

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

Anchorage, Alaska

May 11, 2020

4:01 p.m.

MEMBERS PRESENT

Representative Chris Tuck, Chair
Representative Neal Foster (via teleconference)
Representative Andy Josephson
Representative Ivy Spohnholz
Representative Mark Neuman (via teleconference)
Representative Jennifer Johnston (alternate)

Senator Click Bishop, Vice Chair
Senator Bert Stedman (via teleconference)
Senator Natasha von Imhof
Senator Cathy Giessel
Senator Lyman Hoffman
Senator Bill Wielechowski (alternate, via teleconference)

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Matt Claman
Representative Bart LeBon (via teleconference)
Representative Sharon Jackson (via teleconference)
Representative Dan Ortiz (via teleconference)
Representative Kelly Merrick (via teleconference)
Representative Grier Hopkins (via teleconference)
Representative Mike Prax (via teleconference)
Representative Harriet Drummond (via teleconference)
Representative Andi Story (via teleconference)
Representative John Lincoln (via teleconference)
Representative Louise Stutes
Representative Geran Tarr

Senator Donald Olson
Senator Lora Reinbold
Senator Tom Begich
Senator Jesse Kiehl (via teleconference)
Senator Shelley Hughes
Senator Kawasaki (via teleconference)

Senator Gray-Jackson (via teleconference)

COMMITTEE CALENDAR

CARES ACT REVISED PROGRAMS - LEGISLATIVE (RPLs)

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

PAT PITNEY, Director
Legislative Finance Division
Alaska State Legislature

POSITION STATEMENT: Provided information and answered questions regarding CARES Act RPLs.

BRIAN BUTCHER, Executive Director
Alaska Housing Finance Corporation (AHFC)
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding CARES Act RPLs.

NEIL STEININGER, Director
Office of Management & Budget
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding CARES Act RPLs.

ROB CARPENTER, Deputy Commissioner
Department of Transportation & Public Facilities
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding CARES Act RPLs.

MEGAN WALLACE, Director
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions related to CARES Act RPLs.

JULIE ANDERSON, Commissioner
Department of Commerce, Community & Economic Development
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding RPLs.

MICAELA FOWLER, Director
Administrative Services
Division of Community & Regional Affairs
Department of Commerce, Community & Economic Development
Juneau, Alaska

POSITION STATEMENT: Answered a question during discussion of RPLs.

DOUG VINCENT-LANG, Commissioner
Alaska Department of Fish & Game
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion of CARES Act RPLs.

ACTION NARRATIVE

[4:01:30 PM](#)

CHAIR CHRIS TUCK called the Legislative Budget and Audit Committee meeting to order at [4:01] p.m. Representatives Josephson, Spohnholz, Johnston (alternate), and Tuck and Senators von Imhof, Giessel, Hoffman, and Bishop were present at the call to order. Representatives Neuman (via teleconference) and Foster (via teleconference) and Senators Stedman (via teleconference) and Wielechowski (alternate, via teleconference) arrived as the meeting was in progress. Also present were Representatives Claman, LeBon (via teleconference), Jackson (via teleconference), Ortiz (via teleconference), Merrick (via teleconference), Hopkins (via teleconference), Prax (via teleconference), Drummond (via teleconference), Story (via teleconference), Lincoln (via teleconference), Stutes, and Tarr and Senators Olson, Reinbold, Begich, Kiehl (via teleconference) Hughes (via teleconference), Kawasaki (via teleconference), and Gray-Jackson (via teleconference).

CARES ACT REVISED PROGRAMS - LEGISLATIVE (RPLs)

[4:04:19 PM](#)

CHAIR TUCK announced that the only order of business would be the CARES Act Revised Programs - Legislative (RPLs).

CHAIR TUCK, in his opening remarks, stated that the purpose of the meeting was to consider RPLs to help Alaskans alleviate some of the effects of the COVID-19 crisis. He said that through

review of "the revised RPL request" from Governor Mike Dunleavy, submitted Friday, 5/1/20, and through continued work on RPLs, the Legislative Budget and Audit Committee has "several more RPLs that are comfortably within the scope of the RPL process" as outlined under AS 37.07.080(h). He advised that these RPLs total more than \$62 million and are directed at the Alaska Housing Finance Corporation (AHFC) and various programs within the Department of Transportation & Public Facilities (DOT&PF).

CHAIR TUCK informed the committee there are also 126 RPLs that do not fall within the scope of the RPL process as outlined in AS 37.07.080(h). These RPLs deal with direct aid to communities, small business relief, and fisheries. Chair Tuck imparted that the fisheries RPL was presented originally on 4/21/20. He said the committee received revisions related to direct community assistance on 5/1/20, which included an individual RPL for each community receiving direct assistance based on economic impact metrics. He related that the committee also received a revised and much more detailed RPL for small business relief. He noted that these RPLs are included in the committee packet.

CHAIR TUCK stated that the governor has proposed a series of programs to utilize approximately \$1.5 billion in CARES Act federal funding to Alaska; thus far, \$506 million has been authorized, with \$381 million received by the Department of Health and Social Services (DHSS) and approximately \$50 million targeted to nonprofit organizations, as authorized by open-ended receipt authority in the budget, and which requires no further legislative authorization.

CHAIR TUCK stated that on 5/1/20, the Legislative Budget and Audit Committee approved \$125 million in RPLs for education, public safety, transportation, and the university. He said the committee would consider the remaining proposed RPLs, \$52 million in two DOT&PF items focused on airport support and the Whittier Tunnel. He indicated that \$10 million of the \$300 million in the business relief assistance had been "broken out for homeless support through AHFC." He said that that now leaves \$958 million and three major items as the focus of concern. He stated there are "four risks" related to some of the RPLs, but he would like the committee to first focus on "the easy ones."

[4:07:46 PM](#)

CHAIR TUCK said he thinks everyone can agree that Alaskans are hurting, and the legislature needs to get relief out to them as quickly as possible. He explained that with that in mind, his intent was to entertain discussion on the RPLs, including the legality of said RPLs and the risks of approving requests that are outside the scope of the RPL process and create entirely new programs without vetting by the full legislature. He stated, "The last thing I want to see is this money tied up in lengthy legal battles because of our actions here today; however, I do recognize the urgency of distributing the funds and can only hope that that does not happen."

CHAIR TUCK invited Pat Pitney to discuss the first batch of RPLs on the agenda. He noted others available to speak: Sabrina Javier, Alexei Painter, and Kelly Cunningham, with the Division of Legislative Finance; Brian Butcher and Daniel Delfino, with the Alaska Housing Finance Corporation (AHFC); Neil Steininger, with the Office of Management and Budget; Dom Pannone, Rob Carpenter, and John Finder, with the Department of Transportation & Public Facilities (DOT&PF); Julie Anderson and Micaela Fowler with the Department of Commerce, Community & Economic Development (DCCED); Meg Wallace, with Legislative Legal Services; and Alan Weitzner, with the Alaska Industrial Development and Export Authority (AIDEA).

[4:09:57 PM](#)

SENATOR HOFFMAN said he understood the concern regarding the legality of the last set of RPLs, and he asked whether it was Chair Tuck's intention to have the committee vote on them.

CHAIR TUCK responded that the RPLs would be up for motion and, depending on the feedback received from Legislative Legal Services and other testifiers, he may rule them out of order. He acknowledged there might be an appeal on that ruling.

[4:11:16 PM](#)

PAT PITNEY, Director, Legislative Finance Division, referred to a memorandum ("memo") [included in the committee packet] that she had written to the committee on 5/7/20, to five RPLs listed in a table starting at the bottom of the first page through the top of the second page. She explained that those were the five RPLs she would address, one of which had several RPLs embedded within it.

MS. PITNEY directed attention to RPL 04-2020-1059, Department of Revenue (DOR), Alaska Housing Finance Corporation (AHFC) Homeless Assistance Program. She stated that this RPL would provide \$10 million of the \$1.25 billion Coronavirus Relief Fund dollars available for "the priority needs of the state." She said the \$10 million would go to an existing program within AHFC. She said, "AHFC has federal programs that do very similar, if not the same exact program." She indicated there are no issues with this particular RPL; it is appropriate for the RPL use and would provide money for both homeless assistance and homeless prevention.

[4:13:35 PM](#)

SENATOR HOFFMAN remarked that the homeless population is vulnerable to COVID-19, and he asked whether these or other funds would be used to test that population for the virus.

MS. PITNEY deferred to Neil Steininger and Brian Butcher but offered her understanding that this RPL is for the prevention of homelessness; it is "money to allow people to stay in the homes they have."

[4:14:44 PM](#)

BRIAN BUTCHER, Executive Director, Alaska Housing Finance Corporation (AHFC), confirmed Ms. Pitney's response by indicating that the funds would be used primarily for the prevention of homelessness. He reported that statistics show that getting somebody out of homelessness and into a home is approximately four times more expensive than preventing him/her from becoming homeless in the first place. He offered his understanding that funding for testing was "in the health care piece of this."

[4:15:27 PM](#)

NEIL STEININGER, Director, Office of Management & Budget, Office of the Governor, concurred with Mr. Butcher regarding there being other funds within the Department of Health and Social Services that would go toward "testing-related activities."

SENATOR HOFFMAN said he would like to hear back from the department regarding "how that program is going to be identified for the homeless." He said homeless people are at higher risk, and he emphasized that preventing COVID-19 is "our number one priority."

[4:16:31 PM](#)

CHAIR TUCK indicated the information before the committee shows that "there is existing federal authority in this allocation's use for similar purposes, such as rental assistance." He asked, "Is there anything on mortgage relief, as well?"

MR. BUTCHER responded yes, AHFC was looking at this program for both rental and mortgage relief, focusing on the need to prevent homelessness.

[4:16:56 PM](#)

REPRESENTATIVE JOSEPHSON ask Ms. Pitney whether there was anything in the CARES Act that would prohibit the legislature from giving more than \$10 million to help with rental and mortgage relief should Mr. Butcher express the need for more funds.

MS. PITNEY answered no; it just would require an appropriation.

REPRESENTATIVE JOSEPHSON asked Mr. Butcher whether he thinks it would be wise of the legislature to appropriate greater than \$10 million and whether he could spend it prudently.

MR. BUTCHER answered that AHFC feels comfortable with the allocations made by Governor Dunleavy. He said the amount will not be enough to cover every aspect of homelessness reduction, but indicated that the amount has been based on "the amount of time the economy takes to come back, what other stimulus packages might come through the federal government, and a host of other variables."

REPRESENTATIVE JOSEPHSON asked Ms. Pitney whether it would be a fair statement to say that if the legislature accepts the \$10 million but does not appropriate more, it effectively would be waiving its right to do so with the \$1.25 billion.

MS. PITNEY agreed that that would be a fair statement.

[4:19:29 PM](#)

REPRESENTATIVE SPOHNHOLZ asked Mr. Butcher how the amount of \$10 million was chosen and how many Alaskans would be served with that amount. She also asked him to define what the entire need would look like and how much money that would require.

MR. BUTCHER answered that the \$10 million was not derived scientifically but as a result of discussions between the Office of the Governor and AHFC. He said, "Certainly they had a policy view ... beyond just the conversation we had on this." He said he would have to get back to Representative Spohnholz regarding the complete need. He talked about the fluctuation being studied in April and early May regarding the ability of people to pay rent and mortgage. He said AHFC is also working to determine the amount of gap that would be needed. He said, "The smaller the gap, the more people we could serve."

REPRESENTATIVE SPOHNHOLZ asked whether AHFC is getting information solely regarding people being served by AHFC or whether other entities are identifying folks who cannot pay rent or mortgages.

MR. BUTCHER answered that currently in the Homeless Assistance Program, AHFC works with 40 nonprofit service partners in 20 communities. He said, "We would look at working with our nonprofit partners ... in a more expansive way that would cover all of the state. We would certainly take a period of time to get all the information out to mortgage holders and renters in Alaska [and] make sure there was a sufficient period of time for them to submit applications, and we would go from there."

[4:21:46 PM](#)

SENATOR VON IMHOF pointed out that currently several banks are offering mortgage relief, including Wells Fargo; therefore, \$10 million is not the only mortgage relief available. In response to a request for clarification from Chair Tuck, she said each bank is managing this on its own outside of the CARES Act entirely.

[4:23:14 PM](#)

CHAIR TUCK, regarding the \$1.25 billion in RPLs, said one area missing is relief for individuals directly; however, he said he is interested in the RPL currently being considered because it gives household relief. He said he has seen a proposal to break this up into two phases. He said if more CARES Act money comes to Alaska, it would be nice to see \$45 million for residential and \$20 million for businesses. He indicated this could help an estimated 15,000 residences and 4,000 businesses statewide. The second phase would "take half of that and do the same thing." He said the proposal also includes residential rental and

mortgage relief up to two months or \$3,000, and business rental and mortgage relief up to two months or \$5,000. He expressed hope that there would be "more money down the road" to help expand Mr. Butcher's vision.

4:25:02 PM

MS. PITNEY next addressed RPL 25-2020-8771, DOTPF, Statewide Aviation and Rural Airport System CARES FAA Funding, at an amount of \$49 million. Referring to the committee packet information with the heading, "Department of Transportation and Public Facilities Highways, Aviation and Facilities and Administration & Support Various Allocations," she said the RPL would provide specific appropriation amounts by allocation, as shown on a table lower on the page and onto the next page. The table shows the breakdown for FY 20 for statewide aviation at \$1 million; Central Region highway and aviation \$3.8 [million]; and specific amounts continued for Northern and Southern Region, and so on. Then the balance of those appropriations are shown just below that and on the next page for FY 21, including Northern Region highway and aviation \$16.3 million. Ms. Pitney specified that this money was a separate appropriation within the federal CARES Act specifically for airports; therefore, it comes with federal restrictions for use within the rural airport system in Alaska. She said different money is slated for the Fairbanks International Airport, the Ted Stevens Anchorage International Airport, and the Juneau International Airport. She continued:

And although there are two of these allocations where there doesn't exist a federal appropriation to increase, the money is restricted by the federal government to these airports, and the appropriation performs ... the same purpose as this money was appropriated for. For those reasons we feel ... the RPL process was an appropriate avenue. We have 237 rural airports that this money can provide additional support to. ... Explicitly it can be used for backfilling revenue to keep airports open, knowing there has been a severe impact on air travel.

4:28:05 PM

REPRESENTATIVE NEUMAN asked Ms. Pitney how the appropriations for the different regions were determined.

MS. PITNEY deferred the question to Mr. Steininger.

[4:28:22 PM](#)

MR. STEININGER deferred to Rob Carpenter of DOT&PF.

[4:29:12 PM](#)

ROB CARPENTER, Deputy Commissioner, Department of Transportation & Public Facilities (DOT&PF), said the department first took the entire amount of general funds that go to the rural airport system, which is approximately \$35 million, and subtracted that amount and applied the remainder to the FY 20 budget; then \$1 million was put in statewide aviation; the remainder was divided among the three regions, based on their weighted allocation of general funds going for rural airport maintenance operations. He said the same "weightings" were applied for FY 21. In response to a follow-up question from Representative Neuman, he confirmed, "Yes, they're split based on ... the budget weightings for each of those components."

REPRESENTATIVE NEUMAN said he wants to ensure that legislators are not trying to get more for their areas and that the regional formula is followed.

[4:31:21 PM](#)

REPRESENTATIVE JOSEPHSON asked Mr. Carpenter whether he would describe these monies as intended to be directly COVID-19 responsive or to supplant dollars appropriated in March - either as a supplemental or in the FY 21 budget.

MR. CARPENTER answered that Congressional intent was clear that [RPL 25-2020-8771] funds were to mitigate the impacts of the pandemic on the rural airport system. He said there was subsequent guidance by the federal aviation administration (FAA) that provided significant flexibility to use the funds for any maintenance, operation, or capital cost of the airport system, whether or not it was related to COVID-19. The restriction was that the money has to be used for airport expenses, he added.

REPRESENTATIVE JOSEPHSON asked whether, because there does not have to be "the same COVID connection" as with municipalities, the legislature should anticipate the funds it has already appropriated to lapse. In response to Mr. Carpenter, he clarified that he is talking about general funds going to the rural airport system.

MR. CARPENTER answered that the impact of the virus on rural airports is "relatively insignificant." He said there are not many terminals in rural airports that need to be made safer; the revenue impact to those airports has been minimal. He said DOT&PF is hoping to utilize this funding to replace the general funds and then use the general funds elsewhere in the department's budget. He stated that the intent is to do this as minimally as possible and "carry as much of this forward into FY 21 as we can to get further legislative input on how this money is used."

REPRESENTATIVE JOSEPHSON said he learned that neither the \$290 million for small business nor the 45 percent for municipalities is dictated by the CARES Act. The legislature could have said it does not think \$290 million was enough. In that context, he queried whether the \$49 million was dictated by the CARES Act or was a number selected by the administration.

MR. CARPENTER replied that it was set forth under the CARES Act. He added, "The administration had nothing to do with this funding level."

[4:35:19 PM](#)

SENATOR BISHOP referred to [a subsequent RPL, labeled 25-2020-8772] and noted that [the Measurement Standards & Commercial Vehicle Compliance (MSCVC)] had waived annual permit fees. He asked for confirmation that this was related to overweight permit fees.

MR. CARPENTER confirmed that was the purpose. He said, "This funding would cover the additional costs borne by the state as a result of waiving those fees."

CHAIR TUCK asked whether waiving the fees also meant waiving the fines.

MR. CARPENTER said he did not know, but could not imagine fines would be waived; however, he said the idea was that a person could "come in for an overweight permit fee and not be ... out of compliance." He indicated that he would get back to Chair Tuck regarding his question.

CHAIR TUCK surmised that if this has to do with someone applying for an overweight permit, then if he/she were given the permit, he/she would not have to pay the fee.

[4:37:52 PM](#)

CHAIR TUCK returned attention to the RPL ending 8871, regarding airports. He said reporters had investigated why some airports were getting more money than others that were of the same capacity, and they found out that it had to do with a federal formula influenced by those airports that "had more reserve money."

[4:38:25 PM](#)

MS. PITNEY moved on to RPL 25-2020-8772, DOTPF, Measurements, Standards, and Commercial Vehicle Compliance (MSCVC) 5001(d) CARES Funding, at an amount of \$1,350,000. She said this RPL previously was lumped in with those that did not have the same purpose; therefore, OMB and DOT&PF split it out as a single purpose RPL. She stated that RPL 25-2020-8772 is similar to RPL 25-2020-8771 in that the MSCVC-compliant allocation does not have federal appropriation, but the federal money is incoming. She said, "That allows it to be applied for this specific purpose." She concluded, "Because the allocation serves the same purpose as this money provides for, we felt like the RPL was ... an appropriate mechanism to use."

CHAIR TUCK ascertained that there were no questions related to this RPL and asked Ms. Pitney to proceed with the next RPL.

[4:40:15 PM](#)

MS. PITNEY directed attention to RPL 25-2020-8776, DOTPF, Whittier Access and Tunnel 5001(d) CARES Funding, at an amount of \$1,219,100. She explained this was a separate grant within the CARES Act; therefore, it was not part of the \$1.25 billion. She said this was a lump sum, which OMB and DOT&PF split out to provide specifically for an existing capitol project related to the Whittier Access and Tunnel that has federal money for operations and maintenance.

CHAIR TUCK ascertained that there were no questions related to this RPL and requested Ms. Pitney proceed to the next RPL.

[4:41:34 PM](#)

MS. PITNEY brought attention to RPL 25-2020-8777, DOT&PF, Northern Region Highways & Aviation 5001(d) CARES Funding, at an amount of \$465,000. This federal money is not part of the \$1.25 billion but is a DOT&PF-specific grant to address the change in

schedule for the Dalton Highway road maintenance crews. She explained that the change allowed the same people to work together on their weeks-on schedules to mitigate the spread of Covid-19. The hours and schedule change required more money, she explained.

[4:43:04 PM](#)

CHAIR TUCK remarked that that was "the last of the easy RPLs." He characterized [the RPLs offering rental and mortgage relief] as "a mortgage holiday."

[4:43:42 PM](#)

REPRESENTATIVE JOSEPHSON said he thinks the amount of people that can be given rental relief with "a mere \$10 million" is "pretty inadequate." He surmised that 10 times that amount could be necessary. He said he thinks legislators would say the concern they have heard most is that of landlords, and he said rental relief would serve a dual purpose. He opined that more needs to be done and one could argue that the state has the resources to do it.

CHAIR TUCK remarked that a tough aspect of RPLs is that the committee cannot amend them. He stated, "Fortunately, through asking revisions, and hearing from the public a little bit better, we're able to at least get this \$10 million that we have now out of [\$290 million]."

[4:45:02 PM](#)

SENATOR STEDMAN moved that the Legislative Budget and Audit Committee approve the following RPLs: RPL 04-2020-1059, DOR, AHFC Homeless Assistance Program; RPL 25-2020-8771, DOT&PF, Statewide Aviation and Rural Airport System CARES FAA Funding; RPL 25-2020-8772, DOT&PF, MSCVC 5001(d) CARES Funding; RPL 25-2020-8776, DOT&PF, Whittier Access and Tunnel 5001(d) CARES Funding; and RPL 25-2020-8777, DOT&PF, Northern Region Highways & Aviation 5001(d) CARES Funding. He issued the following statement:

Passage of these RPLs while in session represents action taken during an unprecedented public health disaster and is allowable because the RPL increases appropriations already made in operating budgets that have already been passed by the full Legislature. This action does not represent an abrogation of the

Legislature's preeminent constitutional appropriation authority.

There being no objection, it was so ordered.

[4:47:14 PM](#)

CHAIR TUCK announced that the committee would address the remaining RPLs. He noted that the committee had been advised by legal counsel that the remaining RPLs are outside of the RPL scope, as outlined under AS 37.07.080(h). He said he would have Ms. Pitney walk the committee through the RPLs, then allow questions of Ms. Pitney, Neil Steininger, and other people available online. He said that following that he would ask Megan Wallace, Director, Legislative Legal Services to talk about the legal risks should the committee take action today.

[4:47:55 PM](#)

MS. PITNEY began with RPL 08-2020-0250, State of Alaska COVID-19 Community Distribution, at an amount of \$257,548,754.00. She said this RPL was revised from the one originally submitted on 4/21/2020; the revision narrowed the amount from \$562 million. The distribution of the funding is using the community assistance program (CAP) formula that has a \$20 million base amount, plus a population driven additional amount. She specified that the RPL is using only the distribution formula from the community assistance formula, not all the other features of that program. Ms. Pitney stated that the structure of the program is through the Division of Community and Regional Affairs [within the Department of Commerce, Community & Economic Development]. She explained that although the division allocation has federal funding, it is for an entirely different purpose than this funding is for; therefore, "it stretches the limits of an RPL." She noted that a four-page spread sheet included in the committee packet shows the amount of money. She explained that the [\$257,548,754.00] is listed in that first column; the rest of the spreadsheet reflects an upcoming RPL.

[4:50:49 PM](#)

REPRESENTATIVE JOSEPHSON asked Ms. Pitney whether this particular RPL was stretching or exceeding RPL authority.

MS. PITNEY answered that she would say, "We are outside the RPL authority." She added, "The RPL authority envisions being able to add to an existing program; this is ... creating a program."

[4:51:31 PM](#)

CHAIR TUCK asked how CAP works currently.

MS. PITNEY responded that CAP is set up as a separate fund. The legislature regularly deposits money into the fund through fund capitalization. One-third of the balance of the money at the end of the fiscal year is distributed on the first day of the following fiscal year. She continued that if the money followed the provisions of the program, then it would need to be deposited into the fund and then one-third would be distributed; however, that would be inappropriate, because this is part of the \$1.25 billion CARES Act funding that needs to go toward eligible expenditures. So, this is federal money going straight to the communities based on the formula distribution.

[4:53:41 PM](#)

REPRESENTATIVE JOSEPHSON noted there had been a lot of testimony on this issue. As an example, he recollected that the mayor of Gustavus had testified that thus far Gustavus did not have any expenses related to COVID-19, but he said the community may still have a loss of revenue. He said the overall testimony was that the guidance, of which he indicated there are two, were read as being restrictive. He asked his question as follows:

If we appropriate these monies, and we set them aside in a subaccount or however it's done at treasury, and in fact in the end the accountants say we can only spend \$150 million of it, have we lost a chance to be more surgical and say, "Oh, we could have dedicated the other \$107 million for COVID-related daycare systems or domestic violence shelters or university needs or rental relief"; have we taken that money and locked it away? And I'm aware that it will be distributed in quarterly sums. So, taking into account that factor, do you have any thoughts about that?

MS. PITNEY responded that the \$257 [million] of the \$568 [million] that's earmarked by the administration to go to the communities is actually a singular distribution to each of the communities as listed in the CAP distribution column. She said unless a community voluntarily says it cannot spend the money and gives it back "for the next best priority choice," the money is "off the table once approved and cannot be redirected." In

response to a follow-up question from Representative Josephson, she confirmed that she interprets the RPL and being a one-shot deal. She indicated a willingness in having Representative Josephson direct the question to Mr. Steininger.

[4:57:10 PM](#)

MR. STEININGER stated that communities have until the end of December [2020] to incur the expenditure. When a community relates that it may not have incurred expenditures related to COVID-19 now, there is still uncertainty as to whether the community will incur the expenditures by the end of December. He indicated that this RPL is the first of the monies to go out to communities; there are other monies that will go to communities on a quarterly basis from other RPLs. He said those monies would not go out to the communities unless they show that they have actually spent down the initial money sent. He indicated that toward the end of summer, once it is seen what is left unspent, monies could be reallocated; however, he remarked that he thinks that by the end of December, communities will realize significant costs related to COVID-19 that need to be covered.

REPRESENTATIVE JOSEPHSON said testimony heard at the 14 hearings the legislature has held has already shown what the existing need is; however, the monies "are going to be virtually dedicated," so "while that happens, we can't redirect them." He asked Mr. Steininger to confirm that is what he said.

MR. STEININGER confirmed that the communities need to know they have access to the money in order to respond as they see fit "as the situation continues to emerge through the end of the year."

[4:59:25 PM](#)

REPRESENTATIVE SPOHNHOLZ asked Ms. Pitney, "Have we ever received federal funds for community assistance?"

MS. PITNEY answered no. She repeated that "this money is part of the \$1.25 billion." She said it is the administration's choice to distribute this amount of funds to communities "using this distribution methodology."

REPRESENTATIVE SPOHNHOLZ directed attention to a legal opinion dated 5/5/20, from Megan Wallace, [included in the committee packet], in which Ms. Wallace "described the legality of using the RPL process for community assistance payments, given that

... community assistance hasn't received funds in the past and that there isn't appropriations for community assistance, I believe, in either 2020 or 2021." She said it seems like this RPL might be out of order. She asked to hear from Ms. Wallace.

[5:00:56 PM](#)

MEGAN WALLACE, Director, Legislative Legal Services, Legislative Affairs Agency, confirmed that she had penned a legal opinion on 5/5/20 to the Legislative Budget and Audit Committee, and she did an analysis of the proposed community assistance RPL. As Ms. Pitney had already noted, she said the issue she sees with this RPL is that it seeks to increase the operating expenditures for the Division of Community and Regional Affairs, and "that appropriation that is being sought to increase does not serve any community assistance function." She said these are funds that are not being used to increase a community assistance program; the proposal really is "to create a community assistance program through use of the CARES Act funds that the state receives." She continued:

Even though ... that allocation has federal funds, ... the RPL process was not intended to be utilized to create new programs or to create new appropriation to increase or supplement existing appropriation, and therefore it would be my opinion that if challenged, this RPL poses a risk of being deemed an unconstitutional delegation of the legislature's appropriation power.

[5:03:19 PM](#)

REPRESENTATIVE JOHNSTON asked Mr. Steininger to confirm that the federal guidance would direct 45-48 percent of the funds to communities.

[5:03:47 PM](#)

MR. STEININGER responded that there is a "suggestion" that 45 percent should go to communities.

REPRESENTATIVE JOHNSTON remarked that the administration "is trying to honor that guidance." She offered her understanding that the communities receiving the funds must provide receipts showing that they have followed the guidance of the U.S. Department of Treasury and spent about 80 percent of the funds before they get the next tranche.

MR. STEININGER confirmed that is correct.

REPRESENTATIVE JOHNSTON asked whether there would be anything to prevent communities from spending the money received on the other needs listed by Representative Josephson.

MR. STEININGER responded that there was nothing that would prevent communities from allocating the funds to those needs, "so long as they fit within the CARES Act guidelines."

REPRESENTATIVE JOHNSTON offered her understanding that the Municipality of Anchorage and the House Finance Committee felt that the legislative intent was broader than the current criteria of the U.S. Department of Treasury, and she said there seems to be interest in Congress to broaden the criteria to replace revenue shortfalls in communities.

MR. STEININGER responded that while he does not want to speculate as to what the federal government will do in the future, he expressed hope that it would remove some of the restrictions to make the money more impactful in communities.

[5:06:02 PM](#)

CHAIR TUCK asked for confirmation that the 45 percent was a cap on what could be spent on any individual community. He said he thinks the administration chose to use that as a guideline for all the communities. For instance, in a small state with one very large community, there was concern that all the money would go to one community.

[5:06:32 PM](#)

MS. PITNEY, in response, offered her understanding that the 45 percent was determined based on the relative size across the nation of local and state governments and on employment and dollar value as presented in a congressional research report. That was used to determine where there were those large population cities and counties for the distribution. She said it was merely a target and left to the discretion of the state how much could go to the communities.

[5:08:08 PM](#)

SENATOR VON IMHOF said if Alaska had a city with a population of 500,000, this conversation would not be taking place; the money

would have gone straight to that major city. She said it is because of Alaska's small populations that "the state gets all the money." She stated that the intent of the federal government is to get the money to communities as soon as possible. She said there are 123 communities, and the legislature does not know the needs of every one of them. She said those communities would "apply for the second half and provide a list of expenses." She echoed the comment of Representative Johnston that states are looking for relief beyond the scope of that stated by the U.S. Department of Treasury. She said one cannot speculate on how that may change; however, considering the amount of information being written on the subject, it is possible that the second tranche may come with a little more flexibility. There is no RPL process for this new situation, she added. In response to Chair Tuck, she confirmed she was talking about the second tranche of \$311 million.

[5:10:40 PM](#)

SENATOR HOFFMAN, regarding the monies going directly to the populations of more than 500,000 in other states, questioned whether [Alaska] is being held at a different standard because it does not meet a population threshold. He emphasized that the smaller communities in the state need the relief as urgently, if not more so. He said he represents over 100 communities. He expressed concern that "we are sitting around twiddling our thumbs, not taking the action necessary to dispense these funds out to the people." He said initially the administration presented this proposal for the money to be disbursed May 1, and today is May 11. He said the people of Alaska need to be able "to take the funds and do what they feel is necessary." He added that the larger communities in the Lower 48 "have got their money and they're spending it." He opined that that is an injustice.

SENATOR HOFFMAN expressed an additional concern that if there is a deadline of June 30, 2020, for spending the \$365 million that was available on May 1, then communities not able to spend the money can blame the legislature. He asked Ms. Pitney whether the first two appropriations of \$257 million and \$107 million, totaling \$365 million, must be spent by June 30.

[5:14:07 PM](#)

MS. PITNEY answered no, not by June 30. She said the rules on the Coronavirus Relief Fund from the federal government is that

it has to be spent on costs incurred by the end of calendar year 2020. The first amount of \$257 million is an FY 20 distribution, but it is an RPL applied to the DCCED budget. The communities have use of the money until the end of December 2020, because of federal restrictions. She said the next amount of money is \$311 [million], the direct community cost payment, and is split as RPLs for FY 20 and FY 21. She then said, "Actually, ... the first distribution of the direct cost is a 2020 item, and then the next two are 2021 items."

SENATOR HOFFMAN clarified that he is in full support of getting the funds to the people of Alaska as quickly as possible. He said it does not make sense to distinguish one citizen over another based on whether he/she lives in a community of greater than or fewer than 500,000 people. He stated, "I am not going to be one individual that's going to be hiding behind that shield and not dispensing money to the people of Alaska."

[5:16:40 PM](#)

SENATOR GIESSEL remarked that when she read the federal guidance that was published on May 4, she was impressed with the number of affirmative answers regarding how money could be spent by the communities. She mentioned impacts of the coronavirus, such as hospitals that have not been able to allow elective surgeries and dentists who have not been able to open their offices. She said she thinks communities, no matter the size, will look at the impacts of the coronavirus and recognize "the facility that this money will give them." She expressed her high regard for Ms. Wallace as the legislature's legal counsel and respect for Ms. Wallace's concern about a possible lawsuit. Nevertheless, she said she has to agree with Senator Hoffman that COVID-19 is stretching the limits of the state and its communities, and "this money does needs to be dissipated as soon as possible to help mitigate some of that."

[5:18:09 PM](#)

SENATOR BISHOP said he would also like to "echo some of the comments of the previous speakers." He related that an article in The Daily News Miner of Fairbanks, Alaska, reports that Alaska my lose hospitals to COVID-19 [through loss of revenue]. He described [the federal guidelines put out] on May 4 as "refreshing," and he indicated that he hopes that the committee will [approve the RPLS] so that the hospital in Fairbanks will not need to lay off its staff.

SENATOR STEDMAN said the clock is ticking and Alaska is treated differently because it is a smaller state. He said, "The emergencies are today, and we need to deal with this. As far as the legalities, we've been working through that issue for the last three weeks, often daily." Senator Stedman recognized that the times are unprecedented and [the committee] is "pushing the bounds in some directions," but he said the full legislature has the ability to go through a ratification process. He said while there may be technical and bureaucratic reasons not to go forward, an emergency is affecting citizens all across the state and a response is needed as soon as possible. He expressed support in the statements made by the last three members regarding the need to take action.

[5:21:08 PM](#)

REPRESENTATIVE JOSEPHSON expressed support for Senator Hoffman's concern for rural Alaska. He mentioned amendments he had offered during the session to that end. He said he agrees that "we must look out for our local communities."

[5:21:40 PM](#)

REPRESENTATIVE NEUMAN spoke about urgency and local control being the best control. In terms of the legal opinion of Ms. Wallace, he stated, "Everything that we're doing here is a legal risk." The needs of each community differs, he emphasized, so each community should decide how it best can use the funds. He reiterated that there is a risk in what the Legislative Budget and Audit Committee is doing, but emphasized that he would do all he could to get the money to the communities.

[5:23:59 PM](#)

REPRESENTATIVE FOSTER expressed support for getting the money out to communities as soon as possible. He said the public won't understand the specific technical bureaucracies that are delaying the disbursement of the money, yet will understand that they exist and won't be happy about them. He expressed that not approving the RPLs or going through the appropriation process would result in the money getting to the people "much later." He reiterated that he wants "to see the money get out sooner."

[5:25:07 PM](#)

CHAIR TUCK, in response to previous comments supporting the immediate disbursement of funds to the people of Alaska, pointed

to a letter he had drafted to the governor regarding the RPLs. He said he had shared the [draft] letter with members of the committee, who requested he remove two of the paragraphs. Chair Tuck opined that the paragraphs should have remained in the letter, and he read them as follows:

The RPLs are currently being reviewed by the Legislative Finance Division and Legislative Legal division. Many of the items included in the RPL packet are likely outside of the narrow confines of what the Legislative Budget and Audit Committee is able to legally consider under the RPL process and require the full attention of the Alaska State Legislature as the appropriating body of the State of Alaska.

In addition: Although we are still awaiting official guidance - expected on April twenty-eighth from the feds - on how the state may use the CARES Act fund, some of the items in the packet are contrary to early guidance. It would be imprudent to distribute funds outside of allowable usage and end up owing that money back to the federal government, especially in the uncertain fiscal times. It appears that those items will be allowable under the second round of federal stimulus money that is now being considered currently.

CHAIR TUCK posited that the reason for the current situation was because he was talked into "playing nice" by taking out the two paragraphs. He said, "If I had not taken those two paragraphs out, I think we would have acted a lot sooner than we are right now, the proper way, the right way." He said there is no reason the legislature should not be "doing this the right way" while in session. He said, "You don't do things thinking that you won't get caught. In this case, we're trying to do something hoping that somebody won't sue." He said there are only eight days left in the legislature's regular session and "communities are being impacted." He added, "They're going to be further impacted in a much more negative way if there is a lawsuit." He gave an example of the effects of current litigation regarding "federal monies going through tribal councils." He noted that in that lawsuit there was an injunction, and nobody is getting money right now. He said he wants to avoid the position where no one will get money for a while.

CHAIR TUCK asked Mr. Steininger what authority the governor has "to be able to set up this new program." He offered his

understanding that the governor, in FY 20, "vetoed these funds on three separate occasions - three appropriations bills," thus "we have zero money going into it now" and "no federal money going into it." He asked, "So, what would make this RPL process eligible for the governor to be able to carry out this plan?"

[5:28:28 PM](#)

MR. STEININGER answered that the vetoes related to the Community Assistance Program are unrelated to RPL 08-2020-0250. The RPL provides federal authority to the Division of Community and Regional Affairs, which engages in community support activities. He said these are federal funds the state is allowed to grant out to communities in Alaska. He added, "So, we have an appropriation for the purpose of providing community support, including financial support and grants to communities."

CHAIR TUCK offered his understanding that that is included in statute pertaining to DCCED but does not mean "they can incorporate entirely on their own." He asked whether that is correct.

MR. STEININGER answered, "Those are the core services of the Division of Community and Regional Affairs and their statutory authority of the department to provide grants to communities within Alaska."

[5:29:57 PM](#)

REPRESENTATIVE JOHNSTON, for clarification, asked whether DCCED has the grant authority and, thus, the receipt authority from the federal government. She asked whether the granting authority is cited "for both these community distribution RPLs."

MR. STEININGER answered that the statute for DCCED allows the department to provide grants, "including financial support coming from the federal government to communities." He said the core service of the Division of Community and Regional Affairs includes financial assistance to administer grants and funding distribution programs to communities.

[5:30:58 PM](#)

REPRESENTATIVE SPOHNHOLZ said she understands the stress that communities are facing right now and the need to get funds appropriated. She pointed out that this issue addresses community assistance, and there are other RPLs that have not yet

been addressed regarding business assistance. She expressed concern about protecting the state's economy, which she said has been diversified over the last three decades. She said she has heard that "a lot of that's going to be lost if we don't get the funds out to communities really quickly." Notwithstanding that, she expressed concern that "we are establishing a really dangerous precedent by doing this today." She explained two possible risks: being faced with a lawsuit and having to pay back the federal government "or" setting a precedent of ceding more authority to the executive branch of the State of Alaska. She gave examples of times when the legislature has worked fast on legislation and suggested that if the legislature had moved that quickly when it received the first RPL, "we would be done with this by now." She said there would be subsequent tranches of funds from the federal government, questioned what would prevent the governor from deciding to go with an RPL process again, and questioned whether the legislature would be happy with the outcome. She said at that point a precedent already would have been set. She said the legislature has already faced challenges in maintaining appropriating authority "because of the high veto override threshold." She expressed disappointment that the legislature did not move more quickly, because "we could have, sort of, had our cake and eaten it, too," rather than being in present circumstances.

[5:33:41 PM](#)

SENATOR STEDMAN responded, "We're not changing any ... appropriation authority balance between us and the executive branch at all. We've got language that we're reading into the record. We're making it very clear that these are unprecedented times dealing with a world-wide emergency." He stated that all 60 members of the legislature are guarded in terms legislative authority. He concluded, "So, that argument doesn't hold much water."

[5:34:31 PM](#)

SENATOR HOFFMAN noted that Senator Stedman had spoken with the administration, and he alluded to a conversation with Senator Stedman from which he gained the understanding that "the administration agrees wholeheartedly that this is unprecedented times and they don't view it as us usurping our authority to appropriate." He sought confirmation from Senator Stedman.

SENATOR STEDMAN responded, "That is correct."

5:35:06 PM

CHAIR TUCK noted that the Mississippi State Legislature plans to spend its [\$1.25 billion] "with advice from the governor." He remarked that the way he sees the RPL process going currently, "we're going to let the governor spend it, with some limited advice from the legislature." He stated, "So, I think there is a shift in balance of powers that's happening in the State of Alaska that should be maintained much the same as the State of Mississippi." He made a comparison of government to industry, stating that the executive director never goes outside of the wishes of the board of directors, which has the final say as to the wishes of the board. He said he would argue that there are Senators and Representatives that "do not like the process that we're going into, because they are not effectively representing their districts." He said the committee does not have the power to amend any of the RPLs and essentially is "rolling over" to and "letting the executive branch appropriate." He called that a dangerous precedent.

CHAIR TUCK related that when he was on a KSRN radio talk show recently, "explaining what the proper [legislative] process is," a former speaker of the House called in and said, "Do not set this precedent." Chair Tuck recognized a pandemic is talking place but remarked that there had not been a new case in Juneau since April 14. He said, "So, I don't see the panic." He noted that grocery store clerks, hairdressers, and barbers are working, and he opined that the legislature should also be working. He said the issue could have been addressed early on.

5:38:10 PM

SENATOR GIESSEL emphasized that nothing the committee is doing changes the appropriating authority of the legislature; the legislature remains the appropriating body. She criticized nonaction, worrying about whether the legislature gets "to eat cake," and worrying about retaining power over the executive branch when businesses and communities are "in desperate need of financial assistance." She said the public knows that that money has been delivered to the state treasury and that the Legislative Budget and Audit Committee has the power to get that money disbursed. She reemphasized that [the committee] is not giving up any appropriation authority. She said the additional RPLs before the committee should have been addressed last week, and in those RPLs are revisions "offered by members of this committee," and those revisions have improved the RPLs. She

offered her understanding that the communities are wondering when action will take place.

5:39:45 PM

REPRESENTATIVE JOSEPHSON said the previous speaker made some good points. In response to the idea that "someone is dawdling," he stated:

Whether there was input or not to revisions to, for example, the small business RPL, as proposed by the administration: that arrived at around ten-thirty in the morning, today, May eleventh.

REPRESENTATIVE JOSEPHSON expressed concern that stating that the legislature is not abdicating its appropriating authority does not mean that "as a matter of legal fact it is not happening." He said, "Because no one can cite to me any authority for the administration unilaterally to say, 'We'll tell you what to do relative to the appropriation power.'" He said just as carpenters work with wood and cooks work with food, legislators appropriate. He continued as follows:

We were exhausted on March 28, we were working beyond an emergency, and people were concerned, and they should have been. We wanted to see our loved ones. All of that is fair. But we knew, 24 hours earlier, that \$1.25 billion was coming to us, and ... our appropriation authority remained there. I just don't have it in me, when I see a piece like Ms. Wallace's of April 30 and May 5, to say, "To heck with it." I don't have that capacity, especially when it's so unequivocal."

5:41:49 PM

SENATOR HOFFMAN stated, "How Mississippi does business - that's their business. We are Alaskans. We represent the people of Alaska. We don't represent every other state in the Union. They decide on their own what and how they want to do that process." He continued:

These times are unprecedented, and we are in a changing era of COVID. We will work with each other, and we will come to the determination of what is best for Alaska. But the people of Alaska are looking at us, and we need to quit squabbling about what happened

in Mississippi and what happened yesterday and what happened last week and what might happen tomorrow. We need to say, "We are the decision-makers; let's make some decisions today."

SENATOR HOFFMAN urged the committee to "get this thing done" for the people of Alaska.

5:43:00 PM

CHAIR TUCK indicated he had mentioned Mississippi as an example, not an arguing point. He opined, "We should err on the side of the Constitution [of the State of Alaska] and use that as an example." He emphasized that he would not "play stupid to get along with people." He said, "I have an oath of obligation just like everybody else has an oath of obligation, and I take that seriously. You may not, and I'm not going to say that you do or you don't."

SENATOR HOFFMAN said, "You do."

CHAIR TUCK emphasized that he currently had the floor to speak. He added, "And I want to keep this very respectful."

SENATOR HOFFMAN remarked, "I hope you do, because your last statements haven't been."

CHAIR TUCK indicated that the urgency that exists in the last nine days of the session is because of the legislature, not the Legislative Budget and Audit Committee. He said, "We've all seen the same [legislative legal] opinions. We had a House Judiciary [Standing] Committee meeting on it last Wednesday; it was very clear." He said no one has been able to show him "how this is legal" and everyone is saying, "Hey, ignore it." He said his only point is that some of the members are having a difficult time "ignoring it." He said he understands and appreciates the urgency but wants to "make sure that we do it right."

5:44:42 PM

The committee took an at-ease from 5:44 p.m. to 5:53 p.m.

5:53:37 PM

CHAIR TUCK clarified that the comment he had made before the at-ease, regarding not playing stupid to get along, was in reference to himself and not anyone else.

[5:54:19 PM](#)

SENATOR STEDMAN stated that similar things have been done in the past to address emergencies, and the current situation could be the biggest emergency. He pointed out that the co-chairs of both the House and Senate Finance Committees were present, as well as Senator Hoffman, who formerly chaired the Senate Finance Committee. He emphasized the years of experience in the room. Regarding concern about changing the balance of power with the executive branch, he stated, "It's not going to happen."

[5:55:25 PM](#)

CHAIR TUCK remarked that the amount of money being considered with the RPLs currently under consideration is \$958 million, and he said he does not know whether the legislature has ever "given up that much power and that much money" through the Legislative Budget and Audit Committee, especially with "no federal monies into programs" and no programs established. He noted that in the second round of guidelines from federal government were some great ideas on [uses for the funds]. He said that the governor's plan for community assistance and revenue sharing "isn't so bad," but the question is, "Is that how much each community needs versus how much we need to ... [put] directly into small businesses?"

CHAIR TUCK ascertained that there were no further questions regarding RPL 08-2020-0250.

[5:57:11 PM](#)

MS. PITNEY directed attention to RPL 08-2020-0251, State of Alaska COVID-19 Small Business Relief, for an amount of \$290 million. She said this is a revised RPL from a previous RPL that established a loan program; it was submitted this morning just after 10 a.m. She said it was revised based on input from legislators and is now a grant program. The additional information provides guidelines, boundaries, and definitions of small businesses, as well as a list of eligible expenses. It provides for a contractor to help in determining eligibility for different businesses. She said the money is directed to the Office of the Commissioner in the Department of Commerce, Community & Economic Development, with the expectation that the

Alaska Industrial Development and Export Authority (AIDEA) will be a partner or advisor in the program because of AIDEA's existing relationship with small businesses. She said the \$290 million comes out of the \$1.25 billion.

6:00:08 PM

REPRESENTATIVE JOSEPHSON asked for a simple explanation from Ms. Pitney as to the change in the RPL from a focus on loans to a focus on grants.

MS. PITNEY answered that the original RPL requested funding for loan programs through AIDEA, which developed a request for proposal (RFP) and awarded it to a financial institution, which established a loan program. The federal guidance on the use of the CARES Act funds stipulated that loan programs would not be an eligible expense. She offered her understanding that there was additional input from those who said a loan would not help [their businesses] but a grant would. Ms. Pitney noted that the grant program does not supplant or overlap the Small Business Administration's [Paycheck] Protection Program (PPP). The loans are for those who did not qualify for the program or who did not get funding because the funding ran out.

REPRESENTATIVE JOSEPHSON referred to the considerable discussion about the delay in the release of the RPLs, and he remarked again that he thinks they are not legal. Notwithstanding that, he emphasized the marked difference between a loan and a grant and said this may be the most important point he has heard because the legislature had some involvement in the changes and because they are materially different. He suggested that a grant may "change the destiny of a small business." He remarked that to the extent that the delay brought about that significant change, it makes him "happy for the delay."

6:03:09 PM

REPRESENTATIVE SPOHNHOLZ said the House Labor and Commerce Standing Committee had heard from small business owners about the importance of receiving grants rather than loans. She said this proposal will complement and not supplement the federal programs, and a business would not be able to receive these funds if it were benefiting from the federal PPP and economic injury disaster loans (EIDL). She offered her understanding that these grants available to small business owners are not being made available to nonprofit organizations. She said there are funds for nonprofits that are responding to the COVID-19

crisis with aid; however, there is a gap between those nonprofits and others that are experiencing declines in earned and charitable income. She said she would like to hear from the commissioner of DCCED as to whether she is willing to consider the addition of nonprofit organizations as recipients of this RPL.

[6:05:18 PM](#)

SENATOR VON IMHOF listed those entities that are eligible for the RPL and pointed out that the basic requirement is that the entity must have a business license; therefore, "your nonprofit will need to obtain a business license from the Alaska Division of Corporations." She noted that nonprofits do have business licenses, which is the basic prerequisite.

[6:05:43 PM](#)

JULIE ANDERSON, Commissioner, Department of Commerce, Community & Economic Development, offered her understanding that as Senator von Imhoff had indicated, any business license holder is eligible. She said she would like to see the full focus of the initial \$150 million "be out towards small businesses throughout Alaska that are so desperately in need of these funds." In response to Representative Spohnholz' question, she stated, "Yes, I am open to looking at that."

[6:07:01 PM](#)

REPRESENTATIVE SPOHNHOLZ said she thinks it is important to acknowledge that nonprofit organizations are businesses that may have to lay off employees as a result of a lack of earned and charitable income. The issues are the same; the difference is that a nonprofit does not have to generate a profit and generally serves a charitable purpose. She said testimony has been heard by the legislature from nonprofits that are struggling financially and would like to be included in "any programs that are designed to serve small businesses."

[6:07:53 PM](#)

SENATOR VON IMHOF said she thinks it would be in the best interest of the state to include nonprofits. She asked Commissioner Anderson whether she has any thoughts on sole proprietorships.

COMMISSIONER ANDERSON replied that sole proprietorships are eligible. She said 1 through 50 employees is the target of the RPL program.

SENATOR VON IMHOF urged Commissioner Anderson to communicate that clearly on the materials for application.

[6:09:08 PM](#)

SENATOR WIELECHOWSKI asked Commissioner Anderson to talk about the criteria for a nonprofit or small business to get access to the funds, including how the decision is made for the amount given and how prioritization will work, assuming there will not be enough funds for all the applicants desiring them.

COMMISSIONER ANDERSON said the businesses would have had to be eligible, with 50 employees or fewer, when the health disaster was declared on March 11, 2020. The applicant must have been excluded or unable to qualify or otherwise unable to obtain funds from other federal programs under the CARES Act. The program will be first-come/first-served. She said DCCED will be doing "a massive communication" once the RPL is approved; it is already preparing information. The intent is to notify people so they can be ready with the required documents before the program goes live. She said the department has been assured that the funding process will go smoothly for those who submit complete applications. She said the funding amount ranges \$5,000 to a maximum of \$100,000 per business. The department will determine the amount of funds needed based on expenses incurred from March 11 to date of application, as well as the eight weeks following application. She indicated that money would be spent by the applicants on working capital expenses. In response to a follow-up questions from Senator Wielechowski, she said the money would not cover compensation for loss of business.

[6:13:21 PM](#)

REPRESENTATIVE SPOHNHOLZ asked for confirmation that those who had been declined or not eligible to receive funds from the PPP or the Economic Injury Disaster Loan (EIDL) would be eligible for this RPL program.

COMMISSIONER ANDERSON answered that is correct.

[6:14:20 PM](#)

SENATOR BISHOP noted that the RPL said each applicant may make only one application for funding, and he asked Commissioner Anderson to look carefully at all the applications, because there are many Mom and Pop businesses that do not have a legal team to help them in the application process.

COMMISSIONER ANDERSON replied that she understands the concern. She said the department would be providing grants to Alaska Regional Development Organizations (ARDOR) to provide technical assistance. The intent is to get the information and technical assistance out to rural communities - to all areas of Alaska - so people understand the process. She said the department has set aside 20 percent of the initial funds for rural businesses that may have communication problems, because the department wants to ensure that everyone is treated fairly and equitably irrespective of where he/she lives or his/her level of sophistication.

[6:16:27 PM](#)

COMMISSIONER ANDERSON, in response to Chair Tuck, reviewed that for the purpose of this RPL program, a small business is considered to have 50 employees or less.

CHAIR TUCK asked about subsidiaries and whether total employees would be counted or each individual subsidiary of entity.

COMMISSIONER ANDERSON answered that it would be based on business licenses. A business may have a number of subsidiaries under one business license. Under this RPL, each entity would have to have a separate business license.

CHAIR TUCK said often several different names operate under one license. He asked, "So, you're just going to take that one license, is that right?"

COMMISSIONER ANDERSON answered, "That's my understanding as we develop this program."

[6:18:22 PM](#)

SENATOR VON IMHOF offered that a further scrutiny or eligibility consideration could be one federal taxpayer identification number (TIN) and one social security number (SSN) per proprietor.

[6:18:46 PM](#)

CHAIR TUCK suggested taking applications from small businesses that may have received some PPP funds but did not sustain the same funding they would have if they had 500 employees, for example. He asked Commission Anderson, "Would you be willing to take applications for them, as well, in case more money comes into the state to be able to help them out?" He suggested that a business could end up being penalized by having applied for other funding first, not knowing that this RPL program would be available subsequently that would have provided the business more benefit.

COMMISSIONER ANDERSON said she has thought about that. She noted that there are still quite a few small businesses that have not had access to any funds. She proposed waiting to see what the demand is. She said the process allows more flexibility; the department is not dedicating the entire amount to one entity all at once. She said the department is still tracking the Small Business Administration (SBA) programs; close to 10,000 small businesses in Alaska have received funding through EIDL or PPP. She said she would like the ability "to adjust as we move forward."

CHAIR TUCK noted that "the fourth or fifth paragraph" states that as of FY 17, the State of Alaska does not provide funding to ARDOR. He read, "This RPL will provide a grant to ARDOR for a temporary increase in activities in direct response to coronavirus public health pandemic." He asked how ARDOR is currently funded.

COMMISSIONER ANDERSON offered her understanding that ARDOR received a grant from the Denali Commission this past fiscal year and funneled the grant through the [Division] of Community & Regional Affairs. She explained that that happened before her time as commissioner. She deferred to Micaela Flower.

[6:22:29 PM](#)

MICAELA FOWLER, Director, Administrative Services, Division of Community & Regional Affairs, Department of Commerce, Community & Economic Development, stated that up until FY 16, ARDOR received grant funds from the state that were a portion of its funding. She said ARDOR can apply for federal grants. It also receives funding through its membership; for instance, the Southeast Conference in Juneau is able to charge fees for events and other things. She said ARDOR is not receiving state funding at this time.

[6:23:20 PM](#)

REPRESENTATIVE SPOHNHOLZ related that SBA had reported several weeks ago, regarding paycheck protection loans, that 4,800 Alaska businesses had loans averaging \$190,000; therefore, the businesses eligible for the PPP would do much better under that program than they would under this RPL program. She said this program makes more sense for the smaller businesses. To Commissioner Anderson, she stated that many of those who applied for EIDL but did not receive them got an advance, and those 1,500 advances averaged about \$4,600, and she asked whether [the receipt of those advances] would make people ineligible for the RPL program being discussed.

COMMISSIONER ANDERSON answered that she had not heard that statistic but is willing to consider it. She said the intent of this RPL program is to help as many small businesses as possible, while having enough guidelines to avoid any ambiguity regarding eligibility.

REPRESENTATIVE SPOHNHOLZ opined that it is important not to penalize businesses that received a small sum from EIDL. She recommended keeping the process simple while still doing due diligence, in order to show kindness to the small business owners across the state who are having to adapt in many ways.

[6:26:13 PM](#)

SENATOR VON IMHOF asked Commissioner Anderson to put the EIDL concept "in a box" when considering eligibility, because she said although it has been a good program, it has been inconsistent, unreliable, and sometimes with "no rhyme or reason." For example, she said folks have applied, never heard back, and then received \$4,000 in their account. She requested that Commissioner Anderson "use that as a consideration" but not to "penalize a business if they have received even some funding." She added, "Representative Spohnholz is right; it's about between three and five."

COMMISSIONER ANDERSON expressed appreciation for the advice and said the department would consider that.

[6:27:31 PM](#)

SENATOR WIELECHOWSKI asked whether a small business that could not pay its rent could apply for a grant.

COMMISSIONER ANDERSON responded yes, absolutely. She said that is the intent of the grant program. She explained that the program would look at expenses incurred and whether those expenses had been paid or not. She said the department recognizes that businesses have had to close because of COVID-19 and have lost the revenue to pay incurred expenses, as a result. The grants could keep those businesses alive and moving forward in the following weeks; the money could cover mortgage payments, rent, utilities, payroll, and other typical operating expenses. She said the grant program is not intended to provide a payoff for previously existing expenditures or loan amounts, but rather all costs incurred between March 11 and December [31, 2020]. In response to a follow-up question, she said the money in this grant is not for individuals who may need help paying their rents; she suggested perhaps AHFC may have such a program or perhaps DHSS.

[6:29:51 PM](#)

MR. STEININGER stated there is the AHFC Homelessness Prevention Program RPL for \$10 million, discussed previously, "to cover costs like that."

SENATOR WIELECHOWSKI asked Mr. Steininger whether he thinks giving \$10 million to "several hundred thousand Alaskans who might not be able to pay their rent" and \$290 million to small businesses is fair.

MR. STEININGER responded, "That's the allocation that we've made." To a repeated question as to the issue of fairness, he said, "It's difficult to determine the overall need of every aspect as we allocate the money. ... All areas of the Alaska economy are in need, and all of these needs are very sympathetic. And so, I don't think this is a question of fair but a question of where we're seeing impact."

[6:31:20 PM](#)

SENATOR VON IMHOF pointed out that the intent behind giving money to small businesses to cover payroll is so employees can pay their mortgages, rents, car payments, et cetera. This would affect up to 50 employees per business, she added.

SENATOR WIELECHOWSKI said he thinks it is good to provide assistance to small businesses but does not think the amounts are in a proportion that helps individuals.

[6:32:52 PM](#)

REPRESENTATIVE JOSEPHSON asked whether marijuana businesses are eligible for these grants.

COMMISSIONER ANDERSON answered that in addition to the limits previously stated, the following are not eligible for this particular grant: marijuana businesses, secondary income sources, state businesses, and businesses that have filed for bankruptcy.

[6:34:19 PM](#)

CHAIR TUCK commented that a lot of businesses are hurting, and he wished there were more money to give. He remarked that money going out in the form of permanent fund dividends and small business relief will "go fast." He said the hope is to sustain businesses through [the pandemic], but consideration will have to be given to opening up the economy more each day as safely as possible.

[6:35:08 PM](#)

MS. PITNEY moved on to a group of 123 RPLs, beginning with RPL 08-2020-0260, titled "COVID-19 Community Direct Costs for Adak," for an amount of \$684,000. She said RPL 08-2020-0260 partially applies to FY 20 and partially applies to FY 21. She continued as follows:

So, this is the framework for the \$311 million of direct-cost grants to communities. So, there was the \$257 million distribution based on a community assistance program; this is an additional \$311 million based on a different formula, and the formula is more ... community tax-based.

MS. PITNEY directed attention to a spreadsheet previously shown in relation to RPL 0250. She pointed out that on the spreadsheet, the first column shows community assistance-based payment. She referred to the next three columns on the spreadsheet as direct-cost distribution one, direct-cost distribution two, and direct-cost distribution three. She said the framework for RPL 0260 and the 122 other RPLS is the same; "the amount of money is associated with direct-cost distribution one, two, and three" for each community on the spreadsheet. She continued as follows:

This was revised from the program that was submitted originally on April 21 to put an expectation that the communities would apply for this funding and certify that they would use it for eligible expenses and be responsible for the return of any funds not spent on eligible expenses. The other revision was that ... after the first distribution, future distributions would be pending demonstration of 80 percent of prior funding utilized. Between the community assistance distribution and this direct-cost distribution, the total is \$568 million to communities.

[6:39:31 PM](#)

REPRESENTATIVE JOSEPHSON remarked that he had never seen a complete explanation from OMB as to how [these 123 RPLs] were derived, and he asked Ms. Pitney if she had.

MS. PITNEY answered, "Only through backing into it."

[6:40:26 PM](#)

MS. WALLACE, in response to Chair Tuck, stated that the analysis she had done relating to the \$257 million RPL for the community assistance payment is substantially similar to this series of RPLs addressing the remaining \$311 million. She said the RPLs were amended on May 1 to make minor technical changes. She continued:

One example, in terms of the statutory authority that is cited for the expenditure authority: the RPLs now identify AS 44.33.020(a)(20), which is the statutory provision providing for the powers and duties of the department, which includes administering community assistance, including federal programs for revenue sharing and community assistance.

And so, there's been some ... positive updates in terms of identifying the authority to administer these programs, but the underlying issues that I spoke about earlier - they still cite the same appropriating authority, which is the operating expenditures of the Division of Community & Regional Affairs, which, as I mentioned before, do not currently serve community assistance function.

And so, I do have some concerns that, if challenged, these individual RPLs suffer kind of the same deficiencies as ... the first community assistance RPL. But ... the legal issues, again, ... are similar to what I previously advised, and I did not differentiate between the first RPL and ... this batch.

[6:43:23 PM](#)

REPRESENTATIVE JOSEPHSON asked Ms. Wallace whether her concerns about the second batch of RPLs were greater because they were not grounded in the statutory formula.

MS. WALLACE responded that she had not before considered the question. She said it is difficult to say what weight the court would give. Ultimately the executive branch wielded great discretion in terms of identifying the formula for the second batch and determining the amount to attribute to the first batch. She said she thinks both batches of RPLs suffer from similar legal problems. She opined that if one batch failed constitutional muster, then they both would, under similar reasoning.

[6:45:14 PM](#)

SENATOR STEDMAN said the challenges that may be faced are unknown, but the legislature can utilize ratification "to nullify a lot of this stuff." He added, "... We also have the ability to counter or clean up any issues as we go forward."

[6:46:23 PM](#)

MS. WALLACE, at the request of Chair Tuck, addressed the previous RPL regarding the release of funds to help small businesses. She said she had had a chance to look at the updated RPL made available earlier the same day. She said the conclusion she had provided in her memorandum would not change in response to the revised version of the RPL, since most of the technical substance remains the same. She explained she was referring to the appropriation authority, which is an investment appropriation and allocation in the department, which currently does not contain any federal receipt authority. She said she thinks this RPL feels like a new program and appropriation versus an increase of an existing program or appropriation accounted for by the legislature.

[6:48:36 PM](#)

SENATOR BISHOP, referring to Ms. Wallace's memorandum recommending that the legislature ratify the RPLs if they are approved, asked her to specify what she meant by "a later date."

MS. WALLACE responded that she had written about the potential of the legislature to ratify the RPLs subsequent to them being approved by the Legislative Budget and Audit Committee. She pointed to an example in the memorandum of when something similar had been done during the administration of former Governor Bill Sheffield, when the governor had impounded municipal funds under a statutory provision and was successfully challenged by municipalities. When that happened, the legislature subsequently ratified the impoundment, and the Alaska Supreme Court held that that ratification served to cure any constitutional defect with the impoundment. Ms. Wallace emphasized that the sooner the legislature ratifies the RPL expenditure, the less risk there will be of any challenge.

[6:51:42 PM](#)

SENATOR WIELECHOWSKI asked whether the state would have to repay the federal government or whether the communities and small businesses would have to repay the state should the legislature not ratify the expenditure.

MS. WALLACE, in terms of the \$1.25 billion in federal funds received by the states, said the CARES Act specifically provides some oversight function within the U.S. Treasury. She stated that while the focus of the U.S. Treasury guidelines to date has been on acceptable uses, there is little information pertaining to payback procedures. She said at this point she thinks it would be safe to assume that it would be the state that would be required to pay back the funds it receives from the federal government if the funds are improperly expended.

[6:53:32 PM](#)

REPRESENTATIVE JOSEPHSON emphasized his support of local governments and stated that his concern for the previous RPL for community assistance is the same as for this one. He explained that having heard testimony that "there was strong evidence that ... [communities] couldn't possibly use it all," his concern was that "we're sort of encumbering" [the funds] when, for example, they could be used for rental relief, small business loans,

COVID-19-related daycare assistance, homeless shelters, and to address the increased needs related to domestic violence.

6:54:42 PM

CHAIR TUCK remarked that the committee could not broaden the scope [of RPLs] but said it could "close that scope a little bit" to ensure communities spend the funds in such a way that does not put the state at risk of having to pay the funds back to the federal government. He indicated that "the second round of guidelines" opens up possibilities for other things that can be done, and he said Representative Josephson mentioned a few of those. He said he would like more to go toward small businesses. He expressed hope that communities would be able to help their local businesses. He said he thinks childcare is in need of assistance. He suggested that emergency rental and mortgage relief could probably use more money through AHFC to help out families and employees that are not getting unemployment insurance at the level needed but are not able to go back to work. He said it would be nice to do other creative things with the money, but he also understands the need to get the money distributed as quickly as possible. Chair Tuck said the RPL package for community assistance and revenue sharing is not a bad one overall; the question is how it should be administered and whether the amounts are fair.

6:57:22 PM

SENATOR WIELECHOWSKI agreed that the need is urgent but argued that when the finance director, the department, and the attorney from Legislative Legal Services say this is unconstitutional and does not fit within the RPL process over which the Legislative Budget and Audit Committee has jurisdiction, it is unconstitutional "to have this money go out like this." He marveled that there has been no opportunity for public testimony and there has been no legislative oversight regarding distribution of \$1.25 billion. He speculated there may have been private conversations in the Office of the Governor. He said the Constitution of the State of Alaska states that the legislature is the appropriating body, and that cannot be overridden by a committee vote or a legislative agreement. He opined that the simple solution would be for all legislators to fly to Juneau to vote on the issue.

6:59:07 PM

REPRESENTATIVE NEUMAN said he had asked Ms. Wallace about the authority that the Legislative Budget and Audit Committee has in its ability to accept the federal funds. Considering that the legislature already passed its FY 20 supplemental budget and the FY 21 operating budget, he said he finds it unlikely that a court would invalidate action taken by the Legislative Budget and Audit Committee during a recess as he indicated is outlined under AS 08.08. He said the governor submits the RPLs, and the committee has 45 days to approve them, which would speed them up, or tell the governor what it likes or does not like. The governor can still take the federal money no matter what the Legislative Budget and Audit Committee says, because it is an advisory committee. He said, "It comes down to whether we want to accept these federal funds or not." He offered his understanding that the governor has worked with the administration, the committee, and others "to try and comply and make this work." He added, "But I don't think anybody knows what the rules are yet." He said he thinks it is a risk worth taking, and he indicated that delaying the decision does not help communities.

CHAIR TUCK said there may be some gray areas on some of the RPLs. He allowed that the committee may meet during a recess but "to take up additional monies going into programs already determined by the legislature." He said he thinks "that the way this is being applied falls outside of the RPL process." He mentioned the lack of underlying federal program receipts as being an issue. He stated that the prohibition on using funds for revenue replacement is also a concern. He continued:

The formula underlying the \$311 million could put the funds at risk. We were able to reverse engineer it and see that, yeah, a lot of it's done to lost revenue, not including property taxes, but all the other taxes: sales taxes, bed taxes, cruise ship taxes - you name it. And so, this might push this liability onto individual communities in case they misuse the funds, but ultimately, I think ... the State of Alaska's going to be responsible for it.

There's also the equity issue of the formula itself, which I don't have a problem with, but some community may have a problem with, so, we have to be careful with that.

And then the oversight issue regarding the small business assistance program - we're not sure how it's

... going to be used or how it's not going to be abused. And I'm glad that we changed it from a loan to a grant program I know that it was recommended by the Alaska Support Industry Alliance that we flip this over to grants, but if we had made this decision a week ago, I think we would have been making a bad decision, because, again, we can't amend RPLs; all we can do is accept them as they are. And I want to thank Representative Josephson for pointing that out.

... We've got to make sure that these programs are utilized the most efficient way possible; that it's going to what we intend it to go to and it has the effects that we intend on having And there's just ... very little checks and balances on this at this time right now.

The official last day of session is May 20; that's just nine days from today. We haven't had a COVID crisis ... since April 14 in Juneau. ... We haven't had any legal support, as pointed out by Senator Wielechowski. I know that ... [the] House Judiciary [Standing] Committee did try to invite [the] Department of Law and they refused to appear and state their case of why these ... are legal, so you really only are hearing it from one side, and that's from our counsel. ... I just have a little bit of a problem of not ... following the advice of our legal counsel or heeding ... the warnings. So, notwithstanding the emergency, I think that it is a little bit dangerous of walking down this RPL process and setting a precedence.

[7:06:26 PM](#)

REPRESENTATIVE NEUMAN acknowledged the work that Chair Tuck has done on the issue. He remarked that everyone has his/her opinion and individual vote. He offered a reminder that he had spent time chairing the House Finance Committee in the past and sought expert advice because he is not an expert. He expressed confidence that those handling the money would find the right way to get that money to the people. He said, "I feel that we are standing in the way of that happening."

CHAIR TUCK said there have been times when he has been disappointed but other times when he has been impressed at what

has been accomplished. He offered an example in the past when the legislature worked together. He talked about bridge-building and partnerships amongst all branches and parties in government. He then stated, "I do believe that ... we could have come together on something very solid on this stuff."

REPRESENTATIVE NEUMAN shared with the committee that at 3 p.m. that afternoon, he had received word that his uncle had died as a result of COVID-19 and that his cousin is infected.

CHAIR TUCK expressed his condolences.

[7:09:43 PM](#)

MS. PITNEY, at the direction of Chair Tuck, began her explanation of the final item for consideration, RPL 08-2020-0054, a request for an appropriation in the Office of the Commissioner, in the Department of Commerce, Community and Economic Development. She said the source of the funding is part of the CARES Act that was directed to National Oceanic and Atmospheric Administration (NOAA). There is an earmark of funds of \$50 million for Alaska to provide relief to fisheries participants, which includes fishermen, charter boat companies, and subsistence participants. It covers incurred losses resulting directly or indirectly from COVID-19. She said the participant definition is "fairly narrow" and prescribed by federal law.

MS. PITNEY said the funding is intended to go to the interstate fisheries commissions - Alaska's being the Pacific States Marine Fisheries Commission (PSMFC) - and it will be released when there is an approved plan by NOAA. She said it is unclear whether the funding is coming through the state. Also unclear is the exact spending plan for that money. She said the other issue is that the money is coming to the DCCED Office of the Commissioner, which does not have "a like appropriation." Ms. Pitney said there are a lot of unknowns at this time and suggested that once a plan is in place, this might be something that the Legislative Budget and Audit Committee may want to consider. She stated that other than this not meeting the boundaries of the RPL process, the risk would be an additional \$100 million of federal appropriation in the DCCED Office of the Commissioner.

[7:13:19 PM](#)

CHAIR TUCK asked Ms. Pitney to confirm that currently "we don't have the money for the \$50 million in the fisheries" and "we don't have a program set up for it right now."

MS. PITNEY answered that that is her understanding. She added that the good news is that out of the \$300 million the CARES Act provided for fisheries, \$50 [million] is earmarked for Alaska.

[7:13:53 PM](#)

SENATOR GIESSEL observed that the release from NOAA, dated May 7, 2020, clarifies that after the money is released, NOAA will use the allocations to "our partners," which she pointed out is PSMFC. She said the commission "actually does this all the time." She gave as example fisheries disasters. She said she is confused because "we don't have the money yet" and "it's going to the commission to be distributed"; therefore, she asked, "How does the state have any hands on this money at all?"

MS. PITNEY deferred to Mr. Steininger.

[7:15:42 PM](#)

MR. STEININGER deferred to the commissioner of the Alaska Department of Fish & Game.

[7:16:00 PM](#)

DOUG VINCENT-LANG, Commissioner, Alaska Department of Fish & Game, confirmed that NOAA has administered the money so that it goes to PSFMC and the state is in the position to develop "the spend plan." He said the department learned that it would have to develop the eligible pools of people that could apply for this money, including any coastal fishery impacted by COVID-19. He explained that once the spend plan was put together, he did not want to have to wait for Pacific states to distribute money to other groups of candidates across the West Coast; therefore, the best approach would be to apply for a block grant once the spend plan was in place and get the money into DCCED's hands, then use DCCED's granting authority to get the money quickly into the hands of Alaskans. In response to Senator Giessel, he confirmed that ADF&G would be developing the spending plan, even if the block grant were not received.

SENATOR GIESSEL remarked that that information gave her "a level of confidence."

7:18:13 PM

CHAIR TUCK asked whether a bill would be necessary in order for the department to develop the plan.

COMMISSIONER VINCENT-LANG answered that the department has developed plans for various disaster relief and does not need a bill in order to figure out this plan. He reiterated his support for the idea of a block grant to the state that could be distributed more quickly.

CHAIR TUCK surmised there may be some legal issues to address regarding this RPL.

7:19:20 PM

SENATOR GIESSEL related that she serves on the Pacific States Fisheries Commission and imparted that it sometimes takes two to three years for the money to pass through the commission. She expressed appreciation for Commissioner Vincent-Lang's plan for getting the money to Alaskans more expediently.

7:19:50 PM

REPRESENTATIVE NEUMAN said in prior years it was not uncommon to request state authority for spending funds in order to shorten the process. He added, "Doing this seems very similar to that."

7:20:26 PM

SENATOR BISHOP observed that the plan would include many aspects of fisheries, including subsistence, guided fisheries, and commercial. He said it is unknown what people will be able to do in the future, what fishing they will have access to, and people will need fish stocked in their freezers; therefore, he asked Commissioner Vincent-Lang to pay close attention to subsistence users in the fisheries.

COMMISSIONER VINCENT-LANG responded that Senator Bishop is correct that there is a smaller pot of money dedicated to subsistence relief that's "maybe going" to the Pacific States Fisheries Management Commission. He stated that it is his intent not to forget about that user group. Further, he stated his intent is to manage the fisheries in a way that will provide subsistence harvest opportunities so that people can fill their freezers throughout Alaska this summer.

7:22:18 PM

CHAIR TUCK, after ascertaining there were no further comments pertaining to RPL 08-2020-0054, made some wrap-up comments. He remarked that the [RPL] process was being used in an unprecedented manner. He stated that it is typical for the chair of the Legislative Budget and Audit Committee to bring forward only those RPLs that are lawful or made so through interaction with the Office of the Governor. He indicated that four of the RPLs would not typically be brought before the committee, but he did so with the understanding of the urgency of getting assistance to communities. He said the committee can let the governor know that it does not want to approve the RPLs either because "it's something we don't want to see happen" or because "they're illegal," and the governor can withdraw the RPLs or "enact around the Legislative Budget and Audit Committee." He reiterated that there is no way for the committee to amend the RPLs; it must accept them or not - as is.

7:23:55 PM

REPRESENTATIVE JOSEPHSON emphasized that beyond the attorney finding these RPLs as being "outside the law," she had said that "if we didn't act," then the governor's receipt of the funds would also be outside the law. He said he wrestled hard with this [issue]. He said it was impressive that the legislature passed a budget in 68 days, working beyond the emergency declaration. He reiterated that saying the legislature is not abdicating its authority does not make it so. He expressed concerns that with these RPLs, the committee is making the governor an appropriator, as well. He related that [the House] learned a lot of things through recent committee hearings that the administrative branch did not know, including that there are more targeted ways to reach a bigger audience in this crisis. He mentioned the methods adopted by the government of the State of Mississippi.

REPRESENTATIVE JOSEPHSON expressed concern that too much will be given to local governments that they cannot legally use. Referring to the disparate amounts designated for small businesses versus rent relief, he said he thinks it is not fair, but that that does not mean he does not think the \$290 million should not go to small businesses. He also expressed concern that "this process is going to grow the power of" the Legislative Budget and Audit Committee by saying to the rest of the legislators that if there is no appropriation, the committee can just determine what the desires of the legislature are. He

said this process is not following the protocol of the committee approving RPLs for monies already appropriated by the full legislature.

REPRESENTATIVE JOSEPHSON expressed concern that allowing this precedent now will, in the future, give free reign for the governor to come up with RPLs for unrestricted federal monies. He said if the legislature were to fly back to Juneau and appropriate the money for these RPLs, then that would be lawful, but "we are not even doing that." He said in a country where Alaska already has the model for the strongest governor, he is concerned that "we've made the governor stronger yet." He concluded, "I remain profoundly concerned about these RPLs."

[7:30:02 PM](#)

REPRESENTATIVE SPOHNHOLZ stated that she would not "stand in the way of this ... happening" but expressed concerns about a flawed process. She said the RPL process does not include public testimony and the vetting process of legislative committees and both bodies, which she opined always makes a bill better. She said she was glad that the funds were changed from loans to grants but said there is "some of this" that doesn't "meet the mark that's been established." She said there is not enough money in housing assistance. She mentioned previous remarks by Senator Wielechowski and a letter to the governor signed by 22 legislators recommending increased funding for housing assistance. She referred to the previous remark made by Mr. Butcher that significantly more than \$10 billion would be needed in order to significantly respond to the need and that it costs four times more to get a homeless person back into housing than it costs to keep them in housing in the first place. She stated there is legal jeopardy in the approach being taken by the committee, which risks the ability to get the funds distributed properly. She opined that the legislature should ratify right away to prevent greater consequences for Alaskans counting on the funds and to ensure the full legislature gives its seal of approval to ensure both the letter and spirit of the law are being met.

[7:33:02 PM](#)

SENATOR STEDMAN indicated his full support of approving the RPLs during the current meeting to aid Alaska's citizens. He said there probably will be other assistance from Washington, D.C., and perhaps further refinements coming up, that the committee

would need to address. He added, "But right now, we need to move the process along."

7:33:50 PM

SENATOR HOFFMAN stated that beyond COVID-19 itself, people are hurting in other ways; they are not able to pay rent, buy food, or pay medical bills, and communities are not able to raise needed revenue. He opined, "The sooner we get these dollars out on the streets, the better off Alaskans are going to be."

7:34:44 PM

SENATOR WIELECHOWSKI set up a hypothetical situation in which session was still in progress, the budget was not yet passed, and the governor decided the people of Alaska could not wait and began to appropriate funds. He said although the people of Alaska may cheer that, it would be a clear violation of the Constitution of the State of Alaska, because the legislature has the power of appropriation. He asked, "How would that be any different than what's happening here?" He offered some more examples where the governor appropriates funds wherever he/she wishes, including to select communities. He said, "Under this theory that he can do that, this committee really can't stop him; he just has to wait 45 days and there goes half a billion dollars to Wasilla." Senator Wielechowski said that is clearly unconstitutional and he does not want "to give that sort of power to one individual in this state," because that is not what the state's founders "envisioned setting up the appropriation process." He said he agrees that the people of Alaska are hurting and need help, and that is why he thinks "we should be voting on this as an entire legislature in Juneau."

7:36:52 PM

REPRESENTATIVE NEUMAN opined, "The best thing we can do is get some more cash - this money - into our economies." He said before the COVID-19 crisis, Alaska was already in a deep recession, with people leaving the state. He said the federal government has given \$1.25 billion to the State of Alaska, and the committee is "sitting here fighting about how we can spend it or if we can accept it." He said he does not think anyone in the legislature would say that "the appropriations that we have seen today are not good." He compared this to the budget, which he indicated no one likes in its entirety but is a compilation of everyone's opinion. He said while there are guidelines for the expenditure of the funds, "we are on new ground." He said

he thinks getting the cash into the economy is the best thing to do. He added, "I know there is a risk in that, there is a risk in everything that we do. It's why we probably have immunity - for making the choices that we do - from court." He says he sees what is going on for businesses, and he doesn't know "the answer for all their stories" other than to distribute the money. He concluded, "Local control is the best control."

[7:39:46 PM](#)

SENATOR GIESSEL offered her understanding that the people of Alaska are not only hurting but are also frustrated, because this is federal money allocated to the State of Alaska "for the specific purpose of assisting the recovery from this virus, to sustain communities, small businesses, and our people." She emphasized that the work of legislators is not a career but is public service, and she opined that this is an opportunity to employ that public service by getting these federal funds to communities. She urged committee members "to set aside our guard of who gets what credit for appropriating this" and "get the money to the people of Alaska."

[7:41:02 PM](#)

REPRESENTATIVE TUCK stated that he, just as much as anyone in the room, wants to get the money to the people of Alaska as expediently as possible. He expressed hope that the RPLs can be compliant so that there would be no chance for legal challenges, "especially on the basis of powers." He said he worked hard "to show people a way that we can go down to Juneau" to address the federal funds and to ensure that the legislature exercises its full authority for appropriating the money. He said this did not happen and the committee is left with no choice but to address the RPLs.

CHAIR TUCK, before entertaining a motion, told the committee that - based on the consistent advice from legal counsel - he would be ruling the motion out of order. He said he would not do so lightly. He acknowledged that based on the comments heard, the committee would be approving the RPLs.

[7:42:28 PM](#)

SENATOR BISHOP moved that the Legislative Budget and Audit Committee approve the following RPLs: RPL 08-2020-0250, Department of Commerce, Community & Economic Development, Direct Municipal Relief; RPL 08-2020-0251, Department of Commerce,

Community & Economic Development, Small Business Relief; RPL 08-2020-0260 through 08-2020-0382, Department of Commerce, Community & Economic Development, Direct Municipal Relief by Community; and RPL 08-2020-0054, Department of Commerce, Community & Economic Development, COVID-19 Economic Stimulus for Alaska Fisheries. He issued the following statement:

Passage of these RPLs represents action taken during an unprecedented public health disaster. This action does not represent an abrogation of the Legislature's preeminent constitutional appropriation [authority].

[7:44:00 PM](#)

CHAIR TUCK ruled the motion out of order, based on the advice from legal counsel that the aforementioned RPLs fall outside of the scope of the process, as laid out in AS 37.07.080(h).

SENATOR GIESSEL objected.

CHAIR TUCK clarified that a yea vote would uphold the ruling of the chair, while a nay vote would override the ruling of the chair and proceed with the motion.

[7:45:35 PM](#)

CHAIR TUCK called for a roll call vote, suggested an at-ease, which was never taken, then voided the roll call vote in order to offer further clarification. In response to Representative Neuman, he specified that the vote about to be taken would not be to approve the RPLs but to uphold or override the ruling of the chair.

[7:46:06 PM](#)

A roll call vote was taken. Representatives Tuck, Josephson, and Spohnholz voted in favor of the ruling of the chair. Representatives Foster and Neuman and Senators Bishop, von Imhof, Giessel, Hoffman, and Stedman voted against it. Therefore, the ruling of the chair was overridden by a vote of 3-7.

[7:47:29 PM](#)

CHAIR TUCK returned to the motion made previously by Senator Bishop. He summarized that those RPLs addressed Direct Community Assistance, Small Business Relief, and Fisheries. He

asked whether there was any further discussion. He remarked that there would be more money coming into the State of Alaska, and he indicated a desire to see the full body addressing the appropriation of federal funding, because he thinks "we're in danger of compounding the problem."

[7:48:18 PM](#)

SENATOR BISHOP expressed thanks to all the committee members. He acknowledged, "It's not easy for anybody, but we're not in easy times." He spoke of keeping ears and eyes wide open.

[7:48:48 PM](#)

CHAIR TUCK brought attention back to the pending motion. He asked whether there was any objection to the motion. There being none, he announced that the committee had approved the RPLs.

CHAIR TUCK expressed his thanks to the committee.

[7:49:26 PM](#)

ADJOURNMENT

There being no further business before the committee, the Legislative Budget and Audit Committee meeting was adjourned at [7:49] p.m.