

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

Anchorage, Alaska

June 9, 2009

1:06 p.m.

MEMBERS PRESENT

Senator Kevin Meyer, Chair
Representative Nancy Dahlstrom, Vice Chair
Senator Charlie Huggins
Senator Linda Menard
Senator Bert Stedman (via teleconference)
Representative Mike Hawker
Representative Mark Neuman (via teleconference)
Representative Mike Doogan
Senator Donald Olson (alternate)
Representative Bill Stoltze (alternate)
Representative Chris Tuck (alternate)

MEMBERS ABSENT

Senator Lyman Hoffman
Representative Bill Thomas

COMMITTEE CALENDAR

REVISED PROGRAM - LEGISLATIVE (RPLs)

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

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

POSITION STATEMENT: Provided comments and responded to questions during discussion of the RPLs.

JAMES ARMSTRONG, Staff
Representative Bill Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of the RPLs.

MILES BAKER, Staff
Senator Bert Stedman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of the RPLs.

FRANK RICHARDS, Deputy Commissioner of Highways & Public Facilities
Office of the Commissioner
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of RPL 01-9-8052, RPL 01-9-8053, RPL 01-9-8054, RPL 01-9-8055, RPL 01-9-8056, and RPL 25-9-7447.

JEFF OTTESEN, Director
Division of Program Development
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of RPL 01-9-8052, RPL 01-9-8053, RPL 01-9-8054, RPL 01-9-8055, RPL 01-9-8056, and RPL 25-9-7447.

STEVE HILDEBRAND, Budget Analyst
Office of Management & Budget (OMB)
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Responded to a question during discussion of RPL 01-9-8057 and RPL 10-9-5174.

LETA SIMONS, Director
Division of Support Services
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of RPL 01-9-8057 and RPL 10-9-5174.

MICHELLE RIZK, Associate Vice President
Budget
Statewide Planning & Budget
University of Alaska
Fairbanks, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of RPL 45-9-1100 and RPL 45-9-1101.

ACTION NARRATIVE

1:06:25 PM

CHAIR KEVIN MEYER called the Legislative Budget and Audit Committee meeting to order at 1:06 p.m. Representatives Dahlstrom, Neuman (via teleconference), Doogan, and Stoltze (alternate), and Senators Meyer, Stedman (via teleconference), Huggins, Menard, and Olson (alternate) were present at the call to order. Representatives Hawker and Tuck (alternate) arrived as the meeting was in progress.

REVISED PROGRAM - LEGISLATIVE (RPLs)

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CHAIR MEYER announced that the only order of business would be consideration of the Revised Program - Legislative (RPLs) that were discussed during the meeting of 6/5/09.

CHAIR MEYER [referring to the Department of Transportation & Public Facilities' RPLs 01-9-8052, 01-9-8053, 01-9-8054, 01-9-8055, 01-9-8056, and 25-9-7447] offered his understanding that the Legislative Finance Division, the Department of Transportation & Public Facilities (DOT&PF), and legislative staff have arrived at a solution that will provide the DOT&PF with "the 50 percent of the stimulus money that [it] ... needs to meet the federal requirement."

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DAVID TEAL, Legislative Fiscal Analyst, Legislative Finance Division, Alaska State Legislature, referred to a document in members' packets titled "June 9, 2009 LB&A Meeting Briefing on RPLs", and indicated that for certain capital projects, "the stimulus bill" contains a couple of catchall provisions - one specific to the Office of the Governor, and one specific to the University of Alaska - intended to allow for the use of additional American Recovery and Reinvestment Act of 2009 (ARRA) funds that the State might receive in the future. However, neither of those catchall provisions can be used for the DOT&PF RPLs because those RPLs don't involve additional ARRA receipts, and this is a problem because the DOT&PF must obligate at least another \$9 million by the federal deadline of June 17, 2009.

Currently, the bids on other DOT&PF projects are coming in at much lower than anticipated, and this has freed up about \$33 million, but has also resulted in there not being enough money authorized either to meet the obligation deadline or to spend the full \$176 million available to the state. And although the DOT&PF has indicated that it would like to receive a higher level of authorization, this raises the concern that the DOT&PF would then have the flexibility to simply pick the projects it wants to pursue rather than those the legislature has determined are a priority. He indicated that [three] of the DOT&PF's RPLs would be acceptable once their appropriation authority is amended, and that approval of the DOT&PF's [other three RPLs] isn't necessary.

MR. TEAL referred to RPL 01-9-8052 - Alaska Highway milepost 1412-1422 rehabilitation, Department of Transportation & Public Facilities - for the amount of \$5.3 million in ARRA funding, and indicated that it [shouldn't be approved] at this time because there is no new ARRA money available for it and neither is there currently a suitable existing capital project to link it to.

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JAMES ARMSTRONG, Staff, Representative Bill Stoltze, Alaska State Legislature, observed that the handout in members' packets titled "LB&A - 6/9/09 DOT&PF RPL Analysis" is illustrative of that point.

MR. TEAL referred to RPL 01-9-8053 - Alaska Highway milepost 1308-Tok weigh station, Department of Transportation & Public Facilities - for the amount of \$3.75 million in ARRA funding, and relayed that there is an old Tok weigh station project [that the RPL could be tied to,] and therefore the committee could approve the RPL after amending the appropriation authority; in this situation, the ARRA receipts could be treated as additional receipts for the RPL's project because "it exists as a 2008 project."

MR. TEAL indicated that the same is true for RPL 01-9-8054 - Glenn Highway resurfacing Airport Heights to Hiland, Department of Transportation & Public Facilities - for the amount of \$15 million in ARRA funding; once the appropriation authority is amended, that RPL can be approved because there is an existing 2008 appropriation for other Glenn Highway projects.

MR. TEAL referred to RPL 01-9-8055 - Yakutat areawide paving, Department of Transportation & Public Facilities - for the

amount of \$8 million in ARRA funding, and indicated that it [shouldn't be approved at this time] because there is no existing project to which the RPL can be linked. However, he relayed, the DOT&PF has recently indicated to him that it can address the RPL's project via an administrative approach.

MR. TEAL referred to RPL 01-9-8056 - Haines Highway Front Street to Union Street, Department of Transportation & Public Facilities - for the amount of \$2.72 million in ARRA funding, and explained that once the appropriation authority is amended, the RPL can be approved because "there's an old project" that it can be linked to.

MR. TEAL referred to RPL 25-9-7447 - Parks Highway milepost 72 to 83 rehabilitation, Department of Transportation & Public Facilities - for the amount of \$18.5 million in federal funds, and indicated that [it shouldn't be approved at this time] because legislative authority is not required in order for the DOT&PF to move the necessary funding to that project; this funding was already an allocation on the "\$176 million list" of [ARRA-funded] projects, and so the DOT&PF can just move funding from other [similar] projects that have come in under bid.

MR. ARMSTRONG offered his understanding that the Parks Highway rehabilitation project authorized by RPL 25-9-7447 will only require \$13.3 million in "new" ARRA funding, whereas all the Parks Highway projects in total will run over \$30 million, and so the DOT&PF will be putting forth a Statewide Transportation Improvement Program (STIP) amendment to capture the rest of the necessary funding.

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MILES BAKER, Staff, Senator Bert Stedman, Alaska State Legislature, added that one of the goals [of the discussion that engendered these recommendations by the Legislative Finance Division] was to ensure that before excess money is spent, that none of the projects the legislature had already appropriated stimulus funds for were going to be compromised. He offered his understanding that only one of those previously-approved projects isn't ready to be bid upon but only due to permitting issues. "Our understanding is that this excess money can be spent on ... [the RPL's] projects without jeopardizing the rest of the projects that are on the list," he concluded.

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FRANK RICHARDS, Deputy Commissioner of Highways & Public Facilities, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), said that one of the DOT&PF's goals is to obligate all of the projects the legislature gave appropriation authority for. He concurred that all of the other [previously-approved] projects are currently advancing; relayed that the DOT&PF would inform the legislature if, later on, additional authorization is needed for any of those projects; and indicated that one such project might be the one that's undergoing issues due to the recent flooding of the Yukon River.

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JEFF OTTESEN, Director, Division of Program Development, Department of Transportation & Public Facilities (DOT&PF), explained that any ARRA-funded project that can't go forward by February 2010 for "third-party reasons" would simply roll into the 2010 STIP and be funded otherwise. "It's our intention to do these projects as originally put on the list by the legislature, and we're not doing any shuffling of projects for any but third-party reasons," he assured the committee.

REPRESENTATIVE DOOGAN surmised that the three projects that would be authorized by the approval of RPL 01-9-8053, RPL 01-9-8054, and RPL 01-9-8056 total approximately [\$21.47 million] in ARRA receipts, and that the Parks Highway rehabilitation project addressed via RPL 25-9-7447 could simply be funded with some of the excess stimulus money available to the DOT&PF due to its other projects coming in under bid.

MR. ARMSTRONG said most of the freed-up stimulus funding would be going towards the three projects outlined in RPL 01-9-8053, RPL 01-9-8054, and RPL 01-9-8056, reiterating that a funding transfer for the project outlined in RPL 25-9-7447 is possible without the committee's approval because a Parks Highway project - requesting \$6.8 million in stimulus funding - was contained within the capital budget. Currently, RPL 25-9-7447 requests \$18.5 million in federal funds, whereas the [Legislative Finance Division's] recommendation is for the DOT&PF - in addition to using that previously-approved \$6.8 million - to use another \$13.3 million of [excess] stimulus funding, and request [\$10.4 million] in federal funds via a STIP amendment.

MR. RICHARDS, in response to a question about RPL 01-9-8053, indicated that its ARRA funding would be used to construct a heated inspection building and expand the parking area - this

new building will facilitate those inspections occurring during the winter months. In response to another question, he said that the Legislative Finance Division's suggestion to only approve RPL 01-9-8053, RPL 01-9-8054, and RPL 01-9-8056 would still provide the DOT&PF with the authority to obligate the \$9 million necessary to meet the "50 percent" federal requirement. Approval of these three RPLs will also give the DOT&PF the ability to provide jobs and promote infrastructure, thereby meeting the intent of the ARRA. In response to a question about RPL 01-9-8052, he said that the DOT&PF will use its "regular STIP dollars and federal highway dollars" to advance that Alaska Highway rehabilitation project. In response to questions about RPL 25-9-7447, he indicated that the Parks Highway rehabilitation project has general obligation (GO) bond funds - from a previously-approved Parks Highway project - available as another funding source from which to acquire [a portion of] the aforementioned [\$10.4 million]; with the various funding sources currently in place, the DOT&PF will be able to advance that project.

MR. OTTESEN added that that project would be obligated later today.

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MR. BAKER concurred with Mr. Armstrong that the Parks Highway projects in total are now anticipated to run over \$30 million, and mentioned that the aforementioned STIP amendment for [\$10.4 million] was not something the DOT&PF anticipated as being necessary during the regular legislative session.

SENATOR HUGGINS posited that everyone is hoping that the Parks Highway rehabilitation project addressed via RPL 25-9-7447 will also come in under bid.

MR. RICHARDS concurred.

MR. OTTESEN mentioned that there has already been a significant reduction in the engineer's estimate for [the Parks Highway projects] compared to what it was last spring, and that it's just the ratio of the different fund sources being used that's changing.

MR. RICHARDS, in response to a question, indicated that the DOT&PF's project addressing the stretch of road between Big Lake and Wasilla is proceeding.

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REPRESENTATIVE DAHLSTROM made a motion to approve RPL 01-9-8053 - Alaska Highway milepost 1308-Tok weigh station, Department of Transportation & Public Facilities - for the amount of \$3.75 million; and to amend the appropriation authority to Chapter 29, SLA 2008, page 167, lines 6-8. There being no objection, RPL 01-9-8053 was approved and the appropriation authority was amended.

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REPRESENTATIVE DAHLSTROM made a motion to approve RPL 01-9-8054 - Glenn Highway resurfacing Airport Heights to Hiland, Department of Transportation & Public Facilities - for the amount of \$15 million; and to amend the appropriation authority to Chapter 29, SLA 2008, page 76, lines 25-26. There being no objection, RPL 01-9-8054 was approved and the appropriation authority was amended.

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REPRESENTATIVE DAHLSTROM made a motion to approve RPL 01-9-8056 - Haines Highway Front Street to Union Street, Department of Transportation & Public Facilities - for the amount of \$2.72 million; and to amend the appropriation authority to Chapter 11, SLA 2008, page 98, lines 17-19. There being no objection, RPL 01-9-8056 was approved and the appropriation authority was amended.

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CHAIR MEYER turned the committee's attention to RPL 01-9-8057 - eradication of spotted knapweed from known locations in Alaska, Department of Natural Resources - for the amount of \$100,000 in ARRA funding; and to RPL 10-9-5174 - forestry and fire economic stimulus, fire fuels and forest management, Department of Natural Resources - for the amount of \$4,530,000 in ARRA funding and statutory designated program receipts.

MR. TEAL, noting that both of these Department of Natural Resources (DNR) RPLs were approved on 6/5/09, expressed a preference for the committee to rescind its action in approving these RPLs so as to address a potential problem that might arise due to the fact that "the standard LB&A review language" found in most appropriation bills was not included in the "stimulus bill." After the committee rescinds its action in approving RPL

01-9-8057 - eradication of spotted knapweed - the committee won't need to take further action on it, he explained, because the DNR can address that project's funding needs through one of the aforementioned catchall provisions in the stimulus bill. After the committee rescinds its action in approving RPL 10-9-5174 - fire fuels and forest management - because there is an existing capital project that that RPL can be linked to, he relayed, the committee can then reapprove the RPL after amending its appropriation authority to Chapter 29, SLA 2008.

CHAIR MEYER, referring to RPL 01-9-8057, asked whether obtaining \$100,000 in ARRA funds via one of the catchall provisions would be acceptable to the administration.

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STEVE HILDEBRAND, Budget Analyst, Office of Management & Budget (OMB), Office of the Governor, indicated that Mr. Teal's recommendations regarding the DNR's RPLs are acceptable to the administration.

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LETA SIMONS, Director, Division of Support Services, Department of Natural Resources (DNR), said those recommendations are acceptable to the DNR as well. In response to a question, she assured the committee that funding would be implemented as outlined in the RPLs.

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REPRESENTATIVE DAHLSTROM made a motion that the committee rescind its action in approving RPL 01-9-8057 and RPL 10-9-5174. There being no objection, the committee rescinded its action in approving RPL 01-9-8057 and RPL 10-9-5174.

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REPRESENTATIVE DAHLSTROM made a motion to approve RPL 10-9-5174 - forestry and fire economic stimulus, fire fuels and forest management, Department of Natural Resources - for the amount of \$4,530,000; and to amend the appropriation authority to Chapter 29, SLA 2008, page 153, lines 6-9. There being no objection, RPL 10-9-5174 was approved and the appropriation authority was amended.

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CHAIR MEYER turned the committee's attention to RPL 45-9-1100 - thermal state of permafrost, University of Alaska - for the amount of \$859,861 in ARRA funding; and RPL 45-9-1101 - University of Alaska Fairbanks (UAF) Alaska Region Research Vessel, University of Alaska - for the amount of \$32.07 million in ARRA funding.

MR. TEAL explained that RPL 45-9-1100 - thermal state of permafrost - can be linked to an existing 2007 capital project; that the full project cost is \$1,859,861; and that the committee could decide to either approve the RPL as is or add another \$1 million in receipt authority. With regard to RPL 45-9-1101 - UAF Alaska Region Research Vessel - he explained that there is a capital project "in SLA 2004" that this RPL could be linked to.

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MICHELLE RIZK, Associate Vice President, Budget, Statewide Planning & Budget, University of Alaska, relayed that her preference would be for the committee to add \$1 million in receipt authority to RPL 45-9-1100; in this way, the University of Alaska's catchall provision within the stimulus bill could still be used for future ARRA funding of other university projects.

MR. TEAL, in response to a question, reiterated that one of the stimulus bill's catchall provisions is specific to the Office of the Governor, and the other is specific to the University of Alaska. Each of these catchall provisions is for \$1 million in receipt authority, [and so funding of the DNR's knapweed eradication project would come from the catchall provision specific to the Office of the Governor, not the one specific to the University of Alaska].

REPRESENTATIVE HAWKER expressed a preference for authorizing only \$859,861 in ARRA funding for RPL 45-9-1100.

REPRESENTATIVE DOOGAN, referring to RPL 45-9-1101 regarding the UAF Alaska Region Research Vessel, asked why the University of Alaska is now requesting what appears to be an additional \$32.07 million in ARRA funding for this project.

MS. RIZK explained that an estimated \$116 million in ARRA funding was included in the stimulus bill, but the University of Alaska has since received information from the National Science Foundation (NSF) indicating that the ARRA funding amount would

instead be [\$148.07 million], and so the RPL request is meant to ensure that the University of Alaska has enough ARRA funding authority.

REPRESENTATIVE DOOGAN surmised, then, that RPL 45-9-1101 would bring the University of Alaska's spending authorization in line with the amount of ARRA funding it would be receiving anyway.

MS. RIZK concurred. In response to a question, she noted that the RPL's documentation says that any excess receipt authority will simply lapse; given the anticipated length of five years for this project, bringing forth this RPL will provide the most flexibility compared to any other funding approach the University of Alaska might have taken.

REPRESENTATIVE DOOGAN expressed disfavor with the concept of giving the University of Alaska what he perceives as an extra \$32.07 million for such a vessel.

REPRESENTATIVE HAWKER said he views this as receipt authority, rather than an appropriation of a State asset, and is therefore in favor of having the University of Alaska take this ARRA funding for this project.

SENATOR HUGGINS pointed out that this ARRA funding would not be in addition to [the amount already authorized], but instead merely supplants some of that which has already been authorized.

MS. RIZK, in response to a question, offered her understanding that the vessel would be complying with the water-quality discharge standards set by the International Maritime Organization (IMO), and agreed to research the issue further.

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REPRESENTATIVE DAHLSTROM made a motion to approve RPL 45-9-1100 - thermal state of permafrost, University of Alaska - for the amount of \$859,861; to amend the appropriation authority to Chapter 30, SLA 2007, page 118, lines 6-7; to approve RPL 45-9-1101 - University of Alaska Fairbanks (UAF) Alaska Region Research Vessel, University of Alaska - for the amount of \$32.07 million; and to amend the appropriation authority to Chapter 159, SLA 2004, page 49, lines 24-25. There being no objection, RPL 45-9-1100 was approved and its appropriation authority was amended, and RPL 45-9-1101 was approved and its appropriation authority was amended.

1:51:09 PM

MR. TEAL - referring again to the document titled "June 9, 2009 LB&A Meeting Briefing on RPLs", specifically to the portion that addresses possible future issues - offered his understanding that the DOT&PF won't have any problem, now, meeting the ARRA's minimum obligation requirement, and surmised that the DOT&PF would agree. Also with regard to possible future issues, he went on to say:

As we receive unspecified money ..., the Department of Law argues that we don't need the traditional RPL language, that we can accept money now because the intent was clear, in passing the stimulus bill, that we expected additional money - unspecified money - and that we expected to use AS 37.07.080(h) to use that money. [Legislative Legal and Research Services] ... disagrees slightly with that interpretation, and says the language may be necessary because under [AS 37.07.080], it simply says you have the authority to expend. But that assumes that you have the appropriation as well, and there isn't an appropriation, so there's a legal dispute here. And my suggestion is that we handle these first RPLs as you just did, and as money comes in in the future, we do rely on this language in [AS 37.07.080] and go ahead and approve RPLs as you wish, but at the next opportunity, you might want to resolve any legal issues that might be outstanding and go ahead and retroactively add the standard LB&A language to the stimulus bill.

CHAIR MEYER acknowledged that point.

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ADJOURNMENT

There being no further business before the committee, the Legislative Budget and Audit Committee meeting was adjourned at 1:55 p.m.