In response to a request for clarification from Ms. Davidson, he said he used the word privilege in a practical sense, rather than a legal one. He continued as follows:

If this bill were to become effective and [an] auditor in the executive branch were to conduct an audit ... and evaluation of an agency program, and then [the Division of Legislative Budget and Audit] did an audit, would the earlier executive branch audit be ... reviewable by the legislative auditors, or is that something that would be a privileged document that you would not be able to see or review?

MS. DAVIDSON responded that the statutes [regarding] the Division of Budget and Audit allow that entity to review all confidential information. She stated her understanding that in the proposed legislation, "They're asking for confidentiality for their internal audits and their working papers; therefore, we would be able to review those if we were asked to ... do an audit." In terms of privilege, she said, the work papers of [the Division of Legislative Budget and Audit] have been deemed privileged by a superior court ruling. She added that that ruling did not come from the supreme court.

CHAIR WEYHRAUCH clarified that he wanted to know whether the audit function that would be carried out if HB 243 became law would be something that [the Division of Legislative Budget and Audit] would be able to review during the course of its audit, so that it would have a full idea of what had transpired.

MS. DAVIDSON replied, "Mr. Chairman, I would expect that they would." She added that it would be the same as when the division gets into audits and reviews files of the ombudsman, or the Alaska Commission for Human Rights, if they're relevant in any way, for example. She concluded, "So, I would expect that these would fall under the same review process."

CHAIR WEYHRAUCH referred to [page 2, lines 4-5, of HB 243], which read as follows:

Internal audit work papers and other related supportive material are confidential, and internal audit reports are confidential until released by the governor.

CHAIR WEYHRAUCH asked if that means that they are not released to the public pursuant to "some sort of freedom of information Act request."

MS. DAVIDSON surmised that that is true; however, she said she is not the best person to answer the question.

Number 0797

REPRESENTATIVE SEATON commented that the type of audit mentioned in HB 243 is regarding performance management and agency programs, for example, which is like comparing apples and oranges next to financial audits. He asked if the type of audit in HB 243 is similar to audits that the division performs for LAA [Legislative Affairs Agency].

MS. DAVIDSON answered that the division does performance audits at the request of the Joint Committee on Legislative Budget and Audit. She added, "That's not to say that we don't do financial auditing as well. We can perform all of those audit functions." She posited that a question could address why [Governor Frank Murkowski] feels it's necessary to have an internal audit shop created so that he has a staff of auditors to do the things on his priority basis. She pointed out that having [the Division of Legislative Budget and Audit] try to meet the needs of all audits is difficult for the executive branch, because it doesn't control the division's audit workload - the legislature does. She concluded that the question that the committee is considering is not whether the division is capable of doing the audits - because it is; rather, it's whether or not it wants to create an audit function in the executive branch, as well.

Number 0963

MS. DAVIDSON, in response to a question by Representative Seaton, said whether it is a performance audit or financial audit, the people needed as staff are those who have been trained in a methodical, analytical program and think about things in an analytical way. She opined that the [issue of] the funding for the positions are better left to be answered by the governor's representative.

REPRESENTATIVE SEATON referred to the zero fiscal note and said he had just been trying to figure out whether the issue at hand is complicated or simple.

Number 1067

CHAIR WEYHRAUCH noted that no one was present to testify on behalf of the administration; therefore, he announced that HB 243 would be held over.

[Later in the meeting, a representative of the administration arrived and so discussion of HB 243 was continued.]

HB 248-SALARY OF CHIEF PROCUREMENT OFFICER

Number 1088

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 248, "An Act relating to the annual salary of the chief procurement officer; and providing for an effective date."

Number 1125

DAN SPENCER, Director, Division of Administrative Services, Department of Administration (DOA), said the proposed bill is a simple one that would increase the salary of the chief procurement officer by "one range." He noted that the reason [for the increase], as stated in a transmittal letter from [Governor Murkowski, dated April 3, 2003, included in the committee packet], is because the chief procurement officer is currently functioning as the division director. The director position is being eliminated, while either a deputy director or administrative manager position will be created. At this point in time, he said, there is a leasing and facilities manager - a position which has existed for several years - and the chief procurement officer. There will be a new administrative services manager or deputy director, depending upon classification action.

MR. SPENCER explained that the proposed increase in salary by one range is to ensure that there is some separation between the two subordinates and the chief procurement officer, and to recognize the chief procurement officer's additional responsibilities in deciding the course of policy issues for the division.

Number 1200

MR. SPENCER, in response to a question by Chair Weyhrauch, explained that a division director's salary is a range 26. The chief procurement officer's salary would be raised to range 24. He said he thinks the reason that the salary would be only a range 24 is that, by statute, the chief procurement officer is in the position for six years and may only be removed "for cause," which is different from a director's partially exempt position which "may be removed for just about anything." Therefore, there is a level of certainty of the employment that is enjoyed [by the chief procurement officer] that is not enjoyed by "a normal division director."

MR. SPENCER, in response to a series of follow-up questions by Chair Weyhrauch, said Vern Jones presently fills the chief procurement officer position. He stated his belief that Mr. Jones was just reappointed and, therefore, is in the first of a six-year term.

Number 1340

REPRESENTATIVE HOLM asked how much [a range 24 pays].

MR. SPENCER replied that he did not bring the salary amount with him to the meeting.

Number 1348

REPRESENTATIVE BERKOWITZ referred to the two fiscal notes. He said he finds it incredibly problematic that increased salary costs aren't available in current appropriations. He said, "If there's an increased salary cost, I think it's important to note what it is."

REPRESENTATIVE BERKOWITZ said moving a bill through the legislature has a cost itself, which, he recalled, is approximately \$5,000 to \$10,000 per bill. He said it seems horribly inefficient to be doing targeted salary increases for individual members of the administration. He asked, "Is this going to be some kind of consistent policy?" He suggested, "Or maybe we can get one sort of omnibus bill effecting members of the administration, so we will have them all in one fell swoop and, perhaps, be able to save enough to pay the people the extra money."

MR. SPENCER answered that he had no idea whether there would be an omnibus bill. He explained the reason that there is no cost in [the fiscal note] is because a range 26 F position is being eliminated to create a range 23 E position. With all the previously stated position changes, the result will be "a several thousand dollar savings over the course of the year."

Number 1423

REPRESENTATIVE BERKOWITZ opined that a fiscal note, in order to be fully transparent, ought to contain that information. He said the fiscal note [before the committee] only lists zeros, with [the following] narrative: "Funding for the increased salary cost is available in the current appropriation." Representative Berkowitz continued as follows:

I realize this isn't your responsibility, but one of the few methods I have of communicating with the administration is when members of the administration come before committees on which I sit. And, this is a consistent pattern and a troubling pattern. Zero fiscal notes mean that there is no cost, not that there's a change in costs or that one item goes up and another item goes down; it means there is no cost. And I think that the fiscal note ought to fairly reflect what's going on, and then let us make a determination. This is shell games with money.

REPRESENTATIVE BERKOWITZ told Mr. Spencer that he did not need to respond to that, because he shouldn't bear the brunt of concern.

Number 1489

CHAIR WEYHRAUCH asked how many specialized employment categories there are "like this." He asked if the legislature could conceivably be "seeing" 20 to 30 of these bills.

MR. SPENCER answered that he does not know. He recalled the following statutory positions that may only be removed "for cause": the public defender in DOA, three Alaska Oil & Gas Conservation commissioners, and the Administrative Law Judge.

Number 1552

REPRESENTATIVE SEATON said he concurred with some of Representative Berkowitz's concerns [regarding the fiscal note].

He said a zero fiscal note seems to indicate that there's no change, while the cover letter states that "we're basically saving money," which is a change that should make the fiscal note a negative one. He said he would like to see the fiscal notes addressed and changed [to reflect] the costs that would be seen.

Number 1582

REPRESENTATIVE HOLM said one of the [considerations] is different step grades [within each range].

MR. SPENCER clarified that a person gets paid depending on how long he/she is in the system.

REPRESENTATIVE HOLM said the impact would change, based upon how long the person has been [an employee].

MR. SPENCER responded that it would change slightly.

REPRESENTATIVE HOLM concluded, "So, I don't know that you could come up with a direct single-dollar figure."

REPRESENTATIVE SEATON noted the change in salary from a range 23 to a range 24.

REPRESENTATIVE HOLM pointed out that "it changes on the sub grade." He asked how many sub grades there are.

CHAIR WEYHRAUCH answered, "A through F."

Number 1653

REPRESENTATIVE SEATON opined that [Representative Holm] is talking about what the particular salary of a person is, whereas, the purpose of [HB 248] is to change "the entire salary range for that position." He said he reads the bill as eliminating a range 26 position and adding a range 24 position. He said there has to be a fiscal impact [to reflect] those changes.

CHAIR WEYHRAUCH said he thinks what Representative Holm [is saying] is "what is the range per step of this employee, too," which may have an effect on the fiscal note.

REPRESENTATIVE HOLM said, "That is correct."

Number 1725

REPRESENTATIVE BERKOWITZ asked what the difference is between a [range] 23 A and 24 A.

Number 1730

MR. SPENCER responded that he does have the information; however, he asked to address the issue of the fiscal note first. Fiscal notes have been done several different ways in the past. One way, he noted, is a zero fiscal note, like the one before the committee. Another way is an "information fiscal note," where information is provided, while pointing out that no additional appropriation is needed. He said, "We would be happy to amend the fiscal note to provide that information; we're not trying to hide any information here." He offered to have that ready for the committee in the afternoon.

CHAIR WEYHRAUCH said he thinks the committee needs a revised fiscal note, [or at least the department] needs to look at it again and, if it doesn't revise it, tell the committee why it is "sticking with it."

MR. SPENCER said he thought what [the department] would do is provide the numbers in an information fiscal note, including [a message to say] that no appropriation is necessary.

Number 1832

MR. SPENCER, in response to a question by Representative Lynn, told the committee that the bi-weekly salaries are as follows:

The chief procurement officer, right now, is at a range 23 K, which would be \$3,307.50 ... and ... would go up to \$3,535.00.

CHAIR WEYHRAUCH referred to the salary schedule in AS 39.27.011.

MR. SPENCER reiterated that the chief procure officer is currently at a step K, which is a "longevity step." In response to a request for clarification by Chair Weyhrauch, he said, "There's a methodology in the statute that shows how you compute the additional steps." He offered to provide that to the committee as part of the revised fiscal note. He noted that the schedule before the committee "takes you from step A through F." He explained that those are annual merit increases [rewarded for] satisfactory performance and increased value [of the

employee] to the state. Beyond step F, he said, are the longevity steps, which are addressed in the statute. Basically, employees stay at step F for two years, then go to step J. He noted, "This is in the partially-exempt schedule, because some of the bargaining units have different arrangements." He said employees stay at step J for four years, then four years at step K. He said he doesn't know "if it ever caps."

Number 1907

REPRESENTATIVE BERKOWITZ said he knows that the administration has had a difficult time filling a number of positions, because the argument is that it's hard getting pay ranges that are high enough. He asked if moving from a [range] 26 to a [range] 24 wouldn't be "moving in the opposite direction," and what a 26 would be making.

Number 1940

MR. SPENCER answered, "The previous director was making one dollar, every two weeks, less than the chief procurement officer would be under this." He explained that the savings would be because of what is being done with the position. He reiterated the reason "that this works in this particular situation," is because the chief procurement officer is a statutorily designated position that can only be removed for cause.

Number 2007

REPRESENTATIVE BERKOWITZ suggested that there is an internal problem within the administration. He said, "This all could be obviated if we just had the chief procurement officer ... become the ... director of the division." He mentioned there would still [be] a promotion, and added, "And then you wouldn't have the cause issue." He asked if that offer had been made.

MR. SPENCER said not that he is aware of. He said [the department] would still need a chief procurement officer. In response to a question by Representative Berkowitz, he explained that the position cannot be left vacant because it is the head of all the procurement functions in the state and sets policy for procurement, as well as plays a role in appeals processes, for example.

Number 2070

REPRESENTATIVE LYNN asked if the previously mentioned "longevity" is part of what the governor wants to eliminate.

MR. SPENCER answered no.

Number 2085

CHAIR WEYHRAUCH announced that HB 248 was heard and held.

HB 243-EVALUATION OF AGENCY PROGRAMS

Number 2125

CHAIR WEYHRAUCH returned attention to HOUSE BILL NO. 243, "An Act establishing state agency program performance management and audit powers in the Office of the Governor for the evaluation of agency programs; and providing for an effective date."

Number 2133

JAY HOGAN, Deputy Director, Office of Management & Budget (OMB), Office of the Governor, said that although he was not present during the previous discussion of HB 243 earlier in the meeting, he has talked with the legislative auditor regarding the concept of "reactivating this function."

CHAIR WEYHRAUCH asked why a statute is necessary to reactivate a function.

MR. HOGAN noted that there has been an internal audit function "off and on" for as long as he has worked for the state. Originally, he said, that function was in the Department of Administration and was moved over to OMB in 1983 when that office originated. He continued as follows:

When we came to deal with the issue of confidentiality of audit records - which was a recommendation to us from the attorney general - we discovered that there never had been a statutory provision granting anyone in the executive branch the authority to conduct internal audits, even though they had been going on ... probably since statehood.

Then in the mid-1990s, the function was scoped down to basically a records-keeping function which exists today in OMB. That is why we put in the authorization to do audits. And we broadened the definition to

align with the governor's concept of more focus on management and performance of agencies and programs.

Number 2245

MR. HOGAN said that when Governor Murkowski took office, he instructed the various departments of state government to perform internal audits on themselves, for purposes of preparation of the budget. He noted that some agencies - for example, the Department of Health and Social Services (DHSS) and the Department of Transportation (DOT&PF) - have internal audit functions because of federal requirements based on the federal funding those agencies receive. He added that the Department of Labor has one or two internal auditors, as well.

MR. HOGAN said it is not the governor's intention to duplicate, replace, or combine those functions; rather, it's simply to have a small management audit team to go where the governor feels there may be a problem. [The team] would in some cases use techniques of internal auditing, and in other cases would use management analysis techniques.

Number 2330

CHAIR WEYHRAUCH referred to Section 3, which he said would amend AS 44.19. He noted that [AS 44.19] is basically the OMB statutes; therefore, [OMB] would have the management authority over the administration because of the addition to the statute.

MR. HOGAN confirmed that statement.

CHAIR WEYHRAUCH asked Mr. Hogan if it is his intent, as representative of the administration, to have the papers that are referred to in [Section 3] be confidential from the public and not available to the public under public records of request.

MR. HOGAN replied that the purpose of [Section 3] is to emulate the language that applies from legislation to the legislative auditor. He said there is a tradition in auditing of keeping work papers - details and names, for example - confidential for a number of reasons that he said the legislative auditor is better versed in than he is. He continued as follows:

But what we attempted to do was to use that very same language, except, rather than clearance from the budget and audit committee, our clearance would come from the governor. So, that's the only significant

change we made in that. And ... we're recommending it for exactly the same reason that the legislative auditor has that in the audit statutes today.

Number 2427

CHAIR WEYHRAUCH asked if the [Division of Legislative Budget and Audit] would have access to the records and analyses that would be performed [by OMB] under Section 3 of HB 243.

MR. HOGAN stated his assumption that the division would [have that access]. He added that [OMB] would want to advise the governor of the division's interest. He noted that [OMB] found, in doing its limited audits in January [2003], that it got "tremendous unofficial help" from the legislative auditor. He said, "We would assume we would be able to return the same courtesy."

Number 2469

CHAIR WEYHRAUCH said he wants the committee to study the fiscal note, because it seems it would add a level of work. Furthermore, he indicated wanting to have [the language of Section 3] analyzed by [Legislative Legal and Research Services]. He opined that anticipating [and alleviating] any possible tension or dispute between the legislative and executive branch would serve everyone.

Number 2504

REPRESENTATIVE SEATON said he doesn't have any problem with the internal [audit] work papers, for example, being confidential; however, the [audit] reports being confidential "until released by the governor" may set up the scenario where they might not be released by the governor, and he said he sees that as a potential problem.

CHAIR WEYHRAUCH said, "We'll have to get some analysis on that point." He commented that the fiscal note does not contemplate the hiring of any new "audit-type folks."

Number 2550

MR. HOGAN responded that [the administration] agonized over that fiscal note. He noted that the governor has moved other functions from his office to departments, and in the process, some money was saved, as well as three positions that would be

vacated as a result of the movement of those agencies. He told the committee that that money - approximately \$300,000 - and those positions are dedicated to OMB should the legislature appropriate the governor's requested budget.

Number 2596

REPRESENTATIVE HOLM referred to Mr. Hogan's previous mention of an [audit] team and commented that that would require new duties that aren't within the scope of the current funding. He said he would appreciate a [more comprehensive] fiscal note.

MR. HOGAN said, "All right, sir."

Number 2654

REPRESENTATIVE BERKOWITZ noted that the last two lines of Section 3 are distinct from the language contained in Administrative Order 202. He said he finds that difference to be substantial, and he is curious to know why it has become more restrictive in law, as opposed to the administrative order.

Number 2680

MR. HOGAN explained as follows:

The administrative order cannot enhance the law; so, we were bound in the administrative order to not attempt to write a statute. In the Act - including the release, which [Chair Weyhrauch] asked about - again, we copied that statute of the [Joint Committee on Legislative Budget and Audit and the Division of Legislative Audit]. Currently - and ever since the committee was formed - the [Joint Committee on Legislative Budget and Audit] must approve for release any audit conducted by [the Division of] Legislative Audit.

They do it in two stages: [first, a] confidential review document; and then later, after that period has expired, a final report. So, we attempted to rewrite that provision to apply on the executive side. And, rather than have the [Joint Committee on Legislative Budget and Audit] do the release, the governor would do the release. So that's sort of the history behind why we chose to do it that way.

Number 2787

CHAIR WEYHRAUCH said the committee would be getting some legal analysis of [Section 3] before the next hearing on HB 243.

[HB 243 was heard and held.]

HB 134-CORRECTIONAL FACILITY EXPANSION

[Contains discussion of SB 65 and HB 55.]

Number 2790

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 134, "An Act authorizing the Department of Corrections to enter into agreements with municipalities for new or expanded public correctional facilities in the Fairbanks North Star Borough, the Matanuska-Susitna Borough, Bethel, and the Municipality of Anchorage."

Number 2799

The committee took a brief at-ease.

Number 2800

REPRESENTATIVE SEATON moved to adopt the proposed committee substitute (CS) for HB 134, Version 23-LS0563\D, Luckhaupt, 3/31/03, as a work draft. There being no objection, Version D was before the committee.

Number 2821

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, as sponsor of HB 134, noted that on page 2, line 19, there is a numerical error. The number should read "\$11,000", not "\$14,600", he pointed out.

Number 2844

CHAIR WEYHRAUCH asked if there was any objection to [Amendment 1] changing "\$14,600" to "\$11,000" on page 2, line 19 of Version D. There being none, Amendment 1 was adopted.

Number 2860

REPRESENTATIVE STOLTZE referred to a handout [available in the committee packet] entitled, "DOC Responses To HB 134 Questions Raised By Committee Members In HSTA Hearing - 04/01/03." He referred to another handout [also available in the committee packet] entitled, "Department of Corrections FY 2008 Prison Bed Cost Comparison," which shows the cost comparison between [current use of] the Arizona facility, building a private prison [as proposed in HB 55], and a public prison detail [as proposed in HB 134].

REPRESENTATIVE STOLTZE said he is still purporting that HB 134 and its companion bill in the Senate, SB 65, are the best options for Alaska; HB 134 is fiscally competitive and has some advantages, notwithstanding the advantages of the increase in employment through construction, for example. He said, "Our corrections model has shown that we have a professionally manned and safe model of public safety for corrections." He stated his hope that the committee would advance [the model offered in HB 134].

Number 2939

MARC ANTRIM, Commissioner, Department of Corrections (DOC), in response to a question by Chair Weyhrauch, confirmed that the previously cited handout regarding the DOC's answers to HB 134 questions is two pages, and attached to the back of it are two other pages that are not numbered sequentially, which offer an "Alaska Construction Cost Comparison."

CHAIR WEYHRAUCH referred to the previously cited handout regarding the prison bed cost comparison and asked why FY 08 was chosen.

COMMISSIONER ANTRIM explained that FY 08 is when the other projects [for the proposed private prison and the proposed public prison] would "come on line."

**TAPE 03-40, SIDE B**

Number 2965

COMMISSIONER ANTRIM, in response to a question by Chair Weyhrauch regarding whether this analysis is an updating of preexisting data, said he thinks that the proposals in the past have been so different that it would be safe to say that a comparison of this type has not been done. That, he added, is one of the reasons that the debate has gotten "so muddled up."

Number 2935

CHAIR WEYHRAUCH remarked that he has never seen an accurate estimate on construction costs in Alaska.

COMMISSIONER ANTRIM responded by referring to the second page of the ["Alaska Construction Cost Comparison"]. He pointed out that the "Anchorage Jail," at \$264 a square foot, is highlighted. One of the committee members, he said, had asked at the April 1 hearing on HB 134 for a comparison between per-foot prison construction costs and other construction costs in the state. He commented that the square-foot cost of the jail in Anchorage is [within the range] of the other public construction costs listed.

Number 2877

CHAIR WEYHRAUCH recalled that at a previous hearing, perhaps regarding HB 55, a testifier had revealed that the construction in the Anchorage jail facility would be primarily for detainees of INS [Immigration and Naturalization Service, now replaced by agencies under the U.S. Department of Homeland Security]. He said the expansion of that facility was, he thought, 100-percent reimbursable from federal money available for the INS detainees. He asked Commissioner Antrim if that is his understanding.

Number 2864

COMMISSIONER ANTRIM answered, "That is correct." He said the U.S. Marshall service requested that project and brought it to [the DOC] to pursue. He said INS activities and activities of the offices of the U.S. Marshall in Anchorage and Juneau are expected to increase.

CHAIR WEYHRAUCH asked if the legislature needs to do anything in order for the state to obtain those federal funds to begin the expansion of the Anchorage facility for the INS detainees.

COMMISSIONER ANTRIM stated his understanding that simply passing [HB 134] will give "us" the federal receipt authority to accept those funds from the federal government, once they are allocated by Congress.

CHAIR WEYHRAUCH asked, "Is that contemplated by HB 134?" He clarified, "That proposal would go forward if [HB] 134 becomes law."

COMMISSIONER ANTRIM responded yes.

CHAIR WEYHRAUCH asked, "Is the expansion of the Anchorage facility and obtaining the federal funds for those INS detainees - is that something that should be settled, in case something ... untoward [should] happen to ... these bills through the process, to ensure that that one actually does come into effect?"

COMMISSIONER ANTRIM suggested that Representative Stoltze may be better suited to answer that question. Notwithstanding that, he said he would recommend that "we just keep involved in one package." He added, "We feel fairly confident that money is going to come our way."

CHAIR WEYHRAUCH interjected, "But only if [HB] 134 passes in its present shape. Is that correct?"

COMMISSIONER ANTRIM said he thinks that the federal funding would be received anyway. He added, "Really, this is whether we can receive it and present it to the legislature for authorization for construction."

CHAIR WEYHRAUCH said, "So, you mean that the State of Alaska will get the federal funds for construction of the INS jail expansion of Anchorage, whether we pass a law or not?"

COMMISSIONER ANTRIM clarified that it is [DOC's] anticipation that the two separate bodies [the U.S. Congress and the Alaska State Legislature] will be doing their work and working toward a common purpose.

REPRESENTATIVE BERKOWITZ, regarding the subject of those individuals who are going to be detained, stated his understanding that the current practice is to ship them out pretty quickly, primarily to Portland. He asked, "Are we going to be holding them longer in state?" He indicated that there are "attorney access issues" he must raise.

COMMISSIONER ANTRIM reiterated that the U.S. Marshals predict increased activity, and he noted that the anticipation is that those held in the Anchorage area will be there longer. Most detainees go to the detention center in Seattle, and then on to Portland. Currently, he noted that there is a contract to hold 50 prisoners statewide. At any given time, he said, there is an average of 80-90 in the system - currently that number is 110,

which exceeds the contract by over double. He opined that the project [proposal for] 200 beds is reasonable.

REPRESENTATIVE BERKOWITZ asked, regarding those individuals [being detained], if [the state] is paid a nightly cost by the feds, and is "making money on it."

COMMISSIONER ANTRIM answered yes. He said that is essentially how the cost of staffing the expansion will be covered.

Number 2635

REPRESENTATIVE SEATON moved to adopt [Conceptual Amendment 2], a set of four written amendments that had been presented on one page, with three handwritten changes. With the handwritten changes, Conceptual Amendment 2 read as follows [original punctuation provided, but some text formatting changed]:

Amendment #1:

HB 134 is amended on Page 2, line 5, to read:

(b) The Department of Corrections, not later than July 1, 2008, may enter into an agreement with the Municipality of Seward for expansion of an existing facility by up to 400 beds.

Amendment #2:

HB 134 is amended on Page 2, line 6, to read:

(c) The authorizations given by (a) and (b) of this section are subject to the following conditions:

Amendment #3:

HB 134 is amended on Page 2, line 21, to read:

...\$14,600 a bed for the Fairbanks, Anchorage, and Seward facilities, with an adjustment for inflation for the Seward costs.

Amendment #4:

HB 134 is amended on Page 2, line 22, to read:

(4) Expansion of the existing facility in Seward is conditional upon the Municipality of Seward doing the following to the satisfaction of the Department of Corrections: making land available for housing development. Expansion of the existing facility in Seward is also conditional upon the Alaska Vocational Technical Center developing a corrections training program.

Number 2593

REPRESENTATIVE BERKOWITZ objected for purposes of discussion. He asked if there is a reason why HB 134 is limited to designated geographic areas, rather than giving the department the authority to expand facilities that exist throughout the state. For example, he said he noticed that the Lemon Creek Correctional Facility is not listed.

Number 2579

REPRESENTATIVE STOLTZE responded that [the designated geographic areas were chosen] based upon the greatest need and "the most economic prisons."

Number 2559

COMMISSIONER ANTRIM mentioned studying where the most at-capacity, at-risk facilities were, and which facilities serve as regional gathering centers for prisoners from outlying small communities. He said, "And clearly, we've got major problems at Bethel and Fairbanks, which is why those two were put on [a] priority list." He reiterated that [the proposal to expand the facility in] Anchorage is based on the federal government's needs. In response to a question by Representative Berkowitz, he said yes, initially the Spring Creek Correctional Facility was excluded for a reason and [Conceptual Amendment 2] speaks to that. He explained, "We felt the priority at this time was to put beds in the Anchorage area, where the prisoners originate from, rather than doing a major expansion [in] an outlying area." He mentioned future years, but then returned attention to [Conceptual Amendment 2].

Number 2485

REPRESENTATIVE LYNN asked whether "Amendment #3" of Conceptual [Amendment 2] should read \$14,600 or should read \$11,000 [to reflect Amendment 1].

REPRESENTATIVE SEATON answered, "No, that's also back to \$11,000."

REPRESENTATIVE STOLTZE stated, "That should stay at \$14,600. These are ... smaller expansions, and they don't have the economy of the 1,200-bed facility, so that needs to stay at that higher number, unfortunately."

Number 2449

REPRESENTATIVE BERKOWITZ recollected that at one point there had been an intention to expand the Spring Creek Correctional Facility.

Number 2438

COMMISSIONER ANTRIM said that is correct. He said that essentially, all of the "dirt work" has been done in the area, as well as much of the supporting infrastructure, for example, sewer and water, so many of the expenses normally associated with a project like that have been taken care of.

Number 2422

REPRESENTATIVE SEATON, speaking to [Conceptual Amendment 2] as it relates to the Spring Creek Correctional Facility, expounded upon Commissioner Antrim's answer by listing additional parts of the facility that are already in place. He said the facility was designed with three modules on one side and is ready for another three adjacent to them.

REPRESENTATIVE SEATON noted that the Spring Creek Correctional Facility has had a problem retaining correctional officers, which he said brings up the question of whether there may be enough people who want to live in an area that is not highly populated. He noted that [Conceptual Amendment 2] would make expansion of existing facility in Seward conditional upon making land available for housing development. He mentioned that the Alaska Vocational Technical Center (AVTEC) in Seward is starting a pre-training program for correctional officers and homeland security [agents], and those who train there from other smaller communities may become familiar with Seward during that pre-training [and may want to remain there].

Number 2242

REPRESENTATIVE GRUENBERG said he thinks [Conceptual Amendment 2] is a good idea. Regarding the amendment, he asked why there is only an adjustment for inflation in the Seward facility, but not in the other facilities.

REPRESENTATIVE STOLTZE replied that that's because there is a delayed date; [the expansion of the existing facility in Seward] is conditional upon the city developing some of the infrastructure. He said he would love to see a facility on the [Kenai] Peninsula employ the residents there.

REPRESENTATIVE GRUENBERG referred to the last sentence [of Conceptual Amendment 2], which states that the expansion of the Seward facility would also be conditional upon developing a correctional training program. He said, "I'd hate to see this stymied because they refuse to or couldn't do something like that."

Number 2140

REPRESENTATIVE SEATON reiterated that Seward is developing a program for training homeland security agents, for example. He said the city is working with the DOC in this effort. He said he thinks [Conceptual Amendment 2] encourages Seward to proceed with that program. He opined that the pre-training program is needed to remedy a statewide problem in retaining correctional officers.

Number 2088

COMMISSIONER ANTRIM said he thinks the point of the training program is to get people to consider being a correctional officer as a career move.

REPRESENTATIVE GRUENBERG said he understands that. He said there would probably be some kind of a fiscal note regarding this issue, and he said he is just wondering if some kind of direction [from the legislature] requesting [Seward] to do this is necessary.

Number 2048

REPRESENTATIVE STOLTZE responded that he is not sure that there would be a fiscal note, because the facility trains people for jobs and would be training people to work in jobs that pay pretty well and that actually exist right in town.

COMMISSIONER ANTRIM, in response to a question by Representative Gruenberg, said AVTEC is always looking for new direction, so he thinks that it will "grasp this pretty quickly." He referred to wording that had been deleted by the handwritten changes to Conceptual Amendment 2 before it was presented to the committee: "developing economic opportunities in the Municipality for spousal employment of facility staff." He said that would be a tough thing to ask of the city, but said he hopes Seward will work diligently to develop economic opportunities for people [so they will want to remain in that community].

Number 1988

REPRESENTATIVE SEATON said the city would be happy to develop any kind of employment base, but the foregoing wording that was omitted was "just going too far."

REPRESENTATIVE SEATON noted that [because that wording had already been crossed out] the word "and" should be added and the "e" in "Expansion" should be lower case; therefore, ["Amendment #4" of Conceptual Amendment 2] would read as follows:

Amendment #4

HB 134 is amended on Page 2, line 22, to read:

(4) Expansion of the existing facility in Seward is conditional upon the Municipality of Seward doing the following to the satisfaction of the Department of Corrections: making land available for housing development and expansion of the existing facility in Seward is also conditional upon the Alaska Vocational Technical Center developing a corrections training program.

[There was no motion to adopt the foregoing amendment to Conceptual Amendment 2, but it was treated as adopted.]

Number 1930

CHAIR WEYHRAUCH indicated that there would be changes to the fiscal note if [Conceptual Amendment 2, as amended] were adopted.

REPRESENTATIVE SEATON referred to page 2, [beginning on] line 24 [of HB 134], which read as follows:

payments under the lease may not exceed \$16,700 a bed for the Bethel facility and \$14,600 a bed for the Fairbanks and Anchorage facilities;

REPRESENTATIVE SEATON said the \$14,600 is the same number as for the Fairbanks facility, because of the size of the facility. He explained that [Conceptual Amendment 2, as amended] would be to "add Seward to Fairbanks and Anchorage."

CHAIR WEYHRAUCH said, "By adding Seward, you're changing the fiscal note."

REPRESENTATIVE SEATON said, "I guess we are, because what we're doing is adding the number of beds." He added that it's conditional.

REPRESENTATIVE STOLTZE indicated that because much of this does not take place until FY 08, he doesn't expect it to change the accuracy of the first part of the fiscal note, although it may change the second part of the fiscal note.

Number 1823

CHAIR WEYHRAUCH asked if there were any other questions or comments about [Conceptual Amendment 2, as amended].

REPRESENTATIVE BERKOWITZ withdrew his objection.

Number 1815

CHAIR WEYHRAUCH announced that the motion to adopt Conceptual Amendment 2 [as amended] was approved without objection.

Number 1783

JIM LECRONE, Business Agent, Public Safety Employees Association (PSEA), a retired correctional officer, said it is rewarding to hear the committee discussing the fiscal responsibility of a public prison, and he offered some comments. He related his belief that incarcerating criminals is a function of government, not the private sector. He noted that in June 2002, Thomas Kane [Assistant Director for Information, Policy and Public Affairs for the U.S. Department of Justice Federal Bureau of Prisons] told U.S. Senator Don Nickles that the federal bureau had concerns regarding [the ability of] private prisons to confine and manage medium- and high-security inmates.

MR. LECRONE said there are many statistics regarding the higher number of assaults in private prisons, both on staff and on inmates. He noted that there are fiscal repercussions associated with a higher assault rate. Generally, he said, when there is an assault in a prison, local law enforcement [becomes involved] and charges are filed. The cost of investigation, prosecution, court fees, appointed attorney fees, appeals, and future incarceration fall to the State of Alaska, whether it's a private or public prison; therefore, he said, it behooves everyone to keep assault rates down. "Obviously," he added, "experience proves we do it better in public facilities."

MR. LECRONE noted that a six-year study done in California showed that the public [prison] sector had 11 escapes, while the private [prison] sector had 200 escapes, although it managed 40,000 less inmates. Mr. Lecrone said he hopes the committee will keep the security factors in mind while looking at the cost factors. He said he appreciates [HB 134].

Number 1600

CHAIR WEYHRAUCH informed the committee that Lieutenant Dan Lowden, from the Department of Public Safety, was available to answer questions.

Number 1510

DEE HUBBARD testified that she is a resident of Sterling, Alaska, on the Kenai Peninsula. She said she supports HB 134, which she said is fiscally competitive. She emphasized that she is comfortable knowing that [the proposal] would be under state control. She told the committee that she has many concerns about privatization [of prisons]. Primarily, she noted, there are many statutes governing the operation of public prisons, but none governing the operation of private prisons.

MS. HUBBARD told Representative Seaton that she likes [Conceptual Amendment 2]. She said the Kenai Peninsula is always looking eagerly for any kind of economic development, and [HB 134] is a great idea.

MS. HUBBARD said the pre-trial beds are desperately needed now. She added that the transportation costs are enormous, and [HB 134] will cut down on those costs. She concluded by saying that other testifiers have done a better job of expressing her feelings.

Number 1400

REPRESENTATIVE GRUENBERG stated his appreciation of Ms. Hubbard traveling to Juneau to testify.

CHAIR WEYHRAUCH noted that the committee had also received emails from Ms. Hubbard, and he complimented her on her job as a citizen who keeps her eye on the legislature.

Number 1361

REPRESENTATIVE SEATON said he appreciates the analysis that Ms. Hubbard provided the committee.

Number 1333

CHAIR WEYHRAUCH announced that HB 134 was heard and held.

**ADJOURNMENT**

Number 1322

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:23 a.m.