

**ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE**

June 3, 2008

5:47 p.m.

MEMBERS PRESENT

Representative Ralph Samuels, Chair
Senator Lyman Hoffman, Vice Chair
Representative Mike Chenault
Representative Mike Doogan
Senator Johnny Ellis
Senator Lyda Green
Senator Bert Stedman
Representative Reggie Joule (alternate)
Senator Charlie Huggins (alternate)
Representative Mike Hawker
Representative Mike Kelly
Representative Kevin Meyer (alternate)

MEMBERS ABSENT

Senator Gene Therriault

OTHER LEGISLATORS PRESENT

Senator Hollis French
Senator Kim Elton
Representative Jay Ramras
Representative Beth Kerttula
Representative Andrea Doll

COMMITTEE CALENDAR

APPROVAL OF MINUTES
AUDIT REQUESTS

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

SENATOR KIM ELTON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the audit request regarding the AIDEA/Snettisham hydroelectric project.

EILEEN DONAHUE, Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of the audit request regarding the AIDEA/Snettisham hydroelectric project.

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

POSITION STATEMENT: Responded to questions during discussion of the audit request regarding AIDEA/Snettisham hydroelectric project and the audit request for the Department of Corrections.

SENATOR BILL WIELECHOWSKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on the request for an audit of the Department of Corrections.

SENATOR HOLLIS FRENCH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on the request for an audit of the Department of Corrections.

ACTION NARRATIVE

CHAIR RALPH SAMUELS called the Legislative Budget and Audit Committee meeting to order [5:47:17 PM](#). Representatives Doogan, Joule (alternate) and Samuels, and Senators Hoffman, Stedman, Ellis, Green, and Huggins (alternate) were present at the call to order. Representatives Chenault, Hawker, Kelly, and Meyer (alternate) arrived as the meeting was in progress.

APPROVAL OF MINUTES

[5:48:04 PM](#)

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

SENATOR STEDMAN made a motion to approve the minutes of the May 14, 2008, meeting of the Legislative Budget and Audit Committee. There being no objection, the minutes from the meeting of May 14, 2008, were approved.

AUDIT REQUESTS

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CHAIR SAMUELS announced that the next order of business would be the audit request regarding the Alaska Industrial Development and Export Authority (AIDEA)/Snettisham hydroelectric project.

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SENATOR KIM ELTON, Alaska State Legislature, stated that the delegation requests a legislative audit of the oversight provided by AIDEA, including the Agreement for the Sale and Purchase of Electric Capability of the Snettisham hydroelectric project (Power Sales Agreement) and the Operations & Maintenance Agreement. He explained that the Power Sales Agreement requires that a repair and replacement fund be maintained by the utility, reportedly set at \$3.5 million, with annual contributions to that fund and periodic evaluation and assessment of the fund, along with any contributions. The Operations & Maintenance Agreement requires insurance on all the assets associated with the Snettisham hydroelectric project, including the transmission lines and towers or a waiver from the state, which is the owner, if any component is uninsurable. He related his understanding that currently no waiver exists. Further, the AIDEA bonds covenant go further than the Operations & Maintenance Agreement and specifically mention self-insurance, he stated. He offered that the fundamental question for the committee is whether AIDEA has exercised the diligence required of an asset manager.

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CHAIR SAMUELS referred to the memorandum dated May 12, 2008, requesting that the Legislative Budget & Audit Committee initiate a legislative audit of AIDEA. He noted that the first question in the memorandum states that the status of the [repair and replacement] fund is unclear. He inquired as to whether this question could be asked without conducting a full blown audit.

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EILEEN DONAHUE, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, related her understanding that the division anticipated conducting a full audit with respect to answering the first question in the memo of May 12, 2008, requesting a legislative audit of the stewardship of the Snettisham hydroelectric project, which read:

- 1) The Agreement for the Sale and Purchase of Electric Capability of the Snettisham hydroelectric project dated July 15, 1998 provides for establishment and maintenance of a repair and replacement fund, annual contributions to that fund, and periodic evaluation and assessment of the fund and contributions. The status of that fund is unclear.

MS. DONAHUE further responded that the division anticipated conducting a full audit in order to answer the second question in the memorandum of May 12, 2008 requesting a legislative audit of the stewardship of the Snettisham hydroelectric project, which read:

- 2) The Operations & Maintenance Agreement dated July 15, 1997 requires insurance on functionally all the assets associated with Snettisham, including the transmission lines and towers. It requires consultation with the Division of Risk Management, and provides for waivers if insurance is not available or not reasonable. It does not appear that waivers were issued in accordance to the Operations & Maintenance Agreement dated July 15, 1997.

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SENATOR GREEN inquired as to whether the legal aspect to this request might be outside purview of the Legislative Budget and Audit Committee. She opined that it appears that the audit request would attempt to establish the failure to take action that resulted in costs. She surmised that a legislative audit might be used during litigation.

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SENATOR ELTON related his understanding that the audit would take considerable time to conduct. He further related his understanding of the Power Sales Agreement and the Operation & Maintenance Agreement that requires specific provisions. He opined that he did not think that anyone disputes that both of

the documents provide that the utility, in this case, Alaska Electric Light and Power (AEL&P), is responsible for both operations and maintenance and is responsible for establishing and keeping the fund. He related that the Juneau delegation has separated this issue from the activities of the last six weeks. He asserted that the delegation would like to ensure that the asset owner, the State of Alaska, has performed well in overseeing the contract, not whether or not the state is legally responsible. He stated that it is very clear that the AEL&P is responsible for operation and maintenance of the Snettisham hydroelectric project.

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SENATOR GREEN inquired whether if in the instance that the state was not involved and AEL&P had concerns about the status of the contract, it would be appropriate for the AEL&P to perform this review. She surmised that the audit would be approaching the issue from the defendant's side such that it would indicate that the something was not done appropriately. She inquired as to what outcome an audit would achieve, such as would it change future policy or is the audit designed for AEL&P to agree that it did not perform appropriately, but that AEL&P would agree to better performance in the future.

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SENATOR ELTON responded that the Operation & Maintenance Agreement and the Power Sales Agreement are in effect until 2038. The only method to change either document is through an agreement by both parties. Thus, the delegation does not anticipate any change in the agreement, or any change in the State's role as the asset owner or that the utility's role as the beneficiary of power purchased from the state owned asset. However, the delegation, through the legislative audit request, wants to ensure that both parties meet their responsibilities for the remainder of the term of the agreements. He related his understanding that the agreements require insurance for all of the state owned assets and outline that it is the utility's responsibility to provide for insurance. Additionally, the agreements provide for a waiver process in the event that the utility is not able to obtain insurance. He noted that a question remains whether the state asked for a waiver or for evidence that insurance was not available. Further, he related that it is important that the state, as the owner of the asset, ensures that the replacement fund is a fund that is adequately capitalized, not by the state, but by the utility. Many other

aspects need to be considered, such as whether the Regulatory Commission of Alaska (RCA) allows for an extraordinary charge to rate payers to capitalize a fund that may benefit future rate payers. He opined that obtaining answers to these questions will provide guidance to the state and to the utility for future operations and will indicate whether the agreements need to be modified to more realistically reflect the duties of both parties.

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REPRESENTATIVE CHENAULT referred to the Power Sales Agreement that provides for establishment and maintenance of a repair and replacement fund. He related his understanding that one of the questions is whether AEL&P is providing what the utility is supposed to provide. He surmised that the annual report from AEL&P would outline what funds are set aside for the maintenance and replacement fund, in accordance with industry standards. He inquired as to whether an audit might reveal that the utility is not spending enough or is spending too much for that purpose. He further inquired as to who would make that determination as to whether industry norms were met for replacement or repair.

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SENATOR ELTON answered that the delegation wants to determine whether a review has been conducted in the past 10 years to assess whether the repair and replacement fund is appropriate, how it is capitalized, and the timeframe that it is capitalized. He offered his belief that he is not sure that review has been conducted. Thus, that could be the first question for the auditor. He opined that the benefit of a legislative audit is not to find fault but is to lay out a template and to determine whether the template is appropriate, particularly for the management of \$100 million asset. And, if it is not appropriate, the audit can provide the parties with recommendations made by independent professional auditors, he offered. He related that previously, during his tenure as the executive director of the Alaska Seafood Marketing Institute, that he has been subject to audits. He related that the benefit of those audits was to allow the parties to review their work and to incorporate valuable recommendations for enhancing the agency's mission. He stated that he hoped that would be the result of this legislative audit. He reiterated that any audit suggestions would require both parties to agree to changes to the current agreements.

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REPRESENTATIVE KELLY related his understanding that AIDEA has a board of directors, and the RCA monitors all utilities, and that the legislative legal agency is available to answer any questions the committee may have. He further related his understanding that allegedly someone did not perform adequately. However, he stated he is not certain what the claim entails. He surmised the allegation is that the utility should have had insurance but did not, or should have had a waiver but did not. He inquired as to whether the AIDEA board, the RCA, and the utility customer, as the aggrieved party would be the one first concerned, or AIDEA. He expressed his concern that the committee would "leap into this" without having the utility and AIDEA present to make statements.

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SENATOR ELTON agreed that those are legitimate concerns. However, he said it seemed to him that the Operations & Maintenance Agreement requires either insurance that is maintained by the utility on the assets or a waiver granted by the state if any parts of the assets are uninsurable. He related his understanding that this audit would consist more of a management audit rather than a fiscal audit. He agreed that he did not have the expertise to suggest how large of a repair and replacement fund should be maintained by the utility or what action the RCA should take.

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REPRESENTATIVE KELLY inquired as to whether in the event that the concerns are "dead right" whether the committee is supposed to take some action. He opined that the number of requests for legislative audits seems high. He cautioned members that the Legislative Budget and Audit committee needs to be careful when selecting which audits to request.

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CHAIR SAMUELS inquired as to whether the auditor should make inquiries of the AIDEA board without initially performing a full audit.

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SENATOR ELTON, in response to Representative Hawker, answered that there are two contractual agreements at issue, the Operations & Maintenance Agreement and the Agreement for the Sale and Purchase of Electric Capability of the Snettisham hydroelectric project, with the parties being AEL&P and AIDEA. In further response to Representative Hawker, Senator Elton answered that technically bond covenants finance a portion of the project.

REPRESENTATIVE HAWKER related his understanding that bonds are contractual agreements to repay funds borrowed. He inquired as to whether the questions cover the agreement between AIDEA and the bond covenant agreements, or to agreements between AIDEA & AEL&P, or do issues exist with all three.

SENATOR ELTON, in response to Representative Hawker, answered that the purpose of the audit should be whether the state, as an asset manager, performed according to the two separate governing agreements. He related his understanding that to some extent, the state probably has incurred further obligations through the bond covenants. Thus, the bond covenants should be reviewed. He said that he did not believe that any of the Juneau delegation "is wedded to a full blown audit." However, he said that he thought that the committee would need to take some action to suggest that the auditor make inquiries to determine whether the state has met its obligations under the agreements. He opined that it could be useful for the auditor to make inquiries by telephone, which could also avoid delay and the legislative auditor's time to conduct a full audit. He offered that process could also provide an interim step and allow the AIDEA board time to decide whether an issue exists and if the board needs to take remedial steps to address the issue. While the Juneau delegation asked for a legislative audit, he said he thought that the inquiries could provide an interim step.

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CHAIR SAMUELS offered his assurance that other legislative audits would not be queued ahead of this audit, should the inquiry to AIDEA reveal the need for a full audit.

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MS. DONAHUE pointed out that the audit would not be conducted for about 6 months.

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PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, stated that it would be possible to have conversations with the agency to conduct an informal inquiry and the success will depend on agency willingness. She opined that she could probably provide the committee with preliminary information in 3 to 4 week timeframe. She added that if it appears that it falls under the broader scope of due diligence that the division could recommend specific objectives.

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SENATOR ELTON noted that the delegation has asked AIDEA, as the controlling agency specific questions which have not yet been answered. Secondly, he offered that the purpose for the request is to ensure that the two agreements accurately reflect what should be done since the agreements span the next 30 years.

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CHAIR SAMUELS noted that the audit would be listed first on the Legislative Budget and Audit Committee's next agenda.

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CHAIR SAMUELS announced that the final order of business would be the audit request by Senator Wielechowski - Department of Corrections. He noted the Alaska Correctional Officer's Association (ACOA) provided members with some information. He recalled that the committee asked the legislative auditor to conduct a preliminary analysis of the type and location of medical records maintained by the Department of Corrections (DOC) for inmates who have or may have contracted methicillin-resistant staphylococcus aureus (MRSA). The committee previously reviewed the audit request on ratios, prisoners per square foot, guards per prisoner and that audit is currently in progress.

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MS. DAVIDSON recalled that the committee approved a partial audit. She referred to a memorandum dated May 28, 2008, with her report on DOC medical records. As expected, electronic data is not maintained and testing only happens when an inmate has a rash/sore that is actively draining. The audit process will be to review the medical files for all inmates in a facility in

order to identify which inmates have MRSA. Further, she offered her understanding that the DOC has begun to collect data.

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MS. DAVIDSON, in response to Chair Samuels, answered that the division has sufficient statutory authority to review all records, as necessary.

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CHAIR SAMUELS referred to the memorandum of May 28, 2008, from the legislative auditor. He read, "Based on this very preliminary assessment, the most promising avenue for accumulating information about the incidences of MRSA will be a combination of reviewing inmate medical records, requesting information from the laboratories testing for MRSA and worker's compensation injury reports." He inquired as to whether the committee wishes to expand the audit to accomplish this task.

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SENATOR ELLIS made a motion to expand the legislative audit to review inmate medical records and to request information from the laboratories testing for MRSA and worker's compensation reports in order to determine the extent of inmates infected with MRSA.

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CHAIR SAMUELS explained that based on the legislative auditor's findings captured in the memorandum of May 28, 2008, that the audit should be expanded to identify the levels of MRSA in inmate populations.

MS. DAVIDSON answered that the scope of the audit is clear from the motion. She inquired as to whether it is the committee's expectation that all facilities will be audited or if the committee will be satisfied if only a portion of the facilities will be audited. She offered her understanding that 4 or 5 correctional facilities would be examined to determine any staffing issues and to identify any MRSA infections in order to give an overall sense of the issues.

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, concurred with Ms. Davidson. He noted his willingness to narrow the scope of the legislative audit in order to reduce the auditor's and

committee's time. He related that he has sent a letter to this effect to the Legislative Budget and Audit Committee.

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REPRESENTATIVE CHENAULT inquired as to whether the administration, the auditor, or the Department of Corrections (DOC) would select the facilities that will be audited.

SENATOR WIELECHOWSKI referred to a letter he prepared, dated June 3, 2008, and explained that his letter contains a list of facilities selected to provide a representative view of the whole system while not burdening the legislative auditor or the committee. He stated that with respect to MRSA, he suggests the auditors focus on the Anchorage Correctional Complex, the Wildwood Correctional Complex, Spring Creek Correctional Center, and Anvil Mountain Correctional Center. However, if the committee chose to expand or reduce the number of facilities, he stated that he could agree to that.

CHAIR SAMUELS suggested that the legislative auditor could select the facilities in order to obtain a good cross section of the facilities. He stated he assumed that the facilities would be selected geographically and by size. However, he deferred to the legislative auditor to decide.

MS. DAVIDSON agreed. She noted that it is important that the committee recognize that each correctional facility will not be audited. However, she assured the committee that the results will be representative of the facilities that are specifically audited. She agreed that the cross section would cover maximum and minimum security facilities, smaller and larger facilities, and geographic dispersion.

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SENATOR FRENCH, Alaska State Legislature, asked that the Anchorage Correctional Complex be included since that facility is unique in that it is a high volume, highly crowded facility, with many inmates moving in and out of the facility. Thus, it is a good place to focus on due to the volume of its inmates.

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REPRESENTATIVE CHENAULT expressed his concern that it is important for the committee to have a good cross section of facilities to audit.

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CHAIR SAMUELS recapped that the legislative audit would contain a representative cross section of correctional facilities.

MS. DAVIDSON, in response to Chair Samuels, answered that the auditors will attempt to go back to examine a two year timeframe of MRSA cases to the extent that it is possible to do so. She offered that the correctional facilities are now beginning to track the MRSA cases.

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REPRESENTATIVE HAWKER referred to the auditor's methods for approaching the sampling and testing. He pointed out that Ms. Davidson indicated that one critical element is to request information from the laboratories that test for MRSA for the state, with primarily one private laboratory performing the testing. He stressed his desire that if the preliminary results implied that a facility needed to be incorporated into the audit, that the auditors would incorporate and expand the audit to include the facility into the process.

MS. DAVIDSON related the audit process. She stated that she anticipates that the auditors will initially select facilities and will request the DOC commissioner send a letter to the laboratory to obtain all results. The auditors will identify and match results to the inmates of a particular facility. She highlighted that if a problem is identified in the process of examining the laboratory results that warrants further work, that the auditor will follow up with the facility and will conduct additional review.

REPRESENTATIVE HAWKER expressed his interest in obtaining an independent result from the laboratories. He inquired as to whether the auditor would receive information from the commissioner or would obtain independent confirmation from lab in order to have the assurance that the audit is complete and accurate. He expressed concern that the auditor might receive unverified information from the department.

MS. DAVIDSON explained her understanding that while the department would send a letter of request to the private laboratory, the laboratory would provide the legislative auditor the information and would not respond to the department information to pass on to the auditor. The DOC's letter would

accompany the legislative audit request since the auditor does not have any contractual relationship with the laboratory. Thus, the letter helps ensure that the laboratory will comply with the request for information. She further pointed out that the agency does not expect 100 percent cooperation. First, the division may have trouble finding all of the facilities that test for MRSA, she noted. Secondly, some possible cases of MRSA may already have been treated so the auditors currently anticipate some trouble with completion. She offered her view that the auditors will need to take an abundance of approaches ranging from reviewing medical records, following up with private laboratories, and reviewing financial records of facilities in order to identify any additional laboratories that may have been used for testing for MRSA.

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REPRESENTATIVE HAWKER agreed to the approach so long as the auditor obtains information independent from the department. He also noted that the non-reported and non-tested sampling would be a separate sampling and selection process.

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CHAIR SAMUELS reiterated his understanding of Senator Ellis's motion. He stated that Senator Ellis made a motion that the Legislative Budget and Audit Committee expand the legislative audit of the Department of Corrections to include the MRSA issue, using the parameters set out in last paragraph in the memorandum from Pat Davidson, Legislative Auditor, dated May 28, 2008, which will consist of a combination of reviewing inmate medical records, requesting information from the laboratories that test for MRSA, and reviewing worker's compensation injury reports. He noted that the auditor will examine a cross section of facilities by including the Anchorage Correctional Complex and facilities differentiated by geographical location and degree of security.

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REPRESENTATIVE KELLY offered his understanding that the MRSA issue would be added to the issue of per square foot ratio of staffing per correctional officer discussed at the last committee hearing.

MS. DAVIDSON related her understanding, that the audit report will include an evaluation of whether the ratio of staffing is

adequate using criteria obtained from national standards or from expert consultants. She stressed that the scope of the audit is more than just determining the ratios and is really an evaluation of the adequacy of staffing at the correctional facilities.

CHAIR SAMUELS asked if there was any objection. There being no objection, the motion passed.

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ADJOURNMENT

There being no further business before the committee, the Legislative Budget and Audit Committee meeting was adjourned at 6:31 p.m.