

HOUSE FINANCE COMMITTEE

April 3, 2018

1:36 p.m.

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CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:36 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Les Gara, Vice-Chair
Representative Jason Grenn
Representative David Guttenberg
Representative Scott Kawasaki
Representative Dan Ortiz
Representative Lance Pruitt
Representative Steve Thompson
Representative Cathy Tilton
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Brian Fechter, Policy Analyst, Office of Management and Budget, Office of the Governor; Pat Pitney, Director, Office of Management and Budget, Office of the Governor; Representative David Guttenberg, Sponsor; Seth Whitten, Staff, Representative David Guttenberg; Lori Wing-Heier, Director, Division of Insurance, Department of Commerce, Community and Economic Development;

PRESENT VIA TELECONFERENCE

Maral Farsi, CVS Health, California; Bill Head, Pharmaceutical Care Management Association, Glendale, California; Catherin Kowalski, Petersburg Rexall Drug, Petersburg; Justin Ruffridge, Soldotna Pharmacy, Soldotna; Cindy Laubacher, Express Scripts, Sacramento, California;

Richard Holt, Alaska Board of Pharmacy, Anchorage; Jerry Brown, Self, Fairbanks; Barry Christensen, Alaska Pharmacist Association, Ketchikan;

SUMMARY

HB 129 FISH & GAME: OFFENSES;LICENSES;PENALTIES

HB 240 PHARMACY BENEFITS MANAGERS

HB 282 APPROP: CAPITAL BUDGET CONTINGENT ON TAX

HB 284 APPROP: CAPITAL BUDGET

Co-Chair Foster reviewed the agenda for the afternoon meeting.

#hb282

#hb284

HOUSE BILL NO. 282

"An Act making appropriations, including capital appropriations, and other appropriations; and providing for an effective date."

HOUSE BILL NO. 284

"An Act making appropriations, including capital appropriations, supplemental appropriations, reappropriations, and other appropriations; making appropriations to capitalize funds; and providing for an effective date."

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BRIAN FECHTER, POLICY ANALYST, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, thanked members for the opportunity to present on the governor's capital budget request and the Alaska Economic Recovery Act. Mr. Fechter introduced the PowerPoint presentation: "State of Alaska FY2019 Capital Budget and Economic Recovery Act Overview" (copy on file).

Mr. Fechter began with slide 2: "FY2019 Capital Budget." He explained that the governor put forward two separate capital appropriation bills in the current session. First, there was a base capital budget which was very lean

compared to previous years. It only provided enough federal match to leverage federal funds and certain designated general fund (DGF) supported energy projects. There were also some information technology (IT) improvements within the base capital budget. The second capital appropriation bill was the Alaska Economic Recovery Act. It was the governor's "Jobs" act comprised of shovel-ready deferred maintenance projects designed to get work started immediately and put Alaskan's back to work. There were many smaller projects directed towards communities throughout the state, both urban and rural. This appropriations bill would be supported by a temporary payroll tax.

Mr. Fechter turned to the chart on slide 3: "Capital Budget Trend." He pointed out the capital budget had been reduced 93 percent or \$1.8 billion from FY 13. It meant that important needs such as deferred maintenance were being ignored, and the state was providing less support to communities. As an example, in 2015 the Anchorage School District received \$20 million in state grants. In 2018, the district received zero. For Metlakatla, it was \$3.0 million in 2013 and zero for 2018. The story was the same no matter what community was being looked at. It also impacted employment. The idea behind the dual capital budgets was to get capital spending up to a more sustainable level and to support economic growth. He highlighted the red portion reflecting the Alaska Economic Recovery act versus the blue on the chart reflecting the base capital budget.

Mr. Fechter reviewed slide 4: "Base Capital Budget (SB142/HB284)." The base capital budget was comprised of \$160 million in unrestricted general funds (UGF) which were matched with designated, other, and federal funds totaling \$1.3 billion. Many of the appropriations would look very similar. It was a status quo budget from the previous year. It included another federal match to match the available federal receipts for a village safe water program, a federal transportation program, Alaska Housing Finance Corporation (AHFC) dividend supported housing programs, energy programs, minor deferred maintenance programs, IT programs, and a couple of high priority investments that would be discussed on a future slide.

Mr. Fechter discussed slide 5: "Base Capital Budget." He reviewed the \$70 million in a Department of Transportation and Public Facilities match which would leverage around \$700 million, a 90/10 match. There was a federal match for

village safe water and sewer projects in the amount of \$12 million leveraging \$52 million. There was a status quo housing program from AHFC including health professional and trooper housing with some capital grant participation through the federal Housing and Urban Development (HUD) Administration. A number of energy projects supported by excess earnings of the Power Cost Equalization (PCE) fund were new this year. There was \$22 million in the capital program for those projects. Under maintenance, the state had the Alaska Marine Highway System vessel certification program that kept its vessels running and got all of the required work done to safely sail the vessels in revenue service. There was also a small amount of public building fund deferred maintenance that was low compared to previous years.

Mr. Fechter continued that under IT the state was putting forward a number of software upgrades which, together as a bundle, would realize an overall savings of 10 percent. In other words, the state has appropriated 10 percent less than what they would have reasonably taken to implement the software solutions. He explained that with the implementation of the Office of Information Technology, the administration thought it could come under budget. There were also two high priority investments; the committee will receive a letter from his office detailing them. The first project was enhanced 9-1-1. Outside of Fairbanks, Anchorage, Mat-Su, and Ketchikan when a person called 9-1-1 they were bounced around to the nearest available dispatch officer and their location might be difficult to convey without the enhanced 9-1-1 service. The other priority was for \$1.5 million to go towards AKLNG legal and financial due diligence. The deliverable item will be a report back to the legislature about the feasibility of the project.

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Mr. Fechter continued to slide 6: "Alaska Economic Recovery Act (SB140/HB282)." The second capital appropriation bill was the Alaska Economic Recovery Act. There would be a temporary wage tax that would be kept at twice the Permanent Fund Dividend (PFD) and would sunset in 2.5 years. The proceeds of the tax, \$800 million over 3 years and \$280 million in the budget being discussed, would be directed to high-value projects. There were many small projects instead of a couple of mega projects. The bill was designed to get work started immediately and not after

years of environmental studies. The school maintenance appropriation within this budget impacted 60 communities, both urban and rural. The administration was looking to have an impact throughout the state. Most importantly, the bill did not grow government, rather, it took care of current liability. The idea was that once the tax sunsetted in 2022, it could be reassessed based on oil prices, the size of the budget, and revenue selections. It would then be decided whether to extend the tax.

Mr. Fechter reviewed the graph on slide 7: "Construction Industry Employment." He noted that the legislation was important because from August 2013 to August 2017 the construction industry had lost 3,600 jobs. He read from the slide:

- According to ISER, \$100.0 million in reductions to the capital budget results in 506 direct and 425 indirect job losses. (Recall that that \$1.8 billion has been cut from FY2013)
- Ensuring that Alaska has a trained construction workforce will ensure future development opportunities employ as many Alaskans as possible (additional North Slope exploration, AKLNG, etc.)
- Employment figures have a direct link to spending elsewhere in the budget (Public Assistance, Medicaid, etc.)
- For each percentage point of job loss, the traditional Medicaid population grows at an annualized rate of 4.04 percent

Mr. Fechter advanced to slide 8: "Deferred Maintenance." He reported that the state had a number of deferred maintenance projects within the Alaska Economic Recovery Act. The state had a large footprint owning 2,200 facilities including storage sheds and smaller buildings that a person might not think of as facilities. There were just over 200 facilities over 10,000 square feet. The total square footage of space was 19 million square feet. The state owned many different types of facilities including classrooms, airports, offices, laboratories, parks, Pioneer Homes, correctional facilities, and roads.

Mr. Fechter further discussed the backlog of deferred maintenance on slide 9: "Deferred Maintenance Backlog":

- DM appropriations of \$100.0 M annually for 5 years (FY 11-15) has brought the back-log down
- Lean funding since FY 15 is causing the backlog to grow again
- Without a consistent level of funding, entities cannot effectively execute planned renewal
- Current level of funding only prioritizes life/safety concerns
- Failure of building systems is much more costly than addressing the problem early through deferred maintenance

Mr. Fechter reviewed slide 10: "Alaska Economic Recovery Multi-Year Plan." He indicated the chart showed information about the various projects within the Alaska Economic Recovery Act. Investment categories included K-12 major maintenance, University of Alaska (UA) maintenance, and state deferred maintenance. There was also an appropriation for the Port of Anchorage that required some municipal match. He noted some additional highway match funds that might become available should other states lapse their federal apportionment. There was also the municipal harbor facility grant projects, some bulk fuel upgrades, some Emergency Medical Services (EMS) equipment, the weatherization program, some AHFC facility maintenance, and some other assorted housing programs.

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Mr. Fechter scrolled through slides 11 - 13. The slides were for members' reference showing example projects in some of the categories. He highlighted a few of the projects on each slide.

Mr. Fechter presented a list of other items on slide 14: "Other Items":

Alaska Economic Recovery Act

- Municipal Harbor Projects
 - Sitka: Crescent Harbor
 - Whittier: Small Boat Harbor
 - Sitka: Eliason Harbor
 - Ketchikan: Bar Harbor North Harbor
 - Anchorage: South Float
 - Whale Pass: Small Boat Harbor
 - Juneau: Douglas Harbor

- o Juneau: Harris Harbor
- Bulk Fuel Upgrades
 - o Statewide Impact
- Weatherization
 - o State-wide impact
- Senior Citizen Housing Development
- Anchorage Port
 - o Required Municipal Match

Mr. Fechter highlighted that the impact reverberated throughout the state.

Mr. Fechter discussed slide 15: "Tax Proposal." He reiterated that the Alaska Economic Recovery Act was supported by a temporary wage tax. The slide showed the impact of the tax proposal in concert with the PFD. The slide revealed information if the \$1,600 proposed dividend approved by the House Floor remained in place:

- 1.5 percent tax on wages and self-employment income
 - o Does not tax investments, retirement income, rental income, etc.
- Tax is capped at \$2,200 or twice the PFD ($\$1,258 * 2 = \$2,516$), whichever is greater
 - o Based on a \$1,100 PFD, the cap begins at \$146,666/year, If the PFD is \$1,600 next year, the cap begins at \$213,333/year
- Targeted to generate \$320.0 million
- Without a cap, it would only generate \$10.0 million more
- Including the PFD, most Alaskans will still receive a net payment from the state
- Out-of-state residents will pay the highest rate because they do not receive PFDs

Mr. Fechter explained that the majority of Alaskans under the scenario would still receive a net payment from the state when taking the tax obligation against the dividend. The tax cap would begin at \$146,000 if the tax was implemented in the current year based on a PFD amount of \$1,100. In the following year, the cap would begin at \$213,000. The tax proposal would allow the state to increase the progressivity of the tax by increasing the dividend because a wealthy Alaskan paying at the cap would receive \$1 for every additional dollar of PFD but would have to pay \$2 in additional taxes. The tax proposal was

targeted to generate \$320 million per year. Without the cap, it only generated \$10 million more per year.

Mr. Fechter reviewed the multi-colored chart on slide 16: "Tax Proposal." He claimed that even after the tax was implemented, Alaska would remain the lowest tax paying state in the nation. He concluded his presentation and made himself available for questions.

Vice-Chair Gara referred to slide 7. He asked about the notion that for each percentage of job loss, if reversed, would result in Medicaid use by about 4 percent.

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Mr. Fechter responded that Vice-Chair Gara had the information transposed. He elaborated that every additional percent of job loss created 4 percent increased annualized usage of the traditional Medicaid population.

Vice-Chair Gara calculated that a 4 percent decrease in the use of Medicaid would equal a savings of \$25 million in state money. He indicated that \$100 million back into the capital budget would bring back about 1,000 jobs, according to the Institute of Social and Economic Research (ISER) report. He asked how 1,00 additional jobs and \$100 million back into the economy would relate to a 1 percent decrease in unemployment.

Mr. Fechter replied that the state's workforce was slightly greater than 400,000 people. For the ease of math 4,000 people would be a 1 percent increase.

Vice-Chair Gara suggested that 1,000 jobs, was not a 1 percent increase. It would not result in a 4 percent Medicaid decrease. He thought it would be closer to a 1 percent decrease in Medicaid use.

Mr. Fechter responded that the last bullet was a rule of thumb, not related to construction industry employment.

Vice-Chair Gara referred to slide 5. He was not criticizing the administration. Every governor since he had been in office had proposed a village safe water program that was just the federal money and the required state match. As an urban legislator, he was frustrated with the idea of putting the honey bucket into the museum of history, as

proposed by Governor Tony Knowles, which had never happened. He asked if there was the opportunity to do something better than what the federal government allowed the state to do. He was frustrated with the schedule.

Mr. Fechter indicated it was a lean capital budget.

Vice-Chair Gara was curious how many communities with more than 50 people did not have safe water and safe sewage. He would speak with Mr. Fechter separately after the meeting.

Representative Wilson referred to information technology on slide 5. She wondered if any of the upgrades addressed the public assistance issues the state had experienced. The state had a dual system resulting in extra processing. She asked if the state was looking to fix it.

Mr. Fechter deferred to Ms. Pitney.

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PAT PITNEY, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, responded that currently the Department of Public Safety was using two systems. A portion of the capital request would facilitate moving to one system for eligibility rather than two. It would greatly streamline things.

Representative Wilson asked about the AKLNG funding for legal and financial due diligence in the amount of \$1.5 million. She thought \$12 million had already been added for the project. She wondered why the state was spending additional monies.

Ms. Pitney replied that the funding was for the Department of Revenue and the Department of Natural Resources rather than AKLNG. The Department of Natural Resources monies would be spent towards the royalty in-kind (RIK) / royalty in-value valuation. The funding would not go to the AKLNG project. The funds would go to DOR and DNR to do due diligence and to help determine whether it was in the state's best interest to participate. The money was specific to the agencies and not to AKLNG.

Representative Wilson referred to slide 7. She thought it was difficult to understand the jobs program. There were no projects listed in the bill. It mentioned grants, but no

particular projects. She asked if most projects went out to bid to Alaskan and non-Alaskan companies.

Ms. Pitney asked Mr. Fechter to return to the project listing [slide 10]. She noted that on the OMB website there was a K-12 major maintenance list showing the priority projects comprising the \$70 million. The list reflected 60 communities. Every project for the University of Alaska deferred maintenance was listed as well as the projects for state deferred maintenance. She added that the associated jobs were private sector jobs. She reported that 95 percent to 100 percent of the work went out to local construction companies. Therefore, the money was being kept local.

Representative Wilson indicated that the Port of Anchorage was an exception. The project was \$40 million. She wanted to see the jobs given to Alaskans. However, she was aware of the bidding process. She wondered if she had information about what percentage of projects went to Alaskan companies. She spoke about work in Fairbanks going to companies outside of Alaska.

Ms. Pitney responded that during her tenure at the University she looked at the companies that were awarded projects over a period of 9 years. She reported that 97 percent of the deferred maintenance projects went to local or in-state contractors. In Fairbanks, 88 percent of projects went to local contractors. She agreed that the Port of Anchorage was the largest project on the list. However, as large as the project was, it was really a series of small projects. She thought that over 90 percent, likely 95 percent, would be in-state hire. The Port of Anchorage would be the only exception.

Representative Wilson hoped the state, not just the university, kept track of local company hires. She asked if the Department of Transportation and Public Facilities (DOT) kept track. She wanted more information.

Ms. Pitney would get her the information.

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Mr. Fechter could provide the information.

Representative Wilson commented about wanting to only hire Alaskans. She understood there was a process for hiring and looked forward to receiving the information.

Representative Kawasaki referred to slide 11. He asked how to know if the projects listed were shovel ready.

Mr. Fechter responded that the projects were prioritized based on the K-12 major maintenance prioritization list. It was a recurrent capital project in the capital budget. The projects that rose to the top of the list were ones that were ready to go to construction immediately as well as the highest life, health, and safety need and the various other requirements under AS 14.10.

Representative Kawasaki referred to slide 13. He asked if the projects listed on the slide were singled out as part of the same prioritization as the projects for K-12 major maintenance.

Mr. Fechter replied that there was an ongoing prioritization of the state deferred maintenance needs. It was coordinated by OMB and done at the agency level. For the purpose of the slide he had chosen some random examples. It was not in the order of highest need.

Representative Kawasaki referred to slide 11. He wondered about the local match. He asked if the matches were already available. For example, did St. Mary's have the money to match the state's total.

Mr. Fechter indicated Representative Kawasaki was correct. The major maintenance program required a participating share. It was on a sliding scale of 5 percent to 35 percent depending on the taxable property of the average daily membership of the district.

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Representative Kawasaki asked if Mat-Su already had a local match ready or if the local match would have to go to a vote.

Mr. Fechter would have to confirm, but he believed the matching funds had to be on hand to get on the list.

Representative Guttenberg referred to slide 5. He asked about the first bullet. He wondered if any of the other projects on that list had any other matches available.

Mr. Fechter responded that it was possible there might be other small matches. However, the largest pots of match funding were listed.

Representative Guttenberg asked about the information technology bullet. He wondered about the automated park fee collections. He asked if a feasibility study of building infrastructure had been done for some of the parks farther out. He asked about cost benefits.

Mr. Fechter believed there were already stations in place in a limited number of locations. The intention was to add more stations in more locations. It had been a common complaint by people who used the state parks, particularly those in passive management, to be able to pay the fees with a credit card. They were definitely revenue generating machines. Sites would be determined based on park traffic and potential revenue.

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Representative Guttenberg did not feel his question was answered. If a person was at a park in an urban area, all that was needed was a Square or a slider box. However, farther out, there was no capacity. He did not have a problem with automating the system. He observed that when he pushed the state to improve its broadband infrastructure, he was told it was not the state's job. He suggested that by enhancing broadband, many other places would benefit. He thought there was a lack of coordination and understanding in the governor's office about what needed to be done.

Vice-Chair Gara agreed with the governor about cutting the budget without adopting a fiscal plan, which was costing jobs. He was somewhat angered that the state was in its current situation. He appreciated the governor's efforts. He had discussed rural safe water. Another issue he had was on slide 10 of the presentation. He understood the state did some homelessness prevention funding through the Alaska Housing Finance Corporation (AHFC). He asked if any of the community needs housing investment money was aimed at addressing the state's homelessness problem.

Mr. Fechter indicated that perhaps indirectly the supplemental housing development program was aimed at increasing the low-income housing stock. Some homeless or near-homeless people would benefit from increasing the public housing stock in the state. However, they were not direct grants to homeless shelters or support to homeless shelters.

Vice-Chair Gara responded that homeless shelters were not the only way to address the homelessness problem. He was interested in a capital budget that addressed the homelessness problem. He understood that it was difficult to address the issue without funding.

Representative Grenn referred to page 9 regarding the deferred maintenance backlog. He asked what the future would look like without a consistent level of funding or with continuing to do only the minimum. He wondered how the number would grow over the next 5 years to 10 years.

Mr. Fechter responded that the future would look like the past. Fiscal Year 2012 was a high point for deferred maintenance after ignoring the problem for a number of years. The cost ticked up and up reaching about \$2.5 billion. It took a concerted effort and the state regularly choosing to make the investment to effectively execute a deferred maintenance program. The small uptick in FY 18 could be expected to accelerate. He thought FY 22 or FY 23 could look similar to FY 12 in the chart.

Representative Grenn did not feel deferred maintenance received enough attention. It was not sex but vital to cost savings and job creation. He was interested in seeing any information regarding the following 5 years.

Mr. Fechter replied, "Absolutely."

[2:13:19 PM](#)

Representative Pruitt relayed that his first question related to the base capital budget and high priority investments. He wanted to know exactly where the money was coming from. He thought that that it was a combination of seismic funds and possibly general funds. He asked for clarification.

Mr. Fechter replied that it was a redirection of the seismic budget request. There were a number of related re-appropriations.

Representative Pruitt asked why there had been a shift in seismic funding.

Mr. Fechter deferred to Ms. Pitney.

Ms. Pitney replied that when the administration requested seismic area work be done in partnership with other entities, the timing seemed appropriate. Upon further investigation, the administration had determined that the timing was not quite right. She suggested that it would be better for the work to be done in the following fiscal year. The partnership piece that would have made the request time sensitive was not in place. The two primary sources of funding for seismic work was the Alaska Industrial Development and Export Authority (AIDEA) dividend and the general fund.

Representative Pruitt asked about the \$1.5 million slated for the AKLNG project. He noted that Alaska had something similar to a "fee for service" model. If there was a cost to the state, Alaska's industry partners paid in some capacity. He spoke of the Alaska Gas Development Corporation (AGDC) and the state being forced, at times, to expend money in the process leading up to construction and afterwards. He wondered if AGDC should have to pay its share. He suggested that AGDC pay the \$1.5 million.

Ms. Pitney answered in the affirmative. Alaska Gasline Development Corporation was paying for the permitting process out of its budget. The money being discussed was not to fund AKLNG. Rather, it was to fund the Department of Revenue and the Department of Natural Resources to look at the project from the state's best interest perspective. She mentioned deciding between royalty in-kind versus royalty in-value. She continued that DOR would also present on what was best for the state. The legislature would make the final decision about the investment.

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Representative Pruitt asked about the Alaska Economic Recovery Act. He asked about the yearly start-up cost associated with the tax.

Mr. Fechter thought it was around \$15 million to start-up the tax and approximately 40 positions would be added consisting of full and part-time staff for tax season.

Representative Pruitt wondered if it was the administration's intent to ask for an extension in 3 years.

Mr. Fechter thought that is was clear that the governor wanted an ongoing revenue measure to close the budget gap.

Representative Pruitt asked if Mr. Fechter thought it was disingenuous to have a sunset date on the bill.

Mr. Fechter replied that there were competing points of view. There was the point of view that oil would save the state. Another perspective was that Alaska was in a new world with low-price oil or lower-for-longer priced oil. If oil prices were at \$90 per barrel at the end of 3 years, the state could celebrate, and the tax could sunset. If oil prices were in the \$50-\$60 range, there would still be a budget gap.

Representative Pruitt did not think that oil could necessarily save Alaska. However, there were many people that thought the state could be making different decisions. He suggested asking why people have asked their legislators not to support the current budget. He thought the responses would be because their PFD was too low or that their government was too large. He did not approve of the term, "differing points of view" or that oil would save the state. Oil was an important piece, but there was more to the picture.

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Co-Chair Foster was looking at some of the life, safety, and health related projects. He was glad to see there were a number of projects in the base capital budget that fell under that category. He highlighted several items from the list. He asked Director Pitney to describe her thought process concerning how she prioritized putting the budget together. He had broken down the list into four categories: life, safety, and health; leveraging of federal funds; deferred maintenance; and other. He asked because as the House moved forward and as projects were added, he wanted to have a better sense of the type of projects the

administration would support. He thought all would agree that life, safety, and health would be at the top. He was asking because he wanted to have a better sense of which type of projects were important in the administration's view.

Ms. Pitney responded that state first went with the federal match. The federal match had two main components: transportation and village safe water. Another area of match was in health and social services for IT projects. She noted that the transportation match was 90/10. She continued that housing items having to do with life, health, and safety were put in the main budget. Some less direct service components of housing were in the Alaska Economic Recovery Act budget. Some deferred maintenance had been moved into the Alaska Economic Recovery Act budget. The administration could size deferred maintenance. The administration's approach was to size deferred maintenance on a large scale to get a significant number of projects done and focus on the economy. There were high priority investments such as the enhanced 9-1-1 project. The administration had placed the early study for the project in the operating budget. The Department of Public Safety (DPS) moved their due-diligence up making the 9-1-1 project more shovel-ready. The project met some of the state's public safety goals and addressed health and safety across the state. The appropriation was small in comparison to the number places the project would affect. She reported that the two small deferred maintenance items placed in the base capital budget were the DOC upgrades in Bethel due to a recent break out and the Pioneer Homes. The remainder of projects were placed in the Alaska Economic Recovery Act bill. The base capital budget was comprised of items that were in the budget annually. The bigger investments in deferred maintenance were in the Alaska Economic Recovery Act.

Representative Wilson asked why there was a supplemental capital budget. She highlighted \$6 million UGF and \$8.1 million in other state funding.

Mr. Fechter explained that the \$6 million appropriation was for the Alaska Marine Highway System (AMHS) vessel certification. He thought \$8 million had to do with a settlement with Volkswagen.

Representative Wilson asked if the administration knew about the AMHS vessel certification and intentionally left it out of the budget.

Mr. Fechter responded that there were a number of factors at play. He recalled that the M/V Tustumena had issues that caused it to be in layup and needed a significant amount of work. As a result, AMHS burnt through a large portion of its current year certification dollars. Additionally, certification budgets had been very lean for the past several years. Historically, the system had received \$3 million - \$4 million of deferred maintenance money in addition to \$12 million - \$13 million in certification monies. Between the two figures, it fully funded the system's maintenance needs for the year. The request was generated because of lean deferred maintenance budgets, significant additional overhaul expenses associated with the M/V Tustumena, and the aging of the fleet.

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Representative Wilson asked if the \$6 million would come out of the FY 18 or FY 19 budget if it was not approved in the supplemental request.

Mr. Fechter responded that if the \$6 million was not approved, the department would not have additional flexibility in the current year, and it would have to push its bills out into July 1. The department would encounter the same problem in the following year.

Representative Wilson asked if the committee would be having another session to go through the projects in more detail rather than in a high-level overview.

Co-Chair Foster liked her suggestion and thought something could be put together.

Representative Tilton referred to the wage tax budget and the Code Blue Project. She reported that over the past 5 years, the project request had been \$500,000 every year. There was a request of \$1 million in the current year which returned to \$500,000 the following year. She asked why.

Ms. Pitney responded that the administration looked at their significantly large priority list. The administration thought that the additional \$1 million would help to

address some of the highest priorities on the list rather than shifting them to future years.

2:31:10 PM

Vice-Chair Gara commented that 4 years prior the capital budget was much higher. He had heard that a lack of capital projects would result in a greater number of job losses into the future. He asked if there was a lingering effect of money still on the street through earlier capital budgets. He wondered about future job losses if the state did not adjust the capital budget.

Ms. Pitney confirmed that the state had largely used the money in the pipeline from FY 12 - FY 14 in high capital budget years. The projects associated with those budget years were currently being completed. The state was moving into the low capital budget years. The state was fortunate, under the base capital budget, that the state had maintained the transportation funding. She reported that it was largely the community projects that had dwindled. She relayed an example. She thought it was difficult to quantify, but OMB monitored the state's spending on capital projects on an annual basis. The state had remained relatively steady. However, she anticipated that in the following year there would be a reduction in spending of about \$100 Million to \$200 million for capital projects. It was difficult to predict how the circumstances would manifest themselves. She relayed that the administration anticipated an additional downturn in the economy.

Co-Chair Foster thanked Mr. Fechter and Ms. Pitney.

HB 282 was HEARD and HELD in committee for further consideration.

HB 284 was HEARD and HELD in committee for further consideration.

#hb240

HOUSE BILL NO. 240

"An Act relating to the registration and duties of pharmacy benefits managers; relating to procedures, guidelines, and enforcement mechanisms for pharmacy audits; relating to the cost of multi-source generic drugs and insurance reimbursement procedures; relating

to the duties of the director of the division of insurance; and providing for an effective date."

2:34:47 PM

Co-Chair Foster invited Representative Guttenberg and his staff to the table.

2:35:26 PM

AT EASE

2:36:19 PM

RECONVENED

REPRESENTATIVE DAVID GUTTENBERG, SPONSOR, turned it over to his staff to review the changes.

SETH WHITTEN, STAFF, REPRESENTATIVE DAVID GUTTENBERG, reviewed the changes in the proposed work draft:

Page 6, lines 22-25: Changes language dealing with pharmacies' appeals of pharmacy benefits manager's reimbursements for multi-source generic drugs below pharmacy acquisition cost.

Version A (Sec. 21.27.950(c)) of the bill states that:

"(c) A pharmacy benefits manager shall grant a network pharmacy's appeal if an equivalent multi-source generic drug is not available at a price at or below the pharmacy benefits manager's list price from at least one of the network pharmacy's contracted wholesalers who operate in the state."

Version D (Sec. 21.27.950(c)) is changed to read:

"(c) A pharmacy benefits manager may grant a network pharmacy's appeal if an equivalent multi-source generic drug is not available at a price at or below the pharmacy benefits manager's list price for purchase from national or regional wholesalers who operate in the state."

Page 7, line 18: Version A of the bill provides a definition establishing that "board" means the Board of Pharmacy. This is the only place in the bill where

the terms "board" or "Board of Pharmacy" are used. This language is deleted in Version D.

Page 9, line 6: Updates conforming language in the bill. Version A of the bill contains revisers' instructions to change "AS 21.27.900" to "AS 21.27.990" in AS 21.97.900(26). There is no reference in AS 21.97.900(26) to AS 21.27.900. This substitution needs to be made in AS 21.97.900(27).

Page 9, line 8: Updates the effective date to July 1, 2019.

Co-Chair Seaton asked about the change on page 6, line 23-25. In the last line, it changed from "at least one of the network pharmacy's contracted wholesalers who operate in the state" to "for purchase from national or regional wholesalers who operate in the state." He wanted to understand the impact of that change.

Mr. Whitten responded that the change came into play after speaking with the Department of Administration and hearing their concerns about the way the specific provision worked. In legislation in other states, the provision was stated more generally. As long as it was a national or regional wholesaler doing business in the state, making the provision broad helped alleviate some concerns about how it would be interpreted.

[2:39:24 PM](#)

Co-Chair Seaton MOVED to ADOPT proposed committee substitute for HB 240, Work Draft (30-LS0868\D).

There being NO OBJECTION, it was so ordered.

Mr. Whitten reviewed the sectional analysis:

Bill section 1. Adds a new section concerning Pharmacy Benefits Managers.

Sec. 21.27.901. Registry of pharmacy benefit managers; scope of business practice. Requires that pharmacy benefits managers register as third-party administrators under 21.27 .630 and describes the parameters under which they may contract with an

insurer or network pharmacies, set the cost of multisource generic drugs and allows for appeals.

Sec. 21.27.905. Renewal of registration. Establishes a bi-annual renewal of a registration fee for a pharmacy benefits manager as set by the director.

Sec. 21.27.910. Pharmacy audit procedural requirements. Describes the procedural and time requirements required of the pharmacy benefits manager and defines who conduct an audit and what records can may be provided by the pharmacy.

Sec. 21.27.915. Overpayment or underpayment. Indicates that a pharmacy benefits manager shall base a finding of overpayment or underpayment on the actual payment and not a projection of patients served by similar circumstances. It also designates the dispensing fee limitations.

Sec. 21.27.920. Recoupment. Establishes how a pharmacy benefits manager shall base the recoupment of overpayments from a pharmacy.

Sec. 21.27.925. Pharmacy audit reports. Establishes time frames as to when preliminary and final audit reports shall be delivered to a pharmacy and the response time for any discrepancies found in the audits.

Sec. 21.27.930. Pharmacy audit appeal; future repayment. A written appeals process shall be established by a pharmacy benefits manager. It also states that future repayment of disputed funds or other penalties imposed on a pharmacy shall occur only when all appeals have been exhausted.

Sec. 21.27.935. Fraudulent activity. Defines what may not be considered fraud by the pharmacy benefits manager.

Sec. 21.27 .940. Pharmacy audits; restrictions. Adopts restrictions on the requirements of the entire Section 1 when applied to an audit in which intentional or suspected fraud is demonstrated in a review of the claims data. In addition, the requirements do not

apply to any claims paid for under the medical assistance program found in AS 47.07.

Sec. 21.27.945. Drug pricing list; procedural requirements. The methodology and sources used to determine the drug pricing list will be provided to each network pharmacy at the beginning of their contract term and updated accordingly by the pharmacy benefits manager. Basic contact information shall also be provided.

Sec. 21.27.950. Multi-source generic drug appeal. Establishes a process by which a network pharmacy may appeal the reimbursement for a multi-source generic drug and procedures if their appeal is denied. It also sets the limitations on the pharmacy benefits manager and the insurance division director as to how many days they have to resolve an appeal or a request for review.

Sec. 21.27 .955. Definitions. Defines all selective wording as used in Section 1.

Bill section 2. Adds a new section on Applicability as it applies to audits of pharmacies as conducted by pharmacy benefits managers.

Bill section 3. Adds a new section as to Transitional Provisions for adopting Regulations.

Bill section 4. Adds a new section stating the Reviser's Instructions.

Bill section 5. Effective date clause for Bill section 3.

Bill section 6. Effective date clause for this Act except as provided.

Co-Chair Foster relayed the list of available testifiers.

Representative Wilson asked about appeals and how they would be handled.

[2:44:52 PM](#)

LORI WING-HEIER, DIRECTOR, DIVISION OF INSURANCE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, responded that in respect to appeals, the way the bill was currently written and based on the current statute, appeals would automatically go to the Office of Administrative Hearings (OAH). The department had had discussions with OAH and made them aware.

Representative Wilson referenced AS 21.27.950. She wondered about the number of days the pharmacy benefits manager (PBM) and the insurance division director had to resolve an appeal or a request for review. She wondered if the division would set a time frame in conjunction with the PBM.

Ms. Wing-Heier replied that the division would still be involved after an appeal was given if the PBM disagreed with the findings of OAH. Timeliness would still apply.

Representative Wilson had heard that the Department of Administration (DOA) was going to become more active and might look at the rebates that came back. She asked if there would ever be a circumstance where one state agency went to another state and had some sort of appeal.

Ms. Wing-Heier responded that a pharmacist could come to the division for an appeal. An insured plan provider could also request an appeal of their cost for a pharmaceutical drug through the division's external review process. It was a bit of a quandary as to when the state would have its own appeals. The division worked for the insured plans including the individual market, the small group, and the large group. The state was self-insured with Alaska Care. Many employees were in union trust. The division did not have direct authority because the plans were Employee Retirement Income Security Act (ERISA) plans or self-insured plans. She conveyed that Title 21 generally only applied to insured plans. It was a much narrower scope in terms of the number of people.

Representative Wilson thought there were 2 entities. She asked if the self-insured plan providers would be affected by the bill.

Ms. Wing-Heier responded that the PBMs, even under contract to a union trust or any group, would be required to register with the division. However, registration did not

always give the state regulatory authority. The division would work with the PBM, but the state did not have control over the contract between the trust or a large self-insured employer and the PBM. The state would have sight into the contract between the insurance company and the PBM.

Representative Wilson mentioned that the state had prescription insurance. She asked if the state would go through the same appeal process via OAH if it had an issue similar to the issues pharmacies were having.

Ms. Wing-Heier responded that presently the state would go through the OAH process. She suggested directing the question to the Department of Revenue (DOR) to find out their intent.

[2:49:13 PM](#)

Representative Wilson asked about the pharmacy audit appeal which was being set up by the PBM. She was curious why the PBM was not handling all appeals including generic drug appeals. She reviewed the language in AS 21.27.930. She asked for clarification.

Representative Guttenberg relayed that self-insured entities, including the state, hired PBMs. The statute was about the relationship between the PBM and the pharmacy. If a pharmacist was audited by the PBM and they disagreed, the pharmacist would have a place to file an appeal. Many different things could be addressed in an appeal including reimbursement rates. One pharmacist had stated that in some instances it was more cost-effective to give a client \$20 to go to a chain pharmacy than to fill their prescription because of reimbursement rates. The focus of the legislation was between one contractor like the state and the pharmacy.

[2:52:49 PM](#)

Representative Wilson highlighted her understanding of the bill. An appeal process was set up in AS 21.27.930 in case a pharmacy did not agree with a PBM's audit conclusions. The pharmacy would go before an OAH judge to present its case. The judge would hear from the pharmacy and the PBM to decide. She wondered if the pharmacy would go to the Division of Insurance if it disagreed with the decision of the OAH judge.

Ms. Wing-Heier replied that when something went to OAH on behalf of the Division of Insurance it came back, and the director had the final say if the pharmacy continued the appeal. It did not come back to the Division of Insurance if everyone agreed with the decision at the OAH level. It was hoped that with this legislation a number of appeals would be worked out between the pharmacy and the PMB based on its parameters. She reported that OAH would hear the first appeal between the two and, if they still did not render an agreement, the director would make a final decision. The following step would be court.

Representative Guttenberg underscored that the goal was not to micromanage the process. The bill would be consistent with what was already in place.

[2:54:34 PM](#)

Co-Chair Seaton asked about page 5, line 21 of the bill. He did not see anything that required the pricing list to be updated electronically. The bill required that the list be updated once every 7 days. He asked if the intention was for the work to be done electronically with the exception of pharmacies without electronic communications. He did not see anything about broadband mentioned in the bill. The information could be sent in the mail and there would still be a disconnect in terms of time. He wondered if it would be beneficial to include language in the bill.

Representative Guttenberg replied that he had not heard of any pharmacies not online. He thought it was necessary to have online access to look up insurance information and pricing. He suggested having the technology was a basic function of a pharmacy. He was unaware of an issue in the rural clinics.

Co-Chair Seaton had only brought the issue up because of an unrelated issue having to do with the Department of Environmental Conservation and sharing information electronically or thorough the mail. He thought the goal of the bill was that the PBM and the pharmacist had pricing information simultaneously. He suggested a clarification might be in order while the bill was still in the House Finance Committee.

Representative Guttenberg had received feedback about updating the list at reasonable intervals. He had heard concerns about stability if the list was updated too frequently. Prices went up and down.

Co-Chair Seaton asked Ms. Wing-Heier if the Division of Insurance thought the legislation was workable. He wondered if there was anything the division wanted to see changed.

Ms. Wing-Heier indicated that similar legislation had been proposed in the past. The concept was not new and other states were passing PBM models. The division did not see any problems with the bill presently.

Co-Chair Foster OPENED Public Testimony.

[3:00:58 PM](#)

MARAL FARSI, CVS HEALTH, CALIFORNIA (via teleconference), opposed the legislation. CVS Health believed the bill would be a cost driver to the state. It increased governmental oversight of private business-to-business contracts. The language changing the word "shall" to "may" increased confusion as to the purpose of the provision in its entirety. The presence of the statute meant that with some sort of initial rule-making or some level of enforcement, the clause would stand. The provision would still be a cost driver. She believed the audit capacity in the bill was weakened and left the door open to fraud, waste, and abuse.

Ms. Farsi continued that there was a blanket registration for PBMs and involvement by government agencies on prescription drug prices, which was a complex and volatile environment. She thought the bill attempted to delegate how appeals were settled in a system that had already been agreed to in contracts with pharmacies. It allowed the state to involve itself in private contracts between businesses in ways it had consequences for other business-to-business contracts. She provided an example pertaining to reimbursement prices. The bill would tie the CVS's hands in multiple ways. The bill in its current form did not exist in any other state. In states where a law addressing pharmacy reimbursements and audits existed, CVS had worked very closely with legislators and pharmacists to come up with a solution. CVS had requested the opportunity to work with the legislature to craft an appropriate bill but had

not been given the chance. She asked for the opportunity to craft an appropriate policy for all involved.

Vice-Chair Gara asked if CVS Health was a pharmacy benefits manager.

Ms. Farsi replied that CVS was a multi-armed pharmacy innovation company. She elaborated that the company had chain pharmacies and a pharmacy benefit manager. She assured the committee that CVS had a strict firewall between both sides of its business. In Alaska CVS acted as the pharmacy benefit manager for the state plan.

Vice-Chair Gara had learned of a practice that pharmacy benefit managers had prohibited pharmacies from telling a consumer that they could get a lower price for a prescription drug by paying cash than they could through their co-pay through their insurance. It was a national problem. He asked if such gag orders preventing pharmacists from revealing certain information to their customers existed in Alaska.

Ms. Farsi indicated that CVS Health did not participate in that practice. The company permitted pharmacists to offer the lowest price drug to their patients whether it was the price under their cost share or the cash price of the drug. She indicated CVS would have no objection to a bill that addressed that particular practice. There were probably PBMs that allowed that practice. However, CVS was not one of them.

[3:06:35 PM](#)

BILL HEAD, PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION, GLENDALE, CALIFORNIA (via teleconference), opposed the bill. He indicated he had provided information with specific details of the bill. He suggested that he would be willing to come to Juneau to further discuss in detail those items that were problematic. He wanted to add to the response already made about pharmacists not being allowed to share pricing information with their customers. His company did not support such practices and would support language to ensure that pharmacists could provide pricing information to their customers. He thanked the committee for its time.

[3:08:40 PM](#)

CATHERIN KOWALSKI, PETERSBURG REXALL DRUG, PETERSBURG (via teleconference), had been in the family business since 1965. She disagreed with CVSs information regarding cost drivers. She opined that if it was really an issue, she would be seeing it and she had not. She indicated that there were bills with similar language across the state. She reported that 40 states had adopted them. She argued that there had already been discussions on the issue. She thought it was time for the state to move on. She thought it was important to get back to serving customers.

Representative Ortiz asked if he knew Ms. Kowalski as Ms. Warhatch. Ms. Kowalski responded positively.

Representative Ortiz asked if her family had operated its business as an independent pharmacy since 1969. Ms. Kowalski indicated he was correct.

Representative Ortiz asked if she was calling in support and need of the bill in order to help maintain the existence of independent pharmacies in the state. She responded in the affirmative.

[3:11:41 PM](#)

JUSTIN RUFFRIDGE, SOLDOTNA PHARMACY, SOLDOTNA (via teleconference), spoke in support of the legislation. He had provided testimony in the last hearing of the bill. He supported HB 240 and relayed that it was absolutely needed. Much of what the PBM presence had been stating had already been tried. As a pharmacist, he had attempted to be an easy person to work with. He liked to be able to operate a business that offered great care and great services to people in rural areas. He felt the issue was at risk due to some unfair practices that have been left unchecked. It will drive independent pharmacies out of the state. He wanted some sideboards around what was allowed. He wanted to have a means in which to be heard. He appreciated the efforts in putting the legislation forward. He was available for questions.

Vice-Chair Gara understood that there was a practice that did not allow some pharmacists who had contracts with PBMs to tell a consumer that there was a lower cost alternative than to pay the co-pay for a pharmaceutical drug. He asked Mr. Ruffridge if he was aware of it.

Mr. Ruffridge felt that he was an appropriate person to ask. He had a contract in front of him which contained a type of gag order. It stated that pricing as a whole had to be kept a secret in a black box. The pharmacist was not allowed to share the information with any other pharmacy or patients. In the case of driving up healthcare costs, the lack of transparency was driving up costs. He reported that when he was asked what a customer's insurance paid, he responded that he did not provide the information because he could be in violation of a contract. He indicated there were a number of PMB's that had a gag order in place.

Vice-Chair Gara expressed concerns about gag orders. He asked if there was a circumstance that would allow a pharmacist to tell a client about a cheaper way to buy a pharmaceutical than through their insurance. He wondered if there would be an opportunity to offer a different price to patients if gag orders did not exist.

Mr. Ruffridge responded that if his staff noticed if a cheaper price was available, they would fill the prescription for cash for the patient and not inform them. It was his goal to offer the cheapest price. He did not want to overcharge for medications and knew what the pharmacy was paying for them. He let patients know that the pharmacy actively sought to give patients the best price possible.

[3:17:33 PM](#)

CINDY LAUBACHER, EXPRESS SCRIPTS, SACRAMENTO, CALIFORNIA (via teleconference), had traveled to Juneau to talk with legislators to discuss the bill. There were many provisions in the bill that were acceptable. However, there were several problematic provisions as well. Express Scripts would like to sit down to discuss those areas of concern. The company was committed to the process of coming to an agreement. She relayed that Express Scripts did not have gag clauses in their contracts. The company's contracts require pharmacies to dispense at the lessor of cash or the patient co-pay and would be supportive of language reflecting this policy. She reiterated that Express Scripts was committing to sitting down to further discuss the legislation.

Representative Ortiz asked if Ms. Laubacher if she was familiar with a letter from the Pharmaceutical Care Management Association dated, March 2, 2018.

Ms. Laubacher responded that she could pull up the letter.

Representative Ortiz relayed that on page 1 of that letter the organization showed concern with the section that addressed AS 21.27.910. The section required entities to provide pharmacies with advanced written notice 10 business days before an audit. According to the letter, it would give individuals ample time to hide evidence of fraudulent activities or to evade authorities altogether. He asked if it was the position of Express Scripts and fellow PBMs that independent pharmacists would hide fraudulent evidence.

Ms. Laubacher responded that as a general rule PBMs were looking for fraud, waste, and abuse on behalf of its clients. Typically, there were concerns about giving prior notice of audits. However, Express Scripts did not have a problem with the provision in the bill. The only problem the company had with the section was that it wanted additional clarification about on-site audits. She explained that there were two types of audits that occurred. There were on-site audits where the company looked at a large batch over a long period. They were full-scale audits conducted by the company for all of its clients at the same time. There were also desk audits which occurred regularly. The purpose of desk audits was to let a pharmacy know about potential mistakes. Any issue would be resolved immediately so that it would not resurface in the larger audit. Express Scripts did not have a problem with the 10-day notice as long as there was language in the bill that indicated the notice would not apply in cases of suspected fraud in AS 21.27.940.

[3:23:05 PM](#)

RICHARD HOLT, ALASKA BOARD OF PHARMACY, ANCHORAGE (via teleconference), supported the legislation. The board saw it as an opportunity to have open and honest conversations with pharmacists and patients. He was available for questions.

[3:23:53 PM](#)

JERRY BROWN, SELF, FAIRBANKS (via teleconference), spoke in support of the bill. He owned an independent pharmacy in Fairbanks. He thought the bill provided side boards to the auditing process and gave pharmacists a method of recourse for any appeal that was unfairly determined. He provided an example having to do with reimbursement rates. He had appealed his case but was denied. The appeal decision claimed he could find the drug somewhere else that would cost him less. It was a multiple source item but not available through the manufacturer. In his example, he lost \$23 filling the prescription. He wanted to be able to have some recourse because the PBM ends up becoming the judge, jury, and prosecutor in the appeal process.

[3:25:32 PM](#)

BARRY CHRISTENSEN, ALASKA PHARMACIST ASSOCIATION, KETCHIKAN (via teleconference), reported the association's priority was to see the bill pass. He had been at the table with the PBMs. He appreciated the efforts of the committee. He supported the bill and the amendments.

[3:26:54 PM](#)

Co-Chair Foster CLOSED Public Testimony on HB 240.

Co-Chair Foster indicated amendments were due on Wednesday April 4th by 5:00 pm.

Co-Chair Foster indicated that committee would not be hearing HB 129. The bill would be taken up on Wednesday, April 4, 2018 at 1:30 p.m.

Representative Wilson asked about another bill coming back up in committee.

[3:28:29 PM](#)

AT EASE

[3:28:44 PM](#)

RECONVENED

Co-Chair Foster would let the committee know the following day. He discussed the agenda for the following day.

#

ADJOURNMENT

3:29:21 PM

The meeting was adjourned at 3:29 p.m.