

ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Anchorage, Alaska
September 5, 2007
8:03 a.m.

MEMBERS PRESENT

Representative Ralph Samuels, Chair
Senator Lyman Hoffman, Vice Chair
Representative Mike Chenault
Representative Mike Hawker
Representative Mike Doogan
Senator Lyda Green
Senator Bert Stedman (via teleconference)
Senator Gene Therriault
Representative Reggie Joule (alternate)
Representative Kevin Meyer (alternate)
Senator Charlie Huggins (alternate)

MEMBERS ABSENT

Representative Mike Kelly
Senator Johnny Ellis

COMMITTEE CALENDAR

APPROVAL OF MINUTES
EXECUTIVE SESSION
RELEASE OF AUDITS
REVISED PROGRAM - LEGISLATIVE (RPLs)
UPDATE REGARDING NAVIGABLE WATERS AND R.S. 2477 TRAILS AND
EASEMENTS RSAS
PRESENTATION BY THE DEPARTMENT OF CORRECTIONS
OTHER COMMITTEE BUSINESS

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

JEFF JESSEE, Chief Executive Officer
Alaska Mental Health Trust Authority (AMHTA)
Anchorage, Alaska

POSITION STATEMENT: Presented RPLs 06-8-0001, 06-8-0080, 06-8-0081, 06-8-0082, 06-8-0083, 06-8-0084.

MILLIE RYAN, Executive Director
Governor's Council on Disabilities & Special Education
Office of the Commissioner
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of RPL 06-8-0084.

LAURA BAKER, Budget Manager
Central Office
Finance and Management Services
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Responded to a question during discussion of the RPLs.

CAROL FRIES, Project Manager;
Exxon Valdez Oil Spill Liaison
Office of Project Management & Permitting (OPMP)
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Presented RPL 10-8-5007.

WYN MENEFFEE, Chief of Operations
Central Office
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Presented the update regarding navigable waters and R.S. 2477 trails and easements RSAs.

ELLEN SIMPSON, Habitat Biologist IV;
Access Defense Supervisor
Division of Sport Fish
Alaska Department of Fish & Game (ADF&G)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to a question during the update regarding navigable waters and R.S. 2477 trails and easements RSAs.

JOE SCHMIDT, Commissioner
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Offered the presentation by the Department of Corrections.

DWAYNE PEEPLES, Deputy Commissioner
Office of the Commissioner - Juneau
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the presentation by the DOC.

DAVID TEAL, Legislative Fiscal Analyst
Legislative Finance Division
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the presentation by the DOC.

SHARLEEN GRIFFIN, Director
Central Office
Division of Administrative Services
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Provided comments during the presentation by the DOC.

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

POSITION STATEMENT: Provided comments during discussion of other committee business.

ACTION NARRATIVE

CHAIR RALPH SAMUELS called the Legislative Budget and Audit Committee meeting to order at [8:03:24 AM](#). Representatives Doogan, Chenault, Hawker, Meyer (alternate), Joule (alternate), and Samuels, and Senators Green, Stedman (via teleconference), and Huggins (alternate) were present at the call to order. Senators Hoffman and Therriault arrived as the meeting was in progress.

APPROVAL OF MINUTES

[8:04:26 AM](#)

CHAIR SAMUELS announced that the first order of business would be the approval of the minutes.

REPRESENTATIVE HAWKER made a motion to approve the minutes of July 10, 2007. There being no objection, the minutes from the meeting of July 10, 2007, were approved.

EXECUTIVE SESSION

[8:04:42 AM](#)

CHAIR SAMUELS announced that the committee would next go into executive session.

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 at 8:05 a.m.

CHAIR SAMUELS brought the committee back to order at 8:47 a.m.

RELEASE OF AUDITS

[Not on the recording, but relayed by the committee aide was the motion by Representative Hawker to release to the departments for response the following preliminary audit reports: a sunset review of the Big Game Commercial Services Board; a sunset review of the State Board of Parole; and a review of the University of Alaska Fairbanks, School of Education, selected issues. This motion passed without objection.]

[Not on the recording, but relayed by the committee aide was the motion by Representative Hawker to release to the public: a sunset review on the Alaska Commission on Aging; a sunset review of the Real Estate Commission; and a review of the Department of Corrections, Community Jail Program. This motion passed without objection.]

REVISED PROGRAM - LEGISLATIVE (RPLs)

[8:48:56 AM](#)

CHAIR SAMUELS announced that the next order of business would be RPL 06-8-0001, training for criminal justice personnel; RPL 06-8-0080, Bridge Home Program; RPL 06-8-0081, flexible Special Needs Housing; RPL 06-8-0082, outpatient, emergency residential services and training; RPL 06-8-0083, rural long term care; and RPL 06-8-0084, Alaska Alliance for Direct Service Careers.

JEFF JESSEE, Chief Executive Officer, Alaska Mental Health Trust Authority (AMHTA), relayed that the funding for the aforementioned RPLs comes from two sources within the AMHTA's budgeting process: funds that were not expended in fiscal year 2007 (FY 07); and additional revenue resulting from the permanent fund. Because the AMHTA generally doesn't know about the status of such funds until late in the legislative budgeting process, the AMHTA waits until the May trustee meeting before allocating them.

MR. JESSEE, referring to RPL 06-8-0001, explained that this \$20,000 RPL is for the training of criminal justice personnel. The Division of Juvenile Justice (DJJ) is significantly increasing its capacity to serve AMHTA beneficiaries within the juvenile justice system (JJS). The AMHTA considers this to be a very positive direction given that a very large percentage of kids in the DJJ's custody have mental health and substance abuse issues. The legislature has been supporting this initiative with general fund (GF) funding, and the RPL funds will go towards [training,] staffing, and the development of protocols. He noted that the Legislative Finance Division has commented that perhaps funds from currently vacant positions might be used to cover "these" [training] costs, and, if so, the RPL funds would probably be the last spent.

[8:52:35 AM](#)

MR. JESSEE, referring to RPL 06-8-0080, explained that it involves \$150,000 in trust funds for the Bridge Home Program; in this instance, [it consists of] FY 07 funding that was not all spent. Assisted living homes are one of the core strategies used by the AMHTA to try to keep beneficiaries in the community, providing supportive services along with housing. However, the normal assisted-living level of service often doesn't serve high-intensity-needs beneficiaries well enough to keep them stable in that housing. The AMHTA has, therefore, developed an Assisted Living Facility (ALF) pilot program called, "Super ALF," which will provide additional support services in terms of case management and therapy with the goal of keeping beneficiaries from cycling back into the correctional and psychiatric systems.

[8:53:48 AM](#)

MR. JESSEE, referring to RPL 06-8-0081, explained that it involves \$300,000 for flexible special needs housing. One of the AMHTA key partners in housing [beneficiaries] is the Alaska

Housing Finance Corporation (AHFC). When AMHTA beneficiaries are served "by these programs," the programs often incur significant upfront costs that are not recoverable - either through Medicaid billing or other billing systems - and are sometimes called transitional costs or "rent-up" costs. Without flexible funding as proposed by the RPL, many programs can't even accept special-needs-housing capital funding because they can't afford the aforementioned startup costs.

MR. JESSEE, referring to RPL 06-8-0082, explained that this \$425,000 would be for outpatient [and] emergency residential services, and training projects.

CHAIR SAMUELS, referring to RPL 06-8-0081, asked how long housing units are held open for beneficiaries.

MR. JESSEE said that they are held open for perhaps just a month or two. For example, if a beneficiary decompensates, stops taking medication, and goes back into the Alaska Psychiatric Institute (API), that beneficiary is going to be released within 30 days and so the rental unit needs to be held open for him/her. Returning attention to RPL 06-8-0082, he said he is very pleased with the results of the Bring the Kids Home (BTKH) initiative. At the start of this project there were over 425 kids out of state and now there are fewer than 275 kids out of state, and this has proven to be a very effective program. The goal is to have as many residential beds as are needed, and perhaps have even more beds than are actually needed. The continuum of "pre-residential" care is being built out, so that services can be provided to kids before they need residential services. The legislature has supported this initiative by adding increments into the budget and this has been part of the strategy from the beginning, to reinvest those dollars, that are now going out of state, instate; initially the funding went towards residential services, but now it can go towards lower levels of care.

MR. JESSEE indicated that this RPL will augment what the legislature has included in the budget thus far, and mentioned that this program will require additional GF monies because as the number of kids out of state is reduced, out-of-state funding will need to be reallocated to in-state programs. Nothing is gained by not funding this RPL, he added, because it will merely delay, for a year, having "these services" come on line.

8:58:30 AM

REPRESENTATIVE HAWKER asked whether there is an expectation that the \$425,000 will be supplanted with GF monies in FY 09.

MR. JESSEE said the plan is to supplant it with GF monies - there will be significant GF recommendations for "this level of service" in the administration and AMHTA's budget recommendations. There is a need to build this part of the continuum of care regardless of whether "these trust funds" are spent this year. Rather than waiting for the increment to come forward for FY 09 and starting these programs then, approving the RPL will jump start some of these programs now with trust money, and thereby possibly divert some kids before they need residential services.

REPRESENTATIVE HAWKER indicated that it is troubling to him for the committee to make a policy call committing next year's budget cycle and circumventing some of the budget subcommittee hearings.

REPRESENTATIVE DOOGAN asked what would happen if the RPL is approved but the budget increment for FY 09 is not.

MR. JESSEE said the individualized services would not be available in FY 09 and those kids would have to be reabsorbed into the residential system of care that's available at that time. Probably more kids would end up going back out of state because in-state capacity would be limited. The funds in this RPL are designed to keep kids in pre-residential community-based systems, which the legislature has recognized and supported. He said he is willing to accept that these might just be one-time funds, though this would create challenges in dealing with underage beneficiaries. If the legislature still believes in the goal of the BTKH initiative, approving the RPL will assist the state in avoiding some out-of-state costs.

MR. JESSEE, in response to a question, said that in order to continue the BTKH initiative, significant GF funds will be needed to provide "that level of care in the continuum," and the \$425,000 outlined in the RPL would be a part of that but won't increase the total amount needed in FY 09 to continue the BTKH program. He added, "This is a good policy ... discussion to have because we are halfway down the road on this ... [BTKH] initiative, and if people want to change course and decide we want to go back to the direction of institutional care, then you need to come to grips with that."

MR. JESSEE, in response to another question, said that if the RPL is not approved, then this \$425,000 would just sit in the trust account; however, given that there are providers available now, the AMHTA wants to be able to get those providers working with "these families and kids" right now.

9:05:14 AM

SENATOR GREEN offered her understanding that the AMHTA had great flexibility when using only trust dollars, and could therefore begin funding and creating programs that don't require legislative approval. She asked whether the AMHTA could go ahead with this program without going through the Legislative Budget and Audit Committee.

MR. JESSEE indicated that the AMHTA probably could do that, though it might have to go through an additional procurement process since there wasn't enough money when it successfully went through the procurement process originally. However, the reason the AMHTA is reluctant to go ahead without legislative approval is that the Division of Behavioral Health (DBH) is doing a very good job of managing this program and so the AMHTA wants to encourage the DBH to continue administering it.

SENATOR GREEN surmised, then, that although the AMHTA could proceed without legislative approval, it has chosen to keep the legislature involved for everyone's benefit.

REPRESENTATIVE HAWKER opined that Mr. Jessee has created a false dilemma, and his concern, he relayed, centers on how rapidly the program is being implemented and thereby getting ahead of the state's ability to provide the necessary support infrastructure.

MR. JESSEE, in response to questions, reiterated his comments that approving this RPL will not increase the total amount needed in FY 09 to continue the BTKH program.

SENATOR THERRIAULT offered his understanding that the RPL acknowledges that there is no guarantee that additional funding will be available later.

MR. JESSEE concurred.

REPRESENTATIVE JOULE asked whether bringing the children back into the state will save money.

MR. JESSEE indicated that the advantage of bringing the children back into the state is that any money then spent on them would be spent in-state. Also, there might be some savings in that the program might divert kids from being sent out of state to begin with, since the costs of caring for children out of state add up pretty quickly even for a small number of children.

9:14:54 AM

MR. JESSEE, referring to RPL 06-8-0083, explained that this \$138,000 is for rural long-term care. Although there has been discussion regarding the growing elderly population and the need to support families in their communities, this money would go towards aging and disability resource centers, which are essentially one-stop information shops for families of either individuals with disabilities or seniors that need assistive services. Developing these centers has been pretty successful and they are serving significant numbers of people. The funds for this RPL weren't used in FY 07 and so the goal is to move these funds into FY 08.

REPRESENTATIVE MEYER asked whether the funds will be used to hire a coordinator.

MR. JESSEE said they wouldn't be used for that because they already have a coordinator; instead, these funds will go directly to the centers and will be used to add a center. These centers, incidentally, are also being used for independent living, thus eliminating a second set of entities. In response to a question, he said that the coordinator is funded by the trust.

MR. JESSEE, referring to RPL 06-8-0084, explained that this \$100,000 would be used by the Alaska Alliance for Direct Service Careers. Workforce is one of the biggest challenges the AMHTA faces with regard to providing services to beneficiaries, he noted, and there is a need to continue finding, training, and keeping staff; these trust funds will support the department and the Governor's Council on Disabilities & Special Education in helping agencies recruit and retain a qualified workforce. Furthermore, this RPL will have no long term impact on the state's budget.

MR. JESSEE, in response to a question, explained that the Full Lives Conference brings together "the actual on line ... workers in these programs" resulting in staff development and a sense of cohesiveness. If the people who are actually doing the work

don't become committed to the field, then there is a lot of staff turn over. The Full Lives Conference has been pretty successful as part of a retention program, he indicated. In response to a question, he indicated that the conference has been going on for a little over seven years.

REPRESENTATIVE JOULE questioned whether the AMHTA has seen improvements in recruitment and retention rates as a result of the Full Lives Conference.

MR. JESSEE said, "I think so."

[9:19:43 AM](#)

MILLIE RYAN, Executive Director, Governor's Council on Disabilities & Special Education, Office of the Commissioner, Department of Health and Social Services (DHSS), relayed that the Governor's Council on Disabilities & Special Education has been handling these funds for the trust for the last seven years and has seen an increase in the number of people who've come back to the conference because they've stayed in this field. Also noticeable is the fact that when agencies post position openings, there are more applicants.

MS. RYAN, in response to another question, said that a typical attendee could be a respite care provider, or a job coach working with clients that have a mental illness or a developmental disability, or a mental health clinician, or someone working in a nursing facility providing support to clients with dementia, or anyone who provides direct one-on-one service to a trust beneficiary.

[9:20:56 AM](#)

REPRESENTATIVE HAWKER asked whether the department concurs with all of the AMHTA's requests.

LAURA BAKER, Budget Manager, Central Office, Finance and Management Services, Department of Health and Social Services (DHSS), said yes, adding that the department was prepared to present the RPLs to the committee [had Mr. Jessee not been available].

REPRESENTATIVE HAWKER made a motion to approve RPL 06-8-0001, RPL 06-8-0080, RPL 06-8-0081, RPL 06-8-0082, RPL 06-8-0083, and RPL 06-8-0084. There being no objection, the motion passed.

9:22:32 AM

CHAIR SAMUELS next drew the committee's attention to RPL 10-8-5007: Exxon Valdez oil spill (EVOS) small parcel purchase, Chokwak II.

CAROL FRIES, Project Manager; Exxon Valdez Oil Spill Liaison, Office of Project Management & Permitting (OPMP), Department of Natural Resources (DNR), explained that the \$160,000 being requested will be used for the purchase of a native allotment owned by the heirs of Phillip Chokwak; this [allotment] was presented to the Exxon Valdez Oil Spill Trustee Council ("Trustee Council") for its consideration. The department has worked through the Bureau of Indian Affairs (BIA) and performed due diligence activities associated with the acquisition of the parcel, and has worked through the BIA's approval process. She relayed that because it has taken so long to work through that process, the department's concern is that were the department to wait on purchasing this parcel, the appraisal would expire and the department would then be required to update the appraisal and work back through the BIA - which takes a significant amount of time - and the department would then be in the same position it's in today.

MS. FRIES noted that the parcel is located on the northern shore of Kiliuda Bay, Kodiak Island, is surrounded by state-managed lands, and would become state-managed land as well.

REPRESENTATIVE HAWKER questioned why it would be good thing to take this land out of the private sector.

MS. FRIES pointed out that the heirs of Phillip Chokwak brought this proposal to the Trustee Council; the heirs have had the parcel on the public market, but there weren't any offers. She surmised that the heirs would like to see the parcel "in public ownership" since they would then be able to continue using it for access to the area for hunting, fishing, and other subsistence activities.

CHAIR SAMUELS surmised that the heirs wish to have both access to the land and the money.

MS. FRIES mentioned that there are 10 heirs; that the son of Phillip Chokwak started working with the BIA to get the parcel on the market in 2002 and had indicated to her that there were people who had looked at the parcel but nothing had come of it; and that the parcel originally had a bid price of \$190,000.

9:27:01 AM

REPRESENTATIVE CHENAULT opined that although the RPL says the habitat of this parcel will contribute in the restoration of a number of injured species and then lists them, it is somewhat deceptive to characterize bald eagles, Dolly Varden, and sockeye salmon as injured species.

MS. FRIES explained that the evaluation process for parcels that are nominated to the Trustee Council involves looking at a list of 19 resources and services that were injured at the time of the Exxon Valdez oil spill, and although bald eagles and sockeye salmon have been determined to be recovered, there are still other resources listed in the RPL that have not yet recovered, such as harlequin ducks and herring. In response to questions, she relayed that the parcel was noticed as being considered by the Trustee Council for possible purchase, that no one has raised an objection, that no potential buyers have come forward, that the parcel has been appraised, that the appraisal was reviewed by an independent appraiser, and that the BIA has also reviewed and approved the appraisal.

MS. FRIES, in response to comments, remarked that the Kodiak Island Borough is generally supportive of EVOS habitat acquisitions in that area. In response to further comments, she explained that within the Kiliuda Bay area, the native allotments are in strategic locations that are prime for accessing the state-owned uplands; they are located primarily adjacent to streams where the terrain is level. So in a sense, this purchase would provide additional access to the state lands in that area. The land immediately surrounding this parcel was part of an exchange that the state entered into with Old Harbor Native Corporation; the state gave the corporation land owned on the lower portion of Sitkalidak Island and in turn acquired the land around this parcel as well as land to the west and east. Furthermore, during that process, the Trustee Council negotiated for the ability to consider other native allotments should one that provides enhanced access become available, and the [heirs] did notify the restoration office that this particular allotment was available.

MS. FRIES pointed out that access is an attribute of this parcel that does have value to the state. In response to a question, she indicated that the only other way to access the aforementioned uplands is to trespass on private property.

SENATOR GREEN questioned the need for legislative approval in this matter.

REPRESENTATIVE HAWKER opined that the valuation of property is extremely problematic, and remarked that the state hasn't put forth a compelling argument justifying this purchase. Therefore, he relayed, he is not ready to move forward with this RPL.

MS. FRIES, in response to questions, explained that the money for this purchase would come from the "settlement account," which is a jointly managed state/federal/civil account, and won't go towards any purpose other than EVOS-related items. In response to further questions, she relayed that Old Harbor Native Corporation has no interest in this property.

SENATOR HUGGINS expressed agreement with Representative Hawker's comments.

MS. FRIES, in response to comments, relayed that the proposal was noticed prior to the Trustee Council taking action in June. In response to questions, she said that EVOS runs a large parcel program and a small parcel program - small parcels are generally less than 1,000 acres; that the state has purchased parcels all over the state; and that the state doesn't purchase every parcel that's offered to it if, from a management perspective, it doesn't make sense to buy a particular parcel. With regard to the RPL before the committee, she reiterated the department's belief that purchasing this parcel would be of benefit to the state, and noted that the state has purchased other allotments in the area as well as an allotment just to the west of the one currently under consideration. In response to further questions and comments, she listed some of the locations of some land that the state has purchased; relayed that with the exception of some private land, most of the land in the south part of Kiliuda Bay is federal land; and acknowledged that the map in members packets is incorrect with regard to the name of a river on that land.

CHAIR SAMUELS asked whether [the Trustee Council] can turn around and sell the parcel, or whether the land would then belong to the state.

MS. FRIES indicated that the land would then belong to the state. In response to questions, she relayed that should other individuals wish to sell their allotments, they can submit a nomination to the Trustee Council, which in turn forwards the

nomination to the most logical land managing agency, which will make a determination with regard to whether purchasing a particular allotment is appropriate to pursue. Furthermore, although there are EVOS funds that have been set aside for habitat protection, once those funds are gone, the program is done.

REPRESENTATIVE SAMUELS expressed concern that everybody with an allotment will want to sell their land to the state and thereby retain access to it while also getting the money for the land.

CHAIR SAMUELS, in response to a question, noted that there has not been a motion to approve the RPL, and thus nothing will happen with it at this time.

UPDATE REGARDING NAVIGABLE WATERS AND R.S. 2477 TRAILS AND EASEMENTS RSAS

[9:48:16 AM](#)

CHAIR SAMUELS announced that the next order of business would be the update regarding navigable waters and R.S. 2477 trails and easements RSAs.

[9:50:27 AM](#)

WYN MENELEE, Chief of Operations, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), relayed that for the last several years [the department] has been on contract to work on R.S. 2477 right of ways, state ownership and public use of navigable waters, and applications of recordable disclaimers of interest (RDI) - an administrative process by which to clear up "titleship" of submerged lands. At statehood, the state received ownership of state lands underneath all navigable water bodies; however, the state never received "a piece of title document" reflecting this, and so RDIs are used to clear the cloud of title. He explained that the DNR, the Alaska Department of Fish & Game (ADF&G), and the Department of Law (DOL) have been working as a team to provide policy guidance and select priority waterways for RDI applications and R.S. 2477 assertions.

MR. MENELEE explained that in fiscal year 2007 (FY 07), the DNR and the ADF&G were each funded \$70,000, primarily to fund personnel to work on "these" issues. Within the DNR, the Public Access Assertion & Defense (PAAD) Unit has been the primary group conducting the work, and to date has provided historical

research assistance to the DOL for the quiet title action on two R.S. 2477s, which are non-surveyed routes that the state owns but with that ownership being questioned by the federal government; those two R.S. 2477s were surveyed by [the PAAD Unit] and are routes that are primarily used as access for miners.

MR. MENEFEE relayed that the [PAAD Unit] has also established the Bureau of Land Management's (BLM's) [RDI] Assistance Agreement; because historical documentation must be provided with any RDIs, the BLM, through the RDI Assistance Agreement, will pay the PAAD Unit to do the necessary research as long as it is done under the BLM's constraints. This maximizes the PAAD Unit's funding so that it has the ability to file as many RDIs as possible. He mentioned that establishment of the aforementioned agreement has resulted in not as many applications being filed due to a lack of time, but the PAAD Unit anticipates now being able to file more applications for less cost in the future. Once the research is completed for a given water body - hydrologic unit - the PAAD Unit submits all the necessary RDIs, and, because the BLM is paying for the research, it generally accepts the research, and this should reduce processing fees.

CHAIR SAMUELS remarked that the amount of cooperation between the state and federal government is dependant upon who the President and secretary of state are; therefore, it is important to move forward with these processes during the current favorable climate.

MR. MENEFEE concurred. He then relayed that the strategy is to conduct as much research as possible. By conducting historical navigability research under the RDI Assistance Agreement, funds for field research and public notice and advertisements regarding RDI applications have been freed up. As a result, the PAAD Unit has been able to pay the cost recovery fees to the BLM. Both the DNR and the ADF&G have requested funding in FY 08 which will be used to pay for personnel costs for the researching of R.S. 2477 "navigabilities"; also, the PAAD Unit is expecting 17 RDIs to be approved, to file on 20 RDIs in FY 08, and to pay for personnel and advertising costs to apply for BLM right of ways on grants on a select number of R.S. 2477s.

MR. MENEFEE explained that if the PAAD Unit were to take a quiet title action on a given trail through the full court process, it could cost between \$500,000 and \$1,000,000 and take several

years; in contrast, simply obtaining access through right-of-way grants from the BLM could be accomplished for less than half the cost without extinguishing the state's right to file quiet title. The PAAD Unit will be researching which R.S. 2477s have "current issues on them," and then start the right-of-way process on those as soon as possible; if successful, the state will acquire legal right of way on the associated trails.

MR. MENEFEE, in conclusion, said that the DNR and the ADF&G will continue to work on a multitude of issues related to R.S. 2477s, navigable waters, and public access rights, and the funding to do so is essential because the lack of documentation outlining state ownership of certain trails, lands, and waters, has resulted in numerous disputes. He also mentioned that [the PAAD] Unit will be able to make further use of current technology as a result of certain funds being freed up, thus making it easier for the public to keep track of these issues.

[10:05:17 AM](#)

ELLEN SIMPSON, Habitat Biologist IV; Access Defense Supervisor, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), added that the Legislative Budget and Audit Committee funding that's given to the ADF&G is really the only money the department receives to investigate access issues, and access is very important for the hunting and fishing activities of those using the ADF&G's resources. She also mentioned that the BLM's RDI Assistance Agreement is for very specific research, and so problems discovered by users while out hunting and/or fishing must be investigated separately by department staff.

SENATOR HOFFMAN asked about the historical public use of the Arolik River.

[10:07:35 AM](#)

MR. MENEFEE relayed that the department has considered conducting a field trip to the Arolik River this summer to gather hydrologic information for purposes of perhaps filing an RDI because there is a contention between the Native corporations and the United States Fish and Wildlife Service (USFWS) in that both feel they have ownership and management rights; furthermore, there are mining interests in the area as well as commercial companies offering rafting trips. The research for this area will be paid for by the state because it is not part of the RDI Assistance Agreement.

SENATOR HOFFMAN asked how many commercial operators are in the area.

MR. MENEFEE said he is unable to answer that question at this time. He relayed that although the state has filed a notice of quiet title action regarding the Arolik River, [the PAAD] is attempting to resolve the issue without going through that process.

MS. SIMPSON, in response to a question, relayed that funds referred to in a June 23, 2007, letter were not spent in FY 07 and so the department simply asked that those funds be rolled over. That money would be spent primarily on field research that wasn't accomplished last year, and would most likely be reprioritized by the state's interagency navigability team.

MR. MENEFEE relayed that the courts have held that if a river was susceptible to trade and commerce, then it also passes the BLM test as being acceptable for the issuance of an RDI regardless of whether there ever was use on it. So if there is historical evidence supporting a claim that a river has been used, that's great. However, if such information is not available, then a comparison of rivers with the same depth and breadth must be made. Therefore, the purpose of a raft trip is to document the conditions going down the river to determine if that river was susceptible for commercial trade and commerce. In response to a question, he offered his understanding that Arolik River is 40-50 miles long.

SENATOR HOFFMAN opined that the cost for such a rafting trip would be unreasonable.

[10:12:58 AM](#)

SENATOR THERRIAULT argued that it would not be unreasonable if such a trip ensures access in the future for economic activity, adding that if "it is a right that we got at statehood, we should stand up for the state's right of ownership."

MR. MENEFEE, in response to a question, offered that although there are thousands of lakes and rivers in the state, the only time a field trip will be conducted is when the state feels it is absolutely necessary to support either a quiet title action or an RDI. He added that the state already believes it rightfully owns these rivers and lakes, so when members of the public are being denied their rightful access to these rivers, the state needs to step up and do something about it.

REPRESENTATIVE JOULE asked whether there is a definition of commercial trade and commerce as it applies to [these water bodies].

MR. MENEFEE offered that the BLM has a slightly different view [from the state] regarding what that entails; for example, there is still a question of whether historical subsistence use would be considered trade and commerce. He added that U.S. Supreme Court case law defines the term.

REPRESENTATIVE HAWKER made a motion that the committee authorize the chair to expend the \$70,000 requested for FY 08 for proposed work by the DNR related to navigability issues and R.S. 2477s, and to expend the unexpended balance of FY 07 funds, approximating \$23,000, for conclusion of work begun in FY 07. There being no objection, the motion passed.

The committee took an at-ease from 10:17 a.m. to 10:20 a.m.

REPRESENTATIVE HAWKER made a motion that the committee authorize the chair to expend \$70,000 in support of navigable waters and R.S. 2477 trails and easements issued during FY 08 with the Alaska Department of Fish & Game. There being no objection, the motion passed.

PRESENTATION BY THE DEPARTMENT OF CORRECTIONS

[10:21:34 AM](#)

CHAIR SAMUELS announced that the next order of business would be the presentation by the Department of Corrections.

[10:21:59 AM](#)

JOE SCHMIDT, Commissioner, Department of Corrections (DOC), offered the presentation by the Department of Corrections. With regard to the department's short and long-term plans to address the fact that DOC facilities are regularly at 115 percent of emergency capacity, he relayed that the department has developed a two-phase plan: phase one makes use of money already approved for operations, as well as project capital money, while phase two implements the Twenty-Third Alaska State Legislature's Senate Bill 65 - pertaining to correctional facilities and personnel.

COMMISSIONER SCHMIDT mentioned that there were problems with that legislation. For example, contractors consistently told the state that more money was needed than was outlined in the legislation - Senate Bill 65 provided for 2,200 beds for \$330 million whereas contractors were saying it would cost up to \$410 million. The DOC, therefore, suspended the design contract and began working with others who were able to find alternative ways "to do this" such as, instead of building the maximum beds planned for at various other facilities, the DOC would provide fewer beds and convert existing gymnasium and kitchen spaces to dormitories.

COMMISSIONER SCHMIDT, regarding phase one, described the design of portable, 20-bed units that would be built by the inmates. He said the overcrowding is primarily in the Anchorage facility, and because the people there are "pre-trial," they cannot be shipped to the Lower 48. He talked about the volatile nature of pre-trial inmates, the need to keep the percentage of them down in any one facility, and the consequences of not doing so. He predicted that the first 60 pre-trial beds would be ready in the summer of 2008.

COMMISSIONER SCHMIDT discussed various projects occurring under phase one. For example, by remodeling and moving the medical area in the Fairbanks facility, he said, the department will be able to install 38 new beds. The facility in Kenai will be treated for asbestos and subsequently be renovated by prisoner work crews to provide 80 minimum security beds. A total of 238 beds will be produced during phase one between 2008 and 2009. He noted that the department already has half of the required \$600,000 it needs for the project and will be requesting the other half from the legislature during next session's budget. The capital funds already approved are for the amount of \$1 million.

COMMISSIONER SCHMIDT, returning to discussion of the implementation of Senate Bill 65, talked about a 144-bed medium security housing unit in the Seward facility and a "V-wing" inside a double fence, which would add to the maximum security beds already there. In response to a question, he relayed that because the department needs all its facilities, building a large prison in Palmer would not result in closing the Seward facility. He then offered more information regarding the Fairbanks facility modifications, made under phase two, noting that the kitchen is not [currently being] used and can therefore be "repurposed."

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COMMISSIONER SCHMIDT, in response to a question, explained that the same staff will be used for the aforementioned medium security housing unit to be built in Seward as are already overseeing the maximum security housing. He clarified that the general housing in the Seward facility is medium and "close" [security], and said there are plans to relocate the gymnasium in Bethel and convert the current gym space to hold 66 beds. He indicated that the City of Bethel has requested that the DOC address the problem of inebriated people who are inundating the local hospital. He mentioned incorporating space for these people and operating a "sleep-off." The same thing happens in Fairbanks, he noted, adding that there are approximately 3,500 inebriates brought to prison throughout the state, and two-thirds of those come from Bethel and Fairbanks - evenly split. He mentioned that the department is planning to have 1,260 medium security beds at Point Mackenzie.

COMMISSIONER SCHMIDT, in response to another question, said he would research what the cost difference to the state would be for choosing to build and run a prison at Point Mackenzie rather than somewhere closer to already existing infrastructure and population. He then noted that the Anchorage facility was listed within Senate Bill 65, which called for federal receipts for construction and operation; however, since federal receipts have been declining, he said he does not see that plan as viable. He then reviewed the number of beds [to be added] in the various communities: 80 in Fairbanks, 66 in Bethel, 1,260 at Point Mackenzie, and 60-40 in Palmer. In response to a question, he confirmed that when he is speaking of Palmer, he means the Palmer Correctional Center in Sutton.

COMMISSIONER SCHMIDT, in response to a question regarding how much more personnel will be needed, said he has not yet drawn up a staffing plan. Notwithstanding that, he said, he uses Anchorage by which to roughly estimate the figures. To counter a concern that the department cannot fill its current staff requirements, he stated, "We can staff what we've got, and I believe we can staff what we want to build."

COMMISSIONER SCHMIDT, in response to comments that the bed capacity is at 115 percent, talked about a disparity between the actual number of occupied bunks and the numbers reflected in the "design cap" produced in the 1980s. He said the actual percentage is at 102 percent, although the beds in the Anchorage area are more crowded. He noted that the current bed count

includes all bunks, as well as special-use beds; it does not include "boats" - plastic devices used for sleeping on the floor. He indicated that the department is using the terms "design cap" and "max cap" instead of the term "emergency," because he thinks no one will believe that the department has been at emergency capacity for so long.

10:43:37 AM

SENATOR GREEN offered her understanding that there is a clear definition of what constitutes a bona fide emergency bed, and thus using a term other than that is disingenuous and puts the department in "a very, very gray area." She emphasized the importance of providing the actual count so as to make the legislature realize the needs of the department. She said any delay in necessary construction causes her concern, and noted that in the past decade, three other pieces of legislation attempting to solve the problem of the lack of prison beds have failed. This time, she indicated, there are deadlines that the department must meet [in order to use already appropriated funds]. She said the revised count data makes no sense and causes her concern.

COMMISSIONER SCHMIDT explained that he wanted the count to accurately reflect how many prisoners were actually sleeping in beds, even if a significant number of those beds were [bunk beds] or beds in gymnasiums, and it is not his intent to imply that the need for beds is not as great as it has been. His concern, he relayed, pertains to the department's credibility. He explained, "I think that it would take [away] from our credibility [when] looking for staffing ... - not only in our expansion, but in any venue - when we're saying we've got hundreds more prisoners than we have beds, when they're [actually] in beds." He noted that the facility in Arizona serves to hold Alaska's overflow of inmates, and there is some criticism related to how many of Alaska's inmates are there. He mentioned bringing inmates back from Arizona and placing them in the facility in Seward. He reported that the number of inmates needing beds grows between 130-150 a year.

10:48:51 AM

SENATOR GREEN offered her belief that if he were to survey legislators and most people in Alaska, he would find that their definition of a prison bed is one that is secure, not an auxiliary bed or a temporary bed or an emergency bed or a cot.

COMMISSIONER SCHMIDT, in response to a question, said he thinks that if the department were to count the aforementioned boats as beds - which it has not - then that would be changing the definition of a bed. He said the DOC would prefer to not count the 170 beds that are in gymnasiums and thereby get those gymnasiums back for their original purpose, but he had thought that the legislature would accept the loss of some gymnasiums.

COMMISSIONER SCHMIDT, in response to a question regarding the commencement date, objectives, and clarification of costs, reviewed the phase one costs and reported that the beginning discussions regarding phase two - due to be concluded by 2012 - are just now commencing, and ground could be broken by spring of 2008. He said that based upon the guidelines in Senate Bill 65 and the Anchorage Consumer Price Index (CPI), the cost of phase two calculated "through the construction" at today's rates would be \$185 million. He also mentioned that satellite buildings will be constructed.

[10:54:47 AM](#)

DWAYNE PEEPLES, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), in response to a question regarding cost differences, said that DOC staff are just beginning to develop preliminary cost estimates on building "the modified versions that are based upon the Palmer building," and will not have any numbers available for a couple weeks. He emphasized that construction costs will have to be maintained within the constraints of Senate Bill 65, and mentioned that \$30 million is outlined for utility infrastructure development.

COMMISSIONER SCHMIDT, in response to a question, reviewed the results of the Cleary v. Smith decision. He said that the court ruling spoke to living conditions of the prisoners, including: temperature of the cells, square footage, law library access, inside versus outside recreation opportunities, television sets, and staffing ratios.

SENATOR HUGGINS opined that the term "bed" is being misconstrued in that it encompasses more than a place to sleep, and concurred with Senator Green's comments on that subject.

COMMISSIONER SCHMIDT, in response to a question, reported that the per diem cost of holding a prisoner in Arizona is \$60.50 per day, with inflation each year. He indicated that the cost of sending a jet is \$110,000 to \$120,000 "both ways," and mentioned that the DOC lost \$920,000 of its personnel budget, though there

has been \$850,000 in savings, plus the funds for one transport that may not be necessary, that will help.

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COMMISSIONER SCHMIDT acknowledged that if Arizona were to send inmates back to Alaska, there would be no place to put them. In response to a statement by Senator Huggins, he concurred that Alaska is at the mercy of Arizona in terms of what Alaska has to pay Arizona to house Alaskan inmates. Rural areas cost more to run, he noted, and the staff in Bethel, for example, is paid approximately 30 percent more than the staff in Anchorage.

SENATOR HUGGINS talked about durability and warned that temporary shelters are costly to replace.

COMMISSIONER SCHMIDT, in response to a question of whether the administration is considering additional legislation, said that currently the department is attempting to follow the strictures of Senate Bill 65; however, he said, "Anchorage doesn't look feasible" under that bill's terms. At this time, he noted, there is no plan to introduce any new legislation regarding that issue, but it may come to that.

MR. PEEPLES, in response a question regarding the Arizona contract, relayed that the contract for the beds in the Arizona facility has approximately four more years of unilateral options available. In the event that the Arizona facility were to ask Alaska to take its business elsewhere, he said, "You can always enjoin them and go forward like that." He offered further details, indicating that Alaska will probably need to renegotiate the price of housing some of its prisoners in Arizona within the next year.

COMMISSIONER SCHMIDT, with regard to the department's classification system, said that at this point, the DOC has not made plans to update that system; however, it is comparing that 20-year-old system to one called, "level of service inventory (LSI)." The LSI system was studied in a small test group and will be studied again in a larger test group. He said it will not be used if the only result is that it "makes more minimums."

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CHAIR SAMUELS said that in the last five years the legislature has created new crimes and stiffened sentences. He said he wants offenders to go to jail and is willing to spend more of

the state's money to build a prison. He observed that the legislature has created laws that must have resulted in an increase in inmates, and asked Commissioner Schmidt what the DOC is doing with all those extra people, if new prisons have not yet been built.

COMMISSIONER SCHMIDT responded that the DOC packs the inmates in where it can, including the 860 who are being housed in Arizona. The growth is approximately 150 inmates per year. Recidivism rates, he noted, are 66 percent in Alaska. In response to further questions, he noted when each of the prison system's gymnasiums were built and how many beds they each hold, and said the number of prisoners held in Arizona have been increasing.

COMMISSIONER SCHMIDT then discussed who is authorized to build a prison. He mentioned the Alaska Housing Finance Corporation (AHFC), and said he would be approaching the legislature to find out how to get money to the AHFC. He spoke of money that the department views as "receipt authority" rather than an actual "budget piece."

CHAIR SAMUELS said he wants to see some concrete plans by next session, particularly since crime rates increase when prisoners are released to halfway houses and then into neighborhoods; he urged building prisons as soon as possible.

COMMISSIONER SCHMIDT, in response to comments about the DOC's use of halfway houses, pointed out that minimum security prisoners shouldn't be taking up maximum security beds, and said that although the DOC owes it to the public to keep criminals in prisons, it must also be able to justify the cost of sending its prisoners outside the state, and that's best done by using Alaska resources first - including halfway houses. He surmised that high recidivism rates occur when prisoners with short prison sentences are sent out of state and then returned directly into the population once they get back to Alaska; making use of halfway houses as well will help reduce recidivism rates.

REPRESENTATIVE HAWKER questioned whether the low-security environment of halfway houses will still protect the public.

COMMISSIONER SCHMIDT opined that it will, adding that the "walk away" rate is now less than half of what it was a year ago; furthermore, the DOC wishes to expand its electronic monitoring program, though with caution so as to continue protecting the public.

11:15:34 AM

SENATOR THERRIAULT offered that his constituents aren't concerned that prisoners are sleeping in "boats"; rather they simply want their communities to be safe and don't want to hear either that violent offenders have been released to halfway houses because of overcrowding or that driving under the influence (DUI) offenders are being held in maximum security facilities. He surmised that eventually the legislature will appropriate the money to build another prison facility, but it has not yet come to grips with the cost of incarcerating more people for longer periods of time.

CHAIR SAMUELS reiterated his belief that the DOC should move forward with building [another] large prison.

COMMISSIONER SCHMIDT, in response to a comment, said that the DOC is still intending to work under the constraints of Senate Bill 65.

REPRESENTATIVE HAWKER opined that [the majority] of prisoners have behavioral illnesses, and so questioned whether the DOC has looked into dedicated treatment for such individuals. He offered his understanding that Texas has taken some major steps in that direction with incredibly successful results.

COMMISSIONER SCHMIDT indicated that the DOC has been looking at such a behavioral-health model, and that he would be willing to compile further information for the committee. In response to a question regarding future overcrowding, he said that completion of the current plan will allow the DOC to bring all of its prisoners back into the state, return the gymnasium spaces to their original use, and still be at below 100 percent capacity; he surmised, however, that the DOC will always have to be building new facilities in order to keep up with the continued growth of the prison population.

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SENATOR THERRIAULT said he would prefer that the DOC use gymnasiums to house prisoners if doing so will allow the DOC to live within its budget.

CHAIR SAMUELS concurred.

SENATOR GREEN relayed that her concern is that prisoners be in secure beds.

COMMISSIONER SCHMIDT said the beds in the gymnasiums are as secure as any of the DOC's dormitory beds.

REPRESENTATIVE HAWKER expressed concern about the DOC having simply changed how beds are counted without the benefit of legal counsel, and questioned whether that's crossed a legal line established by the courts in Cleary.

COMMISSIONER SCHMIDT pointed out that the DOC is no longer under Cleary oversight, but acknowledged that it isn't necessarily healthy to cram the gymnasiums full of prisoners. In response to a question, he indicated that there are guidelines regarding the square footage per prisoner.

CHAIR SAMUELS noted that if the courts did find that Alaska is out of compliance with Cleary, the state could be fined.

COMMISSIONER SCHMIDT concurred, but surmised that before the state came under Cleary oversight again, it would need to go through a process and so would be given a chance to rectify any perceived problem.

CHAIR SAMUELS expressed concern with having the courts dictate how Alaska's prison system will be run.

SENATOR HUGGINS asked that the DOC relay to the legislature what the DOC needs should implementation of Senate Bill 65 not produce the desired results.

COMMISSIONER SCHMIDT, in response to a question, indicated that the state needs the 2,200 new beds that Senate Bill 65 provides for, but a different design concept is called for.

SENATOR HOFFMAN said it seems to him that Senate Bill 65 needs modification.

COMMISSIONER SCHMIDT offered his understanding that the legislature wouldn't have supported any proposals for modification.

SENATOR GREEN pointed out that any proposed modifications would have had to come from the administration.

SENATOR HOFFMAN added that if the DOC doesn't bother to ask for modifications, there won't be any opportunity for such to be made.

CHAIR SAMUELS relayed that he was not asked by the DOC whether he would have supported modifications.

COMMISSIONER SCHMIDT, in response to questions, reiterated some of his earlier comments, and relayed that the DOC has no plans to request supplemental funding for overcrowding issues and that the DOC has lost funding for 11 positions.

11:38:32 AM

DAVID TEAL, Legislative Fiscal Analyst, Legislative Finance Division, Alaska State Legislature, in response to a question regarding "short funding," offered his understanding that perhaps there was about \$15 million in Public Employees' Retirement System (PERS) costs that may have been included in the governor's amended budget but which shouldn't have been because at that time "the 22 percent rate" was fairly certain. Regardless, he added, "the governor's amended budget should have been a rate of 22.75 percent, which was the PERS rate before any agreement on a rate reduction." He also said, "243 is what the governor's amended request was." He then referred to a chart and spoke about the numbers in various columns. He offered his interpretation that the DOC's budget has been growing by roughly \$20 million a year during the last several years, and acknowledged that there was a slight budget reduction [this year]. He mentioned that last year the DOC's supplemental [request] was \$14 million, and said he has no idea what DOC's management is doing to try to reduce costs. He also said that it wouldn't surprise him to learn that the DOC needs approximately \$245 million in order to operate this year.

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REPRESENTATIVE HAWKER offered his recollection that some inmate medical funds got moved to the "language section of the budget" and were no longer in the "numbers section of the budget." He said he doesn't believe that the legislature short funded the administration's request for the DOC except for "about a million dollars in wages."

MR. TEAL, in response to a question, added that although "the governor's request was 243," the legislature "authorized 226." He remarked that regardless of whether one views the DOC as

having been short funded, the DOC was actually flat funded from FY 07 to FY 08, and this is correcting for those 11 positions that were removed; "pull that out and they've got just about the same amount of money after you adjust the PERS rate for 22.75 [percent] down to 22 [percent]. However, he added, the trend is that the DOC doesn't operate at flat funding; instead the DOC operates at \$20 million a year more than it needed last year.

CHAIR SAMUELS surmised, then, that any supplemental request from the DOC "would be nothing but medical."

COMMISSIONER SCHMIDT reiterated that the DOC doesn't plan to make a supplemental request based on overcrowding, and that the DOC's budget has been reduced by \$920,000 - totaling 11 positions.

SENATOR GREEN questioned whether the DOC will be requesting supplemental funding for any other purpose.

COMMISSIONER SCHMIDT relayed that he could not say at this time whether the DOC would do so.

MR. TEAL, noting that it is only two months into the fiscal year, concurred that it would be very difficult to say where the DOC will wind up [fiscally] by February/March of next year.

CHAIR SAMUELS questioned why any department would ever need to make a supplemental budget request if it had actually asked for what it needed to begin with during the regular budget process.

COMMISSIONER SCHMIDT said that the DOC did ask for what it needed. Returning to his presentation, he then relayed that the DOC has no intention of housing sex offenders in its Point MacKenzie Correctional Farm facility.

11:49:05 AM

SHARLEEN GRIFFIN, Director, Central Office, Division of Administrative Services, Department of Corrections (DOC), returning to the issue of supplemental requests, relayed:

There is a condition in [FY 08] that we will keep a close watch on. It's a leap year, [and so] we will have an additional day of running 24-hour institutions that were not budgeted for, and it's not something that we would normally come forth and ask for - it only happens every four years - but we will have an

additional day of correctional officer salaries because they're paid hourly, as well the three meals a day for all prisoners, and additional day of utilities. We will keep a watch on that; we'll try to handle all of it that we can without coming forth for more funding, but it is an item that we do keep a watch on every four years.

COMMISSIONER SCHMIDT, returning to his presentation, offered that there are prisoners housed in its Point MacKenzie Correctional Farm facility that were sentenced long term for a crime against a person, but he's not heard of any problems associated with them.

SENATOR GREEN asked what the legislature could do to expedite the construction of prison facilities.

COMMISSIONER SCHMIDT said that the DOC will begin that discussion in-house next week.

SENATOR GREEN asked to be kept abreast of what is actually happening within the DOC.

COMMISSIONER SCHMIDT indicated that he would do so.

OTHER COMMITTEE BUSINESS

[11:52:22 AM](#)

CHAIR SAMUELS announced that the final order of business - under other committee business - would be a discussion regarding potential consultants.

CHAIR SAMUELS reminded the committee that it had hired the Federal Energy Regulatory Commission (FERC) attorney, Bill Mogel. There was a bit of a dispute with Mr. Mogel's travel expenses in that the committee was being billed the full rate for travel. Because the aforementioned wasn't clarified in the contract, the travel expenses were paid and the matter [has since been] clarified. With regard to the contract with Econ One Research Inc. ("Econ One"), there was a situation in which there was a request [from a co-chair of the House Resources Standing Committee] to have a hearing on the Alaska Gasline Inducement Act (AGIA). He relayed that he had offered for Mr. Mogel, Dan Dickinson, and Dave Harper to call in to speak. He highlighted that neither he nor his staff, Cheryl Sutton, were contacted by Econ One or Mr. Harper. However, the end result

was that about \$20,000 was paid to give the same exact testimony that took place five days earlier. Furthermore, the testimony was given four days after the vote [on AGIA]. The bill for the aforementioned was paid. Chair Samuels stressed that the aforementioned won't happen again and that he will attempt to develop a process to address such.

CHAIR SAMUELS then relayed that the committee had sent a request to extend the Greenberg Traurig contract for this calendar year. The aforementioned was never returned to the committee; it wasn't ever signed. He further relayed that when he and Senators Huggins and Stedman met with Mr. Minesinger in Washington, D.C., in March, Mr. Minesinger asked if there were any other services he could provide. The committee received a bill for work on the 2005 FERC order because Don Shepler had kept the committee advised. That bill was paid, but later the money was returned because they were no longer [the committee's] attorneys. There was also a deal with Mr. Larry Ostrovsky in the administration in which any work product would be shared.

CHAIR SAMUELS opined, "We lent them our lawyer and I've already stated earlier, when session first started, [we] probably shouldn't have done that; you can't serve two masters." The deal was that all the work product would come to the committee and be open to the public, and the first batch of work was just received. Chair Samuels said that he didn't find out that [Greenberg Traurig] wasn't working for the committee until he called to obtain the second batch of work product. He relayed his assumption that Greenberg Traurig is still working for the administration, but he didn't know whether the committee would have access to the work product. In fact, he said, he assumed that there would be no access at all. He mentioned that the only thing Greenberg Traurig was consistently doing was tracking "that" case. He stated that at present there are no problems, but he wanted to inform the committee of the past year's dealings with consultants since the legislature is likely to make use of consultants again.

CHAIR SAMUELS relayed that he's received a letter that has been provided to the committee. He then informed the committee that the committee has contracted with Mr. Dickinson if anyone is interested in the historical perspective of how the petroleum production profits tax (PPT) works or doesn't work. Mr. Mogel is still on contract and the committee is also contracting with Steve Porter. Chair Samuels pointed out that every member of the Legislative Budget and Audit Committee, save Representative Doogan, was present during the development and passage of the

PPT. Therefore, he opined, they all understand the baggage various [consultants] bring to the table. He informed the committee that A. Pedro H. van Meurs, PhD, actually pitched a profits-based tax to Governor Knowles. He asked if the committee believes it would be detrimental to the process to bring Dr. Van Meurs and Daniel Johnston back to review their philosophy of the PPT and provide a historical background.

12:02:43 PM

SENATOR HUGGINS offered that the most capable person possible should bring everyone up to speed regarding the evolution of the PPT. At this point, Senator Huggins said, he assumed that Dr. Van Meurs is that person, but acknowledged that there may be someone else. He relayed that he doesn't support bringing in Daniel Johnston.

CHAIR SAMUELS relayed that Dr. Van Meurs could present why he thought the PPT concept was best for Alaska, but not then also be an ongoing adviser to the legislature. He relayed that there are very few people who do fiscal systems, although there are others who could speak to the issues raised in Senator Therriault's letter such as whether costs in Alaska have risen proportional to other areas. Therefore, there are others who can speak about the industry in general without discussing fiscal systems. Chair Samuels asked if there was interest in obtaining a historical view of how the PPT developed.

SENATOR THERRIAULT opined that the administration, via its presentation yesterday, has made a decision that the PPT concept needs some modification. He surmised that the administration isn't taking the state in a new direction. Therefore, Senator Therriault said he didn't know that having Dr. Van Meurs or Mr. Johnston talk about the PPT is really warranted.

12:06:58 PM

CHAIR SAMUELS said that he was thinking [that having a historical perspective of the PPT] would be beneficial for new members. Furthermore, he said he anticipates that there will be debate regarding whether there should be drastic changes to the PPT or whether the legislature should even start all over. He expressed the desire to have someone tell the committee the pros and cons of a different system, particularly the new members.

SENATOR HOFFMAN opined that much depends on the direction the committees takes with the legislation, and the information the

committees might need. He pointed out that the governor is making several changes to the PPT, including lowering the progressivity. He questioned why the Econ One numbers and other numbers put forth [under the PPT] are \$800 million off. He further questioned how much [anticipated revenue] numbers from those same entities could be relied upon when the formula is changed. However, he acknowledged, there has to be some professional testimony upon which the legislature makes its decisions. Senator Hoffman noted his agreement with Senator Huggins that it's critical to purchase the best [professionals] possible, given how much the state depends upon the anticipated revenues.

REPRESENTATIVE HAWKER concurred with Senator Huggins and Senator Hoffman that the value of the institutional knowledge is immeasurable, adding that it's critical to have this information available. The real value, he opined, comes from Dr. Van Meurs who brings credibility, particularly for the public. Therefore, Representative Hawker strongly recommended that Dr. Van Meurs be retained.

REPRESENTATIVE DOOGAN offered his belief that in general, more information is better than less information. Given that the new members can't replicate the experience of returning members, the best option would be to have some sort of presentation regarding how the state arrived at the point at which it is now. Therefore, Representative Doogan expressed the need to have a presentation or briefing, but from whom would be a decision for the returning members to make. He surmised that such a presentation/briefing could occur prior to the special session since it's not dependent on potential legislation.

SENATOR STEDMAN said that he supports bringing Dr. Van Meurs in for a briefing of historical information as well as some input with regard to comparisons of worldwide systems. It looks as though there is a potential significant shift in the percentage of the government take. Furthermore, he remarked, the special session proclamation by the governor seems to be wide open on oil and gas issues and thus he would prefer to be able to call on more consultants.

12:15:08 PM

REPRESENTATIVE JOULE opined that considering the scope of the debate, the more people available the better. He recalled that Dr. Van Meurs and Mr. Johnston had different approaches,

although they performed the same work, and characterized [the information they provided] as valuable.

SENATOR STEDMAN reiterated his support for bringing consultants before the committee.

SENATOR THERRIAULT reminded the committee that prior to the Murkowski Administration turning in the PPT plan, Dr. Van Meurs prepared a report saying that the tax rate should be 25 percent. However, upon the request of the administration, Dr. Van Meurs changed his recommendations from 25 percent to 20 percent. Senator Therriault said that Dr. Van Meurs and Mr. Johnston at one point had both agreed that 25 percent was fair and doable and now the Palin Administration is also suggesting that 25 percent is the number. Therefore, Senator Therriault expressed concern that due to pressure or a request, Dr. Van Meurs changed the information he provided to the legislature, and thus he questions the credibility of Dr. Van Meurs. Senator Therriault opined that when one hires a consultant, that consultant is hired to relate his/her view and not change it.

CHAIR SAMUELS interjected to point out that when he has hired consultants [outside the legislative environment], those consultants have asked where the hiring entity wanted "to end."

[12:20:32 PM](#)

REPRESENTATIVE DOOGAN opined that if the talent pool is small and if there's agreement to have a historical briefing for the new members and the liabilities of Dr. Van Meurs and Mr. Johnston balance each other out, then perhaps both should be secured as consultants.

CHAIR SAMUELS said that he would oppose having either Dr. Van Meurs or Mr. Johnston continue as a consultant because political opinions about them have already been formed.

SENATOR THERRIAULT highlighted that Dr. Van Meurs would often leave the state for lengthy periods of time, and therefore he suggested making inquiries as to whether Dr. Van Meurs will even be available.

CHAIR SAMUELS agreed to contact Dr. Van Meurs and Mr. Johnston regarding whether they're interested in providing a presentation, whether they're available, and how much it would cost. He said that the committee could hold the hearing and invite all new members. He also offered to find other people

who could provide additional information, including those who could compare global systems.

SENATOR HOFFMAN asked whether anyone could explain why the PPT ended up being \$800 million off course.

CHAIR SAMUELS said he would try to find someone to speak about that issue.

REPRESENTATIVE DOOGAN opined that from the governor's presentation yesterday, it seems that the administration, even on its general approach, is relying heavily on economic modeling. He relayed his belief that it would be worthwhile to have an independent consultant who could review the administration's model to say whether it's an accurate tool.

CHAIR SAMUELS identified Econ One as the independent consultant to do the aforementioned, though he acknowledged that some of the administration's components are based on Econ One's numbers.

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REPRESENTATIVE HAWKER opined that reconciling the model with the achieved results isn't that complex of a process, and noted that the Department of Revenue (DOR) is already doing so. He offered that Mr. Dickinson is a potential candidate for the position of reviewing that reconciliation, and said he would have a great deal of comfort with Mr. Dickinson's counsel. Furthermore, Econ One needs to be an available and willing player in the reconciliation.

SENATOR THERRIAULT concurred. He highlighted that Econ One didn't create its own model, but rather used Dr. Van Meurs' model, and noted that Econ One was supposed to check that model to be sure that it agreed with the way the components operated. Since the model has "missed the mark," Econ One would be an excellent candidate to run the mathematics to determine why the PPT model didn't work.

CHAIR SAMUELS offered his understanding that Econ One had access to the models from the Department of Natural Resources (DNR) and the Department of Revenue (DOR), neither of which agree.

SENATOR THERRIAULT expressed his hope of having Econ One do the work, which doesn't seem very extensive. He noted that the administration indicates that most of the [shortfall] is related to the difference in costs - operating expenditures and capital

expenditures. He asked what percentage of the \$800 million can be attributed to higher than expected costs.

REPRESENTATIVE DOOGAN surmised that this is a situation in which the PPT is a model that made a prediction that was 80 percent off and that the same people who offered that model are now offering a new approach that will reach 100 percent. In such a situation, he said he questions the level of confidence he would have in believing [that the new approach will reach 100 percent]. Therefore, he is seeking a way to evaluate why it would be any more likely that the new set of values is more likely to be correct than the last set. Representative Doogan said his level of confidence would be higher if the entity offering the new model was an entity other than those that were involved with PPT.

CHAIR SAMUELS suggested that Econ One, the DNR, and the DOR could all be asked if, in the model they ran, using the higher cost number and lower price of oil would result in what the PPT resulted in. If that's the case, then the question is one of the impact on production if the costs are lower. He said that it could be that the model worked perfectly, but the costs weren't expected to be as high as they were.

SENATOR HOFFMAN highlighted that Governor Palin has indicated that she is trying to get to \$2 billion. However, many legislators have been discussing how to get to \$3 billion. He questioned how the \$2 billion can be achieved with a different formula, progressivity, and tax structure. There is also the question of the effective dates to consider.

CHAIR SAMUELS reiterated that he will contact Dr. Van Meurs and Mr. Johnston to determine if they're available. He further reiterated that both gentlemen have given him additional names that the legislature could possibly contact, and said that he could also contact Econ One regarding some of the specific questions laid out in Senator Therriault's letter.

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PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, relayed that her role is to provide a little advice to the project director in terms of contracting and to ensure that the invoices are accurate. In the past, contractors may have taken legislators out for meals for which the state pays, but, oftentimes, legislators are already receiving a per diem and thus the state is paying twice.

The aforementioned has been resolved by specifying that the contractors will simply be paid the federal meal allowance rate. Under the legislative procurement rules, contracts in excess of \$25,000 need committee approval and contracts in excess of \$50,000, save for legal services, must go through a competitive bidding process. The procurement code includes stipulations that allow [the committee], when it's in the best interest of the committee or the state, to forego those competitive procurement requirements. For example, the committee, when seeking consultants to give the committee advice regarding world oil markets, may find that there may not be the time or expertise to hold a competitive process. Therefore, the committee may be presented with sole source out-of-state contractors as the best option. In such a case, the motions made by the Legislative Budget and Audit Committee will need to be very specific.

SENATOR THERRIAULT recalled that at least one in-state firm bid on "this." He surmised that Alaska firms would complain if a sole source out-of-state contractor is used. He reminded the committee that there is a contract with Econ One that was done through a competitive bid. In fact, there is \$180,000 of current authorization available.

CHAIR SAMUELS highlighted that Econ One's contract was for advice on the Stranded Gas Development Act, but it seems "we drifted on PPT ... and AGIA too." He asked if that would be problematic.

MS. DAVIDSON replied, "The short answer tends to be yes." She explained that when there's a competitively bid contract, the scope of work is identified and put out to interested parties who can provide those services. When one drifts beyond that original scope of work that went out to bid, there are procurement issues.

CHAIR SAMUELS asked about the specific language used in Econ One's contract.

SENATOR THERRIAULT interjected to say that he had requested that Legislative Legal and Research Services review that matter. He relayed that the governing language in that section of the contract says, "At such time as a contract is proposed under ... [the Alaska Stranded Gas Development Act] or legislative approval, if sought for an alternative pipeline proposal." According to Legislative Legal and Research Services, AGIA is an alternative pipeline proposal, he added.

CHAIR SAMUELS offered his belief that discussions related to the PPT raise the same general issues as discussions of an oil tax.

MS. DAVIDSON characterized it as a continuum issue, but noted that the PPT is no longer discussed with regard to the gas pipeline.

CHAIR SAMUELS interjected to say that the PPT impacts gas taxes.

MS. DAVIDSON clarified that she's merely suggesting that as the legislature moves forward and reviews a tax regime, it must be aware that it's opening itself to complaints that the legislature isn't following its own rules. If there's time, the [committee] may choose to reissue a Request for Proposals (RFP). In further response to a question, Ms. Davidson confirmed that the committee can either amend the contract to be more specific or simply issue a new contract.

CHAIR SAMUELS said he will seek a legal opinion to ensure that the committee can continue its contract with Econ One. If the committee can't, then there'll be another meeting in the next couple of weeks to keep everyone abreast of the situation with the consultants and address Senator Therriault's questions.

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REPRESENTATIVE THERRIAULT said there are still specific questions he'd like the administration to respond to, adding that he will distribute any responses to members, and requested that any answers the committee receives from the consultants also be distributed immediately.

CHAIR SAMUELS agreed to do so. He then reiterated that he will develop a process that addresses some of the logistical problems regarding the dissemination of information.

SENATOR THERRIAULT recalled that when he was the chair of the committee, there was a distribution list, which included legislators and staff as well as industry folks who requested to be on that list. He said he would be sure to forward that list to Chair Samuels.

MS. DAVIDSON reminded the committee that there is a web site for the committee on which any documents received from the consultants has been posted, and surmised that the web site will be updated as the special session gets underway.

ADJOURNMENT

There being no further business before the committee, the Legislative Budget and Audit Committee meeting was adjourned at 12:44 p.m.