

HOUSE FINANCE COMMITTEE
March 27, 2009
1:40 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:40 p.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Vice-Chair
Representative Allan Austerman
Representative Harry Crawford
Representative Anna Fairclough
Representative Richard Foster
Representative Les Gara
Representative Reggie Joule
Representative Mike Kelly
Representative Woodie Salmon

MEMBERS ABSENT

None

ALSO PRESENT

Patrick Gamble, President & CEO, Alaska Railroad Corporation; Bill O'Leary, Chief Financial Officer, Alaska Railroad Corporation; Representative John Coghill, Sponsor; William Hogan, Commissioner, Department of Health and Social Services; Mike Lesmann, Community Relations Manager & Legislative Contact, Office of Children's Services, Department of Health and Social Services; Representative Cathy Munoz, Sponsor; Vern Jones, Chief Procurement Officer, Department of Administration; Larry Persily, Staff, Co-Chair Mike Hawker; Dan Spencer, Director, Division of Administrative Services, Department of Public Safety; Jo Ellen Hanrahan, Senior Policy Analyst, Office of Management and Budget, Office of the Governor; Alison Elgee, Assistant Commissioner, Finance and Management Services, Department of Health and Social Services; Guy Bell, Assistant Commissioner, Department of Labor and Workforce Development; Tom Nelson, Director, Employment Security Division, Department of Labor and Workforce Development.

PRESENT VIA TELECONFERENCE

Craig Tillery, Deputy Attorney General, Department of Law; Jeff Jessee, Chief Executive Officer, Alaska Mental Health

Trust Authority; Harry Noah, Executive Director, Alaska Mental Health Trust Land Office; Dan Fauske, CEO/Executive Director, Alaska Housing Finance Corporation, Department of Revenue; Robert M. Pickett, Chairman, Regulatory Commission of Alaska; Bob Stoller, Attorney, Regulatory Commission of Alaska, Anchorage; Bryan Butcher, Director, Government Affairs and Public Relations, Alaska Housing Finance Corporation, Department Of Revenue.

SUMMARY

HB 127 ALASKA RAILROAD BUDGET

HB 127 was HEARD and placed in a subcommittee consisting of Representative Stoltze as chair, and Representative Fairclough, Representative Joule, Representative Gara, Representative Foster, and Representative Kelly.

HB 35 NOTICE & CONSENT FOR MINOR'S ABORTION

CSHB (FIN) 35 was REPORTED out of Committee with no recommendations and two previously published fiscal notes: FN1 (LAW), FN2 (HSS).

HB 161 JUNEAU SUBPORT BLDG/AHFC BLDG

HB 161 was HEARD and HELD in Committee for further consideration.

HB 199 APPROPS: NON-TRANSPORTATION STIMULUS

HB 199 was HEARD and HELD in Committee for further consideration.

#hb127

HOUSE BILL NO. 127

"An Act providing that the Alaska Railroad Corporation is subject to the Executive Budget Act and providing that expenditures of the Alaska Railroad Corporation are subject to appropriation; and providing for an effective date."

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Co-Chair Stoltze presented an overview of the day's bills.

PATRICK GAMBLE, PRESIDENT & CEO, ALASKA RAILROAD CORPORATION, stressed the significance of the bill and provided history leading up to the state assuming operation of the railroad. The Alaska Railroad Corporation Act of 1985 provided guidance for the innovative relationship between the state and the railroad, including a management board.

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Mr. Gamble detailed the goal of making the corporation financially sustainable. The corporation had to be able to make enough money to turn revenues into capital projects that would benefit the state, especially connecting the Railbelt. The corporation was formed in 1985 and reviewed by the legislature in 1997. He saw the purpose of the current meeting as a review of conditions to determine the viability of the original model.

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Mr. Gamble presented the committee with a document summarizing the railroad's performance (copy on file). He suggested that consultants and lawyers could study and rewrite the 1985 act if the legislature believes the budget act requires a deeper review. He referred to the corporation's 14 percent combined annual growth rate over the 24-year period.

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Co-Chair Stoltze agreed that the policy issue was important and referred to active debates and criticisms of the corporation. He thought there was foundational support for state government having oversight of and responsibility for the railroad. He referred to earlier concerns.

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Representative Gara questioned the ramifications of putting the railroad under the executive budget act.

Co-Chair Stoltze thought there would be differences of opinion. His intent was to have little or no day-to-day oversight of operations. He referred to initial fears that have not been realized and did not think the changes would be significant.

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Representative Gara asked if the railroad corporation would submit a budget like other agencies and queried how the budget process works currently. Mr. Gamble replied that the budget goes through the board of directors.

Representative Gara questioned language on page 2 related to the concurrence of the governor.

BILL O'LEARY, CHIEF FINANCIAL OFFICER, ALASKA RAILROAD CORPORATION, clarified that current language states that the corporation may request an appropriation from the

legislature; the change would require it to request appropriations.

Representative Gara asked if the corporation receives state money outside of the capital budget. Mr. O'Leary responded that the corporation has not received state funds. Mr. Gamble added that the corporate act provided for the corporation going to the legislature for funding if it could not pay its own way.

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Representative Austerman queried the corporation's plans regarding the legislation. Co-Chair Stoltze stated that subcommittee hearings would be needed and did not think the legislation would move through quickly. He hoped for meaningful input from the corporation regarding the changes.

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Representative Gara referred to concerns he had with the railroad corporation and reviewed past legal cases against the railroad. He questioned high management salaries and a sense of an insider club, and stated concerns about the corporation's status as a "quasi state agency." He thought the corporation acted either as a state agency or a private company depending on its own interests. He asked if the state currently reviewed management salaries.

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Mr. Gamble replied that his salary is the only one that is public information, so he could provide only statistical information and not information about the salaries of individuals. He would be able to compare corporation salaries with those in the Lower 48.

Representative Gara reiterated historic concerns related to management salaries. Mr. Gamble thought that the issue had changed since the railroad had downsized in recent years. Individual actions must go through him. He speculated that illegal actions may have taken place at one time. He now has three lawyers and a human resource person overseeing personnel actions.

Mr. Gamble commented on remarks that the corporation acted sometimes as a state agency and sometimes as a private one, opining that the flexibility to do so was part of the genius of the Alaska Railroad Corporation Act, and has brought millions of federal dollars into the state. He believed the ability to operate both ways was an advantage. He commented that the tax code is unique in the U.S.

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Representative Gara wanted assurance that railroad property would be public property. Mr. Gamble acknowledged the right to protest on railroad property as long as individuals are not standing in the right-of-way.

Representative Crawford questioned how workers would be treated if the railroad came under the federal system, especially related to retirement contributions.

Co-Chair Stoltze stated that the intent was to have employee status remain the same.

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Mr. Gamble agreed and recommended the issue be examined closely, as it is complex. In general, anything involving hiring, wages, or benefits could be affected by outside control and employees will be concerned. He wanted to protect benefits. He referred to a letter in the committee packet from a long-time labor representative on the board (copy on file). He wanted human resources issues to be carefully vetted. He referred to a two-year gap in the corporation's formation process during which some rights were lost and emphasized his desire to make sure that would not happen again.

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Representative Gara stated an affinity for railroad rank-and-file workers, and discussed salary requests that were denied because the corporation claimed to be financially stressed. He wanted the committee to review management salaries and bonuses over the past three years and asked if the figures could be seen if the names of the individuals were deleted. Mr. Gamble replied that he needed to ask his lawyers; he did not have a problem with the request. He thought statistical information compared with other statistical information might be possible.

Representative Gara wanted the information by position. Mr. Gamble pointed out that management salaries were currently frozen. To address revenue loss, there was a hiring freeze in 2007, positions were reduced in 2008, and a management salary freeze was implemented in 2009.

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Representative Foster liked way the railroad was being run and questioned the time being spent on the legislation.

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Representative Kelly asked if there were a list of problems with the railroad.

Co-Chair Stoltze did not want a list of grievances. He believed the legislation dealt with long-term institutional questions and policy issues.

Representative Kelly queried the number of unresolved labor grievances. Mr. Gamble offered to get the information. He thought the number was a high average.

Representative Kelly asked about dividends. Mr. Gamble replied that the issue has come up, although not recently.

Representative Kelly asked about the quality of the current board. Mr. Gamble spoke positively of the board.

Representative Kelly asked if the corporation's unfunded liability was included in the state's unfunded liability. Mr. Gamble responded that the corporation's entitlements, such as retirement and post-retirement medical are paid for out of earnings and not out of the Public Employee Retirement System (PERS). The entitlements went down with the economic downturn; there is currently 80 percent funding for retirement.

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Representative Kelly queried the sunset date.

Representative Fairclough volunteered to be on the subcommittee. She relayed that her constituents have had problems with the railroad. She mentioned conflict with the port in Anchorage. Constituents have also expressed concern regarding rail straightening.

Co-Chair Stoltze emphasized that the broader policy issue is related to budget concerns. He acknowledged the existence of many complaints related to the railroad, but did not think it would be productive to bring them before committee. He appointed the subcommittee with himself, Represented Joule, Representative Fairclough, Representative Gara, Representative Foster, and Representative Kelly. He invited the public to call his office with comment.

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HB 127 was HEARD and placed in a subcommittee consisting of Representative Stoltze as chair, and with Representative Fairclough, Representative Joule, Representative Gara, Representative Foster, and Representative Kelly.

#hb35

HOUSE BILL NO. 35

"An Act relating to notice and consent for a minor's abortion; relating to penalties for performing an abortion; relating to a judicial bypass procedure for an abortion; relating to coercion of a minor to have an abortion; relating to reporting of abortions performed on minors; amending Rule 220, Alaska Rules of Appellate Procedure, and Rule 20, Alaska Probate Rules, relating to judicial bypass for an abortion; and providing for an effective date."

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REPRESENTATIVE JOHN COGHILL, SPONSOR, provided history of the legislation and spoke to anticipated amendments.

Representative Gara referred to a request from the Department of Health and Social Services (DHSS) regarding the issue of consent from foster parents and guardians.

Co-Chair Stoltze asked whether Commissioner William Hogan had designated someone to answer the question. Representative Coghill did not know the answer. He had questions regarding how many young teens under foster care have sought abortions.

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Representative Austerman queried the version of the bill before the committee. Representative Coghill replied that he had introduced version A as the version that had been significantly amended in committees during the previous legislature. He stated that the version was a compromise for him.

Co-Chair Stoltze clarified that a previous committee had not amended the bill.

Representative Foster reported that his rural district was 83 percent Native and that they valued human life. He referred to historic high fatality rates and how those affected child rearing in the present. He did not think there was an issue with abortion in the past and noted that getting an abortion in the present requires traveling long distances at high expense. He thought the bill pertained more to people in urban areas.

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Co-Chair Stoltze brought up the issue of amendments.

Representative Gara told the committee that he was open to feedback and that he did not plan to introduce all the amendments. He did not believe a fiscal note from DHSS would

change the mind of committee. He referenced statements during the previous legislature regarding accurate fiscal notes, and requested one from DHSS before introducing amendments to the bill.

Co-Chair Stoltze replied that DHSS had been asked for the fiscal note and could not explain why it was not there.

Representative Coghill added that information was needed regarding how many female foster care teens would be in state custody and how many have chosen to elect for an abortion. He pointed out that there are no rules or restrictions at present related to foster care teens who seek an abortion, so the state cannot know the numbers.

Co-Chair Stoltze felt that the question was legitimate. Representative Coghill stated that he was open for discussion but that time is running out.

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Representative Fairclough requested additional information regarding previous testimony by Dr. Whitefield, specifically the 48-hour notice for parents and medical complications that might require a faster abortion.

Representative Coghill replied that the 48-hour waiting period would be a legal question. He noted the concurrent nature of the waiting period. He disagreed with the charge that the waiting period was restrictive and believed that it allowed for planning and communication. He referred to a U.S. Supreme Court case regarding the issue, and quoted: "The 48-hour delay provides the parents the opportunity to consult with his or her spouse, family physician to inquire into the competency of the abortion doctor and to discuss the decision on religious moral implications with the minor, and provide needed guidance and counsel on how the decision will affect their future. The delay imposes only a minimal burden on the minor's rights."

Representative Coghill added that another issue was where the pregnant teen lived. Whether she lived in an urban or rural area, the teen would not be able to get a pregnancy test one day and abortion the next. The process takes three days; notification follows a similar timeline.

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Representative Coghill continued that the emergency medical issue was a separate legal question. He had asked Dr. Jay Butler, Alaska's Chief Medical Officer, who believed that the medical instability mentioned on page 2, line 29 is open to interpretation by medical doctors. He was open to an amendment to clarify the language; however, Dr. Butler also

said that the remaining language regarding a doctor's judgment about what constitutes a medical emergency was very clear.

Representative Fairclough felt that the medical emergency language in the bill needed to be revisited to clarify what a doctor needed to do. She asked about the judicial bypass. She mentioned public testimonies given regarding pregnancies caused by incest and questioned the necessity of a second signature for the judicial bypass.

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Representative Coghill directed attention to page 3, which discusses the issue of minors being a victim of abuse. He clarified that it was not judicial bypass, but bypass of the judicial system. A court hearing is not required, only a signed statement and a witness that is knowledgeable of the abuse. He stressed that he did not want to create loopholes for perpetrators. He felt that having a witness to the signature was wise.

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Representative Fairclough shared from personal experience the difficulty in identifying sexual abuse of a minor because of delays in reporting and the lack of physical evidence.

Representative Gara felt that everyone on the committee would agree about the importance families having open dialogue about the issues. He had questions about the 48-hour waiting period, and the court process with the affidavit. Regarding the 48-hour waiting period, the bill requires a pregnant minor and her parent to first talk about the pregnancy and come to a decision. Then the bill requires the family to wait another day. A family from a rural area would have to stay in a hotel the two days. He agreed that the family should talk; he questioned the law requiring them to wait two days after talking.

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Representative Coghill reiterated the concurrent nature of the waiting period. He thought the question was more appropriate for families from urban areas. He quoted the U.S. Supreme Court ruling: "The states' 48-hour waiting period is necessary to enable notified parents to consult with their daughters or their physicians so if they so wish results in a little or no delay, and therefore is constitutional." He thought the notification was appropriate to allow for family deliberation.

Representative Gara believed the bill worked if the family is perfect, but all families are not perfect. He gave a hypothetical example illustrating the problem with the 48-hour waiting period. He questioned the family having to wait after making a decision.

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Representative Coghill believed that 48 hours is a small period of time given the circumstance. He considered the wait an opportunity for deliberation. He outlined a possible series of events. He did not think the waiting period was unreasonable. He thought it was a notification issue.

Co-Chair Stoltze asked that the discussion focus on amendments.

Representative Gara informed the committee that he would not offer an amendment on the 48-hour waiting period. He reiterated his desire for a response from DHSS.

Co-Chair Stoltze agreed that the question was pertinent.

Representative Joule spoke to the importance of fiscal notes for the Finance Committee. He thought the administration should provide the information to the committee.

Representative Coghill repeated his commitment to finding the requested information. He admitted he had not written to any department head for the fiscal note.

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RECONVENED

WILLIAM HOGAN, COMMISSIONER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, apologized to the committee regarding the fiscal note.

Representative Gara asked for clarification about how the legislation would apply to foster children, especially regarding who would give consent.

Commissioner Hogan explained that the state takes over guardianship and makes decisions either directly or with the courts in foster care situations where parental rights have been terminated. If parental rights have not been terminated, DHSS would continue to work with the guardian or natural parents to make the best decision regarding the child.

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Representative Coghill added that the minor is free to go to court without the custodian's knowledge and have someone

assigned to them at no charge, regardless of whether the parents or the state is the custodian. He thought the real question is what would happen if the minor seeks to avoid consent from the state.

Representative Gara reiterated that the bill works for good families where the minor has support. He was concerned about the others the bill will affect: the 2,000 children in the state who are in the foster care system, plus many others in bad circumstances in their families.

Representative Gara asked whether a minor in foster care would have to get parental consent if the guardian is still the parent who is not living with her. Commissioner Hogan thought the practice would be to talk to the natural parents.

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Representative Coghill explained that the minor could seek emancipation if a minor in state custody was in a situation with parents who did not care.

Representative Gara asked how emancipation would occur for a pregnant minor who has deadlines. Representative Coghill did not know the details. He did know that a minor must demonstrate the ability to be self-sufficient in order to gain emancipation; such a person could seek an abortion without consent.

Representative Gara asked for further clarification. Commissioner Hogan explained that the child protective services system first tries to reunite kids with their families. When that is not possible, the next step is to seek placement outside the home. He added that much depends on the minor's history with the family and noted that all decisions about the child's status are made through the court.

Co-Chair Stoltze asked if Representative Gara's questions would lead to an amendment to provide a focus for the discussion.

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Representative Gara stated that his focus was that the bill has been around for six years and no one has considered how it would work in a foster care situation. He wanted the information before he put together an amendment. He did not want one law for minors with parents that required minors in foster care to go to court.

Representative Gara asked what would happen for a minor who is in foster care but the natural parent is still the

guardian. Commissioner Hogan pointed out that the described situation applies to the typical child who first enters the foster care system. The state must determine over time if the family can be reunited. The intent is to keep the family together if possible.

Representative Gara thought it might be unhealthy to make a child obtain consent from a parent who does not take care of her anymore. Commissioner Hogan agreed.

Representative Gara asked if those children would then have to go to court and wondered if that would be healthy in a torn family. Commissioner thought the child would have to go to court. He acknowledged the difficulty of the decision. He thought the state would go to court but try to make the process as easy as possible.

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Representative Gara asked whether social work staff would be involved in the process. Commissioner Hogan answered that social work staff would be involved.

Representative Coghill added that current law provides only minimal protection. A child abused while in the foster care system could be coerced by the perpetrator to get an abortion without anyone's consent, even if the minor is in state custody. House Bill 35 would provide recourse for the minor; she can appeal without costs to herself. She can go directly to a doctor or some other adult and make an appeal for an abortion.

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Representative Gara referred to statistics showing that approximately 50 percent of youth in foster care end up pregnant before age 18. Commissioner Hogan thought the number seemed high and offered to get figures.

Representative Gara speculated that additional staff would be needed if the statistics were high. Commissioner Hogan thought that all child protective service workers should have the skills needed and did not believe the department would need additional staff. He noted that the department has increased staff training.

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Representative Gara requested clarification regarding the training. Commissioner Hogan reported that the department had implemented new training in January 2009.

Representative Gara asked who would be the guardian if parental rights had been terminated but the minor has not

been assigned a foster care placement. Commissioner Hogan replied that the state would be the guardian; regulations would be needed specifying who that would be. He thought the courts should also be involved.

Representative Gara expressed alarm at a federal review reporting that social workers do not see youth more than once every eight months in 30 percent of cases. Commissioner Hogan did not recognize the exact statistic but agreed that the state needs to see youth in foster care more often.

Representative Gara wondered if social workers did not know foster children well in many circumstances. Commissioner Hogan hoped that the social worker would develop a relationship with the child.

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Representative Gara asked if there were cases where the social worker did not spend the necessary time. Commissioner agreed that that does happen on occasion.

Representative Crawford described experience with the foster care system. In the four years he had a foster child during an adoption process, the social worker visited once per year. When they called with questions, they sometimes did not get an answer for a month. The state had explained that there is less contact with a stable family; others might have had real problems. He felt the foster care system was understaffed and overworked in Alaska.

Commissioner Hogan hoped that the system would respond better to foster parents and that calls would be returned promptly. He emphasized the importance of foster families and apologized.

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Representative Crawford emphasized that he was not trying to fault social workers, but when the timing was as critical as it would be for a pregnant teen, the system had to respond. Commissioner Hogan agreed.

Representative Gara pointed out that in his experience foster youth feel like different rules apply to them. He asked if there could be psychological damage if a foster child was told they must go to court. Commissioner Hogan responded that the state tries to be sensitive to what a foster child needs and works hard to not make the child feel different.

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Representative Gara wanted a pregnant minor without a stable family to consult with an adult in making decisions. He wondered if the emphasis in the legislation could be on giving notice rather than requiring consent. Commissioner Hogan pointed out that the bill is about consent, not notification. He stated that the department supports Representative Coghill's bill, although it would be willing to work on language.

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MIKE LESMANN, COMMUNITY RELATIONS MANAGER & LEGISLATIVE CONTACT, OFFICE OF CHILDREN'S SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, detailed the Alaska statute related to a parent's residual rights (AS47.10.084). Under residual rights, birth parents have the right to consent to major medical procedures. If the child is in state custody, state staff is absolutely not authorized to consent to a non-emergency major medical procedure; parents approval are required unless the parent's rights have been terminated by the court. If the parent is not willing to give consent, a court order is required in order for the procedure to take place.

Representative Coghill added that the parental rights law did not apply to abortion, which was one of the reasons he thought HB 35 was necessary. The courts have been trying to figure out for years how to balance the rights.

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Co-Chair Stoltze observed that the bill had not been amended to date and thought it would be amended on the House floor.

Representative Gara repeated concerns about expecting a child to obtain consent from a parent who has not been involved. He did not want a social worker or judge who does not know the child to be able to override the child's decision. He wanted a child to have someone rational and caring to talk to.

Representative Coghill responded that when someone is in state custody, there is a legal conundrum regarding who should give consent. However, a minor has the right to bypass the legal guardian. A judge would consider the maturity of the minor and the level of stress created by the circumstances. The judge could be a rational decision maker. There could be other rational persons, including the social worker.

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Representative Gara wanted to know for the record the average tenure of a social worker at the Office of

Children's Services. Commissioner Hogan thought a social worker tended to stay two to two and a half years; after that length of time, they tended to stay longer. He added that the vacancy rate was down.

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Representative Gara wanted language in the legislation stipulating that it applied to good families. Representative Coghill responded that four out of five parts of the bill are targeted for people in less than good circumstances.

Representative Gara did not like one of the ways to get out of parental consent, which is to go to a judge that does not know the child. He also did not like a second way, which says a child's affidavit is not good enough, that there must be another witness to the abuse who signs an affidavit.

Co-Chair Stoltze asked for amendments. As there were none, he turned to the fiscal notes.

Commissioner Hogan spoke to fiscal note number 2 by DHSS, explaining that it was indeterminate because the department did not know which minors enrolled in Medicaid had consent from a parent or guardian; the department does not require consent. He indicated the explanation for costs for abortions and qualifications connected with the Hyde amendment. He stressed the difficulty in finding a dollar amount.

CRAIG TILLERY, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), commented regarding indeterminate fiscal note number 1 by the Department of Law (LAW). He explained that LAW does not put anticipated litigation costs into fiscal notes; the department tried to provide the committee with information that would give an idea of potential costs involved with litigation. He opined that litigation is likely; the last time a similar law was litigated, LAW ended up spending approximately \$500,000 on the case. Both in-house and outside counsel were used in the case. In addition, there was a court award of \$940,000 to the prevailing party against the state. He anticipated that in future the state would make every effort to litigate in-house. He thought that costs would be in the \$300,000 to \$400,000 range. In addition, there would be court award costs depending on who won the case.

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Representative Gara asked if Mr. Tillery had read the bill and the court opinion declaring the last similar law unconstitutional. Mr. Tillery responded in the affirmative.

Representative Gara pointed out that the last decision had determined that the parental consent part of the law was unconstitutional. He asked if the court might make a similar determination again about parental consent. Mr. Tillery responded that it was not a foregone conclusion that the law would be declared unconstitutional, although he was not predicting that response again from the court as the vote was close the last time. House Bill 35 modifies the previous law in a way that brings the law closer to the majority opinion that struck it down. In particular, HB 35 adds an exception, a victim of documented abuse, with respect to judicial bypass. In terms of time and ability to navigate the system, HB 35 reduces the time from five business days to three business days; it also reduces appeal time from nine days to eight days. The new proposed law also provides a confidential form for school excuse for a hearing. He added that at least two of the justices will have changed, which could affect a new decision.

Representative Gara requested an explanation of the concept "stare decisis." Mr. Tillery explained that "stare decisis" indicates that when faced with a similar situation that has been previously ruled on by a court, the court will continue with the ruling in order to provide some certainty to the way people order their affairs, unless the situation has dramatically changed. Changes could be those in the bill itself, or changes in social mores. He did not believe stare decisis would play a large role because the court, by the very nature of its analysis, would be determining whether there have been sufficient changes in the law to allow it to be declared unconstitutional.

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Co-Chair Hawker MOVED to REPORT HB 35 from Committee with individual recommendations and attached fiscal notes.

Representative Gara OBJECTED.

Co-Chair Hawker WITHDREW the MOTION.

Representative Gara MOVED Amendment 1:

1. Page 2, lines 3-4:
Following "notice":
Delete "and consent"
2. Page 3, lines 7-8:
Following "performed":
Delete "and the parent, legal guardian, or custodian has consented in writing to the performance or inducement of the abortion"

3. Page 3, lines 10-11:
Following "notice":
Delete "and consent"
4. Page 3, lines 13-14:
Following "notice":
Delete "and consent"
5. Page 5, line 5:
Following "to":
Delete "and the consent of"
6. Page 5, line 8:
Following "to":
Delete "or the consent of"
7. Page 5, line 17:
Following "to":
Delete "or the consent of"
8. Page 5, lines 20-21:
Following "notice to":
Delete "or the consent of"
9. Page 5, line 24:
Following "the":
Delete "consent of"
Insert "notice to"
10. Page 6, line 7:
Following "to":
Delete "or the consent of"
11. Page 6, line 11:
Following "such":
Delete "consent"
Insert "notice"
12. Page 6, line 27:
Following "to":
Delete "or the consent of"
13. Page 6, line 30-31:
Following "to"
Delete "or the consent of"

14. Page 8, lines 15-16:
Following "to":
Delete "and the consent of"
15. Page 8, line 25:
Following "to":
Delete "and the consent of"
16. Page 9, line 18:
Following "to":
Delete "and the consent of"
17. Page 9, lines 30-31:
Following "to":
Delete "or the consent of"

Representative Fairclough OBJECTED.

Representative Gara explained that the amendment says it is fine to give a non-abusive family notice that the minor is pregnant and seeking an abortion so that the family can discuss the matter, but that consent is not required in cases where consent seems impossible, such as from a foster parent who has not seen the child for two years. Since he did not know how to word the amendment, Representative Gara WITHDREW Amendment 1.

Representative Gara MOVED Amendment 2:

- Page 3, lines 20-28:
Delete all text.

Co-Chair Hawker OBJECTED.

Representative Gara detailed that Amendment 2 addresses an exception on page 3 that the child does not have to go to court if the child is the victim of physical or sexual abuse but needs a second witness to the abuse. In a small town, the abusive parent who the child is trying not to tell might find out. The amendment says that the second witness might be the abuser or the abuser's spouse; the minor may not be able to secure the second witness statement. Amendment 2 says the minor's affidavit is enough.

Representative Coghill objected to the amendment. He asserted that the purpose of the list is to protect the minor in cases of abuse, and that abusers could pressure a minor to go to a doctor for an abortion.

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Representative Gara clarified that the amendment has to do with page 3, line 20. He thought all could agree that a parent who physically abuses a child loses the right to consent. However, in order for the minor to comply, the minor must fill out the affidavit and then find someone with personal knowledge of the abuse. He pointed out that there may not be another person with personal knowledge to fill out the second affidavit. He thought requiring the second witness would make the provision unusable.

[4:15:02 PM](#)

Representative Coghill disagreed. He referred to testimony by people who had reached out to minors and found it improbable that no one would know about the abuse. His primary concern was for the minor.

Representative Kelly stated that in a chaotic situation, the default position is that someone dies; he would opt for the keeping someone alive. He supported the legislation, while acknowledging that it is not perfect. He believed DHSS would help. He placed equal value on the unborn child and the minor.

[4:20:17 PM](#)

Representative Gara WITHDREW Amendment 2. He thought the problem with the amendment reflected the problem with the bill. He thought government was bad on how people should communicate within their home. He stressed that he did not believe that the victim of any abuse should have the duty to go to the abuser to get consent for an abortion.

[4:21:38 PM](#)

AT EASE

[4:26:29 PM](#)

RECONVENED

Representative Gara indicated that he would not be offering Amendment 3.

Representative Gara MOVED Amendment 4:

Page 7, line 25:

Following "have":

Insert "or refrain from having"

Co-Chair Hawker OBJECTED.

Representative Gara took issue with Section 9 of HB 35. He believed it should be a crime to coerce someone to have an abortion. Coerced is defined as to "restrain or dominate a minor by force, threat of force, deprivation of food, support, or shelter." He did not think the committee should take sides in the pro-life or pro-choice debate; both

forcing someone to have an abortion and forcing someone not to have an abortion should be a crime. He intended Amendment 4 to balance the bill.

Representative Coghill asserted that the bill's purpose was regulating abortions, not regulating the decision whether to have one. He agreed that coercion is bad in many cases, but did not think the issue was coercion.

Co-Chair Hawker MAINTAINED his OBJECTION.

Representative Gara argued that the amendment was appropriate to the bill, and that the bill was about abortion. He turned to page 7, line 25, which says that a person may not coerce a minor who is pregnant to have or refrain from having an abortion. He agreed with the part of the bill that wanted families to talk about the issue, but the amendment did not relate to that part of the bill. He did not want to create a crime that makes those on the pro-life side of the issue happy but discriminates against those on the pro-choice side of the issue. He did not want to protect minors who decide not to have an abortion and not protect minors who do decide to have one when the decision is legal.

[4:30:31 PM](#)

Representative Kelly expressed reluctance to force lawyers on everyone who is counseling the minor against abortion.

Representative Coghill repeated that the bill intends to protect the minor if she chooses to have the baby. Should she choose not to have the baby, she would have to demonstrate maturity. He thought part of the question related to an immature person choosing to have an abortion. The amendment would strike at the parental consent part. The legal question would be that a parent disagreeing with a minor about having an abortion could be portrayed as coercion. He maintained that the measure is about the regulation of abortion.

Representative Coghill argued the legitimacy of the question of maturity; many other statutes address the issue. He read a statement by the Alaska Association of School Boards on maturity: "Students who have not yet graduated from high school are too young to make the life-changing decision to forego basic education." He maintained that accepting the amendment would result in a legal challenge to coercion.

[4:34:12 PM](#)

Representative Crawford thought it would be wrong to force a child to have an abortion when she did not want one, but it would also be wrong to coerce the minor to do what they

wanted by withholding food or shelter. He acknowledged the difficulty of the issue.

Representative Austerman pointed out that the whole bill would be legally challenged, not just the part of the bill that would be affected by the amendment.

Representative Coghill reported that he had been told by the American Civil Liberties Union (ACLU) and Planned Parenthood that they definitely intended to challenge the measure. He stressed that he did not like coercion, but maintained that the section of the bill addressed by the amendment relates to coercion and opens the door to legal challenge.

[4:38:50 PM](#)

Representative Gara asserted that the bill would be challenged.

Representative Coghill did not think the issue was so clear. He read part of the Supreme Court decision saying that the relocation of fundamental right from minors to parents is "constitutionally suspect." He thought the court was very definite that the parents had the right and definite that the minors are immature in their choices. The Supreme Court was looking for less restrictive means; he believed less restrictive means were crafted into HB 35.

Representative Gara understood the philosophical points, but pointed out that the amendment was narrower. He did not believe it was right to have a law that made it a crime if a person was coerced into having an abortion, but would not stand behind a person who is coerced to not have a legal abortion. He asserted that the amendment says that either kind of coercion should be illegal.

A roll call was taken on the motion.

IN FAVOR: Crawford, Gara, Joule, Salmon, Austerman
OPPOSED: Fairclough, Foster, Kelly, Thomas, Stoltze, Hawker

The MOTION FAILED (5-6).

[4:43:03 PM](#)

Representative Gara MOVED Amendment 5:

Page 2, line 27:

Following "death":

Insert "or a substantial risk to the minor's health"

Page 2, line 28-30:
Delete all text.

Co-Chair Stoltze OBJECTED.

Representative Gara explained that the bill has a provision that says that in the case of a medical emergency, the doctor can perform an abortion to save the minor from physical harm or death. He thought the wording was difficult. On line 29, the bill says that the physical harm that would be avoided must be proved to be irreversible. He asserted that a doctor cannot always know if the injury is irreversible; a doctor could be subject to criminal prosecution. The amendment would clarify that in a medical emergency, an abortion can be performed if necessary to prevent death, or to prevent serious risk to the minor's health.

Representative Coghill responded that he would object less to the amendment if it said to "physical health" so that it would not be open to a subjective interpretation.

Representative Gara agreed and offered an amendment to Amendment 5, to insert the word "physical" before "health."

There being NO OBJECTION, it was so ordered.

Co-Chair Stoltze asked if there was continued objection to Amendment 5 as amended.

Representative Kelly OBJECTED.

Representative Coghill stated that he would not speak against the amendment.

Representative Kelly WITHDREW his OBJECTION.

There being NO further OBJECTION, it was so ordered. Amendment 5 as amended was PASSED.

Co-Chair Hawker MOVED CSHB (FIN) 35 from Committee with individual recommendations and attached fiscal notes.

[4:49:51 PM](#)

Representative Gara OBJECTED for discussion. He thought the main part of the bill presents legitimate discussion. He wanted minors to discuss matters such as abortion with their parents. However, he did not know how a law could be written to require families to talk to one another, especially when the family is dysfunctional or when the minor does not have a family. He had concerns about foster children in particular. He took issue with a provision in the bill that

states that there has to be a 48-hour wait after a parent consents to a minor's abortion. He pointed out that legislative researchers reported that there is no 48-hour waiting period for any other procedure in Alaska. He thought the provision was disrespectful to the parent's choice. He reiterated concerns about the second person required to sign an affidavit.

[4:52:44 PM](#)

Representative Kelly agreed that the bill was a very difficult one. He opined that the default position should be choosing life and not death in a confusing and chaotic situation. He thought the sponsor had found a balance.

Representative Joule thought the issue was highly charged and he appreciated the respectful tone of the debate.

[4:55:13 PM](#)

Representative Crawford concurred that the issue is tough. He discussed his views of abortion and the topic of when life begins. He pointed out that there were abortions before it was made legal, and conjectured that there would still be abortions if they were made illegal. He believed that Planned Parenthood had reported that there were 18 in the past year that HB 35 would have covered; 14 of the girls had involved parents and 4 did not. He feared that HB 35 would force the four to have underground abortions and questioned whether the bill would fix the problem it was purporting to fix. He emphasized his desire to pass legislation that would not have unintended negative consequences.

[4:59:40 PM](#)

There being NO further OBJECTION, it was so ordered.

CSHB (FIN) 35 was REPORTED out of Committee with a no recommendations and two previously published fiscal notes: FN1 (LAW), FN2 (HSS).

Representative Foster noted that in the Bush, hospitals fall under federal guidelines and are exempt from state regulations. The doctors and nurses answer to other laws. He wondered if Bush hospitals still operate this way.

Co-Chair Hawker noted that Commissioner Hogan would get a formal response to the question.

[5:02:08 PM](#)

AT EASE

[5:12:00 PM](#)

RECONVENED

#hb161

HOUSE BILL NO. 161

"An Act relating to the Alaska Mental Health Trust Authority Support Office Building; authorizing the issuance of certificates of participation for construction of the building and authorizing the use of up to \$25,000,000 from the mental health trust fund for construction of the building; approving leases of all or part of the building by the Department of Administration; and providing for an effective date."

REPRESENTATIVE CATHY MUNOZ, SPONSOR, spoke in support of HB 161 and introduced several people who could answer questions regarding the legislation.

[5:14:18 PM](#)

Representative Munoz informed the committee that HB 161 was introduced on behalf of the Alaska Mental Health Trust Authority (AMHTA) so that the trust could develop a piece of property in the support area in downtown Juneau. She explained that the plan calls for the construction of an office building that will house approximately 500 state employees.

Representative Munoz added that a primary mission of AMHTA is to develop land that it holds throughout the state. For many years, the trust has viewed the support property as a top development priority. She pointed to a critical need in Juneau for office space; two of the state facilities are aging and face immediate renovation costs of approximately \$8.5 million. In addition, both facilities will need to be replaced in the future. The Department of Fish and Game (DFG) building in Douglas is nearly 50 years old, and the Department of Public Safety (DPS) building downtown is about 40 years old. The DPS building was constructed in 1970; the intent was to use it for ten years. A lease on the third facility, the Department of Labor (DOL) building, is due to expire soon. The state will need to find replacement space for approximately 300 DOL employees.

[5:16:10 PM](#)

Representative Munoz listed four key points regarding the legislation:

- Over the life of the lease, the state will save approximately \$13 million.
- The trust is allowed to develop a key land holding, which will provide a stable and dependable revenue stream for beneficiaries of the trust.
- As land owner, the trust provides the land and half the construction costs, or approximately \$22.7 million.

- The state, in partnership with the trust, is able to meet a critical space need for around 525 state employees, and agrees to bond an equal amount of approximately \$22.7 million, with the lease payments as security on the bonds.

Representative Munoz emphasized that timing is crucial. In order for the project to work, enabling legislation must happen in the current session, as the DOL lease expires in 1012.

[5:17:47 PM](#)

Representative Foster opined that the bill was the best he'd ever heard.

Representative Crawford agreed and asked if the legislation would be under the state's prevailing wage law. Representative Munoz did not know but offered to find the answer.

Vice-Chair Thomas asked who owns the building being vacated. Representative Munoz answered that the state of Alaska owns the DPS facility on Willoughby Avenue and the DFG building in Douglas. The DOL facility is owned privately by a family who lives outside of Alaska.

Vice-Chair Thomas wondered what the Department of Administration planned for the two state-owned facilities. Representative Munoz replied that the buildings would probably be torn down and the property sold for mixed development such as housing.

Vice-Chair Thomas queried if the proposal included funds to tear the buildings down. Representative Munoz responded that the legislation does not provide for demolition costs.

Vice-Chair Thomas hoped there was a plan. He had seen school districts burdened with old buildings after erecting new ones. Representative Munoz explained that the state planned to take the DPS facility down and put in additional parking for the area. There was also discussion about using the facilities for things such as record storage.

[5:21:36 PM](#)

Representative Austerman wondered if parking space would be lost in the downtown area with the new construction. Representative Munoz replied that the facility would require on-site parking to meet the planning and zoning needs of the space. She assured him that the needs could be met on-site. In addition, the city is constructing a parking garage at

Main Street and Egan Drive; this garage is not associated with the proposed project.

Co-Chair Stoltze queried possible parking variances. Representative Munoz replied that the project has not gone through a permitting process yet, but she understood that there would be enough on-site parking.

[5:24:04 PM](#)

JEFF JESSEE, CHIEF EXECUTIVE OFFICER, ALASKA MENTAL HEALTH TRUST AUTHORITY (via teleconference), testified that when the Department of Administration approached the trust about the possibility of constructing the office building, the trust saw a unique opportunity to develop its resources. The land office has relied on more traditional methods of land management such as leases and sales of property. The project would offer the trust the option of being a developer. The trustees considered and decided the project was an excellent investment for the trust. The \$22.7 million that AMHTA would invest in the building would return around 7.5 percent, which is comparable to the return on the trust's permanent fund over time. In the current economic environment, being able to guarantee the return over a 30-year period would help secure the endowment of the trust. During the 30 years, the payout would be offset and after the 30 years, the entire lease would go to the trust, making it an excellent investment. The state has the advantage of seeing its lease payments ultimately return to the non-profits that serve trust beneficiaries in furtherance of the mental health plan of the state. The mental health needs are expected to increase, so the additional revenue will be good.

[5:28:59 PM](#)

Representative Fairclough asked for further information regarding the benefit to the state of using the \$22.7 million general fund. Mr. Jesse understood that the \$22.7 million will come from certificates of participation; the state will not be fronting general funds. Private investors will put up the capital. Through the lease payments, the certificates of participation will be paid off over a 20-year period of time.

[5:30:12 PM](#)

Representative Crawford suggested that the design not include a flat roof, which does not make sense in Juneau.

Vice-Chair Thomas queried the acreage of the land and who owns it. Representative Munoz replied that the trust owns the land.

HARRY NOAH, EXECUTIVE DIRECTOR, ALASKA MENTAL HEALTH TRUST LAND OFFICE (via teleconference), recollected the size as approximately four acres.

Vice-Chair Thomas asked the property value of the land. Mr. Noah replied that comparable appraisals in the area had been made, but he did not have the data. He offered to get the numbers.

Vice-Chair Thomas asked why the parking area had the best view. Mr. Noah answered that the subport area is extremely valuable land. Initially, the intent was to take (through the trust land replacement program) the land where the DPS building stands and build the parking garage. However, the cost of the parking garage was \$20 million. The project could not offset the high number with lease payments. The trust has reluctantly decided to use the area where the old subport building was as surface parking until there is some economic reason to change. Then the parking garage would be constructed and the area where the old subport building was would be developed. He called the measure an interim one. The trust has no specific use currently for the land. When a good one comes along, the trust intends to build a parking garage and further develop the area that will be used for surface parking.

[5:34:37 PM](#)

Representative Gara voiced concern about taking \$22.7 million from assets that generate income for the trust. He wanted to make sure there would be enough. Mr. Jesse replied that there will be no interruption of cash flow. He explained that at the end of the fiscal year, the trust pays out a percentage of its assets held by the permanent fund. In this case, the \$22.7 million will still be in the permanent fund at the end of FY10; payout will be available in FY11. For 2012, the lease payments will begin at the start of the fiscal year, and the lease payments will be available subsequently.

Representative Gara asked whether there would be a risk if tenancy did not occur or if construction were delayed. Mr. Jesse responded that no business deal is entirely free from risk; however, there are major incentives to make sure the building is completed on time, including that the state lease on the current facility expires at same time the new building will be completed. He added that even if there were some delay in the commencement of the lease payments, the amount of money involved is \$900,000 a year, an amount that he believed trust could plan for and absorb without affecting its goals.

[5:38:12 PM](#)

Representative Gara stated that he is fine with the risk if the trust is fine with it. Mr. Jesse replied that he is definitely fine with the risk, particularly because at 20 and 30 years out, the investment becomes an excellent deal for future trustees.

Co-Chair Hawker queried how the state could rationalize building on expensive Class A real estate. Mr. Jesse replied that the AMHTA intends to provide the state with quality, energy efficient, aesthetically appropriate office space without the health and safety concerns caused by the state's current space.

Representative Munoz added that rates at other comparable spaces, such as at the Goldbelt and Sealaska buildings, were comparable. In addition, the renegotiated DOL lease would be considerably more than what is currently being paid.

[5:41:07 PM](#)

Representative Foster asked what the Department of Administration thought about the provision.

VERN JONES, CHIEF PROCUREMENT OFFICER, DEPARTMENT OF ADMINISTRATION, directed attention to the fiscal note and analysis. He reported that DOA thought the proposition was a good deal. He mentioned the DOL building lease that was expiring. If the building does not get built, the department's other option is to put out an RFP the coming summer. The department's analysis shows that over the 30-year life of the lease, the AMHTA option would be \$13.5 million less expensive than a lease in the private sector and maintaining the two older buildings that require a great deal of deferred maintenance. He pointed out that the fiscal note was understated; the cost showed for maintaining the old buildings and continuing the lease is probably low. In addition, the capital costs for the Douglas Island building and the DPS building only have the known existing deferred maintenance projects listed. Over the next 30 years, other work would need to be done.

Mr. Jones added that DOA analysis calculates the square foot price at about \$353. The department thinks the price is a bargain for the quality of space being contemplated.

[5:44:24 PM](#)

Co-Chair Hawker asked if he was referring to cost to construct or leasehold costs. Mr. Jones responded the number represents a cost per square foot under a lease. He pointed out that the number is a ceiling to negotiate under, not necessarily the price that will be paid for the building.

Co-Chair Hawker stated his inclination to support the concept. He referred to arguments by the current owner of one of the buildings that they could do a better job for less money. Mr. Jones replied that he had heard the arguments; departmental analysis does not support them.

Co-Chair Hawker wanted to see a direct response to the arguments with the financial analysis.

Representative Munoz requested that the committee consider what the state has invested in the facility. Close to \$50 million has been invested in the old building. She thought it was important for the state to find space that would allow the department to function better. She reported numerous, well-documented problems. She believed there would be good benefit for all the parties involved.

Co-Chair Hawker asserted that the state has to pay for the property. He wanted questions answered.

Co-Chair Stoltze wanted numbers from the administration.

[5:48:45 PM](#)

Representative Kelly was not convinced that the deal was great. He questioned putting state employees in Class A space. The trust could also construct a building and rent it out to doctors and attorneys to make money.

Representative Munoz believed the current cost for the DOL building was \$2.33 per square foot. She asked if the committee wanted an analysis of comparable space.

Representative Kelly wanted a comparison with costs for Class B or C space, which he thought was more appropriate. He referred to criticisms he was hearing about the measure.

[5:52:23 PM](#)

Representative Foster relayed his experience with office space. He opined that space with good parking can be important for employees.

Mr. Jones reiterated that the \$3.53 per square foot is a ceiling cost and that the price is still not negotiated. He pointed out that the state is not a typical tenant; it is a high quality but expensive tenant. Technology needs are much higher and more expensive to service than for a typical private tenant. There are higher natural light requirements as well, which drive up the cost of space. He suggested that it is not fair to compare to what might be available at a mall or Class C space. The department projects that the expectations for price in the RFP will be in the \$3.80 to

\$4.00 per square foot range. The department thinks it has good backup to justify those expectations.

[5:56:08 PM](#)

Co-Chair Stoltze talked about the information needed by the committee.

Vice-Chair Thomas wondered if there were letters of support from the municipality. Representative Munoz responded that the City and Borough of Juneau had unanimously passed a resolution of support.

[5:58:50 PM](#) RECESSED until 9:00 AM March 28, 2009

[9:09:48 AM](#) RECONVENED

#hb199

HOUSE BILL NO. 199

"An Act making supplemental appropriations and capital appropriations; amending appropriations; and providing for an effective date."

Co-Chair Hawker referred to previous testimony related to the legislation and questions raised for the Department of Education and Early Development.

[9:11:51 AM](#)

Co-Chair Hawker listed items that were added to the original list, items where the administration is going to add personnel in order to accept American Recovery and Reinvestment Act (ARRA) funds: Item 12, Healthcare Services Administration; Item 19, Labor Employment Training Services; Item 27, Public Safety State Troopers; Item 13, Child Care Benefits Grants; Item 22, Workforce Development Training.

Co-Chair Hawker noted that the entire committee was present except for Representative Foster, who had a medical excuse.

[9:14:08 AM](#)

LARRY PERSILY, STAFF, CO-CHAIR MIKE HAWKER, began with two follow-up items from the previous day's meeting. First, he indicated a packet containing the information that Representative Austerman had asked for from the Department of Education. Second, regarding questions about the Department of Conservation (DEC) air quality grants he explained that in FY08, DEC received about \$300,000 under the program. Rather than granting the money out (the department does not have granting authority) DEC used RSAs (reimbursable services agreements) within state agencies. Some went to the Department of Transportation and Public Facilities for diesel equipment retrofits. Some went to the

Alaska railroad for diesel retrofits. The \$2 million available for grants would need statutory authority. State agencies, non-profit organizations, local governments, port authorities, and anyone with jurisdiction over transportation or energy would be eligible for the grant program. He listed examples of things the money could be used for.

Co-Chair Hawker clarified that the DEC air quality grants were contained in Item 34.

[9:16:35 AM](#)

Representative Fairclough had a question about carbon credits. Mr. Persily offered to get the information.

Representative Kelly asked if the legislature could put limits on the DEC grants. Mr. Persily replied that the legislature cannot appropriate to specific recipients; the grant program would go through DEC. Representative Kelly asked if the legislature can instruct DEC about the grants, such as limiting them to diesel retrofits. Mr. Persily said he would get back to committee.

Co-Chair Hawker thought the question of how much constraint could be applied through intent was related to the Department of Education and Early Development (DEED) as well.

Representative Kelly asked if similar limits could be put education, such as accepting only money that would be used for deferred maintenance. Mr. Persily did not believe so. He would get the answer to the how question of much direction and instruction could be used.

[9:20:12 AM](#)

Representative Fairclough asked whether the money could be held and dispersed [by the legislature] to rural communities through an RSA process to limit how it could be used. Mr. Persily did not believe so.

Co-Chair Hawker explained that the RSA is used between state agencies. The legislature does not have the ability to move money to another public entity's budget, only within the state budget. The legislature has to empower an agency through a grant process to pass the money to the other agencies. There was a discussion about limiting the use of the \$2 million.

[9:22:37 AM](#)

Representative Gara thought that most of federal money allows for a menu of expenditures. He suggested the easiest

way to direct where the money went would be to go through an agency. Otherwise there must be a statutory grant program to specify how it is spent. Cooperation with the administration would be required.

DEPARTMENT OF PUBLIC SAFETY

[9:24:17 AM](#)

Co-Chair Hawker asked for details regarding the Department of Public Safety (DPS) Item 27, the State Trooper/Narcotic Task Force.

DAN SPENCER, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF PUBLIC SAFETY, gave an overview of the justice assistance grant program, which is a formula program. The ARRA stimulus funds operate similar to the regular federal justice assistance grants program, with some changes. Supplanting rules have been removed and some of the reporting is different, but the purpose remains the same, and the grants can be used for just about anything that improves crime fighting.

Mr. Spencer detailed that about \$9.6 million is allocated to Alaska; about \$4 million goes directly from the U.S. Department of Justice to municipal governments. Another \$5,821,000 comes to the state; of that, \$1,252,900 will be passed to local governments. The application for the funds is due by April 9, 2009. The stimulus funds do not have to be used for personnel, but DPS plans to ask for that.

Mr. Spencer continued that the justice assistance grants program requires the department to provide to the legislature and to the public a minimum of 30 days notice before applying for the funds. Public review has to be in place before the money is spent. In the past, DPS has put together the grant application, sent a letter to each presiding body, and given online public notice.

[9:28:03 AM](#)

Mr. Spencer reported that there would be a written document with line item detail for legislative review. There will be an option of change once the money is approved by the Department of Justice, but the public and the legislature has to be notified. There will be full disclosure of all proposals.

[9:30:15 AM](#)

Mr. Spencer responded to earlier remarks about how the stimulus funds would require more transparency than other funds. He maintained that DPS is already fully accountable.

Mr. Spencer informed the committee that the overall plan is to increase investigative capacity with six positions, including five investigators in Anchorage, Fairbanks, Soldotna, and Palmer. There would also be an administrative position, probably based in Fairbanks. Once the positions are filled, DPS intends to give roughly \$150,000 per year to the Department of Law (DOL) to bring on an additional prosecutor. In addition, the crime lab would receive funding for sexual assault exam kits and other equipment, and funding would go to local government for investigations.

Mr. Spencer anticipated that the plan would cost \$5.8 million over three years. The question will then be where the money would come from to continue the programs. He asserted that DPS would have proposed increasing the investigative program even if the federal funds were not available. He pointed out that Alaska has the highest rate of sexual assault in the country; several of the positions would focus on that, as well as on internet and financial crimes. He added that more details would be forthcoming.

[9:33:51 AM](#)

Co-Chair Hawker noted how the proposed program would grow government.

Representative Fairclough asked for expected costs in three years and queried the number of new positions at the state level. Mr. Spencer replied that there would be seven new positions for \$5 million over five years, including the attorney at DOL. The money would cover the personnel and all the related training, equipment, travel, and the money to the crime lab.

Representative Fairclough thought that was a lot of money for seven positions. Mr. Spencer answered that the new trooper positions in the first year would cost close to \$1 million; the second year would be less because the vehicles, guns, and so on would have been purchased. He stated there were no hidden costs related to the positions.

Representative Fairclough clarified that the amount included \$1.3 million for local government. Mr. Spencer added that a number of municipal governments are getting nearly \$4 million from the Department of Justice.

Representative Fairclough asked if that funding stream to local governments would continue. Mr. Spencer replied that that had not been discussed; he believed the funding would continue because it would increase investigative ability overall.

[9:36:39 AM](#)

Representative Gara questioned whether there was double funding, specifically for the crime lab. Mr. Spencer assured him there was not.

Representative Gara acknowledged shortfalls in investigation units. He questioned the money going toward internet crime, since the federal government already did that work. Mr. Spencer replied that he would get more information. He believed the issue would be addressed in the forward of the grant application.

Representative Gara asked if there would be seven trooper positions over the three years. Mr. Spencer clarified that there would be five trooper investigator positions, one administrative position, and funding to DOL for a prosecutor position.

Representative Gara pointed to trooper positions that the state has not been able to fill and asked why the money should be used for new ones. Mr. Spencer responded that all the trooper positions were filled or would be filled soon. He was hopeful that the department would continue to be able to fill positions.

[9:40:12 AM](#)

Representative Gara asked whether positions had been eliminated rather than filled. Mr. Spencer answered that DPS started with around 50 vacant positions. The previous summer, seven trooper positions were reclassified to court services officers; previously troopers had filled those positions. The reclassification freed up seven troopers. He noted that court services officers are easy positions to fill.

Representative Gara questioned whether the department would have to come to the legislature in three years if the funds were approved.

Representative Austerman questioned why the items were not included on the original legislation. Mr. Spencer believed that additional requirements such as the need for the public process affected their inclusion in the original bill.

Co-Chair Hawker remembered that the Office of Management and Budget (OMB) immediately rejected anything involving additional personnel.

Representative Austerman asked for clarification.

[9:44:58 AM](#)

JO ELLEN HANRAHAN, SENIOR POLICY ANALYST, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, explained

that the items were not included on the list because they would increase operating costs; requests with positions were immediately rejected.

Representative Austerman asked if the governor's office was moving forward with the application without public comment. Ms. Hanrahan responded that all agencies were instructed to continue the application process in order to meet all deadlines.

[9:46:56 AM](#)

Mr. Spencer added that items could later be modified if the legislature decided, for example, not to include positions.

Co-Chair Hawker noted an opinion issued by the governor.

Mr. Persily clarified that Item 27 was for \$5.8 million that would go directly to the state; a separate allocation under the stimulus bill of \$3.8 million would go directly to 19 different cities and boroughs around the state. For example, the Municipality of Anchorage would get \$2.7 million of that amount, Fairbanks North Slope Borough, Unalaska, the City of Bethel, Bristol Bay Borough, and so on would get disbursements separate of legislative action. The deadline for the state's \$5.8 million is April 9, 2009; the cities and boroughs have until May 18, 2009. The state and the cities and boroughs will have to go through the same 30-day public review of applications. He added that of the \$5.8 million the state would get, \$1.2 million has to go to local governments not covered by the \$3.8 million. There are some restrictions: the money can be used for new positions and other things, but the federal law stipulates that the funds cannot be used directly or indirectly for security enhancements, and the money may not be given to non-governmental entities that are not engaged in criminal justice, public safety, or victim compensation.

Mr. Spencer clarified that some of the \$1,282,000 that is passed through the local governments can go to larger municipalities, although the intent is to ensure that smaller municipalities receive funds.

[9:50:03 AM](#)

Representative Salmon asked whether money was earmarked for Village Public Safety Officers (VPSO) for smaller communities. Mr. Spencer replied no for the proposal under discussion. He explained that a VPSO is not a law enforcement position in the normal definition. However, three other competitive grant programs that the department intends to apply for, including: the \$1 billion Community Oriented Policing Program (COPS), which is specifically oriented to creating new police officers; the \$225 million

Edward Byrne Memorial (Byrne) Competitive Grant program, which could apply; and a rural law enforcement program [Assistance to Rural Law Enforcement to Combat Crime and Drugs Program] aimed at a variety of things. The department has not finalized plans, but intends to apply for at least another five positions through the COPS program; those come with a "general funds kicker right up front." The COPS program will only pay for the entry-level salary and benefits, not for training, equipment, merit increases, etc. The condition of applying for the positions is that the federal government will fund the entry level salary for each of three years; after that, whatever entity created the positions has to agree to continue the positions for a fourth year. The department will apply for additional positions through the Byrne competitive grant. The department plans to ask for three trooper positions dedicated to VPSOs through the rural law enforcement program. He stressed that the applications were not at the final stages and he would come back when there is more information.

Co-Chair Hawker expressed concerns about the growth of government caused by obtaining one-time funds. He saw it as a way of bypassing the legislature and wondered if the legislature should not pass a law to stop it. Mr. Spencer did not agree that the department was going around the legislature. He emphasized that even if the funding is received, the legislature has to give the authority to spend the money and the governor has to sign off on the expenditures. He called law enforcement a government program.

[9:54:13 AM](#)

Co-Chair Hawker asked if the government was sanctioning the growth of government. Mr. Spencer replied that the department had been told to work on applications for what it deems appropriate purposes. Public discussion will determine whether it goes forward, but the intent is to apply by the deadline.

Representative Kelly thought that a state employee position was hard to cut once it was created, while construction workers are laid off when the job ends. He maintained that the record shows that state positions will not be easily cut after three years.

Representative Joule referred to the five positions that the department planned to apply for under the COPS program. He asked if any of the positions were related to the VPSO program. Mr. Spencer answered that the positions were not specifically dedicated to VPSO positions.

Representative Joule heard the answer as no. Mr. Spencer concurred.

Representative Joule asked if the three positions that the department planned to apply for [through the rural law enforcement program] would translate to more VPSO positions. Mr. Spencer replied that VPSOs are not certified police officers, which is the focus of the programs.

Representative Joule asked if the VPSOs are public safety workers. Mr. Spencer replied that they were, but his understanding was that the programs require that the positions be law enforcement positions. He offered to get more information.

[9:57:34 AM](#)

Representative Gara referred to the fact that the department had filled the trooper positions for which there had previously been a shortage. He was supportive of that. He stated that the highest crime, lowest served areas are high-crime urban areas, which have local police forces; troopers will not solve those problems. He questioned why the positions would not go to rural areas where they are most needed. Mr. Spencer denied saying that the positions would not go to rural areas. The troopers are still working on their proposal; he did not know where they planned to put the positions. The five positions covered in Item 27 are investigator positions. He understood the issue of getting positions to rural areas; some may go to Bethel.

[10:00:10 AM](#)

Representative Austerman asked who would oversee the public scrutiny of programs outside the legislative budget process, such as the COPS grant. Mr. Spencer referred to earlier testimony indicating that the Legislative Budget and Audit Committee (BUD) [would perform the function]. He pointed out that the receipts would be federal, and would be tracked separately; since the funds were not anticipated and did not have expenditure authority, he expected to go before BUD during the interim.

Co-Chair Hawker asked for clarification. Mr. Spencer explained that the department had federal authority in the budget. Sometimes the department gets the money it needs, but sometimes it gets less. When there is excess federal receipt authority, or less federal money coming in, the department can use the federal receipt authority to use federal money from other sources. He emphasized that the stimulus money was different. He likened it to a capital appropriation, in that they have a defined purpose. He assumed there would be a mechanism for legislative review on the competitive grant proposals.

Co-Chair Hawker cautioned against assuming anything. Mr. Spencer acknowledged that the legislature could change any assumption he had.

[10:02:58 AM](#)

Ms. Hanrahan agreed that normally, an agency may apply for competitive grants throughout the year if it has excess federal authority, and that the stimulus money is different. She said that the focus has been to identify the funds that they know are coming to the state and have public debate about those funds. The next layer is the competitive process. However, there is no assurance about whether the state would receive any of the money through the competitive process. Some of the grants have stipulations which make it unlikely that Alaska would get the money. She emphasized that until more information was obtained, the administration was focusing on the direct grants. She believed the only potential review for the direct grants is through BUD.

Co-Chair Hawker added that the mechanism works because in the operating budget there is an appropriation of all federal funds that may be received. The appropriation goes through a review by the Legislative Budget and Audit Committee. However, he warned that the BUD review is a "toothless tiger" in that even if the committee says no to the appropriation, the administration may still accept it after a 45-day waiting period.

Mr. Spencer expanded by saying that few governors have taken that prerogative. Co-Chair Hawker emphasized that compliance with the committee is voluntary. Mr. Spencer agreed.

[10:05:27 AM](#)

Representative Salmon asked what a VPSO is considered if not law enforcement. He wanted to know what it would take for a VPSO to become legitimate law enforcement. Mr. Spencer explained that VPSOs are public safety officers. They have a wide variety of duties; they do deal with crimes in some circumstances, but they are not a certified police officer under Alaska Police Standards Council certification rules. The primary purpose of a VPSO is not to arrest, investigate, and help to prosecute. They do have probation and parole responsibilities, which helped in improving the pay schedule. They also have public safety roles such as working with villages with code red firefighting apparatus. He did not know what it would take to get a VPSO certified and offered to get the information to the committee.

[10:07:24 AM](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Co-Chair explained that the Department of Health and Social Services (DHSS) would cover Items 12 and 13. He detailed that Item 12 involves additional personnel and Item 13 has significant dollar value.

ALISON ELGEE, ASSISTANT COMMISSIONER, FINANCE AND MANAGEMENT SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, introduced Item 12, Health Information Technology. The program has been proposed through ARRA with a slightly longer timeframe than most stimulus programs. The money would be made available soon, but the program dollars will be available through FY15. The item will be primarily capital dollars. As yet, there is only very limited guidance from the federal government about exactly how the money will be made available. Nationally, there is \$20 billion for the information technology.

Ms. Elgee reported that the health information technology program is designed to move the country into an electronic health records environment. The benefits have been identified for some time as improving health care quality, preventing medical errors, reducing health care costs, increasing administrative efficiencies, decreasing paperwork, and expanding access to affordable care.

Ms. Elgee noted the tremendous planning effort that will be required to establish health information technology in the state of Alaska. The department will create a health information exchange that will allow providers to access health records from other providers through a very controlled environment that assures the protection and privacy of the health records.

Ms. Elgee offered that DHSS is proposing to establish positions to begin the planning effort. The department believes that a project coordinator, data processors, and additional support personnel will be needed.

[10:10:22 AM](#)

Co-Chair Hawker asked for more background regarding electronic medical records. He wondered how long the practice had been around and if it was voluntary. He did not regard electronic data as secure. Ms. Elgee responded that planning is needed to protect the records. A very secure environment is essential. She explained that the protection of health records runs throughout the business that DHSS does. She emphasized that there are extensive federal requirements under the Health Insurance Portability and Accountability Act (HIPPA) that the department will need to comply with in creating the health information technology environment.

Ms. Elgee pointed out that the potential for cost savings are tremendous. For example, tests are ordered for an individual by a primary physician. If the individual goes to a different doctor, currently most of the tests are duplicated. In a health records environment, a provider would be able to access the original tests and not have to repeat them. The program will help the safety of individuals because the records will contain information such as allergies.

Co-Chair Hawker asked if the initiative was a state initiative. Ms. Elgee replied that it was a federal initiative but that the state has put a great deal of energy into planning with providers what it might look; there has been no money to make it happen.

Larry Persily added that part of the electronic medical records provisions in the stimulus bill is a grant program that states will administer to health care providers. The funds that will be available will be administered by the states and will provide as much as \$67,000 to each health care provider spread over six years. The amount would depend on costs; the maximum grant would be \$21,250 the first year, and up to \$8,500 each year for the next five years, depending on costs. Hospitals, doctors, clinics, nurses, midwives, and anyone who qualifies could then obtain the grant funds to help pay the cost of converting to electronic medical records, which eventually every health care provider will have to do. He emphasized that there will be a lot of money flowing to health care providers in Alaska to help with the conversion over several years.

[10:13:44 AM](#)

Co-Chair Hawker wanted to know if the conversion is already federally mandated. Ms. Elgee understood that the change is not currently federally mandated. The program is intended as incentive to move states in the direction of electronic records. She could not predict the timing of federal mandating but noted a federal process in place planning around the effort.

Mr. Persily believed that there would be a federal mandate at some point, which was why it was a key part of the stimulus bill.

Co-Chair Hawker thought the item would give money to the state to administer the process, but asked if it would administer the grants to providers. Ms. Elgee responded that the money was to begin the planning effort necessary to be positioned to accept the remaining health information technology funds, which will include provider incentive payments.

[10:15:26 AM](#)

Representative Joule wondered whether major health care providers were heading towards electronic health records, either with or without the DHSS. Ms. Elgee responded that there has been planning underway. She referred to an organization created specifically to look at the development of an electronic health records environment. Dr. Butler represents DHSS on the board of directors. She noted a lot of provider interest.

Representative Joule asked if the providers interested were organizations like Providence, Regional, Memorial, and others. Ms. Elgee answered in the affirmative.

Representative Joule wondered if there would be a need for additional capital commitment from the state. He had heard of a requirement for a match of \$1.3 million. Ms. Elgee responded that the department has received very little guidance for the program, so she could not confirm or deny a future need for a state capital match.

[10:17:28 AM](#)

Mr. Persily introduced another concern related to electronic medical records: the issue of privacy. He pointed out that there are already strict privacy rules related to medical records, and that the stimulus bill includes pages of even tighter privacy restrictions. For example, ARRA prohibits the sale of records and use of records in marketing. An audit trail of people having access to the information is required. There are also mandates for standards for technology systems to restrict the sensitive information, use data encryption, to notify people of breaches. There are monetary penalties for violation of privacy and requirements for monitoring the contracts and compliance. He emphasized that the issue of privacy was taken seriously in the writing of the law.

[10:18:35 AM](#)

Representative Gara asked why the state needs so much database infrastructure, since it does not itself provide medical care or share medical records with others. He wanted to know what the state staff would be doing. Ms. Elgee explained that the underlying technology is called a help-information exchange, a means by which providers can exchange records in a secure environment. Once a doctor at Providence indicates a need obtain records from a provider in Kotzebue, they will query the health information exchange for the records. The exchange will then retrieve the records and pass the information on. Records can be made available quickly and duplication of tests can be avoided.

Mr. Persily added that the exchange ensures a secure safe system, rather than passing records on through email attachments.

[10:21:09 AM](#)

Representative Kelly pointed out that the list the committee was looking at consisted of projects that the governor did not put in, putting the departments in the position of asking for something that she did not request funds for. He hoped that presenters would clarify whether the governor had changed her mind regarding any of the items discussed.

Co-Chair Hawker asked if the department would like to get the funds. Ms. Elgee acknowledged that the department would like to receive the funds and believed there was tremendous benefit in the program in terms of controlling health care costs. She observed that SB 133 would address the same subject matter; the department had been advised to work on the bill.

Representative Kelly did not want to hear what the department wanted but whether the administration had changed its position on the items. He assumed that the governor had not changed her mind regarding any of the 39 items on the spreadsheet. Co-Chair Hawker expressed frustration with a lack of communication with the governor.

Ms. Hanrahan felt that the governor was clear that while many of the items could benefit the state, she wanted public discussion regarding the associated costs.

[10:27:03 AM](#)

Representative Kelly reiterated a desire for a clear indication that the governor had changed her position on individual items.

Co-Chair Hawker queried what authority Ms. Hanrahan had in speaking to the committee. Ms. Hanrahan believed that the goal was giving as much information to the public as possible so that the public could decide whether they wanted the funds. Co-Chair Hawker asked if she felt the departments had been giving fair and complete presentations. Ms. Hanrahan affirmed that departments have identified the full spectrum of the issues. She felt that there could be more discussions on costs or obstacles that might be associated with the items.

[10:29:25 AM](#)

Representative Gara concluded that the governor has not changed her position of not wanting the funds. He asked if there had been any discussion with the governor regarding

the technology energy funds. Ms. Elgee noted that the department presented information to OMB and supports the request, but noted they have gotten little information from the federal government.

Representative Gara asked if there was an understanding at OMB that the projects would be presented to the legislature. Ms. Hanrahan explained that OMB was instructed to identify the benefits and costs of the items. She emphasized how little information had been provided by the federal government.

[10:33:49 AM](#)

Representative Gara commented that he was hearing different things from the agencies and from the governor through the press.

Representative Kelly cited experience dealing with the budgeting process. He found the reports from the departments clear and reasonable. He only wanted to know if the departments were aware of a change in the governor's stance regarding the stimulus money. He did not intend to stir up controversy.

[10:37:15 AM](#)

Vice-Chair Thomas talked about experience dealing with health records. He opined that the governor would support the department's project, as she has approved money for electronic records in the past. He emphasized the value of letting the public hear detailed discussion about the various items.

Representative Crawford thought the important question was whether such things as electronic health care records, troopers, or teachers are needed. He thought the items were needed and that the funds would be requested if even the stimulus money was not there. He opined that getting money from the federal government for the next few years would be a good thing and that the legislature needs to decide whether to make a commitment, regardless of what the governor does. He felt the question of whether funds would be available in three years was a separate question.

[10:42:17 AM](#)

Ms. Elgee turned to Item 13, Public Assistance and Child Care Benefits. She explained that the childcare development block grant funding being proposed through ARRA includes \$4,360,000 for the state of Alaska. She believed the money would be available through 12/31/2010. The intent was to improve the quality of childcare services and expand programs. The money cannot be used to supplant general

funds; existing programs must be maintained. Within the allocation, \$333,660 is specifically targeted for quality expansion and \$193,232 for activities that improve the quality of infant and toddler care.

Ms. Elgee continued that the program is partially addressed in the governor's proposed FY10 budget. The department put forward an increment in the amount of \$3 million in general funds to increase the reimbursement level for low-income families that qualify for childcare assistance. The department is aware of issues relative to the eligibility standards being used and are looking at other barriers to childcare access. In addition, DHSS has been working with the Department of Education and Early Development and the Best Beginnings organization to identify needed improvements. The department believes the stimulus money could be used on a one-time basis and would not necessarily commit the state to on-going expense. However, the department would probably come back to the legislature for continued funding to the degree that the money increased the level of childcare assistance reimbursement.

Co-Chair Hawker clarified that currently nearly \$10 million of federal money goes to childcare benefits. He asked if the money could be brought into the program and free up the federal money to be used elsewhere. Ms. Elgee did not think so but would have to confirm. Co-Chair Hawker verified that the department would look for continued general funds if the stimulus money was accepted.

Representative Gara asked if \$3 million of the stimulus money could be used for the childcare expansion considered by the governor. Ms. Elgee answered yes.

[10:46:58 AM](#)

Representative Fairclough clarified that the funds would not supplant a program that the legislature has not approved funding with general funds.

Representative Gara thought \$3 million could be taken out of the operating budget and the stimulus funds used instead. Ms. Elgee explained that the House version of the budget contains \$1.5 million in general funds for the purpose. When the Senate was closing out its budget, the federal economic stimulus funds were better understood; they chose to eliminate the general funding in deference to the policy debate regarding the stimulus funds.

Co-Chair Hawker pointed out that the gamble is the governor rejecting the stimulus funds and the budget going to conference committee.

Representative Gara still thought that some general funds could be freed up if the legislature could do what the governor and both houses want to do with the stimulus funds regarding childcare. He described what could be done for foster care youth with \$1.5 million.

[10:48:45 AM](#)

Representative Austerman verified that \$3 million in general funds was requested for the same program in the FY10 governor's budget. He asked for further clarification. Ms. Elgee explained that the governor's proposed FY10 budget had gone through exhaustive review. The stimulus money came after the committee review and the governor wanted discussion to take place.

Co-Chair Hawker asked if the administration believed the department's presentation had adequately described the challenges of the item. Ms. Hanrahan replied yes, costs as well as benefits had been described in a transparent manner.

[10:51:16 AM](#)

Representative Gara asked if the governor had proposed a \$3 million increment in her operating budget for some of what is covered in the \$4 million amount, after which the House moved the amount to \$1.5 million, and finally the Senate was thinking about how to use stimulus money for the program. Ms. Elgee agreed with his analysis. Representative Gara thought that the governor's rejection of the stimulus money is rejection of federal money to pay for something the state was going to pay for. Ms. Elgee stressed that the governor had not rejected the money, but has called for additional conversation.

Representative Fairclough requested the definition "supplanting." Mr. Persily explained that money that is already budgeted cannot be supplanted. The increment in the FY10 proposal has not been approved, and so is not being supplanted. He defined supplanting as replacing dollars, as in not spending a dollar that had been budgeted, appropriated, and planned on spending, but replacing the dollar with a federal dollar.

Representative Fairclough pointed out that Alaska is caught in a quandary because a budget had been submitted in November before the federal stimulus legislation came about. She described the chain of events. She thought if the federal government reviewed the situation, it would look like supplanting.

Ms. Hanrahan agreed with Mr. Persily's definition that funds not officially in the budget cannot be supplanted.

[10:54:54 AM](#)

Representative Austerman did not understand why the governor would put the item in the budget but not request the stimulus funds. Ms. Hanrahan responded that one of the concerns about the stimulus package is that there will be unprecedented accountability and requirements above and beyond some of the state's formula programs. She believed the governor was providing a chance for more debate regarding any stimulus money that would come to the state.

[10:56:57 AM](#)

AT EASE

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RECONVENED

DEPARTMENT OF REVENUE

Co-Chair Hawker explained that the committee would next approach items 35, 36, and 37. He noted that there had been a lot of confusion about the three programs: the State Energy Program, the Weatherization Program, and the Efficiency and Conservation Block Grants.

[11:06:53 AM](#)

DAN FAUSKE, CEO/EXECUTIVE DIRECTOR, ALASKA HOUSING FINANCE CORPORATION, DEPARTMENT OF REVENUE (via teleconference), provided an overview of the three programs, beginning with the \$28.5 million listed for the state energy program (SEP). The Alaska Housing Finance Corporation (AHFC) has received federal funds for many years, though not as much as offered by the stimulus funds. The corporation has had a reimbursable services agreement (RSA) with the Alaska Industrial Development and Export Authority (AIDEA) for around ten years. The corporation shares the federal money with AIDEA; AHFC deals on the demand side of the energy equation and AIDEA or the Alaska Energy Authority (AEA) deals with the supply side. The item has raised questions because the federal legislation requires a state-wide energy code.

Mr. Fauske continued that AHFC also receives money every year from the federal government for weatherization, though not as large as the stimulus amount. For many years the money was used for people at 60 percent of median income. Now, with the approval of the revised weatherization rebate program, there is about \$200 million in weatherization; the stimulus money would go to that program.

Mr. Fauske explained that the \$8.5 million for the block grants are funds for energy efficiency and conservation activities for communities. Providers would compete for the funds to provide the services required by the legislation.

Mr. Fauske stated that AHFC could certainly put the money to use. Whether the money can be accepted or not because of code requirements is dependent on policies being developed. He pointed out that most building codes in most areas of the state equate to a four-star-plus energy code. By statute the corporation cannot purchase mortgages unless they meet certain standards.

[11:12:29 AM](#)

Co-Chair Hawker asked if Item 37 (the block grant program) was a new program for the corporation. Mr. Fauske answered that it was. Co-Chair Hawker questioned whether additional resources would be needed from the state to administer the program. Mr. Fauske replied that the program would be project based, so any additional money needed would be limited. Once the money was gone, the position would go away.

[11:13:30 AM](#)

Mr. Persily spoke to the question of energy efficiency codes and utility rates. He stated that there is no requirement to change state utility regulation or energy efficiency codes for the weatherization program funds or the energy efficiency and conservation block grants. The requirements under ARRA apply only to the state energy program funds (Item 35, for \$28.5 million).

Co-Chair Hawker queried whether OMB or anyone else believes otherwise. He emphasized the importance of correct information.

Mr. Persily clarified the two requirements under ARRA for the \$28.5 million for the state energy program. Regarding the first requirement, he read from the act:

The applicable state regulatory authority [the Regulatory Commission of Alaska (RCA) in Alaska] will seek to implement in appropriate proceedings for electric and gas utilities a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently, and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective and measureable, verifiable efficiency savings in a way that sustains or enhances utility customer incentives to use energy.

Mr. Persily added that the provision is also referred to as "rate decoupling." He assured the committee that other states have already accomplished the requirement by sending a letter the U.S. Department of Energy certifying compliance, and that such assurance has been accepted.

Co-Chair Hawker underlined the key point that the prefacing condition is that the states "seek" to implement the provision; there is no mandate to include a decoupling arrangement. Mr. Persily concurred.

ROBERT (BOB) M. PICKETT, CHAIRMAN, REGULATORY COMMISSION OF ALASKA (RCA) (via teleconference), testified that the RCA commissioners had taken the matter up at a March 11, 2009 public meeting. He stressed that decoupling is one of the tools towards the end; it is not mandated nor the only tool. He was authorized by the commissioners to draft a letter to Governor Palin. He read part of the letter:

The Regulatory Commission of Alaska assures you that it will seek to implement in appropriate proceedings for each electric gas and electric utility in Alaska for which the RCA has rate-making authority a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provides timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective, measurable, and verifiable efficiency savings in a way that sustains or enhances utility customers' incentives to use energy more efficiently.

Mr. Pickett believed that the letter provides the necessary assurances to the governor.

[11:17:27 AM](#)

BOB STOLLER, ATTORNEY, REGULATORY COMMISSION OF ALASKA ANCHORAGE (via teleconference), testified that RCA has regulations on the books that date back to 1984. The precise citation setting out the pricing objectives or the pricing of electricity is found in Title 3 Alaska Administrative Code Chapter 48, Section 510. There are five itemized objectives; number four is explicitly conservation, and number five is explicitly "optimal use, which includes considerations of efficiency."

Mr. Stoller read from 3 AAC 48.520:

The fundamental basis for establishing rates in order to meet pricing objectives is costs. The Commission will, in its discretion, for appropriate reasons, consider non-cost standards in establishing electricity rates.

Mr. Stoller added that RCA applies similar policies in its gas rate design and gas revenue requirement determinations.

[11:18:36 AM](#)

Co-Chair Hawker asked for copies of the letter and the regulations cited.

Mr. Persily turned to the second requirement under ARRA for the \$28.5 million for the state energy program, which deals with energy efficiency codes for buildings. The act requires that within eight years of the date of enactment, or until February 2017:

The state shall have achieved compliance on at least 90 percent of new and renovated residential and commercial square footage.

Mr. Persily emphasized that there were two separate standards for residential and commercial buildings. He referred to a handout depicting how many states are at the required level. The law requires that the state meet the most recent or equivalent international energy conservation code for commercial buildings; for residential buildings, the state must meet or exceed the equivalent of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE).

Mr. Persily pointed out that on the map, the 26 states in green (for commercial energy codes) either meet, exceed, or are just one addition away from the most recent ASHRAE codes; 22 states meet the residential energy codes.

Mr. Persily detailed that the ASHRAE codes for energy efficiency deal with lighting levels, insulation, windows, and so on; they are not geared towards advanced technology or high performance on proven technology. The codes are practical and doable; the intent is to be cost effective.

Co-Chair Hawker clarified that the codes are strictly energy related and not plumbing or structural. Mr. Persily explained that the energy efficiency codes could be part of a building code. The requirements deal with 90 percent of square footage for energy efficiency codes standards. To receive the funds, the state would have to certify that the codes would be in place within eight years.

Mr. Persily reported that he had asked the U.S. Department of Energy what would happen after eight years if a new or renovated building is found to be at less than 90 percent; the response was that they did not know.

[11:22:36 AM](#)

Co-Chair Hawker asked if AHFC had concerns about the codes. Mr. Fauske answered that the corporation had two concerns. First, the energy code is for both residential and commercial buildings, but AHFC does not deal with commercial

buildings and cannot estimate those costs. Second, the corporation was concerned about the cost of enforcement.

Mr. Persily emphasized that the commercial compliance applied only to new and renovated buildings; he thought most new buildings would already meet the codes. He noted that the state would have to accumulate the data.

Mr. Persily disclosed that his brother is vice-president of ASHRAE. His brother had confirmed that most new construction would meet the codes, which are required in order to get new financing. The challenge for the state would not be enforcement as much as how to gather the data needed to certify that the standards were being met.

Mr. Persily added that voluntary compliance on new and renovated commercial structures would help the state towards the 90 percent goal in eight years, since commercial buildings are larger, and since the square footage is cumulative and made of the combined totals of residential and commercial structures.

Representative Austerman asked if the code issues affected the energy efficiency provision in Item 37. Mr. Persily assured him that the codes apply only to Item 35.

Co-Chair Hawker queried how to measure voluntary compliance and how voluntary compliance would affect the totals. Mr. Persily did not know. He opined that the state would have to figure out whether reporting would be voluntary and how to accumulate the data.

Co-Chair Hawker questioned whether the state was required to adopt the codes or if compliance to the standard was the issue. Mr. Persily replied that though the requirement is 90 percent, the law says that the state will implement the energy code for residential and the energy code for commercial buildings. At some point during the eight years, the state would have to adopt the energy codes and gather the data.

Mr. Fauske interjected that currently the energy rating for compliance for residential buildings costs approximately \$300.

In a response to a question by Co-Chair Hawker, Mr. Persily reported that his brother has tested federal buildings in Alaska, which involves running plastic tubing throughout the building, closing the doors, blowing fans, and seeing which way the air moves.

[11:27:48 AM](#)

Vice-Chair Thomas asked if state office buildings or schools would fall under the requirements. He did not think some buildings had been built to be energy efficient. Mr. Persily was not aware of anything in the law exempting public buildings from meeting the energy efficiency codes.

Mr. Fauske pointed out that AHFC represents about 20 to 25 percent of residential mortgages in Alaska. Regarding compliance, he noted that Fanny Mae, Freddie Mac, and other mortgage companies do not have to adhere to Building Energy Efficiency Standards (BEES) requirements, although they do adhere to building codes. He had just attended a federal home loan bank board meeting (he is a board member) where the issue was discussed; they concluded that a great deal of money was at stake.

[11:30:12 AM](#)

Representative Gara wondered how much money would be lost if the state did not comply with the energy efficiency codes. If the state did certify compliance with the codes, he wondered whether the \$28 million could be used for renewable energy projects. Mr. Persily thought the state would have wide latitude on how to use the money.

BRYAN BUTCHER, DIRECTOR, GOVERNMENT AFFAIRS AND PUBLIC RELATIONS, ALASKA HOUSING FINANCE CORPORATION, DEPARTMENT OF REVENUE (via teleconference), replied that, per previous agreement with AEA, the funds would be split 50-50 between AHFC and AEA. He listed estimated amounts of money that could be used for the different programs:

- \$2 million: weatherization and rebate support, software enhancements, expanding an energy audit program to deal with commercial, school, and state buildings
- \$4 million: home-based renewable energy program, with smart metering, net metering, ways of gathering information
- \$1.8 million: consumer education
- \$4.5 million: weatherization community building retrofit
- \$2 million: statewide energy efficiency standards for public buildings, including developing the commercial energy code

Representative Gara asked whether the agreement to split the money with AEA could be adjusted. Since AHFC was already getting weatherization and other money, he did not think the 50-50 split would be good policy. Mr. Butcher replied that the agreement could be adjusted. If the ARRA funds were received, there would be policy meetings discussing how to use the funds in the time allotted. He noted that

information was still being gathered. Mr. Fauske added that both agencies would want all the money.

[11:35:36 AM](#)

Representative Gara emphasized his desire to use the funds to deal with Alaska's energy crisis. Mr. Fauske thought the legislature and the governor could set policy on the issue.

Mr. Persily stressed that meeting the energy efficiency standards would take a lot of work. He referred to legislation in the Senate that addressed the issue by exempting structures without running water or utilities. He referred to communities moving towards compliance but making the process relevant and doable for Alaska. He opined that the policy call was deciding whether the funds were wanted and could be used well, and then adopting an interim project.

Representative Kelly noted that the private sector was moving ahead on the codes and asked if the federal government would be satisfied with codes already in place. Mr. Persily did not think so. He believed the legislature would have to craft legislation that both complies with the energy efficiency standards required under ARRA and works for Alaska.

Co-Chair Hawker asked if local government could enact standards in lieu of the state. Mr. Persily quoted the legislation: "...the state or the applicable units of local government that have authority to adopt building codes will implement the following..."

[11:39:52 AM](#)

Representative Kelly stated for the record that just determining how to deal with federal requirements would not satisfy citizens who want more states rights as per the 10th amendment. He asked if there was some way to get around federal requirements. Mr. Persily responded that there probably was not; he thought there would be considerable discussion regarding the issue.

Representative Austerman queried requirements for Items 36 and 37 and asked why the items were not in the original budget. Ms. Hanrahan replied that originally the energy funds assurances applied to all three programs or only to one. She reported receiving conflicting information regarding which programs were affected. She added that another issue tied weatherization was the requirement to use the prevailing wage, which is not how weatherization has been operated in Alaska.

[11:43:21 AM](#)

Mr. Butcher explained that Davis-Bacon Act wages [a federal law requiring the payment of prevailing wage on public works projects] have historically been exempted for federal funds coming in for weatherization, but ARRA stipulates that the provision would apply to stimulus funds. All states are waiting for guidance from the U.S. Department of Energy. He did know that the Department of Energy would make the decision, not the individual states.

[11:44:24 AM](#)

Mr. Fauske stated that AHFC was anxious to hear back from the federal government about the issue; the corporation did not want to "taint" the \$200 million currently in weatherization by adding federal money that requires the measure.

Representative Gara wondered why the administration had rejected Items 36 and 37. He felt that the administration's recent response had been offensive. Ms. Hanrahan stated that the administration had not taken the decision lightly. She shared that the administration had been told to be conservative in its approach until hearing from the U.S. Department of Energy.

Representative Austerman asked for clarification concerning federal requirements related to the block grants. Mr. Persily detailed that the U.S. Department of Energy had officially determined that \$9.6 million would go to the state for energy efficiency and conservation block grants; \$4.5 million would bypass the state and go directly to the 10 largest cities and boroughs. He specified that in addition, 60 percent of the state's \$9.5 million had to go to communities too small to received direct funding.

[11:48:59 AM](#)

Mr. Fauske replied that AHFC is not aware of strings attached to the funds. Ms. Hanrahan reiterated that the department had had no guidance concerning the funds, aside from the weatherization funds.

Representative Gara wondered how the 90 percent compliance would be measured. Mr. Persily replied that within eight years from the act at least 90 percent of new and renovated residential and commercial buildings space must meet the requirements. Representative Gara asked for further clarification. Mr. Persily felt that the answers would come from the U.S. Department of Energy. He stated that the definition of "new" was not clear.

[11:52:24 AM](#)

Mr. Fauske concurred with Ms. Hanrahan about the issue of compliance.

Ms. Hanrahan stated that the governor would need to sign certification that she will comply with the assurances to implement an energy building code and that the state would implement a general policy ensuring that utility financial incentives are in line. She emphasized the issue of decoupling, which would have a significant impact on Alaska; the administration wanted to make the assurance without the decoupling. Regarding the state energy building codes, she believed the question of preemption of local codes needed to be answered. She felt that the cost to the homeowner needed to be addressed; renovating a house in Fairbanks, for example, would cost around \$12,500.

Co-Chair Hawker questioned the relevancy of her remarks about renovation costs, since the assurances would relate to new construction. Ms. Hanrahan believed renovation applied.

[11:55:20 AM](#)

Mr. Persily stated that any renovation would be voluntary. Ms. Hanrahan replied that the statewide energy code would cost private homeowners when there was new construction on a residential building.

Vice-Chair Thomas felt that Alaskans should learn to help themselves when it comes to conserving energy in their homes. He relayed personal experience. He felt that public buildings, especially schools, need to be brought up to some kind of standard.

Representative Fairclough noted that the communities of Tok, Glennallen, and Kodiak had asked the legislature to consider weatherization.

[11:58:43 AM](#)

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

Co-Chair Hawker wanted to discuss the larger dollar items, Items 10, 22, and the Unemployment Insurance Modernization. He pointed out that the last line item was found in a supplemental document.

GUY BELL, ASSISTANT COMMISSIONER, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT (DLWD), discussed Item 19, \$4.3 million for Employment and Training Services. He explained that the funding would allow the department to provide enhanced services to out-of-work Alaskans through a web-based labor exchange system and would fund eight positions, including counselors and employment security specialists in Anchorage, Fairbanks, Wasilla, and Kenai.

Co-Chair Hawker asked if the job centers would provide services to rural Alaskans. Mr. Bell responded that the department already provides services to rural areas; the item would address areas with the largest influx of unemployed workers.

Representative Gara asked about the closing of the Tok job center and wondered if it should be reopened.

[12:03:35 PM](#)

Mr. Bell replied that job centers in Tok and Glennallen had been kept open; Delta Junction and Petersburg were closed. He explained that DLWD workload declines during the good times and increases in more difficult times; 31 positions had been eliminated over the past five years through both layoff and attrition.

Representative Joule asked if the eight positions would be in places with the highest unemployment. Mr. Bell clarified that the positions were not necessarily in places with the highest unemployment but the places with the largest volume of job center activity.

Representative Joule explained that unemployment numbers in rural Alaska may not reflect the actual number of individuals who are unemployed. He wanted attention paid to people who have given up on getting a job.

[12:06:35 PM](#)

Representative Fairclough asked if the 31 positions were reclassified or if the budget was reduced. Mr. Bell responded that the number of full-time positions had been reduced in the budget.

Representative Fairclough queried the year the budget had been reduced.

TOM NELSON, DIRECTOR, EMPLOYMENT SECURITY DIVISION, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, informed the committee that since 2005, DLWD has reduced 31 positions in its employment and training component. The department has been able to manage the workload by reclassification of remaining staff. He noted that the unemployment rate was 6.2 percent in 2007.

Representative Fairclough asked if she would then see the dollar reduction to the department in the 2005 budget. Mr. Bell responded that the reduction in position count could be seen, as well as a reduction in dollars. He noted that the Division of Employment Security is nearly 100 percent

federally funded. The reduction in federal funding over the period was reflected in the budget.

[12:08:44 PM](#)

Co-Chair Hawker queried the department's need for the positions. Mr. Bell acknowledged sensitivity to increasing staff but assured the public that asking for the funds would not mean creating long-term costs.

Co-Chair Hawker asked if collective bargaining would allow the department to hire positions with the up-front understanding that they would not have a job when the federal funds ran out. Mr. Bell replied no; however, there is considerable turnover, which he explained.

[12:11:12 PM](#)

Co-Chair Hawker asked if the positions could be hired on a contractual services basis with a termination date. Mr. Bell responded that the department could consider non-permanent positions, with the understanding that the individuals would not be receiving standard state benefits because they are project employees. He stated that the department felt it would be more fair and appropriate to hire the positions with benefits.

Co-Chair Hawker asked whether the positions should be filled. Mr. Bell answered in the affirmative; he believed the criteria could be met and the funds spent creatively in a way that avoids future commitment from the state.

Ms. Hanrahan pointed out that the agencies had been asked to describe what could be done with the funds without expanding government.

Representative Kelly expressed concerns with adding employees that would not have work in several years. He was concerned about timing and asked why the positions should be filled.

[12:15:20 PM](#)

Mr. Bell reiterated that the department was accustomed to jobs coming and going depending on the economy. He thought the goal to upgrade the skills of Alaskan residents and to reduce non-resident hires was good. He pointed out that there are job opportunities for Alaskans.

Representative Kelly reiterated concerns about the timing. He would rather say no to the effort than get people to work and cut off later.

[12:18:33 PM](#)

Representative Joule talked about references to "Velcro" describing jobs that the state is stuck with. He thought there were two sides to the story; for some people, the jobs would provide an important level of security. He did not think the question was where the work was but where the work was going to be when the recession was over. He wanted to provide vision for the future.

Representative Joule listed the necessities for his constituents: education, healthcare, transportation, and some level of resource development. He supported moving rural people who cannot find work in construction towards the jobs in education and health care that are being filled by imported workers. He felt strongly that DWLD's ability to retrain Alaskans is important and stressed the need for a vision for Alaska's workforce.

[12:21:15 PM](#)

Vice-Chair Thomas told the committee that while doing research for HB 58 (debt retirement for college students from Alaska) he was shocked to discover that the state does not track the need for professional jobs such as engineers, teachers, or biologists in Alaska. He thought there should be focus on tracking more than workforce development. He pointed out that highly trained workers end up leaving Alaska. He asked if two of the new positions could be dedicated to determining the needs for professionally trained workers.

Mr. Bell explained that industry and occupational forecasts are done by the department's research and analysis section. Projections for job growth and decline are made by occupation. The most recent projection covers from 2006 to 2016 and shows there will be a need for 30,000 positions. Identifying the supply side or how to train for priority occupations is more difficult. He sympathized with Representative Thomas regarding HB 58; he hoped to come up with a workable method to track the need.

[12:26:38 PM](#)

Vice-Chair Thomas noted that the lack of inventory of need made it difficult for families to plan the future related to returning to Alaska and finding a job. He asked again if two of the positions could be dedicated to the research.

Mr. Bell commented that the department is waiting for information on how many jobs would be created by the stimulus package. He thought there might be a role for research analysis economists to set up a tracking mechanism.

Vice-Chair Thomas asked if the answer to his question was no. He did not hear anything from the department about helping college students. Mr. Bell responded that he was not saying yes or no. The department acknowledges that the need is important. He stated that there may be opportunities within the funding.

[12:29:39 PM](#)

Representative Gara relayed a story of a constituent who had been a job counselor for DLWD. His position had been cut. The man expressed frustration at being unable to have a job where he knew he could help multiple people find work, when there were so many out of work. He asked for an explanation of how the department operated in terms of getting people retrained and able to get new jobs, and how this related to the new positions.

Mr. Nelson explained that DLWD front-line staff (the counselors and employment security specialists, which the eight positions would be) helps people get re-employed. In current conditions, the department is serving an increase of 68 percent of initial unemployment insurance claims; that activity started in June 2008. The front-line staff tries to intervene and immediately reconnect the workers to the workforce. The ideal is to reconnect them in the areas and industries they worked previously; if that is not possible, staff tries to find them something suitable. If there are significant barriers, more intensive services are required. The counselor positions spend more time dealing with more complex cases, such as drug and alcohol treatment and referrals to child services. The system is designed to facilitate those kinds of referrals. At any one point in time on the continuum of services, workers can exit into suitable employment.

[12:33:10 PM](#)

Representative Kelly pointed to Vice-Chair Thomas's question regarding the needed research. He wanted the question answered. Mr. Nelson responded that part of the answer lies in two legislative appropriations over the past two fiscal years. One appropriation was for a variable reporting system and the other was for a credentialing project. The combination of both will allow DLWD to inventory the skills in communities in Alaska and to provide variable reports to employers who have the needs. For example, if an employer in a hospital has a need and lists the jobs with DLWD, the department will be able to tell them ahead of time how many of the skills or credentials exist in a certain geographic area. That work along with the research and analysis will provide the needed information.

Representative Kelly expected an answer to the question. He expressed concerns that the department dealt more with union jobs. He thought the department should work with the university's data.

[12:37:11 PM](#)

Mr. Bell moved to Item 22, \$9.2 million for the Working Investment Act, a federal program directed towards re-training unemployed or dislocated workers. He explained that in FY09 the department received about \$12 million in funding under the program; the item would increase that amount significantly.

Mr. Bell detailed that there were three categories to the program. The first is a program focused on at-risk and economically disadvantaged youth between the ages of 14 and 24. The \$4 million would focus on a summer employment program to increase work preparedness. The department has begun contacting agencies that administer youth programs to get the word out that the program might be available this summer. The department hoped to serve about 1,600 youth through the program. The employment opportunities for the youth would be 100 percent subsidized.

Co-Chair Hawker questioned what would happen when the money runs out. Mr. Bell replied that they would have a work skill; the person could go into a trade or continue their education.

[12:40:49 PM](#)

Representative Joule asked if the program would apply to college students who come home in the summer months. Mr. Bell replied that the student would need to meet income and other eligibility criteria; the program is generally intended more for young people who are disconnected.

Representative Austerman asked if the program would span two summers. Mr. Bell responded that the funding would expire June 30, 2011.

[12:42:35 PM](#)

Representative Crawford asked who would get the benefit of the young people's labor and what criteria would be used to decide who would get the subsidized workers. Mr. Bell described a similar program in Anchorage. The entities getting the workers could be in the private, public, or non-profit sector.

Representative Crawford asked for more information. Mr. Nelson gave the example of the King Career Center, a construction academy in Anchorage. The trained youth are

hired by a consortium of construction companies and industry leaders. The youth learn industry standards and then the industry hires them. Last year, all but three of more than 70 youth that went through the center were hired. Ideally, the positions would later be unsubsidized.

Representative Crawford thought companies would fight over the fully subsidized positions.

[12:45:23 PM](#)

Mr. Nelson agreed. One of DLWD's tasks is to develop a relationship with the employers to promote the programs for youth as well as adult workers.

Representative Crawford did not understand the 100 percent subsidy. He described experience of industry giving a 40 percent break for a first-period apprentice. Industry competes for the 40 percent break. He wondered why there would be such a high break, when it could be spread out to more kids at a 50 percent subsidy, for example. Mr. Nelson pointed out that the emphasis of the incentive funds in the program is that the full subsidy is better than the normal 50 percent or less. The formula under the workforce investment act works to develop an on-the-job training opportunity or federally recognized apprenticeship opportunity. The incentive is to get more employers involved. The incentive is short-term.

Representative Crawford spoke of experience with prison labor contracts that were ended because some businesses were at a huge advantage with the cheap labor force. He could see possibility of abuse. He queried the criteria that would be used to decide which company would get the free workers.

[12:48:52 PM](#)

Mr. Bell admitted he did not have all the details and offered to get more information.

Representative Crawford reported that every year 50,000 to 70,000 or one in four Alaskan jobs are filled by workers from out-of-state, mainly in tourism, the fishing industry, and the construction industry. He thought that a better case could be made for connecting Alaskan kids with those jobs. He felt the 100 percent subsidy proposed would benefit employers more than employees.

Mr. Bell promised to get more information about the perimeters of the program.

[12:50:45 PM](#)

Representative Austerman wanted to know, regarding Item 22, if additional employees would need to be hired to do the training. Mr. Bell replied that the department did not plan to add additional staff. The work will be done mostly through training providers; DLWD will be directing more people to training. Eligibility criteria is being established. More people will be trained without increasing staff.

Co-Chair Hawker queried the strings attached to the item. Mr. Bell explained that there will be a federal fund increase in the operating budget. The department will work with other training providers such as the university rather than create permanent training programs. He cited other experience with federal grants for large amounts of money for specific training. He pointed to good partnerships with training providers around the state.

Co-Chair Hawker asked if the goal could be accomplished. Mr. Bell answered yes.

[12:53:32 PM](#)

Co-Chair Hawker asked if the governor's office found the program acceptable in terms of risk. Ms. Hanarahan responded that the policy issue must be decided by the governor and the legislature.

Mr. Bell turned to the department's last item, Unemployment Insurance Modernization. He noted that the issue has been controversial for other states because of the strings attached.

Co-Chair Hawker added that the issue had been discussed with the governor's office. He believed the item would require careful scrutiny.

Mr. Bell explained that the item was related to the unemployment insurance program administered by DLWD. In general, unemployment insurance (UI) is an insurance program funded in Alaska by both employers and workers. A weekly benefit is provided to workers who become unemployed to support them until they are re-employed. The maximum weekly benefit was increased during the last session to \$370 per week. Alaska is one of three states nationally in which employees pay a portion of the UI tax; in all other states the UI tax is paid fully by employers.

[12:56:34 PM](#)

Representative Crawford interjected that the legislature had substantially raised the share that employees paid.

Mr. Bell continued that the ARRA provision offers monetary incentive to states that adopt certain changes or offer certain conditions for the purposes of qualifying for the UI benefits. For Alaska, the incentive would be \$15.6 million; if Alaska met the criteria, the money would be deposited into Alaska's UI trust by the federal government. He noted that a legislative appropriation would not be required; the deposit would automatically occur when the criteria were met and the state applied for the funds.

Mr. Bell detailed that the first condition to receive one-third of the incentive would be Alaska adding an alternative base period for the purpose of qualifying individuals for UI benefits. The rest of the funding would be dependent on both the alternate base period and the state meeting at least two of four specifically identified criteria. The Department of Law (LAW) has already determined that Alaska meets the second set of criteria. Therefore, Alaska is compliant. However, in order to receive anything, the state must meet the first criteria; Alaska is not compliant on that.

Co-Chair Hawker asked if the committee could stipulate point two, while recognizing that point one is at issue. Mr. Bell disclosed that Legislative Legal had raised questions regarding the issue; LAW believes the criteria are met.

Mr. Bell reported that one of the primary concerns regarding the provision in other states has been specific language in ARRA indicating that in order to be in compliance, there needs to be a change to permanent law. A number of states have asked what that means. On March 19, 2009, the U.S. Department of Labor indicated that the change had to be permanent; however, if a state eventually decides to repeal or modify any of the provisions, it may do so without returning the incentive payments.

[1:00:07 PM](#)

Co-Chair Hawker asked reaction to the idea of passing the law with an inherent repeal provision. Mr. Persily replied that his understanding was that a sunset provision could not be put in the law. To receive the one-third funds, the law making the provision permanent in statute could be passed, and then it could be repealed later.

Mr. Bell provided more information about the alternate base period. The base period is the period of time that the department looks at to determine if an individual is qualified for UI benefits and the amount they will receive. For example, if a person applied for UI benefits in the present quarter (January 1, 2009 through March 31, 2009), the department looks back at the four quarters preceding the last quarter they could have worked, or September 1, 2007 through September 31, 2008; the most recently completed

quarter is skipped in determining eligibility. The recovery act would change the law so that a person would be evaluated under the alternate base if they did not qualify under the current base.

Mr. Bell continued that the department looked at 2008 to determine whether making the change would have a fiscal impact on the UI trust. Individual claims denied in 2008 were re-evaluated to see if the applicants would have qualified under the alternate base criteria. The department determined that approximately 1,300 additional individuals would have qualified for UI benefits; the estimated payout would have been approximately \$1.5 million. The information was then given to the UI actuary, Jim Wilson, who determined that the result would be a \$10 per employer per year increase for an annualized worker. The relative cost to the employer would have gone from \$376 to \$386.

[1:03:45 PM](#)

Representative Kelly asked if raising benefits encouraged workers to get back to work as soon as possible or to stay on benefits. Mr. Nelson believed the intent of the UI weekly amount is only a partial replacement of wages, or about 35 percent. About half of applicants receive the benefits.

Representative Kelly asked if benefits were a stimulus to employment. Mr. Nelson did not think it was a stimulus to employment.

Co-Chair Hawker asked if the increase in benefits would motivate people to return to work or to be deadbeats. Mr. Nelson stated that the department stimulates people to get back to work. He did not think the amount of money accomplished that, but he believed the department did a good job engaging people in order to re-employ them as soon as possible.

Representative Crawford interjected that unemployment is a stimulus to keep workers in Alaska, especially apprentices and trainees. Otherwise, they go other places where wages are as high or higher. The legislature raised unemployment to keep people in the state.

[1:07:08 PM](#)

Representative Gara opined that the public might support rejecting stimulus funds for the item, which does not create jobs. He reminded the committee that UI money goes to people who are looking for work and does not subsidize deadbeats. He asserted that the benefits support economic recovery; he estimated \$15.6 million would enter the local economy at a cost of \$2 to \$3 million to employers.

Mr. Bell spoke to the Unemployment Insurance Trust Fund, which has a surplus as of Dec 31, 2008. He thought the system was working well.

[1:09:55 PM](#)

Mr. Bell presented the employer's perspective, whose UI tax burden is lessening from 2008 to 2010. The average employer rate was 2.5 percent in 2005; in 2009 it is at 1.15 percent. Mr. Wilson figured the rate impact of an alternate base period with the 2010 employer share, assuming the state recognizes 100 percent of the alternate base liability. The employer rate would be 1.12 percent with the alternate base period; without it would be 1.1 percent. There would be a relative increase in cost, but because the employer share is declining, the relative impact is still trending downward.

Mr. Persily thought the calculations assume that the entire \$15 million put into the trust fund is appropriated out for eligible items under the program, as opposed to leaving some behind in the trust fund, which would result in a lower employer rate. Mr. Bell agreed; the department did not factor in the additional \$15.6 million.

Co-Chair Hawker wanted to be sure the committee was following the conversation. Representative Gara said he was not. Co-Chair Hawker referred to a remedy that would be presented later.

[1:13:27 PM](#)

Mr. Bell explained another pertinent provision in ARRA that does not relate to the alternate base period but that affects Alaska. In order to meet the criteria of the act, Alaska also has to be in compliance with all the provisions of the federal UI act. Alaska is on notice that it does not conform to the ability to allow federally recognized tribal entities to become self-insured or reimbursable employers. Generally speaking, employers in the state are charged a rate for UI based on experience. A reimbursable employer, such as some non-profits, the state, and other entities reimburse the trust for actual experience, or UI benefits paid to workers that left them. The federal law requires states to enable federally recognized tribal entities to opt to become reimbursable employers. There are around 305 such entities in Alaska. The department did not think very many of the entities would become reimbursable, but the option has to be available. The conformity issue exists outside ARRA, but is also a condition of the act.

[1:15:30 PM](#)

Representative Fairclough asked how long the department has been aware of the non-compliance. Mr. Nelson replied that

the department was made aware in 2002 when Congress prevented the U.S. Department of Labor from sanctioning Alaska with federal funds.

Representative Fairclough wondered why legislation had not been introduced to remedy the situation. Mr. Bell responded that DLWD hoped legislation was going to be introduced to address the matter.

Representative Fairclough asked who was reviewing the provision. Mr. Bell replied that the Attorney General's Office has reviewed the legislation and aggress that the state needs to move forward with compliance.

Representative Fairclough wondered if the tribal entities had given support. Mr. Bell did not think the department had reached out to tribal entities. He said analysis had shown that the actual benefit payouts in the aggregate for the entities is significantly greater than the amount taken in. When an employer becomes reimbursable, the employer becomes 100 percent responsible for the liability of the UI claims; the employees do not pay a rate.

[1:18:46 PM](#)

Representative Fairclough asked about pooling with other organizations. Mr. Nelson answered that the tribal entities are listed on an annual eligibility federal register and able to receive services from the Bureau of Indian Affairs the U.S. Department of the Interior. The list includes tribal employers and sub-entities that they wholly own. The department had not reached out to the entities because each one is different.

Co-Chair Hawker asked whether Alaska's child support division and some block grants require the same recognition of federally recognized tribal entities as the UI tax provision. Mr. Nelson replied that the department's sanctions result in a de-certification to receive funds from the U.S. Department of Labor Employment and Training Administration.

[1:21:00 PM](#)

Mr. Nelson noted that the state would lose a current 5.4 percent federal unemployment tax act credit, valued at approximately \$111 million. The state would have to start paying the amount at de-certification. In addition, approximately \$20 million in UI administrative funds would be lost; potentially job center funding could also be lost.

Co-Chair Hawker believed the Department of Revenue and the Department of Health and Social Services would be affected

as well. Mr. Nelson agreed. He pointed out that the requirements would still remain.

Representative Kelly asked whether the law had to be changed to accept the stimulus funds. Mr. Nelson replied that the law would need to be changed.

Representative Gara asked whether other federal money would be at risk if the legislature does not pass a law by the end of session. Mr. Bell replied that significant progress needs to be demonstrated. He did not think there was an absolute answer to the question.

Representative Crawford asked about timing related to compliance. Mr. Nelson replied that he did not know.

[1:25:42 PM](#)

Co-Chair Hawker said the issue would be revisited in committee. He believed that the compliance put several other state programs at risk. He spoke of legislation that had been introduced to remedy the situation.

Mr. Bell described the progression of events that would take place with compliance:

- The \$15.6 would be deposited into the Alaska UI trust.
- The money would be held by the trust and earn interest.
- The money could be used to pay for benefits.
- Alternatively, subject to legislative appropriation, the money could be used either for UI program administration or technology improvements, or for re-employment services through the job center network.
- There is no time limit on expenditure of the funds.

[1:27:41 PM](#)

Co-Chair Hawker asked whether the department factored in adjustments to the trust for the investment of the \$15.6 million. Mr. Bell replied that they did not.

Co-Chair Hawker asked about a possible remedy to the increase in employer UI rates. Mr. Persily stated that there had been some objections from employers, the National Federation of Independent Businesses (NFIB), and the Alaska State Chamber of Commerce. He explained that the provision works like a capital appropriation that goes into the UI trust fund. The fund is then overfunded and earns interest. The legislature has the option under ARRA of appropriating out any or all of the \$15.6 million to spend on eligible items. The \$10 per year cost to the employer does not kick in until after three years and only if all of the amount

were appropriated out and never earned interest. He said that a solution could be found in finding out how much must stay in the trust fund so that there is no cost to employers; the rest can be used for eligible items.

Mr. Bell added that the issue is complicated; however, the \$15.6 million would go into the trust and increases the solvency of the fund and earns interest.

[1:30:42 PM](#)

Mr. Bell pointed out that more careful analysis would have to be made to determine how long the money would cover the liability.

Mr. Persily noted that the decision about appropriating the \$15.6 million does not need to be made this year. The current decision is whether the legislature wants to make the statutory change in the base period to get the \$15.6 million into the trust.

Co-Chair Hawker believed only a few million dollars would be needed to keep employers from an increase in UI rates and asked how much of the \$15.6 million would be used. Mr. Persily reported that there is preliminary conjecture that it might be enough to leave \$3 million in the fund permanently, leaving \$12 million for appropriation. He agreed that the department should calculate projections with its actuary if the intent is to hold employers harmless.

Co-Chair Hawker emphasized that \$3 million was an educated guess and wanted stronger numbers, but noted that the NFIB and chamber of commerce were supportive of the option.

[1:32:54 PM](#)

Representative Gara queried what could be done with the other \$12 million. Mr. Bell replied that the amount could possibly be used in the general fund as long as it was used for eligible purposes. He disclosed that the department has received general funds over the past couple years to cover salary increases because of the declines in federal funding; he did not know if the general funds would still be needed. The department gave up general funds for the UI division, because workloads were up and federal cash flow increased. He detailed that there were some general funds still in the employment services component.

Representative Gara asked if the \$12 million could be used anywhere. Mr. Bell replied that he could not comment on possible conversations with the chamber of commerce. He reiterated the need for the department actuary to conduct an analysis before he could comment. He believed whether DLWD needed general funds could be re-evaluated.

1:35:57 PM

Representative Gara viewed the money as free money until he heard otherwise. Co-Chair Hawker believed there was a route forward, although more calculations needed to be done. He had originally viewed the ARRA provision as one of the most problematical.

Mr. Bell noted that the measure would take a statutory change that will allow more people to become eligible for UI benefits; therefore, it increases liability to the UI trust. He reiterated that future legislative committees could revisit the law if it is passed.

1:38:02 PM

Ms. Hanrahan noted confusions due to uneven guidance and lack of guidance. She added her appreciation for the committee and the process.

Co-Chair Hawker pointed to a need for much more policy discussion.

HB 199 was HEARD and HELD in Committee for further consideration.

#

ADJOURNMENT

The meeting was adjourned at 1:39 PM.