

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

Anchorage, Alaska

May 14, 2008

9:33 a.m.

MEMBERS PRESENT

Representative Ralph Samuels, Chair
Senator Lyman Hoffman, Vice Chair
Representative Mike Hawker
Representative Mike Kelly
Representative Mike Doogan
Senator Johnny Ellis
Senator Lyda Green
Senator Bert Stedman (via teleconference)
Senator Gene Therriault
Senator Charlie Huggins (alternate)

MEMBERS ABSENT

Representative Mike Chenault
Representative Reggie Joule (alternate)
Representative Kevin Meyer (alternate)

COMMITTEE CALENDAR

APPROVAL OF MINUTES
AUDIT REQUESTS
EXECUTIVE SESSION
RELEASE OF AUDITS
OTHER COMMITTEE BUSINESS

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

SENATOR BILL WIELECHOWSKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the audit request regarding the Department of Corrections.

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 the Department of Corrections.

ACTION NARRATIVE

CHAIR RALPH SAMUELS called the Legislative Budget and Audit Committee meeting to order at [9:33:57 AM](#). Representatives Doogan, Hawker, Kelly, and Samuels, and Senators Hoffman, Stedman (via teleconference), Ellis, and Green were present at the call to order. Senators Therriault and Huggins (alternate) arrived as the meeting was in progress.

APPROVAL OF MINUTES

[9:34:57 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 April 11, 2008. There being no objection, the minutes from the meeting of April 11, 2008, were approved.

AUDIT REQUESTS

[9:35:14 AM](#)

CHAIR SAMUELS announced that the next order of business would be the audit request regarding the Department of Corrections (DOC).

[9:35:50 AM](#)

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, said that although there have been a number of claims made by correctional officers regarding the condition of Alaska's prison system, the commissioner of the Department of Corrections (DOC) has denied allegations of overcrowding, of inadequate levels of staffing, and that a contagious infection called methicillin-resistant Staphylococcus aureus (MRSA) is threatening the health of both prisoners and guards - and their families. Senator Wielechowski relayed that the commissioner has stated that he is looking forward to an audit so as to be able to show that there aren't any problems, and that the governor has stated that if an audit shows that there are problems, they will be addressed. Correctional officers have also said that they look forward to

an audit. Therefore, he surmised, the prudent thing to do would be to conduct an audit of the DOC.

CHAIR SAMUELS - referring to the audit request, specifically the questions outlined in item number 5 - asked whether the disciplinary records of correctional officers or other employees are available to the public, and what problems will be created by making such records public.

SENATOR WIELECHOWSKI offered his belief that if correctional officers have been disciplined for speaking publicly about [the spread of MRSA], then the legislature has a right to know about it and should look into it. He posited that an investigation into the matter can be done in a confidential manner. He said he's received e-mail from "a commissioner" who's said he/she was reprimanded for speaking publicly about MRSA outbreaks in the prison system.

[9:39:16 AM](#)

PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, in response to a question, explained that the existing authority granted the division would allow an auditor to look at such records, and so there shouldn't be a problem with evaluating them. And although caution must be taken when providing information in a public report, typically the information is aggregated so that confidential information is not disclosed. In response to further questions, she said she has had an opportunity to review the audit request; that a lot of the audit effort will be focused on the issue of adequate correctional officer staffing; that it's been a number of years since the division has looked at DOC staffing issues - the last time was when Spring Creek Correctional Center was opening up, and a consultant was hired to work with the auditors to determine what the staffing requirements would be for that facility; and that determining adequate staffing levels does not involve just considering a simple ratio of inmates to staff because other issues also have to be taken into account such as the configuration of the facility, the security status of the inmates, and staff turnover and absenteeism.

MS. DAVIDSON explained that from an audit-process perspective, the questions in item number 4 of the audit request - particularly the question about whether there are known instances of correctional officers, their families, or the general public contracting MRSA from inmates - could be problematic because the medical records of correctional

officers, their families, or the general public are not available to the division, and therefore determining a causal relationship between MRSA outbreaks in the inmate population and MRSA outbreaks among staff, their families, and the general public could also be problematic. The division will attempt to investigate that issue and provide the committee with an analysis, however.

CHAIR SAMUELS asked whether it would be possible to compare the number of reported instances of MRSA in Alaska's facilities with the number of reported instances in other correctional facilities such as those in Arizona.

[9:44:47 AM](#)

MS. DAVIDSON relayed that when she'd first seen the audit request, she'd asked the State epidemiologist whether MRSA is a mandatory reportable condition, and the answer at that time was that it is not - though the [Section of Epidemiology] is available, along with the Centers for Disease Control and Prevention (CDC), to assist when there is an outbreak in a community - and thus there will be difficulties in gathering a lot of information about MRSA outbreaks in Alaska's prison system, though she expects that any given prison facility will, internally, have kept records of outbreaks.

[9:46:22 AM](#)

SENATOR THERRIAULT - referring to some of the questions outlined in item 1 of the audit request - said it seems like the answers to those questions would be readily available from the department, and thus there might not be a need to take up the auditor's time researching those issues. Senator Therriault asked Senator Wielechowski whether he'd attempted to get some of his questions answered directly by the DOC.

SENATOR WIELECHOWSKI said when he'd initially contacted the DOC, he didn't receive a response, and so after waiting several days he'd filed the audit request, after which he did receive a response from the DOC, but he felt that it didn't really answer the questions he'd posed. He opined that the issue of how much the inmate population has increased or decreased is relevant to understanding whether the staffing levels are adequate. With regard to the issue of MRSA outbreaks, he said he's been hearing very different reports "from both sides." Constituents of his who are correctional officers have told him that there are hundreds of inmates who have MRSA, and that there are

correctional officers and their families who have contracted MRSA. He said: "So I think this is a public safety issue, this is a public health issue. I just want to get to the bottom if it - it's not a head-hunting mission, by any means." He remarked that he just wants to find out whether there is a public safety issue arising for correctional officers, their families, and Alaskans in general that needs to be addressed.

SENATOR THERRIAULT expressed a preference for ensuring that the questions the auditor is researching the answers to are shaped correctly, and for having the division help acquire information informally rather than via a full-blown audit so as to not use up resources. He asked Ms. Davidson to comment on whether some of the questions in the audit request can be researched informally, thus allowing that information be made available more quickly.

9:49:50 AM

MS. DAVIDSON said that from an audit perspective, some of the information being sought could be obtained early on, but more information will still be needed in order to do an overall evaluation and to conduct the audit, because simply looking at the number of inmates, the number of correctional officers, and changes in the inmate population won't really give the entire picture in terms of staffing issues. That other information is not in any way superfluous to the main question of adequate staffing.

9:50:55 AM

SENATOR GREEN opined that issues regarding the DOC's recent reclassification of what constitutes overcrowding, how [overcrowding] relates to [MRSA outbreaks], and how the department has increased the number of inmates allowed for any given amount of floor space and for any given number of staff are all just as important as the question of whether the inmate population has increased. She offered her belief that the aforementioned, and what she characterized as arbitrary, reclassification has very much exacerbated problems.

SENATOR WIELECHOWSKI concurred, and noted that one of the questions in item number 3 of his audit request pertains to whether the DOC has reduced the minimum level of floor staffing at its facilities.

SENATOR GREEN opined that the number of inmates now allowed per square foot in any given facility, in comparison to the number of inmates allowed over two years ago prior to the reclassification, and how that increased number can now be acceptable when it wasn't before is also an important issue to address.

SENATOR WIELECHOWSKI mentioned that he is open to suggestions of a better way to acquire the information he's requesting. He offered his understanding that the Senate Judiciary Standing Committee will be having hearings on this issue, and that the House finance subcommittee for the DOC is also interested in having a hearing. He'd indicated that he'd requested an audit simply because it seemed that an audit was the best way to get moving on this issue but, again, he is open to other suggestions. He said he agrees with Senator Green that reclassification is an important issue to address in order to make a viable comparison, and acknowledged that Senator Green, via the Legislative Budget and Audit Committee, has already been attempting to get some answers on the issues of staffing levels and prison overcrowding. Obtaining an accurate comparison with regard to staffing is the real issue for him, because that is a safety issue, as is the issue of MRSA, he added.

SENATOR WIELECHOWSKI, on the issue of MRSA, said that what he's heard from the DOC is that it doesn't keep track of instances of MRSA and that it isn't a big problem, but he's also heard from correctional officers that there are hundreds of people that have been infected with MRSA. One correctional officer, he relayed, has suggested that the legislature should look at the number of inmates who are being treated with the drug that helps cure instances of MRSA.

[9:55:10 AM](#)

SENATOR GREEN surmised that Senator Hoffman would agree with her that a lot of the current issues would have been resolved if the legislation passed five years ago had actually been enacted thus resulting in more prison space and additional beds; this would have taken much of the pressure off the system. She expressed interest, therefore, in also obtaining, via the audit, information regarding why there has been a delay in the building of prisons and why "there's been stonewalling on that for the last couple of years." This delay has been very discouraging and has not allowed the legislature to make any improvements to the prison system.

REPRESENTATIVE HAWKER concurred, but posited that it takes time to do a proper audit, whereas the issues being raised "have much more of an urgency" about them. He offered his understanding that the Division of Legislative Audit is not really an investigative arm of the legislature; "we typically attempt to establish a body of testimony where we raise the questions [and] ... refine the questions that we then send the auditor out to [investigate]." A series of structured committee hearings - either via the House finance subcommittee for the DOC or the Senate Judiciary Standing Committee - he opined, would be the proper route to take; "get the [DOC] ... out there, put them on the record answering each of these questions," and then, if there are DOC employees who are unwilling to testify for fear of retribution, that too could be put on the record, and then the auditor could be used to further investigate certain issues while maintaining confidentiality.

REPRESENTATIVE HAWKER surmised that by going that route, if the DOC takes punitive actions against someone who testified before the legislature, there will be a clear record of that which could then be used in any forthcoming grievance proceedings. He mentioned that he's chair of the House finance subcommittee for the DOC, and that during those subcommittee hearings no one seemed to care about the questions that are now again being raised. One issue that should be addressed on the record is the current administration's approach to managing the inmate population; the whole focus has been about putting more people in the existing space in Alaska and backing away from prior commitments to expand the use of out-of-state facilities. There have also been allegations, he added, that the DOC has relaxed its release standards, thus putting inmates back into the community in halfway houses and making use of electronic monitoring (EM). He surmised that having the Senate Judiciary Standing Committee investigate some of these issues, and then having the Legislative Budget and Audit Committee address any remaining points, via use of the auditors, would be the best way to go. He also suggested asking the [Section of Epidemiology] to address the public health issues raised in the audit request.

[10:01:32 AM](#)

CHAIR SAMUELS surmised that the two aspects of the audit request are the health issues and the ratios. With regard to the inmate:staff ratio, he observed that one wouldn't want to simply pose questions only to the DOC or only to the correctional officers because one side will just say staff levels are adequate and the other side will say they aren't; therefore, if

one wants an independent view of what national ratios are, then that would be a good use of the Division of Legislative Audit's time. He asked how fast the requested audit could be finished, and how much could be done via the committee or subcommittee hearing process - as opposed to the auditor spending time addressing all the questions raised. He again acknowledged that if the DOC and the correctional officers simply argue back and forth during any forthcoming committee/subcommittee process, then perhaps it would be better to have a third party - the auditor - provide some answers with regard to ratios.

MS. DAVIDSON estimated that if the audit request is approved and then placed in the queue, it would be six months before the audit is started and then it would take two to three months to complete. However, before the audit is started, either the audit requestor or the Legislative Budget and Audit Committee could refine the audit request. So one avenue the committee could consider taking would be to approve the audit request as is and then later, if - via subsequent Senate Judiciary Standing Committee hearings or House finance subcommittee hearings - it is found that some of the questions don't need to be asked or that some of the questions could be refined or that additional questions need to be asked, then the audit request could be modified before the audit team starts on it.

[10:05:08 AM](#)

CHAIR SAMUELS, in response to a question, surmised that the DOC audit request would be addressed prior to any future audit requests.

SENATOR THERRIAULT concurred that the committee would not be able to approve another audit until the next meeting. By that time, he said, the Senate Judiciary Committee will have met and, possibly, will have refined some of the questions or uncovered other issues that should be examined. He pointed out, also, that even if the Legislative Budget and Audit Committee didn't approve Senator Wielechowski's audit request at this time but instead waited until its next meeting, that audit request would still be the next one to go into the Division of Legislative Audit's queue.

[10:06:42 AM](#)

REPRESENTATIVE KELLY asked how many grievances have been filed wherein it was later determined that someone who spoke out against the department was disciplined inappropriately.

SENATOR WIELECHOWSKI said he doesn't know, but noted that he had heard that at least one person who spoke out that he/she had MRSA and had given it to a family member was "given a suspension for speaking to the public on it."

REPRESENTATIVE KELLY characterized everything he has heard thus far as hearsay, and remarked, "The only thing more powerful than the oil lobby is probably the big labor lobby." Representative Kelly mentioned the term, "witch hunts," and said he does not want to do the wrong thing based on hearsay, and cautioned the committee to be careful that it is not being used inappropriately. He said he supports the idea of waiting to see what any aforementioned committee/subcommittee hearings produce before approving the audit request, and indicated that he does not think the committee should approve the audit request today.

CHAIR SAMUELS assured members that if the committee sets the audit request aside today, that audit request would be addressed prior to any other forthcoming audit request. He asked, "Where is the new prison?" He said he has philosophical questions regarding the implementation of the programs in the prisons and recidivism rates. He said the State spends an incredible amount of the auditor's time with a thorough, in-depth recidivism study, and thus he hopes the administration considers that report when considering whether to implement new programs. He encouraged support of programs that work, and discouraged expenditures on those programs that do not work.

[10:11:06 AM](#)

SENATOR HUGGINS questioned why the committee wouldn't go forward with the audit request and then simply refine the audit request later if that seems appropriate. He opined that there's no merit to delaying the action on this issue.

[10:12:28 AM](#)

SENATOR ELLIS said he agrees with Senator Huggins that there is no reason not to follow the auditor's advice with regard to approving the audit today, letting the Senate Judiciary Standing Committee work through some of the issues, and then refining the audit request. He said it is the burden of the committee to provide the resources to address pressing issues in a timely manner through the audit process. He opined that it would be wrong to send the signal to the public that the committee is delaying its study of these public health issues, particularly

given that it is in the power of the committee to make a decision today that meets the needs of all the members of the committee.

SENATOR THERRIAULT reasserted that if the committee were to wait for the Senate Judiciary Standing Committee, it would not "delay the end product at all." He said the findings of that committee may substantially change the questions that are asked, and noted that that meeting will probably be held [within two weeks].

[10:15:48 AM](#)

REPRESENTATIVE HAWKER concurred with Senator Therriault, but said he would like to find a way to accommodate all members of the committee. He said there is merit in dealing with the issue in the current moment, but there is also merit in "knowing what we're asking for before we ask for it." He suggested that the committee move to undertake an audit addressing certain aspects related to the Department of Corrections, with the scope to be determined at the committee's next meeting after investigatory hearings have been held by other committees of the legislature.

CHAIR SAMUELS suggested scaling back the focus of the audit to just the ratios relating to national standards for square footage in correctional facilities across the country. He opined that the discipline records are not an issue, and although the questions related to MRSA could be refined a little more, the crux of the issue from a policy level is related to the ratios.

[10:18:28 AM](#)

REPRESENTATIVE KELLY agreed that issue of ratios is critical, and indicated that he would like the committee to send the signal that it is not the "police dog" for union management.

CHAIR SAMUELS concurred.

[10:20:01 AM](#)

SENATOR HOFFMAN noted his agreement with Senator Green. He expressed a preference for taking action on the audit request today, and then modifying it later if that proves necessary.

CHAIR SAMUELS suggested Representative Hawker, as chair of the House Finance Subcommittee on Corrections, would be able to outline what the legislature told the DOC to do with funding a

short time ago, and what the DOC is currently doing with it. He discussed contacting Representative Ramras and Senator French regarding participation from both the House and Senate Judiciary Standing Committees.

CHAIR SAMUELS, referring to item number 2 relating to ratios regarding prisoners, recommended that a motion be made to agree with the audit request, but solely limited at this time to item number 2, while sending a message about the committee's other concerns. He reiterated his concurrence with Representative Kelly that it is not the role of the committee to pick a side in a labor dispute.

SENATOR GREEN remarked that item number 2 leads to item number 3, and questioned whether the two items [should be addressed together].

SENATOR HOFFMAN indicated agreement with that concept, and mentioned that item number 4 - regarding health issues - is of concern as well.

SENATOR HUGGINS said he thinks it is mandatory to include item number 4.

CHAIR SAMUELS opined that the committee could refine exactly what it wants the auditor to do before the next meeting, and suggested that at least the committee could move forward with the audit request as it pertains to item numbers 2 and 3.

[10:25:11 AM](#)

SENATOR WIELECHOWSKI, in response to Senator Hoffman, opined that item number 4 is one of the questions that should be tackled immediately, as it goes to the public health issue.

SENATOR HOFFMAN agreed, adding that it could be modified or eliminated later. By including item number 4 in the audit request, the legislature is sending a message that it's concerned about the health issue, and therefore it should be included in the audit request at this time.

REPRESENTATIVE KELLY asked whether there is any actual evidence of MRSA outbreaks, or indications that health officials are concerned about MRSA outbreaks in Alaska's prisons.

SENATOR WIELECHOWSKI again relayed that his constituents and correctional officers have relayed that there are hundreds of

cases of MRSA in the prison system. To address the labor/management issue, Senator Wielechowski emphasized that when 96 percent of labor votes no confidence for management, it indicates a serious problem. Further support of the [no confidence vote] was provided when the former DOC commissioner called for the resignation of the current commissioner. Therefore, he opined that this isn't a labor/management issue, but rather a public safety and health issue. With regard to the MRSA issue, he said that in addition to hearing from a correctional officer that there was at least one case in which a correctional officer died from MRSA, he has heard directly from correctional officers who have contracted MRSA.

REPRESENTATIVE KELLY clarified that his point is that the [committee] not proceed too far merely on the basis of hearsay, but instead move forward based only on the reality of the situation and evidence. He highlighted that there is a grievance process between the union and management.

[10:29:03 AM](#)

REPRESENTATIVE HAWKER again opined that the MRSA issue rises to a level of urgency, and offered his understanding that Ms. Davidson has relayed that there will be some significant challenges with regard to the confidentiality of medical records as related to item number 4. He surmised that the desire is merely to get something in the queue that places the department on notice that the audit is headed toward a specific path and that further investigatory committee hearings will flesh out the exact scope. Representative Hawker further clarified that his point is that the Legislative Budget and Audit Committee is not capable of acting/reacting with sufficient urgency to deal with the MRSA issue as is merited.

SENATOR GREEN suggested that perhaps item number 4 could be narrowed to only focus on the following questions:

At each of the state's major correctional facilities, how many inmates have been infected with MRSA in the past three years?

Is MRSA on the rise?

Does the Department track the incidence of these infections in prisoners and employees?

SENATOR GREEN acknowledged that doing so would allow some initial information to be gathered while still allowing further questions to be added later.

[10:31:23 AM](#)

CHAIR SAMUELS asked if it would be possible to track how many times the drug [used to treat MRSA] has been distributed to inmates.

MS. DAVIDSON said that at this point she doesn't yet know what sort of records the DOC maintains, and therefore she is unable to answer that question, but acknowledged that one possible way to track instances of MRSA would be to track use of the drugs used [to treat MRSA]. In further response to Chair Samuels, Ms. Davidson suggested that between now and the first week of June she could talk with the DOC and relay any forthcoming information to the committee, though she wouldn't be able to provide an independent verification of what the DOC tells her.

SENATOR THERRIAULT expressed a preference for first refining what information it would like to have Ms. Davidson to gather and having the chair place the issue of approving the audit request on the agenda for the next committee meeting.

CHAIR SAMUELS surmised, however, that if first the questions of whether the DOC tracks the incidences of MRSA infections and whether it is possible to do so are answered, then the committee would know whether subsequent questions about MRSA could be addressed by the auditor or whether it would require contracting the task out to someone else.

[10:36:22 AM](#)

MS. DAVIDSON said that she, with the cooperation of the DOC, could investigate what documentation is currently available and whether [the incidence of MRSA infections] are tracked, and if it turns out that such incidents aren't tracked, then the committee could ask the DOC to start doing so.

CHAIR SAMUELS emphasized that he doesn't want to ask the Division of Legislative Audit to do something on the MRSA issue that it can't do. He opined that the first step is to find out what the division can do.

[10:37:59 AM](#)

SENATOR GREEN surmised that some of the initial questions Ms. Davidson should ask the DOC is whether it has a protocol

established for responding to incidences of MRSA, and, if so, what is that protocol.

10:38:30 AM

REPRESENTATIVE HAWKER made a motion that the committee authorize the audit request regarding the Department of Corrections, as outlined in Senator Wielechowski's letter dated April 29, 2008, with the audit request being limited to item numbers 2 and 3. He then relayed his understanding that Chair Samuels will direct the legislative auditor to provide more information regarding the contemplated scope of item number 4 at the next meeting. There being no objection, the motion passed.

CHAIR SAMUELS clarified then that the committee wants to know what the auditor can do on this issue and whether there's tracking or not of MRSA. He again indicated that he would be speaking with Senator French and Representative Ramras regarding the possibility of having the House and Senate Judiciary Standing Committees meet to address the issues raised by the audit request.

EXECUTIVE SESSION

10:39:53 AM

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 10:40 a.m.

CHAIR SAMUELS brought the committee back to order at 12:09 p.m.

RELEASE OF AUDITS

12:09:31 PM

REPRESENTATIVE HAWKER made a motion for the final audit reports for the special report on the Department of Natural Resources (DNR), Division of Agriculture, Agricultural Revolving Loan Fund, Matanuska Maid, Part 1; and the special report on the Department of Environmental Conservation (DEC), Division of Spill Prevention & Response, Oil and Hazardous Substance Release Prevention and Response Fund to be released to the public. There being no objection, the motion passed.

12:10:18 PM

REPRESENTATIVE HAWKER made a motion for the preliminary audit of the review of the Department of Health and Social Services (DHSS), statutory rape, to be released to the appropriate agency for response. There being no objection, the motion passed.

OTHER COMMITTEE BUSINESS

12:10:36 PM

REPRESENTATIVE HAWKER made a motion that the Steven B. Porter contract be amended for an amount not to exceed \$300,000. There being no objection, the motion passed.

REPRESENTATIVE HAWKER made a motion that the Econ One Research, Inc., contract be amended for an amount not to exceed \$300,000. There being no objection, the motion passed.

12:11:00 PM

CHAIR SAMUELS relayed that committee members would be provided with an update regarding all contracts.

ADJOURNMENT

There being no further business before the committee, the Legislative Budget and Audit Committee meeting was adjourned at 12:11 p.m.