HOUSE FINANCE COMMITTEE
March 22, 2016
1:31 p.m.

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CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 1:31 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Bryce Edgmon
Representative Les Gara
Representative Lynn Gattis
Representative David Guttenberg
Representative Scott Kawasaki
Representative Cathy Munoz
Representative Lance Pruitt
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Stacie Kraly, Assistant Attorney General, Department of Law; Andrew Peterson, Attorney, Medicaid Fraud Control Unit, Department of Law; Doug Jones, Manager, Medicaid Program Integrity Section, Department of Health and Social Services; Lynne Keilman-Cruz, Health Program Manager, Department of Health and Social Services; Jerry Burnett, Deputy Commissioner, Treasury Division, Department of Revenue; Dan Stickel, Assistant Chief Economist, Tax Division, Department of Revenue; Jane Pierson, Staff, Representative Steve Thompson; Representative Cathy Munoz, Sponsor; Keith Comstock, CEO, Juneau Hydropower Inc.; Mary Becker, Mayor, Juneau; Rodney Hesson, IBEW, Juneau; Wayne Zigarlick, General Manager, Coeur Alaska, Kensington Mine.

PRESENT VIA TELECONFERENCE

John Springsteen, Executive Director, Alaska Industrial Development and Export Authority; Sarah Fisher-Goad, Executive Director, Alaska Energy Authority, Department of Commerce, Community and Economic Development.

SUMMARY

SB 74 MEDICAID REFORM; TELEMEDICINE; DRUG DATABASE

SB 74 was HEARD and HELD in committee for further consideration.

HB 143 AIDEA BONDS, LOANS, FUND; AEA LOAN

CSHB 143(FIN) was REPORTED out of committee with a "do pass" recommendation and with one forthcoming zero fiscal note from the Department of Commerce, Community and Economic Development.

PRELIMINARY SPRING 2016 REVENUE FORECAST, DEPARTMENT OF REVENUE

Co-Chair Thompson relayed that the topics being covered for SB 74 included fraud, false claims, and penalties.

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#sb74
CS FOR SENATE BILL NO. 74(FIN) am

"An Act relating to diagnosis, treatment, and prescription of drugs without a physical examination by a physician; relating to the delivery of services by a licensed professional counselor, marriage and family therapist, psychologist, psychological associate, and social worker by audio, video, or data communications; relating to the duties of the State Medical Board; relating to limitations of actions; establishing the Alaska Medical Assistance False Claim and Reporting Act; relating to medical assistance programs administered by the Department of Health and Social Services; relating to the controlled substance prescription database; relating to the duties of the Board of Pharmacy; relating to the duties of the Department of Commerce, Community, and Economic Development; relating to accounting for program

receipts; relating to public record status of records related to the Alaska Medical Assistance False Claim and Reporting Act; establishing a telemedicine business registry; relating to competitive bidding for medical assistance products and services; relating to verification of eligibility for public assistance programs administered by the Department of Health and Social Services; relating to annual audits of state medical assistance providers; relating to reporting overpayments of medical assistance payments; establishing authority to assess civil penalties for violations of medical assistance program requirements; relating to seizure and forfeiture of property for medical assistance fraud; relating to the duties of the Department of Health and Social Services; establishing medical assistance demonstration projects; relating to Alaska Pioneers' Homes and Alaska Veterans' Homes; relating to the duties of the Department of Administration; relating to the Alaska Mental Health Trust Authority; relating to feasibility studies for the provision of specified state services; amending Rules 4, 5, 7, 12, 24, 26, 27, 41, 77, 79, 82, and 89, Alaska Rules of Civil Procedure, and Rule 37, Alaska Rules of Criminal Procedure; and providing for an effective date."

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STACIE KRALY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, would be reviewing the provisions in SB 74 having to do with false claims, overpayments, and fraud and penalties. She explained that SB 74 addressed 3 major themes outside of the important reforms that Ms. Shaddock had testified to in the previous day. The themes included the false claims act, overpayments, and fraud and penalties. She stressed the importance of these provisions to the overall administration of the Medicaid Program Integrity (MPI) system for the Medicaid program. The proposal in SB 74 was designed to give the Department of Health and Social Services and the Department of Law a more complete range of options when dealing with provider compliance. The tools allowed for the differentiation between fraud and false claims and it also allowed for both criminal and civil enforcement of providers who violated program rules.

Ms. Kraly relayed that she would be walking the committee through a more detailed overview of the False Claims Act. The False Claims Act could be found in Section 4 of the bill. The bill contained a number of different amendments to the Alaska Administrative Code that identified the additional civil action she had discussed the previous day. The first section talked about false claims and the associated civil penalties. In reviewing the bill penalties for false claims they could not be less than $5500 and not more than $11,000 or 3 times the amount of the actual damages. The provision also allowed for the payment of reasonable costs and fees for a prevailing party under a false claim act. The Attorney General was an integral part of the false claims provisions in the bill primarily relating to the process of an individual bringing a claim forward and the attorney general being served with a complaint. The attorney general would investigate the claim. The statute contemplated giving the Attorney General Subpoena authority and providing other investigative tools to evaluate the merits of the underlying case brought forward.

Ms. Kraly continued with her testimony. Upon the completion of their investigation, the attorney general would have to take one of three actions: They would have to intervene in the matter, notify the court that they were not intervening in the matter but were allowing the private plaintiff to continue with the lawsuit, or they would move to dismiss the case. Some of the additionally important provisions of the bill included identifying the incentive for individuals to come forward in identifying false claims. If the attorney general intervened in a case the realtor or the private plaintiff would be awarded 15 to 25 percent of the overall recovery. If the attorney general deferred and did not go forward the individual would be entitled to 25 to 30 percent of the total award but there was also a provision in the bill that stated that if the individual that came forward was somewhat complicit in the false claim there was a provision that allowed reducing the recovery for that complicit individual. It also provided that if the individual was ultimately convicted of Medicaid fraud they would not be entitled to any recovery.

Ms. Kraly reported that there were certain actions that did not constitute false claims including matters already familiar to the Department of Law or to the DHSS and actively being investigated for an ongoing fraud case.

Other matters were listed within the statute that would not be considered false claims. The statute contemplated that the state would not be liable for attorney's fees and other expenses in a situation where a false claim was brought by a private plaintiff. The plaintiff would be entitled to their fees and costs and the state would be entitled to its fees and costs. The two did not mix.

Co-Chair Thompson acknowledged Representative Munoz at the table and Commissioner Davidson in the audience.

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Representative Gara mentioned that to save money the state encouraged a private party to hire a private attorney rather than the attorney general's office handling anti-trust, consumer protection, and other public interest cases If the private party prevailed they would receive full attorney fees, an incentive of sorts. He wondered whether full attorney's fees would be paid to a private individual that hired a private attorney and prevailed under SB 74.

Ms. Kraly responded in the negative. The fees awarded under the provision were those provided under Civil Rule 82, a percentage based upon the type of litigation that occurred. If litigation was settled a person would receive 20 percent. If a case went to trial a person would receive 30 percent. There were enhancements. For example, there could be a provision where a person could get higher fees if it was not tied to the public interest litigate statute.

Representative Gara suggested that there were a number of areas where private individuals were entitled to full attorney's fees including consumer protection and unfair trade practices. It was called privatizing the attorney general and saved the state money. He asked that she consider the practice and wondered why it was not in the legislation. He thought it would save money for the state.

Ms. Kraly would look at his suggestion. However, she thought Civil Rule 82 was sufficient to incentivize the services because of the enhanced recoveries the plaintiffs stood to receive. Trouble damages and penalty provisions in the recovery portion were already included. The Department of Law advocated that full fees were needed to incentivize private plaintiffs. In addition, another reason the department did not think it was necessary was because the

attorney general had the ability to take, differ, or dismiss a case. In many cases the tool would be used as an enforcement mechanism. She did not feel there was a lack of incentive for bringing these cases forward because of damages. However, the department would look at the full fee section.

Co-Chair Thompson relayed that Representative Pruitt had joined the meeting.

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Co-Chair Neuman asked about the source of funding to pay an individual a percentage of the total amount of a false claim recovery. He wondered if the payment was issued from state or federal funds or both.

Ms. Kraly indicated that each state handled it differently. Some states took the recovery off the top and then split the difference. Other states took the share from the percentages. The Department of Law would need to discuss the issue with the Office of Inspector General. She indicated that what was being considered was that the recovery would come off the top and then the split would come from the remaining amount.

Co-Chair Neuman assumed that it would split equally.

Ms. Kraly corrected Co-Chair Neuman. She relayed that the split was not equal between the state and the federal government. If this provision in the bill was adopted and approved by the Office of Inspector General at the federal level then the state would receive an enhanced match for the recoveries. There was a 10 point swing instead of a 50/50 match. In other words, it would be a 45/55 match in the federal rules governing the false claims act. Regarding a private plaintiff, the recovery was split between the state and federal government. It was outlined in the provisions of the bill because the department felt it was part of the ultimate judgement that would occur at the trial level. She confirmed there was an enhanced match for the state and the state would receive more money if the legislation passed and was approved by the federal government.

Co-Chair Neuman reiterated her answer that the recovery came off the top and was split 45/55. He did not see the

information reflected in the bill. He wondered why it was not expressly identified. He asked if it was already in state statute.

Ms. Kraly relayed that the split was set forth in federal law. Once approval came through the Office of Inspector General it would be in federal law. As far as the other adjustment, she could look into identifying it and it could be added to the legislation as an amendment.

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Representative Gara suggested that there was a rule in public interest cases, such as fraud, that if the state prevailed it would receive full attorney's fees and costs. He wondered if there was a reimbursement for the state in the statute if the state prevailed in a fraud case.

Ms. Kraly responded in the negative. She informed him that the rules for attorney's fees were governed under the civil rules under Rule 82. It would be something the Department of Law would have to look at if it was the will of the committee.

Representative Gara thought that without the two provisions it would cost the state a significant amount of money.

Representative Wilson wondered about how difficult it would be to reverse the legislation in the future.

Ms. Kraly responded that the state did not need federal approval to pass the legislation. The state would need federal approval of the framework of the False Claims Act within the provision. If it was approved the state would get the enhanced match of a 45/55 split. If the federal government did not approve it the split would remain a 50/50 split. If, in 2 to 3 years when the private plaintiff provisions were sun-setting and the false claim provision was not doing what it was intended to do, the state could repeal the provisions without a penalty from the federal government for not having them. They were not required.

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Vice-Chair Saddler asked about the potential benefit to the state for allowing private plaintiffs to proceed with the 100 percent reimbursement. He noted that Ms. Kraly had

mentioned that other states did things differently. He wondered if the DOL had done review of states that might have moved entirely to the privatization of the prosecution of Medicaid fraud.

Ms. Kraly explained that the state, under the federal Medicaid act the state was required to have a Medicaid Fraud Control Unit (MFCU), a separate and distinct enforcement arm from the DHSS. The way it was set up in Alaska, as well as most other states, it was within the DOL. Mr. Peterson's office was through the Office of Special Prosecutions and Appeals. He had a team of individuals that worked on Medicaid fraud unit. The department decided to place the false claim provision within the MFCU for a couple of reasons should the legislation pass. The first reason was that as a Medicaid fraud unit they would receive an enhanced match for administrative costs. For every dollar the state paid for Medicaid fraud, the federal government would pay 75 percent. The state would have to come up with the 25 percent match. There were other ways to use the recovery funds through dedicated receipts to use the money the unit was recovering to backfill the state match. She concluded that it was almost a zero sum game for the provision. She had worked closely with Mr. Peterson had worked closely over the course of the previous 6 months on the provisions and he had looked at many other states and talked to other Medicaid fraud units doing the same work. Mr. Peterson would be able to provide additional detail.

Ms. Kraly told of a final provision which was the employee protection against retaliation. There were very stringent whistleblower protections within the act that allowed an individual working for an enrolled provider to come forward and to identify and report fraud without being ostracized by their current employer or with other employers. There was an incentive and a whistleblower protection in place, critical components of any false claim provisions. In summary, the provisions she discussed were critical to enhance and provide additional tools and a means for the DOL and the DHSS to have a robust program integrity system to ensure provider compliance with program rules. She thought it would be helpful for the committee to hear from certain individuals including Andrew Peterson, Doug Jones, and Lynne Keilman-Cruz. They would walk through the spreadsheets and explain how the system currently worked as

a fraud case, an overpayment case, or a sanctioned case and how the provisions would help them to make a better system.

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Co-Chair Neuman asked about the whistleblower provision and thought there would be a plethora of complaints by the public. He wondered if the department had the personnel to handle the complaints or if additional staff would have to be hired.

Ms. Kraly indicated that what constituted a false claim for purposes of the False Claims Act were very well defined. The provisions in the bill allowed the state to differentiate between a false claim and a fraudulent claim. Fraudulent claims were already being prosecuted. The importance of the provisions of the bill allowed for reports to come in and for the DOL and the DHSS to make appropriate referrals administratively through the DHSS, criminally through the MFCU, or through the False Claims Act. Some resources were requested by the DOL as a result of the provisions. The Department of Law and the DHSS were not asking for a significant amount of resources because each department felt it had the resources needed to absorb the related work. The departments saw the legislation as a set of additional tools to get to a more robust and complete compliance package. She thought it was a missing part of the system currently in place.

Co-Chair Thompson invited other testifiers to the table.

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ANDREW PETERSON, ATTORNEY, MEDICAID FRAUD CONTROL UNIT, DEPARTMENT OF LAW, relayed that the MFCU was congressionally mandated and funded at 75 percent federal funds with a 25 percent state match. The unit currently consisted of Mr. Peterson and another prosecutor. There were 6 criminal investigators that were partially sworn - meaning they had the authority to receive and execute search warrants but did not have the authority to arrest or carry firearms. The unit also had a forensic accountant and an office administrator. He had two answers to the earlier question about sufficient staffing to support the activities of the unit. The Medicaid Fraud Control Unit had over the previous 3 years formed a significant number of partnerships with the various state and federal entities

that had an interest in the Medicaid program. The committee would hear from Doug Jones, the MPI manager, and Lynne Keilman-Cruz, the quality assurance manager. The unit coordinated with everyone with an interest in preventing Medicaid fraud and relied on everybody's limited resources to expand on the unit's abilities. The coordination efforts with respect to criminal prosecutions had resulted in charging 130 criminal cases, secured criminal convictions in 96 of those cases, and resolved an additional 10 civil cases. The courts had ordered just over $4.6 million in restitution and the unit had secured fines in the amount of $505,000. This was all based on the 25 percent match from the state equal to about $225,000 to $300,000 per year for the previous 3 years.

Mr. Peterson cited that the focus the MFCU had was somewhat limited. The unit prosecuted medical assistance fraud, allegations of abuse or neglect, and financial exploitation or misappropriation of patient assets in residents that were funded by Medicaid. The unit's focus was almost entirely criminal. It had a mandate to prosecute medical assistance fraud or Medicaid fraud. However, when the unit initiated or conducted an investigation and found in the course of the investigation that the act did not rise to the level of fraud that the unit would prosecute criminally or found there was something about the case that gave pause, the unit had limited options. Such a case would be referred back to MPI to do a civil recovery. That recovery consisted only of asking the provider who might have been involved in wasteful or abusive conduct but not necessarily fraudulent conduct to give back the money. It was essentially a mulligan or a do-over. The only other option was for MPI or the agency within the DHSS that had authorized an entity to provide Medicaid services to dis-enroll them or bar them from being part of the Medicaid program. The unit did not have any other tools at its disposal. A large part of what the unit was asking for through legislation was to provide the unit with additional tools in its tool chest to address waste and fraud. It would also help the unit to get recoveries back for the state in the form of Medicaid money that was paid out that should not have been. There would be interest and penalties associated to restore the state to the financial position it would have been in had the abuse or wasteful billing not occurred. It would also incentivize others in the industry to refrain from committing the same offences. One of the most important provisions was that the tool would give the

state the ability to address waste and fraud without putting the provider out of business. It would benefit the providers within the industry and would benefit the recipients of Medicaid services who rely on many of the crucial and essential services. In dealing with the DHSS over the prior 3 years the unit had identified numerous issues with cases where there had been alternate ways of handling them outside of criminal prosecution or asking for the money back. The False Claims Act was one of the tools that would greatly benefit the state along with the option for MPI to implement civil penalties for providers who continued to ignore the rules and regulations of the Medicaid program.

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Vice-Chair Saddler appreciated the detailed information. He asked about the $4.6 in restitution and $500,000 collected in fines. He wondered how much money the state had foregone in Medicaid fraud.

Mr. Peterson could provide some examples regarding personal care attendant services. At one point the program was costing the state about $60 million per year. It was on a skyrocket trajectory going up and reached the point of costing the state about $130 million per year within about a 5 year period. A significant number of the cases the unit prosecuted over the previous 3 years dealt with personal care attendant services. The unit convicted 57 individuals within a single corporation. His understanding was that the cost of the personal care attendant services for the State of Alaska was declining by about $20 million. He believed it was a direct result of two factors. First, Senior and Disabilities Services had revised regulations pertaining to personal care attendant services which tightened up the regulations, limited waste and fraud, and had made his job easier to prosecute fraudulent conduct. He explained that the regulations were clear as to what services were and were not allowed to be billed. He considered it a joint effort by the DHSS in tightening regulations and the attorney general's office in making the prosecution of Medicaid fraud a priority for the current and previous administrations.

Vice-Chair Saddler asked about the reach and effect of MFCU on the entire universe of Medicaid fraud.

Mr. Peterson relayed that the deterrent effect of Medicaid fraud prosecution was called general deterrence or a sentinel effect. He wanted to be able to provide a specific dollar amount of avoided costs to the state. Medicaid Program Integrity over the first couple of years estimated that the prosecutions and the Medicaid fraud arena saved the State of Alaska approximately $30 million, well above and beyond what had been recovered. However, it was difficult to provide a precise number. In the packet given to committee members there was a "Stop the Scam" pamphlet that stated that somewhere between 5 to 25 percent of welfare spending had been wasteful or fraudulent. He did not know the entity's meaning of "wasteful." The statistics he relied on were provided by the Federal Bureau of Investigation (FBI). Their estimation was that somewhere between 3 to 10 percent of all healthcare billing in the United States was fraudulent. If the number was accurate, even on the low end, there would be a significant amount of additional funds to be recovered by the State of Alaska.

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Vice-Chair Saddler asked who had estimated that the state had saved $30 million over what time frame. Mr. Peterson answered that it was MPI. Doug Jones was the manager for the MPI.

Vice-Chair Saddler asked what the time period was for saving the state $300 million. Mr. Peterson believed it was over the first 2 years in which he was prosecuting Medicaid fraud cases. He thought it was in FY 13 and FY 14.

Co-Chair Thompson noted that Mr. Peterson had quoted several recovery dollars and penalty fees. He asked about the collection percentages associated with those dollars.

Mr. Peterson responded that the collection percentages were difficult to pin down due to the fact that when the unit prosecuted a Medicaid case the provider was, by effect of the prosecution, barred from billing Medicaid. It depended on the amount of money to be paid back. He did not have an exact number but offered to reach out to the attorney general's collection unit to obtain a more precise number for the committee. He reported having been surprised at the number of cases in which the unit had fully recovered the money with respect to fines or restitution that had been imposed. One of the things the unit had done in the prior

1.5 years was to require partial or full payment of restitution upfront in any plea agreement. He had been surprised at the number of cases in which the individuals had been able to come up with the money. He would try to get the precise number for committee members.

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Representative Gara asked if Mr. Peterson was familiar with parts of the law where the attorney general's office was allowed to recover full attorney's fees and costs for their case.

Mr. Peterson was familiar with the related provisions of the law. It was not something that he would be opposed to. He thought it was a balancing act between wanting to deter waste, fraud, and abuse. However, unlike most typical civil cases, it came with penalties and interest. The more that was tacked on to the providers the more burdensome it could be. He thought that the way it was currently designed was a compromise to recognize that waste, fraud, and abuse needed to be addressed. He also wanted to make sure that the providers, even if they made a mistake but were not being prosecuted criminally, could continue working in the industry and providing a service to Medicaid recipients. He thought it would come down to a judgement call of the best way to implement the False Claims Act. He was happy to bring a recommendation to the committee for consideration.

Representative Gara relayed that his focus was on the worst conduct, fraud. He felt that fraud was intentional and deceptive. It was the kind of conduct that he wanted Mr. Peterson to look at as far as reimbursing the state for reasonable attorney's fees and costs.

Mr. Peterson explained that the reason he was distinguishing between the two was that if the conduct was fraudulent the state would generally address fraud with a criminal prosecution. While there were some states that allowed for attorney's fees provisions in criminal cases, Alaska was not one of those states. If the state went after a provider for fraudulent conduct with a criminal charge, upon the filing of the charge or the finding of a credible allegation, the provider would be barred from filling Medicaid even during the pendency of the criminal case. There were significant additional penalties that were automatically imposed once the fraud unit decided to take a

case criminally. He was making that distinction between waste and abuse which were less egregious.

Representative Gara commented that if there was fraud, there would be the option to prosecute both criminally and civilly. Mr. Peterson responded, "That is correct."

Representative Gara stated that if it was fraud, it would be dishonest conduct in which the state would be paying money. He added that it seemed like in the case of fraud the traditional role of full reasonable attorney's fees should apply. He did not see any reason to do a favor for anyone that had committed fraud against the state.

Representative Wilson asked if anyone kept track of the payments of fines and penalties.

Mr. Peterson responded that the attorney general's collection unit tracked the payment of fines and penalties. He did not have the collections totals but would get them to the committee.

Representative Wilson thanked Mr. Peterson for the clarification.

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Vice-Chair Saddler asked Mr. Peterson to differentiate between a false claim and a fraudulent claim.

Mr. Peterson responded with some examples of fraudulent claims that would be prosecuted criminally. Examples included submitting a bill to Medicaid knowing that the person was not entitled to the money, billing for a service that was not provided, up-coding (billing for a higher level of service than was authorized to provide), or billing for a service in a manner that a provider knew was wrong (a provider was warned by MPI that a certain service was not allowed to be billed but continued to do so anyway). Examples of waste or abuse might include billing for a service not allowed by regulations but providers were unaware of or it was unintentional, things that were caught in a lot of audits. It could also be something that was slightly more grievous but did not rise to the level of criminal prosecution or a case that could be proven beyond a reasonable doubt. The distinction between a false claims act and a criminal case was that in a criminal case he

would have to prove the case beyond a reasonable doubt. Whereas, in a false claims act, since it was a civil matter, it was a preponderance.

Vice-Chair Saddler clarified that fraudulent was knowingly doing something wrong and trying to obtain a benefit that a person knew they were not entitled to. A false claim was a claim that was submitted in good faith but was incorrect.

Mr. Peterson thought Vice-Chair Saddler's assessment was fair. He asked that Doug Jones further comment since he dealt with audits in the MPI unit for DHSS.

Co-Chair Thompson asked for Mr. Peterson to continue.

Mr. Peterson relayed that there had been a question the previous day regarding forfeiture. He informed the committee that SB 74 contained forfeiture provisions within Section 28. There was a question about bank accounts providing clear evidence of proceeds of Medicaid fraud. The forfeiture provision would allow for forfeiture of other assets because in some of the cases the individuals committing Medicaid fraud were taking money that they got from fraudulently billing the State of Alaska and the federal government and converting it to other assets such as homes, cars, and other tangible items. Once a criminal case started there was nothing to recover. One of the reasons for the provision was to give the State of Alaska the opportunity to ask a court to freeze the assets or limit the transfer of certain assets pending the outcome of the criminal case. If the court agreed with the prosecutor's assessment on the case that the items were purchased as a result of proceeds of fraud, the state would have the opportunity to have those items forfeited to the state as a means of debt repayment. It had happened in a number of historical cases where there was not an account in which the company could pay the State of Alaska back if a criminal case was successful. He reemphasized that the provisions of the forfeiture statue were that it had to be shown to the court that the items were purchased with fraudulent proceeds. Any forfeiture would be up to the courts to decide following the conclusion of the criminal case.

Vice-Chair Saddler asked if he had the appropriate level of staffing and resources for Mr. Peterson to accomplish his

job. He wondered if he could recover more in Medicaid fraud money for the state if he had more resources.

Mr. Peterson answered that it was a difficult question about the proper level of staff. The legislature expanded the unit's number of investigators from 3 to 6 about 3.5 years prior. The unit had done a substantial job of utilizing the resources that the legislature had given them in the previous 3 years. The bill authorized the hiring of 2 additional individuals. His intent was to move forward with the number of people already on staff and as the demand became evident they would bring on additional personnel. He wanted to make sure that there was sufficient work for everyone in the unit.

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Representative Kawasaki referred to the second part of Section 28 dealing with seizure and forfeiture of real property. He asked if the language in the sentence that included "proper cause" was commonly used for civil asset forfeitures and Medicaid fraud cases for other MFCUs.

Mr. Peterson did not know what the standard was for other units. He would be happy to reach out to other unit directors to pose the question as to their standards. He relayed that the language was standard in other areas of the law within the State of Alaska, such as the Department of Fish and Game when looking at crimes that might have been committed such as using an airplane. If a unit could establish probable cause that an airplane was used to commit a crime, the state would be entitled to seize the aircraft, with a proper court order granted by a judge. In Alaska Fish and Game cases as well as with Medicaid cases the individual would be entitled to come before the court to ask for an immediate court order to have the items returned to them if they believed the state had made a mistake. The decision would rest with the court.

Representative Kawasaki mentioned that a civil asset forfeiture was used in the case of a hunting and fishing violation when the use of an airplane was the object committing the crime. Another example was using a boat to transfer drugs from point A to point B. He was aware that civil asset forfeiture was used and wondered if it was possible to get more information on how often civil asset forfeiture was used specifically for white collar crime

such as Medicaid in the future. He also had a question regarding item E of the same question having to do with the property seized under the chapter including bank accounts, automobiles, boats, planes, and stocks and bonds. He appreciated the information regarding liquidating assets and putting them into other tangible property. He referred to the last section that said "Real or personal property owned and used to conduct the Medical Assistance Prover's business." He thought the language was limiting. He thought the word "and" could be replaced with "or."

Co-Chair Thompson did not understand the question.

Representative Kawasaki elaborated that in Item E of the section it talked about property that could be seized, and it talked about real or personal property. It stated that "real or personal property owned and used to conduct the medical assistance providers business." He thought "and" limited it to the persons' business.

Mr. Peterson was aware of the section Representative Kawasaki was referring to. He indicated he would be speaking with Ms. Kraly following the hearing to discuss the provision. He saw how the provision could be interpreted to limit what the state could go after. He spoke to Representative Kawasaki's first question with respect to Medicaid fraud cases the state had used a seizure of proceeds within a bank account, the accounts for which Medicaid was paying funds into the account for the provider. There was one case against a physician that resulted in a successful conviction and one against a home healthcare agency which also resulted in a successful conviction. In both cases the proceeds were forfeited to the State of Alaska to go towards paying the restitution due to the state.

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Representative Munoz asked if most of the cases were aimed at providers or consumers of Medicaid.

Mr. Peterson responded that by and large the fraud comes from the provider rather than the recipient. The unit's mandate was to prosecute fraud by providers within the Medicaid program. However, the unit was allowed to prosecute recipients when the recipient was colluding with the provider to commit a fraud. The unit had prosecuted a

few recipients in the previous 3 years. If the unit discovered through its investigation that a recipient was committing Medicaid fraud then the unit would refer the case to the Office of Special Prosecutions which had a public assistance prosecutor.

Representative Munoz asked if it would remain the case with the new legislation.

Mr. Peterson was uncertain of Representative Munoz's question.

Ms. Kraly responded that it would not change the prosecution dynamic. Individuals would still be prosecuted by the public assistance prosecutor and providers would be prosecuted by the MFCU.

Representative Edgmon asked how Medicaid expansion would affect the work of the MFCU.

Mr. Peterson answered that he did not see any noticeable change in work load due to the expansion of Medicaid. He thought the reason for that was because the focus of the unit was primarily on provider fraud. There had not been a large expansion or explosion of the number of providers in the industry. One of the ways in which the unit prosecuted white collar fraud cases was that it would find out about a fraud scheme or some type of conduct that would be in violation of state law. In working with the Department of Health and Social Services the unit analyzed billing data. However, whether analyzing billing data for 200, 300, or 400 recipients there had not been a significant change in his workload.

Co-Chair Thompson relayed that there were a number of questions for Doug Jones. He invited him to introduce himself.

2:27:27 PM

DOUG JONES, MANAGER, MEDICAID PROGRAM INTEGRITY SECTION, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, introduced himself and relayed that his section managed the audit contract under AS.47.05.200. His section worked closely with the federal government on some of its audit programs including the Program Error Rate Measurement (PERM) program and the Medicaid Integrity Contractor Program. His office

also worked closely with the MFCU and the Medicaid division in cases of suspected Medicaid fraud. He reviewed slide 3: "Overview of Medicaid Provider Audit/ Over Payment." He relayed that the slide covered the procedural aspects of an audit and of an overpayment and notice scenario. He wanted to review some of the benefits of the bill that would broaden the section's tool chest in order to maintain and preserve the integrity of the Medicaid program. He referred to a question from the previous day about Section 25 regarding the number of audits. It was changed in the bill requiring the department's contract for no less than 50 audits annually of medical assistance providers, a change from the current language of 75. Ms. Kraly had indicated correctly that there had been a large change in the landscape of provider audits since the original statute was enacted. Large changes had included the Affordable Care Act, which rolled out recovery audit contractors from the Medicare program to the Medicaid program. Another change was the implementation of the PERM program which seemed to grow significantly. Another area of change, for those providers that participated in electronic health records, were incentive payment audits and audits conducted directly on state Medicaid providers by the Centers for Medicare and Medicaid services.

2:30:49 PM

Mr. Jones continued to speak about the influx in the number and types of audits being conducted on Medicaid providers. He was very comfortable with the reduction in the number of audits in AS.47.05.200. Section 26 of the bill allowed for the assessment of interest on overpayments. He relayed that with the allowability for interest on overpayments over the last couple of years the section had identified about $20 million in overpayments through the administrative conduct of audits and reviews on medical assistance providers. In the same timeframe the section had collected about $6 million which underscored a couple of points. First, there was no incentive for a provider who was faced with an overpayment to resolve the matter quickly and no disincentive for them not to appeal the case. Secondly, he referred to the realm between administrative overpayment and a criminal Medicaid fraud case. The difference between false claims and Medicaid fraud was difficult because the MFCU had to prove that the provider intended to seek a benefit that was not theirs. A false claims act allowed for the ability to identify a middle ground. When the

department sought recovery on an overpayment there was due process rights for Alaska providers. In some cases, providers took the due process to an unhealthy level, pushing poor positions to Superior Court where they most likely did not belong tying up resources in staff time for various offices. It ultimately could eat up Superior Court. The false claims act and civil penalties provided an extra incentive for providers to come into compliance without having to be shut down. There were measures that could be taken but if it was difficult to prove Medicaid fraud, the False Claims Act gave the department a boost in encouraging compliance with Medicaid rules and regulations.

Mr. Jones explained that Section 27 of the bill provided another tool in encouraging providers to identify and repay a self-identified overpayment. The provision worked well in conjunction with the false claim and reporting act. It would encourage providers to initiate compliance programs. For those providers with compliance programs already in effect it would incentivize them to look for cases where they might have inadvertently overbilled the program and return the funds. He was available for questions.

2:36:37 PM

Co-Chair Thompson had heard Mr. Jones report that there was overpayments in excess of $20 million. However, only about $6 million had been recovered. He wondered if he had heard him correctly.

Mr. Jones replied in the affirmative. He explained that whenever he talked about a matrix in the fraud, waste, and abuse realm he thought of them in three different areas. The first was what had been identified as an overpayment - in cases where the department issued a final audit and informed the provider. Secondly, collections were hard dollar recoveries, money which actually came in the door. He reminded members that his numbers were separate from the numbers Mr. Peterson had discussed which was on the criminal restitution side. The third piece had to do with the idea of cost avoidance or how much was saved through the sentinel effect. The number for the previous 2 years was about $30 million, a calculation that was not very scientific. Every state struggled in trying to support or prove up the effectiveness and efficiency of any program integrity, fraud, and abuse program. A question to ask was how much money was saved by prosecuting cases to put some

bad guys in jail. The number was calculated by identifying the prosecuted and looking at their annual billings. The annual billing amount for 1 year was calculated out as a cost avoidance amount which was where the $30 million figure came from. The cost avoidance or the sentinel effect amount was difficult to assign a scientific and rational calculation.

Representative Gattis could not help but think about the state having a glitch in its own software system. She wondered if that factored into the $30 million overpayment figure.

Mr. Jones responded in the negative. He suggested that the $30 million only had to do with a cost avoidance number due to the sentinel effect. Any issues with the payment system would not affect the number.

2:40:54 PM

Representative Gattis stated that the state had problems with its system. She wondered if it was possible that the state overpaid or underpaid. Assuming that the state overpaid, she wondered if it was possible that the state overpaid and was unable to collect. She wondered it if would be categorized as fraud.

Mr. Jones reported not having focused its reviews on payments associated with the new system. He relayed that he had not studied the full impact of the system. Currently, audits being conducted were from calendar year 2012. There was only limited focused reviews on more current timeframes. The primary audit program under AS. 47.05.200 was still looking at years prior to the implementation of the new system. The potential impact of the payment system had not been reviewed.

Representative Gara asked about the potential of losing money by pursuing a fraud case.

Mr. Jones responded that he would have to defer to Mr. Peterson regarding fraud cases. He could see Representative Gara's point about a relatively small overpayment and whether it was worth appealing.

Representative Gara asked whether the civil side of the unit had the right to pursue someone that had committed fraud against the state.

Mr. Jones responded in the affirmative. He clarified that they would be pursuing the overpayment associated with the fraud.

Representative Gara understood that the process began administratively but wondered if it ended in court. He assumed if the state won, the losing party would have the right to appeal.

Mr. Jones relayed the Representative Gara was accurate. He stated that he worked closely with Mr. Peterson on such cases. On the administrative side he would be looking for the administrative overpayment through administrative remedies. A party had due process rights and could appeal the overpayment findings through Superior Court.

Co-Chair Thompson noted that Mr. Jones had mentioned looking at cases from 2012 and wondered if there was a statute of limitations that would apply.

Mr. Jones confirmed that there was a limit of 7 years.

Co-Chair Thompson remarked that they were at year 5 and encouraged Mr. Jones to keep going.

Representative Gara asked about the number of attorneys in Mr. Jones' fraud unit.

Mr. Jones responded that the unit worked with one assistant attorney general and often times Ms. Kraly was involved in some of the cases. On the administrative side he worked primarily with one assistant attorney general and in part with Ms. Kraly.

2:46:35 PM

LYNNE KEILMAN-CRUZ, HEALTH PROGRAM MANAGER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, relayed that she would be discussing how each of the divisions worked together with MPI and the MFCU to fight Medicaid fraud. The Senior and Disabilities Services Division had 3 full time investigators, one of whom was a non-permanent position. The quality assurance unit within the division had donated

some of its resources cross-training individuals to assist with identifying cases and receiving complaints from providers and recipients of services. She explained her division had a centralized intake for complaints (several complaints had been received). The division streamlined and reviewed reports and did some of the investigating. Often times the division provided technical assistance to providers to ensure their compliance with state rules and regulations. She also oversaw the Provider Certification and Compliance Unit. She had compliance reviewers within that unit that went out into the field to check for compliance with different providers. Many of the complaints that rose to the level of fraud, waste, and abuse came through the complaint system or through provider compliance checks. Many complaints that were investigated turned into provider fraud cases, some of which involved recipients colluding with providers. Many related cases involved the personal care assistance program. The division had taken some cases against waiver providers as well as with personal care assistance programs. She highlighted the importance of the three units working together. Her division was the programmatic piece of the three-legged stool which also included the MFCU and the MPI unit. Sometimes her unit was able to identify schemes or problems with state regulations that perhaps Medicaid fraud investigators could not. The division investigated on the civil side and often times noticed providers to correct their behavior. Her unit acted through progressive discipline. The unit tried to start with the least restrictive level of discipline and work its way up. If something came to the unit's attention that was egregious it would immediately become a fraud case. Much of the time the unit provided technical assistance to a provider, they failed to correct their way of doing business, and the issue resulted in a sanction.

2:51:38 PM

Ms. Keilman-Cruz turned to slide 2: "Overview of Medicaid Sanction Process." She indicated that what the unit looked for under the Alaska Medicaid Coverage and Payment Regulation 7AAC 105.400 were grounds for sanctions. After the unit provided technical assistance to a provider or explained to them that they needed to discontinue a practice, the unit would move to impose a sanction. Many factors were considered in sanctioning a provider. She indicated that there were times in which providers could be

suspended if there was a credible allegation of fraud. The divisions needed to work together because there were recipients at the other end of a suspension. It was the division's responsibility to ensure that recipients did not go without services.

Vice-Chair Saddler asked Ms. Keilman-Cruz to explain what her section did versus the other sections.

Ms. Keilman-Cruz explained that her section oversaw the personal care assistance and Medicaid waiver program and within that the quality assurance unit, the Senior and Disabilities Services Division, was responsible for the quality oversight of the program. She furthered that within the quality assurance unit there were compliance folks and quality assurance folks that actually performed some of the investigation of complaints that came in. She explained that her unit did the initial investigation and did some of the tidying up of a case. The unit then made a referral through MPI, responsible for tracking and triaging all of the reports that went to the MFCU. The Medicaid Fraud Control Unit oversaw the audit and the payment suspensions (anything to do with payments to the provider involving fraud, waste, or abuse. The investigators for the MFCU only investigated actual fraud cases that came directly to them. Her unit investigators did some of the smaller, more technical assistance civil kind of sanctions for oversight of the program that did not rise to the level of a fraud investigation. Sometimes her team worked collaboratively with the fraud investigators because there was program expertise in the areas of fraud that were occurring within the states programs.

Vice-Chair Saddler wanted to clarify that her division took up low level complaints, gathered up information, and passed them on to MPI, and if justified, complaints would be passed to the MFCU.

Ms. Keilman-Cruz agreed with his summary.

2:56:05 PM

Representative Edgmon wanted to better understand waste. He thought that there would likely always be a small level of incompliance or inadvertent waste. He wondered if it would be ongoing.

Ms. Keilman-Cruz thought there would always be a level of waste. It was difficult to anticipate all areas of waste but she thought her unit had done a good job of working together with the MPI and the MFCU. In focusing on the areas where the unit saw significant abuse and working actively with the other two units she thought it was possible to reduce or eliminate waste by changing regulations. She believed there would always be a small amount of waste but having resources in quality assurance would lead to continuous quality improvement and the elimination of waste, fraud, and abuse.

Representative Edgmon asked about the timeframe and the audits being behind.

Ms. Keilman-Cruz responded that the audits went back as far as 2012. However, investigations were current. She reported an example in which the unit took a civil action to terminate a provider due to program abuses. The unit had to carefully vet whether it looked at system glitches and how people were paid and whether it was factored into an overpayment. The division had to examine it line-by-line to make sure the state was able to get back the resources it deserved.

2:59:38 PM

Representative Wilson was confused. She wondered what was currently being done versus what the bill would do. She asked for a short summary of what the bill would allow the unit to do that it could not do currently.

Ms. Kraly would respond in writing. Briefly, the bill gave the unit the authority to impose civil fines. It allowed the unit to impose interest on overpayments, and also provided the False Claims Act (a civil cause of action for false or fraudulent claims that the unit did not have). It was a specific action related to Medicaid. It gave the unit the ability to achieve the seizure and forfeiture of assets to offset the cost of recovery for Medicaid fraud claims brought by Mr. Peterson's unit. In looking at the broad scheme of things, the unit had very good tools. The unit actively investigated and pursued fraud abuse and waste when it was presented to them. However, there were additional smaller efforts that would help to round out the tools the unit needed. She relayed she would supply a response in writing.

3:01:40 PM

Representative Wilson asked that she provide an example of what the unit might have been able to do for the past 2 years had the legislation been in place. She wanted to have an idea of the impact from historical data rather than a hypothetical example. Ms. Kraly responded, "Absolutely."

Co-Chair Neuman asked why the unit wanted the tools at present. He wondered if something had changed that would cause the need for the additional tools.

Ms. Kraly responded that there were two separate units within the Department of Law and then there was Department of Health and Social Services. The Medicaid Fraud Control Unit was a statutorily required unit set up through federal authorization. They prosecuted and investigated criminal fraud and abuse. The civil side of the Department of Law, the side she was involved in, operated under the auspices of the regulatory authority that already existed under Title 7 of the Alaska Administrative Code. There were certain things her unit wanted to have legislative approval of before she took action such as achieving interest and penalties. They were things that had not come to her attention until after the unit engaged in the audits and after 3 to 5 years of failure to repay in a timely fashion. It became evident that the unit needed the additional tools laid out in the legislation. Some of the tools were items that came to the unit's attention. The unit had thought about and wanted to preserve the ability to have civil fines for many years and felt that the bill was the vehicle to do so. She reiterated that the unit felt it was important to have legislative approval prior to imposing fines on Medicaid providers for violating regulations under the Medicaid act. The items being asked for in the bill were tools designed to help with the civil division and the civil causes of action rather than what Mr. Peterson did when prosecuting fraud cases.

3:04:40 PM

Co-Chair Neuman relayed concerns about the legislation propagating significantly more regulations. He asked if the issues had ever been brought to the attention of the legislature previously.

Ms. Kraly responded that in her tenor she did not recall the issues being presented to the legislature. She added that the legislative changes would not create a large regulatory framework. The fines would lead to some regulations but otherwise the changes would not create a large regulatory influx to administer these tools. The interest and penalties under the audits would happen by operation of law. Some regulatory input would be required to identify the range of fines that were being requested and how they would apply to the sanctions that were authorized under the Medicaid act.

Co-Chair Neuman thought that Ms. Karly made his point.

Representative Wilson asked about a lower threshold of proof for civil versus criminal cases. She wondered if there would be a different type of prosecution due to a different threshold.

Ms. Kraly responded that there was a lower threshold. Criminal cases had to be proven beyond a reasonable doubt - a preponderance of the evidence. However, she noted that in every one of the instances individuals or providers that were fined or who had actions or audits were provided due process compliant notice and the ability to challenge the findings in an administrative hearing and to pursue an appeal to the Superior Court. It was a lower standard of proof.

Representative Wilson asked if the cases that could not be prosecuted criminally could be prosecuted civilly as an alternative.

Ms. Kraly stated that the civil penalty provision that she was identifying would not apply to the circumstance Representative Wilson was talking about. She emphasized that what her unit was looking for was the authority to impose a fine on a provider who had been identified as violating program rules and was being sanctioned. There was a specific regulation 7AAC 120.400 which included a list of over 30 sanctionable offenses. For each sanction there was an enforcement rule. The sanction stated that if a provider had violated one of the rules they could be terminated or suspended or they could be sent to provider education - that was the range of penalties currently in place. The division was looking for ways to impose a fine of $250 per occurrence. If Mr. Peterson decided not to criminally

prosecute a case her unit already had the ability to pursue the issue through an administrative method. She was looking at the fines from a sanction perspective which was the intent of the legislation.

3:10:05 PM

Representative Wilson stated that it was similar to the Board of Game or the Board of Fish. She was concerned about adding more things at a lower threshold that the state could do to providers when a higher threshold could not be proven. She was concerned with the legislation.

Vice-Chair Saddler was confused. He wanted additional clarification about the three divisions.

Ms. Kraly responded that the Medicaid divisions within DHSS had a quality assurance program directly tied to the administration of their individual Medicaid programs such as Senior and Disabilities Services or Behavioral Health. They worked directly with providers, enrolling, certifying, and approving them. The also provided technical assistance and dealt with program compliance. That was the foundation. Medicaid Program Integrity was a more global entity within the DHSS that dealt more with the overpayment and audit side of things. However, when the quality assurance program was working with a provider, could identify a financial issue and refer it to MPI or could identify fraud and refer it through MPI to the MFCU. It was a linear structure.

Vice-Chair Saddler asked where quality assurance fit in the structure. Ms. Kraly relayed that quality assurance was the basic block. Each division had a quality assurance position.

Vice-Chair Saddler repeated what Ms. Kraly stated that each of the two Medicaid divisions, Senior and Disabilities Services and Behavioral Health had a program compliance. He asked if program compliance was the same thing as quality assurance. Ms. Kraly responded that she had meant to say quality assurance. Quality assurance dealt with program compliance and the direct interface with the providers.

Vice-Chair Saddler asked where quality assurance was in the structure. He wondered if it was a separate office. Ms. Kraly explained that there were quality assurance programs in each one of the Medicaid divisions.

Vice-Chair Saddler thought she had said that there were program compliance offices in each division. Mr. Kraly clarified that each dealt with program compliance.

Co-Chair Thompson asked Vice-Chair Saddler if he had further questions.

Vice-Chair Saddler responded in the negative.

Ms. Kraly agreed that it was confusing. One of the most important points was that each of the units worked independently in identifying fraud abuse and waste, but all worked collectively as a team. She represented the quality assurance units and program integrity units in each division. Her office also worked collaboratively with the MFCU to identify cases that did not rise to a criminal prosecution. In looking at the original spreadsheet (slide 3) a fraud case would either come in through quality assurance, program integrity, or a third party and would then go to the MFCU where it would be evaluated and a determination would be made whether to pursue a criminal case or a civil case.

Vice-Chair Saddler asked for consistent terminology.

Co-Chair Thompson thanked Mr. Kraly for her testimony.

3:15:28 PM

Representative Wilson suggested that presentations clearly indicate current practices versus what was being proposed in legislation.

Ms. Kraly wanted to answer a question asked by Representative Munoz in the previous day. She had asked about whether the State of Alaska could be charged with a false claim. Generally, the answer would be no. The focus of investigating a false claim was provider compliance. The Department of Health and Social Services outside of the Pioneer Home was not an enrolled provider. The Pioneer Home could potentially have a problem. However, since the false claim was designed towards achieving compliance and remedying overpayments or cost outlies, once they were identified they would be remedied and immediately internally through the Commissioner's Office. A false claim would not necessarily achieve the same goal as what her

office was trying to do with other providers. The department and its individual divisions were not subject because they were not enrolled providers. Since the idea was for provider compliance her office would rectify issues concerning billing and documentation internally upon discovery of those issues.

Co-Chair Neuman explained that the committee was frustrated with her complicated answers. She shared a lot of information.

Representative Edgmon stated that for presentation purposes it would be helpful to have visual terms brought to the committee in a simple form where building blocks such as quality assurance, integrity, and control could be layered.

Co-Chair Thompson recessed the meeting until 4:00 PM.

SB 74 was HEARD and HELD in committee for further consideration.

3:20:25 PM
AT EASE

4:03:35 PM
RECONVENED

Co-Chair Thompson reported that Representative Guttenberg left the meeting for the day.

4:04:49 PM

^PRELIMINARY SPRING 2016 REVENUE FORECAST, DEPARTMENT OF REVENUE

4:04:49 PM

JERRY BURNETT, DEPUTY COMMISSIONER, TREASURY DIVISION, DEPARTMENT OF REVENUE, pointed to a one page information spreadsheet titled: "Summary of preliminary Spring 2016 forecast data."

4:05:51 PM
AT EASE

4:08:48 PM
RECONVENED

Mr. Burnett indicated that the spreadsheet was a simple summary of changes between the spring and the fall forecast. He referred to the shaded bar in the top box showing the total general fund (GF) unrestricted revenue for FY 16 to FY 26. The spring FY 16 forecast was $1.316 million. The fall forecast was $1.593 in FY 15 for a difference of $277 million. In FY 17 looking at the same bar the top box listed $1.232 billion. In the center box the fall FY 17 forecast was $1796 for a difference of $564 million. The state was looking at a lower price with production being similar in the earlier years of the forecast and trailing off in the later years.

Co-Chair Thompson asked about the price per barrel estimate.

Mr. Burnett replied that the forecast was based on $39.52 per barrel in FY 16 and $38.89 per barrel in FY 17 compared to $49.58 and $56.24 in the fall [FY 15] forecast.

Representative Gara asked why tax credits went down in 2019 to $250 million per year and remained flat. Mr. Burnett deferred to Mr. Stickel.

Representative Gara clarified that he was talking about the line labeled, "Tax credits for refund." It was an exact $250 million per year starting in 2020.

4:11:16 PM

DAN STICKEL, ASSISTANT CHIEF ECONOMIST, TAX DIVISION, DEPARTMENT OF REVENUE, explained that the department did not have much certainty regarding the tax credits that would be claimed for years beyond 2020. The department held the credits constant at the $250 million per year for 2020 and beyond. It was basically about the amount that he would expect in the 2019 to 2020.

Representative Gara suggested they had been going up to $825 million. He wondered why they were going down after 2017.

Mr. Stickle responded that there were some tax credits going off of the books and the underlying forecast was that capital expenditures would start to decrease over the time horizon of the forecast. He noted that with prices

recovering, the state would have lower net operating loss carry forwards. All of the things combined helped to reduce some of the tax credit liability in the out years.

Representative Gara referred to the production taxes in 2017 in the amount of $54 million but paying out tax credits of $825 million. He spoke of Mr. Alper's report but the tax credits were for fields that on average did not pay any production tax up to $73 per barrel. He wondered if he was accurate. He was referring to the GVR fields that paid the post 2002 fields. He wondered if he was accurate.

Mr. Stickle did not have the dollar amount off the top of his head. He relayed that the tax credits for refund were going to be for the companies that did not have enough of a tax liability to apply the tax credits against a liability. It would include explorers, developers, and companies operating GVR eligible fields.

Representative Gara asked if he knew for up to what price those fields paid and no production taxes. Mr. Stickle did not have that information with him.

4:14:07 PM

Vice-Chair Saddler referred to the forecast for FY 2017. He wanted to know about what revenue sources were included. He wondered if it presumed passage of any legislation in the current session that would affect FY 17.

Mr. Burnett responded that it assumed the current status quo tax structure entirely. He relayed that the crux of the presentation was to review the base figures. There were some interesting things to note. The prices in the forecast for years 2019, 2020, and 2021 where low because of carry forward loss credits. Producers that were currently paying production taxes would be carrying forward losses and not paying production taxes. They would be paying only the nickel per barrel tax (the spill response tax and another small tax) which was why the tax liability was only $19 million and $20 million.

Mr. Stickle reported that in those years from 2018 through 2020 the primary production tax revenues were the nickel per barrel plus a 5 percent tax on the private land owner royalties' interest.

Co-Chair Neuman asked if the spring 2016 total general fund unrestricted revenues (GFUR) for 2016 in the amount of $1.316 billion was a net figure or gross figure.

Mr. Burnette responded that it reflected the net taxes and royalties paid to the State of Alaska.

Representative Gara provided a hypothetical scenario going out to 2020 when the state was projected to receive only $20 million in production taxes with an estimated price of $54 per barrel. At that price all the state would receive was the 4 percent gross minimum tax. He asked if he was correct.

Mr. Burnett responded that with the prices in the forecast, below $67 per barrel, the state would be receiving the minimum tax for the entire period of the forecast.

4:17:09 PM

Representative Gara did not believe the state would get past the 4 percent minimum under current law until the price of oil per barrel reached $76. He wondered why at $39 per barrel in the previous year the state received $142 million in production taxes but by 2020 at a much higher oil price the state's revenue would go from $142 million to just $20 million.

Mr. Burnett answered that in 2016 the oil companies, for the purposes of the production tax had a net operating loss which could be carried forward as a net operating loss credit into the future years through approximately 2022. In 2023 producers would be paying a minimum tax but not using much of a net operating loss credit. The credit was being reduced by the net operating loss in future years.

Representative Gara asked that when people stated that Alaska did not have a firm minimum tax floor they were talking about the state getting less than 4 percent because of the net operating loss. He wanted to make sure he was understanding correctly.

Mr. Burnett replied that Representative Gara was essentially correct. Producers could not reduce their tax liability below zero with a net operating loss on the production tax but could reduce it to zero with prior year net operating losses.

Representative Gara asked about the bill the governor had proposed. He wondered if it established a firm 4 or 5 percent minimum so that the net operating loss could not go below the minimum tax.

Mr. Burnett replied in the affirmative as the bill was initially introduced.

Representative Wilson asked that of the tax credits for refund what the state was required to pay.

Mr. Burnett responded that refundable tax credits were subject to appropriation. The credits deducted against tax liability were obviously not subject to appropriation. The statute had a 10 percent or 15 percent floor depending on oil price as to what was intended to be placed into the tax credit fund. He believed the amount was approximately $73 million in the governor's budget in the current year. The question was whether the state was required to pay the money or if it needed to pay it in order to keep the industry meeting expectations. All of the refundable credits were technically subject to appropriation.

Representative Wilson asked Mr. Burnett to clarify the difference between the total petroleum royalties and the petroleum royalties in two lines appearing in the first box on the spreadsheet.

Mr. Burnett explained that there were two lines that referred to petroleum royalties including the Permanent Fund share was $728 million. The general fund share was $504. The difference between the two numbers was the amount going into the corpus of the Permanent Fund - 25 percent of all royalties under the constitution plus 50 percent of certain fields.

4:21:35 PM

Representative Wilson asked how many barrels of oil were projected.

Mr. Burnett pointed to the second line in the first box where it showed ANS production 517 thousand barrels per day in 2016 and 507 thousand in 2017.

Representative Wilson assumed that no additional barrels of oil were being produced based on the numbers in the forecast.

Mr. Burnett responded that interestingly the forecast for production was higher than two years prior. He confirmed that it showed the effects of earlier prices and of things that were done. The Department of Revenue used a risk-based model and only include production that was certain. It was more likely that the state forecast was low rather than high.

Co-Chair Neuman asked about the production tax minimum floor of 4 percent. He suggested that because the state had a net system rather than a gross taxation system producers were allowed to deduct the standard allowable deductions from the 4 percent net. He wondered if producers could go below 4 percent when taking deductions such as transportation costs and upstream costs.

Mr. Burnett stated that the 4 percent floor prevented producers from deducting costs in the year in which they were incurred. However, it allowed producers to deduct net operating losses from previous years. It was a floor that worked well in a 1-year low price environment. When circumstances were such that producers had ongoing net operating losses over a period of time the amount could get down to zero.

Co-Chair Neuman was trying to clarify whether producers could go below the minimum tax because of their deductions and because the State of Alaska had a net system.

4:24:39 PM

Vice-Chair Saddler took some cold comfort in seeing that the production forecasts were larger currently than they were 2 years prior. He wondered about the forecast out to 2026 assuming a 277 thousand barrels per day. He wondered if it presumed that there was no change or additional significant investment in the Trans Alaska Pipeline that would allow them to function at 277 thousand barrels per day.

Mr. Burnett was unsure of the correct answer to Vice-Chair Saddler's question.

Vice-Chair Saddler was curious about the status of the audits on past year tax returns.

Mr. Burnett indicated the topic had been discussed in the subcommittee meetings earlier in the year. However, the tax returns were audited through 2009. The intent following would be to do 2 years at a time. His hope was to be completed and perhaps ahead in the following year. He relayed that there had been challenges with having mixed years of different tax regimes in place at different times. The process was fairly complicated and there were several changes to regulations and to tax filings that occurred after the fact. He noted that he did not necessarily want to finish the audits too soon because of all of the changes.

Representative Gattis had questions regarding the tax credits. She wondered what the balance was for the oil and gas tax credits fund at present.

Mr. Burnett thought it was in the $40 million range. He added that he had information in the packet for the meeting that detailed the expected refunded credits for 2017. He thought the information about what was in the pipeline and what was expected was helpful.

Representative Gattis disclosed that she had talked to Mr. Burnett about getting the information and commended him for doing a great job of putting it together for her.

4:28:12 PM

Representative Gara asked about the 4 percent tax floor projection out to 2026. He specified that it was not a net tax. It was 4 percent of the gross value of oil with some very limited deductions for transportation. There was a net operating loss problem. It was not a net tax where a company could deduct all of its costs. A company would be allowed its full deductions as if it were a profits tax when it reached above a 4 percent minimum and the price reached above $76 per barrel of oil. He asked if he had presented a fair summation.

Mr. Burnett responded that Representative Gara's interpretation was a fair one.

Representative Gara mentioned that the statute on the tax credits that the state paid out, $825 million in 2017, provided that the legislature was authorized to only pay a portion based upon available state revenues calculated using a formula. He wondered if in FY 17 the state was obligated to pay roughly $72 million.

Mr. Burnett reported that the formula that was used was instated with ACES. He thought that at $65 per barrel and above it was 10 percent of revenues. Below $65 per barrel it was 15 percent of revenues. The governor's budget was based on these numbers. He could not speak to the type of obligation relative to other obligations.

Vice-Chair Saddler stated that when looking at the projections for the North Slope lease expenditures, the spring forecast was slightly higher than the fall forecast. By 2026 it was higher in most years. He wondered if there were any conclusions or assumptions that could be gained in looking at the chart from the investment in the North Slope.

Mr. Burnett deferred to Mr. Stickle.

Mr. Stickle reported that in putting together the spring forecast one of the things the DOR had heard from a number of companies was that the producers were making adjustments to their spending for the following couple of years. They were waiting until the following fall to make adjustments to the out years. He relayed that there would be a significant reduction in lease expenditures in 2016, 2017, and 2018. The forecast reflected that there was not a significant reduction in the later years. The department had added a few projects seen on the horizon but largely left them untouched until the fall forecast.

4:31:53 PM

Vice-Chair Saddler asked about what information the producers were waiting for in order to make their investment decisions.

Mr. Stickle had heard that it was about oil price uncertainty and about how the state addressed its fiscal challenge.

Vice-Chair Saddler asked if the prospect of an oil taxation adjustment would have a role.

Mr. Stickle was sure it would.

Vice-Chair Saddler asked if he had heard.

Mr. Stickle heard companies making reference to the broader discussion of the fact that the state was facing a $4 billion plus deficit and questions arose about how the state would handle it.

Mr. Burnett reiterated that the forecast was a preliminary forecast and that the final production tax returns were not due until the end of the month. The final spring forecast would be completed approximately one week following receipt of the tax return. There could be some slight changes in the amounts. He did not anticipate the changes to be more than a few million dollars.

Co-Chair Thompson appreciated the administration providing the preliminary forecast.

Representative Gara wanted to better understand how the net operating loss worked. He commented that even though it was low, the state had a positive amount of production taxes ($20 million to $54 million over the next few years). For particular companies they could not deduct their net operating loss unless they were at the point where a company's deductions were so high it would lose money in a year. He used Point Thomson as an example. He suggested that maybe Exon Mobile's investments would be large enough that their investments would bring them below a minimum. If an individual company made a small amount of money they would not get to use their net operating losses, it was only if the company lost money based on investments and income. He wondered if he was accurate. He asked if a producer could deduct its net operating loss credits from the 4 percent floor if the company was revenue positive.

Mr. Burnett believed that a company could deduct it up to the point of the net operating loss against tax liability. The carry forward loss credit earned in previous years could be spread out over several years. It could reduce it somewhere between zero and the 4 percent.

Representative Gara spoke of the governor's firm minimum tax floor. He asked if production tax revenue would be closer to the FY 16 amount than the numbers seen in FY 17 and beyond in the spreadsheet.

Mr. Burnett responded in the affirmative. He added that if oil prices went up significantly producers would still be earning net loss carry forward credits that could be taken against future revenues. There would not be as much of a bump from future oil price spikes as there would be if there was not a net operating loss or if producers were able to take the credits during the current period. The state would be deferring revenues farther out.

Representative Gara asked that if the 4 percent floor was firm, oil jumped above $76 per barrel, and there was a net profits tax greater than the minimum floor, then in those years producers could begin to deduct their net operating losses. He asked if he was correct.

Mr. Burnett responded positively. It would push out the taking of the credits.

4:36:37 PM

Representative Gara suggested that the way the system was currently crafted the state would never get above the 4 percent minimum floor and the price would not reach high enough to go beyond the 4 percent minimum floor according the DOR's predictions out to 2026.

Mr. Burnett responded that it was likely the case unless producers stopped spending money.

Vice-Chair Saddler referred to page 2 of the executive summary which made reference to the middle column to a meaningful increase of 17,500 barrels of oil per day from the fall forecast. He asked if it was fair to attribute it in part or in total to the tax credits or to the changed tax structure of SB 21.

Mr. Stickle explained that the increase was primarily due to CD5 coming online slightly earlier than expected and producing better than expected.

Vice-Chair Saddler asked if his answer was yes or no.

Mr. Burnett responded that it was a complex question. He explained that when CD5 started prices were much higher than in the present day. He thought it was started prior to the passage of SB 21. It was likely an effect of several things.

Representative Gara had a list of the fields that the state was investing in prior to the change in the tax law. CD5 announced they were going forward before SB 21 passed. The big delay was the refusal of the Army Corps of Engineers to give them a bridge permit. He asked if he was correct.

Mr. Burnett responded in the affirmative.

Co-Chair Thompson asked Representative Gara if his question had anything to do with the revenue forecast.

Representative Gara thought the answer to his question as to whether SB 21 had anything to do with CD5 was no.

Co-Chair Thompson thanked Mr. Burnett and Mr. Stickle for their presentation.

4:39:38 PM
AT EASE

4:42:09 PM
RECONVENED

Co-Chair Thompson indicated the committee would be hearing about HB 143.

#hb143
HOUSE BILL NO. 143

> "An Act authorizing the Alaska Industrial Development and Export Authority to issue bonds to finance the infrastructure and construction costs of the Sweetheart Lake hydroelectric project; and relating to legislative approval for a loan from the power project fund to the Lynn Canal Transmission Corporation."

Co-Chair Neuman MOVED to ADOPT the proposed committee substitute for HB 143, Work Draft (29-LS0599\S).

There being NO OBJECTION, it was so ordered.

JANE PIERSON, STAFF, REPRESENTATIVE STEVE THOMPSON, explained the changes between the S version and the H version. The first change was the title. The title was shortened to address what was currently in the bill. The loan from the Power Project Fund to the Lynn Canal Transportation Corporation had been removed and was no longer addressed in the bill or in the title. Section 1 had been amended to remove financing through AS.44.88.172. Under version S financing would be what was known as conduit funding paid through the revenue derived from the project. The revenue bonds and interest due would not constitute a general obligation to the state or the authority. Bonds would not be applied against the authority's 12 month bonding limitation in AS.44.88.095A. As previously stated Section 2 of the bill was removed. It would have been a loan for the Lynn Canal Transmission Corporation. The repealer date was changed in Section 2 from June 30, 2019 to June 30, 2020.

Co-Chair Neuman assumed that the legislation allowed Alaska Industrial Development and Export Authority (AIDEA) to work as a conduit to help the project move forward but did not obligate AIDEA to the financial packet.

Ms. Pierson replied that he was correct.

Representative Gara asked why the reference to the Lynn Canal Transportation Corporation was removed.

Ms. Pierson answered that it was in working with the bill sponsor. It was a fund that would have had to be recapitalized for $22 million. In the state's fiscal times it was not looking to recapitalize or to cap out its bonding.

Representative Gara noted that he would have questions for AIDEA.

REPRESENTATIVE CATHY MUNOZ, SPONSOR, explained that the committee substitute for HB 143 would allow financing for the construction of a hydroelectric facility dam located 43 miles South of Juneau. The proposed project would generate 19.8 megawatts of power and would allow the Kensington Mine to come off of diesel generation and move to hydroelectric power. The project would increase hydro capacity by about 20 percent and would result in many jobs for the community. The initial application to Federal Energy Regulatory

Commission (FERC) occurred in 2009. The final FERC permit, the final environmental impact study (EIS), and the final 404 permit were expected in the summer of 2016.

4:47:22 PM

Representative Pruitt asked if there was a power sales agreement between Kensington Mine and the developer of the Sweetheart Lake Project.

Representative Munoz deferred the question to the chief executive officer of the Kensington Mine.

Representative Gara asked what percentage of power generated from the project would go to the Kensington Mine.

Representative Munoz deferred the question to experts available to speak to the bill.

Co-Chair Thompson asked the other testifiers to come forward to address the committee.

KEITH COMSTOCK, CEO, JUNEAU HYDROPOWER INC., indicated that there was a slide presentation in the member packets titled: "Juneau Hydropower and Lynn Canal Transmission" (copy on file). He began by providing a brief history of the project. It was a project identified by the federal government in 1906 as having significant hydropower capacity. In 1929 it was identified as a federal power site classification and removed from other uses. There had been multiple attempts to look at the project. For a number of reasons such as access to a market, the timing, or other issues have prevented the project from moving forward. In the mid to late 80s the state had come closest to building the project. In December of 2009 Juneau Hydropower filed for a FERC preliminary permit. At that time the company began studying and investing money to do all the various environmental studies, the hydrological studies, and fortunately for the company the project had been studied repeatedly and had 40 years of water data. The 40 to 50 year old water data was saying the same as the new water data. He continued that from 2009 to 2014 the company conducted environmental, hydrological, and preconstruction studies. It had worked on all of the various regulations and defining the customer base. In May 2014 the company submitted its final FERC license application that FERC accepted. Once the application was accepted the timeline

began for the EIS. The final comment period was a few months prior. The company was expecting its final license, the 404 permit, and the notice to proceed on or around the July timeframe. Also in February the company announced the existence of the Juneau District Heating, a major customer for Juneau Hydropower Inc. The company received unanimous letters of support from the City and Borough of Juneau assembly. He was before the committee asking for support in order to find some bond financing.

4:51:18 PM

Representative Kawasaki asked Mr. Comstock to tell him about the company's attempt to make private financing available or whether private financing has been available.

Mr. Comstock answered that the project had been 100 percent privately financed, very unusual for a hydro power in Alaska. He had not received any or applied for any grants or assistance from any state or federal agencies. Every dollar to-date had been private money. He was bringing his own private equity to the project. In addition, should AIDEA invest in the company, the company would still be required to put up a significant amount of private equity.

Representative Kawasaki asked how much equity Juneau Hydropower had in the project to-date. He wondered if the amount of the bond, $120 million, was enough to complete the project.

Mr. Comstock replied that the entity had invested approximately $4 million private dollars in the project at present. The company anticipated that between Juneau Hydropower Inc., the Juneau District Heating, and the Lynn Canal Transmission Corporation, the project totaled approximately $175 million. He was expecting to put in about $40 million to $50 million in private equity.

Representative Gara spoke to the Juneau District Heating component that would convert energy from the canal into heat. He asked if the component was contingent on the Sweetheart Lake project.

Mr. Comstock answered that the items were related. He provided a brief explanation of Juneau District Heating project. The Ted Stevens Marine Research Center in Auke Bay had a first generation seawater heat pump system. It

resulted in a savings of 120 gallons of fuel annually by switching to seawater heat pump heating. The heating only supplied a building. The same concept was in use - a generation 2 heating system - at the Alaska Sea Life Center in Seward. The Juneau District Heating system would be a third generation heating system, a high heat system, which would allow a building like Alaska's State Capital building to cheaply and easily convert from an oil-based system to a seawater heat pump based system or a hot water based system without a costly retro fit only having to change certain equipment. The other two systems were low-heat systems that required new construction. The company was copying a system that was first brought online in Drammen, Norway, in 2011. The payback on their total investment was under 3 years. Seawater heat pumps were an old technology. However, modern refrigerants and the ability to boil refrigerants to very high temperatures have made it viable as a capacity to heat a city.

4:55:33 PM

Representative Gara asked how the seawater portion was related to the Sweetheart Lake Hydro Project.

Mr. Comstock answered that in order to run the heat pumps it required a significant amount of electricity. He suggested that for every unit of electricity that was put in, 3 units of heat energy resulted. It was an incredible efficiency of 300 percent. This efficiency was the reason the numbers worked to pay for the more expensive costs such as digging up and laying down pipes. If a person were to burn oil it was 85 or 90 percent efficient and natural gas was 95 percent efficient. This project would provide a 300 percent efficiency rate. It required a lot of energy which the Sweetheart Lake project would be able to provide.

Representative Gara asked for comfort that the project would not damage fisheries.

Mr. Comstock replied that he was a life member of Trout Unlimited and had been involved in cold water fisheries issues most of his adult life. He spoke to the Sweetheart Lake fishery claiming it was a no-deposit and no-return salmon fishery. In other words, the Sockeye Salmon that were stocked by Douglas Island Pink and Chum, Inc. (DIPAC) the local hatchery were stocked and could get out. However, they could not get back to span again. Therefore, they had

to be artificially replenished every year. His organization worked closely with DIPAC who supported the project. His organization believed it would enhance the fishery versus causing any distraction at all from the fishery. They have had good support from the sportsmen and the fishing community.

Representative Gara wondered if there were any wild fish runs that would be impacted in the area.

Mr. Comstock reported that there were no significant wild runs in the lake because the lake was high in elevation which meant it was a relatively low biomass, low producing lake. There were some native Dolly Varden trout that would not be impacted. There was a small population of Rainbow trout first stocked in the 50s. The company had worked very closely with the Department of Fish and Game (DFG) and the Department of Natural Resources (DNR) on the issues and they had been very supportive.

4:58:38 PM

Co-Chair Neuman asked if the group anticipated asking AIDEA for future investments into the project. Mr. Comstock asked if he meant beyond the request currently before the committee.

Co-Chair Neuman understood that AIDEA's role in the project was to provide some conduit bonds so that the company would provide for its own financing. Alaska Industrial Development and Export Authority would help set up the financing mechanism. He asked if he was correct. Mr. Comstock replied in the affirmative.

Co-Chair Neuman asked if it was the company's intent to ask AIDEA to invest in the project. Mr. Comstock answered that the entity's intent was to work with AIDEA as a partner to work with the Goldman Sachs Group and various folks in the country. He did not anticipate returning to the legislature with an additional funding request in the future if that was what Co-Chair Neuman was asking. He did not know the full gamut of products and services available from AIDEA. At the moment discussions had been focused mostly around conduit bonds.

Co-Chair Neuman commented that his question was about whether the financial plan for the project revolved around

AIDEA's investment. It sounded like it did not. Mr. Comstock answered that funds from AIDEA were desired but not required.

Vice-Chair Saddler asked about the percentage of power the dam would use. Mr. Comstock answered that his belief was that Kensington Mine's demand was about 60 percent of the capacity.

Vice-Chair Saddler asked how much the Juneau District Heating project would consume. Mr. Comstock replied that it would take the bulk of the balance.

Vice-Chair Saddler asked if the Juneau District Heating project would be possible without the Sweetheart Lake project. Mr. Comstock answered that it would not be possible. Currently the local utility had issues with the possibility of running out of power, especially in low water years. They had several major interruptible customers such as the Greens Creek Mine, Princess Cruises, and a variety of others. The short answer was not without a significant supply of power into the community.

5:01:39 PM

Representative Pruitt asked about the Lynn Canal Transmission Project that was removed in the committee substitute. He wondered if Mr. Comstock was associated with the change.

Mr. Comstock responded that Juneau Hydropower was one of the members of the Lynn Canal Transmission Corporation. Another primary member was the Alaska Power and Telephone Company (the utility for Haines and Skagway and other places). His company would like to ask for money from AIDEA, but it was hard to ask for the funds if they did not exist. The entity believed it could locate other sources of funding. The company liked the terms and the interest rate in AIDEA's program. He understood the state's current fiscal situation and indicated that his company could access money at a slightly higher interest rate in the market.

Representative Pruitt wanted to ensure the legislature did not fund another project and then find the company short of funds before project completion. He wondered if the company could financially handle the intertie separately. Mr.

Comstock answered that he was fairly certain. The company had several viable plans.

Representative Pruitt asked for the total cost of the project. Mr. Comstock answered that between the Lynn Canal Transmission Corporation portion (set up as a non-profit to keep transmission costs as low as possible), the build out of the Juneau District Heating (putting pipes in the ground and building a heat pump facility), and the Sweetheart Lake Hydro Plant the cost would total approximately $175 million.

Representative Pruitt spoke to the hydroelectric project itself. He asked for the cost of that portion. Mr. Comstock answered that the cost was about $125 million without contingencies. The amount depended on how wet the winter was, how long it took to build, and others things. He thought the $175 million total project cost was a good, safe number. Juneau District Heating was a subsidiary of Juneau Hydropower Inc. They were one and the same as far as construction costs went. His company had been given direction from Wall Street and other financial entities to keep the items together as a single package.

5:05:32 PM

Representative Kawasaki asked whether the revenue bonds would be tax exempt.

Mr. Comstock responded that Representative Kawasaki's question would be better directed to AIDEA. He reported that his company was not basing its decisions on any potential future tax credits or subsidies.

Representative Kawasaki asked if Mr. Comstock's private corporation would be required, if it were to obtain the loans, to pass on savings to consumers or if the company would be regulated through the Regulatory Commission of Alaska (RCA).

Mr. Comstock believed that the hydropower function would be a qualifying facility and not necessarily a regulated entity. It was likely that Juneau District Heating would be a regulated entity.

Co-Chair Thompson thanked Mr. Comstock for testifying and introduced the next testifier. He asked Mr. Springsteen to review the decision tree that was in member packets.

JOHN SPRINGSTEEN, EXECUTIVE DIRECTOR, ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY (via teleconference), introduced himself. He explained that the handout showed the decision making process for any project that AIDEA considered for AIDEA financing. He relayed that AIDEA was looking at a conduit bond issuance for the particular project being discussed which would be subject to the requirements of the actual bond buyers. He believed that their process would marginally mirror AIDEA's process. He relayed that when AIDEA was reviewing projects for an AIDEA investment the first step was to perform a suitability assessment to determine if the project fit the mission of providing jobs and creating revenue for the State of Alaska. If the project met the mission and was suitable for AIDEA then a feasibility analysis would follow. Alaska Industrial Development and Export Authority would evaluate whether the project could be done, made economic sense to complete, and was feasible. If their criteria was met AIDEA would move into the due diligence step, a much more detailed review. If agreements to terms and conditions for financing could be crafted then they would be improved internally by AIDEA's investment committee and then by the board of directors. The last phase would be the finalization and closing of the deal which included completing the agreements and doing the financing. Alaska Industrial Development and Export Authority believed that it would be a similar process for the bond buyers in the case of a conduit issuance.

5:09:33 PM

Vice-Chair Saddler referred to page 13 of the AIDEA document titled "Analysis and Decision-Making" (copy on file). He asked Mr. Springsteen to list the elements in the last blue box, after phase 4 was completed. Mr. Springsteen answered that after the finalization and closing of the agreements, ongoing interactions with the party AIDEA financed would ensue tracking the progress of the project and ensuring that the objectives set out with the funds were being met.

Representative Gara asked if the $120 million requested for the project would impact AIDEA's bonding capacity. Mr.

Springsteen replied that because it was a conduit issuance and the project was funded on the merits of the project it would not affect AIDEA's bonding capacity. However, it currently affected AIDEA's rolling 12 month limit of $400 million. Through the proposed legislation the issuance would not be counted towards the cap.

Representative Gara asked for detail related to a conduit issuance. Mr. Springsteen answered that AIDEA only filled the role of a facilitator related to a conduit issuance, which was very difference than in the case of an AIDEA obligation bond where AIDEA's revenue and assets were providing a backstop for a bond issuance. In the case of a conduit issuance AIDEA was only a facilitator.

Representative Gara asked about AIDEA's compensation as a facilitator. Mr. Springsteen answered that AIDEA paid for issuance costs and the reward was that economic capital was being brought to the State of Alaska resulting in economic and enterprise development and jobs.

Representative Gara observed that the project seemed great, but he wondered if it would cost AIDEA. Mr. Springsteen replied that AIDEA was paid back through issuances.

Representative Gara asked if AIDEA had an option to own a portion of the project.

Co-Chair Thompson stated that the option to own was from the old version of the bill.

Representative Gara asked if he was correct in assuming that AIDEA did not have an option to own the project because all it was doing was helping to secure the bonding. Mr. Springsteen answered in the affirmative.

5:14:39 PM

Representative Kawasaki asked how long phases 1 through 4 in the established decision making process took. Mr. Springsteen answered that the process typically took 4 to 6 months given the need for review and for board comment and interaction. In certain cases the process could be accelerated.

Representative Edgmon asked about the benefits the project would provide to the longevity of the Kensington Mine by providing lower cost energy.

Co-Chair Thompson replied that the general manager from Kensington Mine would be testifying.

Representative Edgmon would hold his question for the upcoming testifier.

Representative Wilson asked if the reason for the legislation being considered was due to the legislature deciding that if a loan was over a certain dollar amount it had to come through statute.

Mr. Springsteen answered that AIDEA had a restriction for general obligation bonds and for total bonds issued in the rolling 12 month period. In the case of an AIDEA general obligation bond over $25 million where the authority was providing its assets as a backstop to the bond buyers required legislative approval. In the case of a conduit issuance the question would be about the $400 million 12-month rolling cap for bond issuances.

Representative Wilson asked for verification that AIDEA would conduct due diligence to ensure the investment was sound. Mr. Springsteen replied that in terms of the project and due diligence both AIDEA and the actual bond buyers performed independent and similar reviews.

Representative Wilson asked for verification that his answer was a "yes". Mr. Springsteen replied in the affirmative. In any instance AIDEA had a reputation to uphold in the bond market.

Representative Pruitt asked whether AIDEA would have invested in the project on its own without the legislature's influence if the $400 million cap was not in place and there was not a need for the current legislation before the committee. Mr. Springsteen answered that it would be the type of project AIDEA would consider with its own funds.

Co-Chair Thompson Invited the next testifier to provide their statement.

5:18:23 PM

MARY BECKER, MAYOR, JUNEAU, relayed that the Juneau Assembly had unanimously voted in support of the Juneau Hydropower project at Sweetheart Lake and the Juneau District Heating project. She thanked the committee for taking up the legislation.

RODNEY HESSON, IBEW, JUNEAU, spoke in support of the project.

5:20:06 PM

WAYNE ZIGARLICK, GENERAL MANAGER, COEUR ALASKA, KENSINGTON MINE, introduced himself.

Representative Edgmon asked about the benefits the project would offer to the Kensington Mine in terms of savings in the future.

Mr. Zigarlick responded that the mine's single largest cost of production was labor and the second was electricity. Although it was difficult to quantify what kind of extension there might be with a reduction in power costs, any reduction in the mine's operating costs had the potential to take mineralized material that was not currently generating profits to do so. Thus, the life of the mine would be extended.

Representative Edgmon surmised that the Kensington Mine was the backbone of the project. He also thought the life of the mine as it was currently envisioned would be commiserate with the life of the bond issuance and possibly beyond.

Mr. Zigarlick asked for clarification.

Representative Edgmon stated that, given the significance of the operations of the Kensington Mine and its role in the overall project, it would extend the life span of the mine enough to essentially pay off the loan package.

Mr. Zigarlick answered that he was unsure of the length of the loan package. However, the Kensington Mine's life was dynamic in that it grew every year and was very dependent on metal prices and other factors. He believed the Kensington Mine would be around for a long time, but he did not know the length of time specifically.

Representative Edgmon clarified that he was not trying to put the testifier in a box with the question. He spoke to long-term opportunities that cheaper power could provide citing Red Dog Mine as an example.

Mr. Zigarlick replied that Representative Edgmon was accurate.

5:23:25 PM

Co-Chair Thompson OPENED public testimony.

Co-Chair Thompson CLOSED public testimony.

Co-Chair Neuman asked if Alaska Energy Authority (AEA) would play a role in the transmission of the electrical power lines in the project.

SARAH FISHER-GOAD, EXECUTIVE DIRECTOR, ALASKA ENERGY AUTHORITY, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), answered that currently AEA would not play a role in the project.

Co-Chair Thompson explained that HB 143 would have a forthcoming zero fiscal note.

Co-Chair Neuman MOVED to REPORT CSHB 143(FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 143(FIN) was REPORTED out of committee with a "do pass" recommendation and with one forthcoming zero fiscal note from the Department of Commerce, Community and Economic Development.

Co-Chair Thompson discussed the schedule for the following day.

#
ADJOURNMENT

5:26:30 PM

The meeting was adjourned at 5:26 p.m.