

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

November 2, 2022

10:02 a.m.

**MEMBERS PRESENT**

Senator Natasha von Imhof, Chair  
Representative Chris Tuck, Vice Chair  
Senator Peter Micciche (via teleconference)  
Senator Bert Stedman  
Representative Ivy Spohnholz  
Representative Andy Josephson  
Representative Neal Foster  
Representative James Kaufman  
Senator Click Bishop (alternate) (via teleconference)

**MEMBERS ABSENT**

Senator Lora Reinbold  
Senator Lyman Hoffman  
Representative Dan Ortiz (alternate)

**COMMITTEE CALENDAR**

APPROVAL OF MINUTES  
PROPOSED CHANGE TO THE LB&A HANDBOOK  
PRESENTATION ON FY 21 AUDIT FINDINGS  
EXECUTIVE SESSION  
FINAL AND PRELIMINARY RELEASE OF AUDITS  
REVISED PROGRAMS LEGISLATIVE

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

KRIS CURTIS, Legislative Auditor  
Legislative Finance Division  
Juneau, Alaska

**POSITION STATEMENT:** Provided explanation regarding the  
Legislative Budget and Audit Committee Handbook and RPLs.

NEIL STEININGER, Director

Office of Management & Budget  
Office of the Governor  
Juneau, Alaska

**POSITION STATEMENT:** Provided information related to RPLs.

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

**POSITION STATEMENT:** Provided information and responded to questions during discussion of RPLs.

HANNAH LAGER, Director  
Division of Administrative Services  
Department of Commerce, Community & Economic Development  
Juneau, Alaska

**POSITION STATEMENT:** Responded to questions during discussion of RPLs.

#### **ACTION NARRATIVE**

[10:02:47 AM](#)

**CHAIR NATASHA VON IMHOF** called the Legislative Budget and Audit Committee meeting to order at [10:02] a.m. Representatives Tuck, Foster, Kaufman, Josephson, and Spohnholz and Senators Bishop (via teleconference), Micciche (via teleconference), Stedman, and von Imhof were present at the call to order. Also present was Senator Kiehl (via teleconference).

CHAIR VON IMHOF announced a change to the agenda, saving discussion of RPLs to follow the executive session. There being no objection, the change in agenda was so ordered.

#### **APPROVAL OF MINUTES**

[10:04:05 AM](#)

CHAIR VON IMHOF announced the first order of business would be the approval of minutes.

[10:04:26 AM](#)

REPRESENTATIVE TUCK moved that the Legislative Budget and Audit Committee approve minutes of the following meetings as presented: 7/14/22, 8/10/22, and 9/6/22. There being no

objection, the minutes from the 7/14/22, 8/10/22, and 9/6/22 meetings were approved.

**Proposed Change to the Legislative Budget and Audit Committee Handbook**

[10:04:52 AM](#)

CHAIR VON IMHOF announced that the next order of business would be discussion of a proposed change to the Legislative Budget and Audit Committee Handbook.

CHAIR VON IMHOF explained that the subject pertains to the oversight and responsibility of the Legislative Budget and Audit Committee related to the solution of significant audit findings. The proposed change would formalize the process by which the legislature continues oversight beyond review of audit findings. She noted that the new language was flagged in the handbook [available in the committee packet], beginning on page 41. She asked Kris Curtis to provide further details.

[10:05:38 AM](#)

KRIS CURTIS, Legislative Auditor, Legislative Finance Division, said she was asked to incorporate a new oversight process into the handbook. She reminded the committee that the first step of the process was to focus on top audit issues, following which she had presented them to the committee. Second, the top issues were communicated to state agencies, which were asked to provide their corrective action or status of the issues. She said she summarized those agency responses for the committee, which then determined whether it wanted to continue the follow-up process by sending those audit issues to legislative committees for consideration during the next legislative session. She said the process is meant to be an annual one.

[10:06:56 AM](#)

REPRESENTATIVE KAUFMAN added that the goal is "to standardize what we've been doing that worked well." He indicated this would be a guide for future legislative committees.

[10:07:58 AM](#)

SENATOR BISHOP asked whether this process would be a burden on the Legislative Audit Division.

[10:08:22 AM](#)

MS. CURTIS answered that she would just be summarizing that which the division already does. The burden would land on her shoulders, not that of her staff, and that is part of her job. She said this would actually benefit the audit process, and she opined that it is a needed addition. She stated support for the change.

[10:09:33 AM](#)

REPRESENTATIVE KAUFMAN noted the goal is not an audit but to "drive improvement" - to ensure compliance. Without the change, opportunity is missed, and languishing issues are not resolved. He expressed that "doing a little bit of extra work can actually start to drive down the future workload."

[10:10:50 AM](#)

SENATOR VON IMHOF described shining a light on the top ten issues, and then the next top ten, and so on. She said this is a tool the entire legislature can use during session in a variety of ways to "begin to dive into the findings" and address them.

[10:12:00 AM](#)

REPRESENTATIVE KAUFMAN thanked Ms. Curtis for her partnership working on this issue.

[10:12:10 AM](#)

REPRESENTATIVE TUCK moved that the Legislative Budget and Audit Committee adopt the updated and revised Legislative Budget and Audit Committee Handbook as presented today. There being no objection, the revised handbook was approved.

**PRESENTATION ON FY 21 AUDIT FINDINGS**

[10:12:37 AM](#)

CHAIR VON IMHOF announced that the next order of business would be a Presentation on Top Eight Audit Issues.

[10:12:51 AM](#)

MS. CURTIS began the PowerPoint presentation [hard copy included in the committee packet] by specifying that the oversight process she would discuss extends beyond a single audit; it revisits special audits and performance audits and provides a mechanism for following up those findings. She briefly showed slide 2, which read as follows [original punctuation provided, with some formatting changes]:

### **Audit Oversight Process Top Eight Audit Issues**

#### Focus

Identify top audit findings in terms of fiscal or societal impact and degree of difficulty in addressing findings.

#### Communicate

Work with auditees to identify corrective action for top audit findings.

#### Evaluate

Determine whether legislative action is required; refer to legislative committee for consideration.

#### Measure

Examine progress through legislative finance committees or other legislative committees as relevant.

#### Repeat

Once the Single Audit is released - repeat. Process covers all reports issued over a fiscal year.

MS. CURTIS addressed slide 3, which read as follows [original punctuation provided, with some formatting changes]:

### **1. Financial Statement Opinion Modifications**

#### Issues That Led to Qualified Audit Opinion

- Revenues eligible for transfer to the Constitutional Budget Reserve Fund (CBRF) due to Federal Energy Regulatory Commission decisions were not transferred during FY 18 through FY 21 and fund balances that should have remained in the CBRF were moved to the General Fund.

- The Department of Natural Resources did not transfer to the Alaska Permanent Fund all dedicated mineral lease revenues received during FY 18 and FY 19.
- Based on guidance from the attorney general, fund balances for certain subfunds were considered assigned instead of swept into the CBRF.

Single Audit Findings (Reference)

- 2021-019, 2021-064 (CBRF transfers)
- 2021-063 (Perm Fund transfers)
- 2021-008 (General Fund assigned balance)

MS. CURTIS stated there were three reasons for modifying the financial statement opinion, two of which the division believes will resolve themselves. She said in July the Legislative Budget and Audit Committee recommended pursuing a court resolution for taxes and royalties received as a result of those Federal Energy Regulatory Commission (FERC) decisions; therefore, a court interpretation of that issue is being pursued.

MS. CURTIS turned to the second issue, shown on slide 4, which read as follows [original punctuation provided, with some formatting changes]:

**2. Financial Statement Errors**

Significant Errors in Draft Statements

- Although improvements were noted regarding the FY 21 number and severity of errors, there were still significant errors and repeat findings. The Division of Finance is understaffed in terms of resources and training. Department accounting staff suffer from routine turnover and lack of experience.

Single Audit Findings (Reference)

- 2021-001, 2021-006, 2021-007, 2021-009, 2021-010, 2021-011, 2021-026, 2021-027, 2021-051, 2021-065, 2021-069

MS. CURTIS said she saw improvement when comparing the FY 20 and FY 21 financial statements; however, there were significant errors. She said this is a summary of 10-12 actual findings

merged into one area. She highlighted that the Division of Finance, which produces the statements, is understaffed and has inexperienced accountants, which impacts timing and quality. She noted that the legislature, in the last sessions, approved two new positions; those positions are yet to be filled, but once filled should positively effect both quality and timing.

[10:15:05 AM](#)

MS. CURTIS moved on to slide 5, which read as follows [original punctuation provided, with some formatting changes]:

### **3. Medicaid Eligibility Determinations**

Significant Errors in Accuracy and Timeliness of Eligibility Determinations

- Division of Public Assistance eligibility technicians did not process applications in a timely manner or redetermine eligibility when required for 32.5% of Medicaid cases tested and 72% of Children's Health Insurance Program (CHIP) cases tested.
- Inaccurate eligibility determinations found in 20% of Medicaid cases tested and 8% of CHIP cases tested.
- Special audit 06-30094-20 found that, during FY 19, the Department of Health and Social Services paid \$28 million in State general funds for ineligible benefits due to eligibility errors.

Single Audit Findings (Reference)

- 2021-045, 2021-046

MS. CURTIS directed attention to slide 6, which read as follows [original punctuation provided, with some formatting changes]:

### **4. Medicaid Behavioral Health**

Significant Errors With New Behavioral Health System and With Provider Screening

- New system had a defect, which caused claims to be paid despite invalid procedure code and modifier combinations.

- Logic flaws in new system resulted in paying for ineligible services. Further, the system paid several wrong providers and unenrolled providers.
- Certain behavioral health providers were not screened and enrolled in accordance with federal eligibility requirements.

Single Audit Findings (Reference)

- 2021-042, 2021-043, 2021-048

[10:16:07 AM](#)

MS. CURTIS, in response to Chair von Imhof, said the resulting financial loss did not add up to "a huge amount," and she said she could follow up with the exact number. The single audit is available online, she noted. She added that often it is not possible to determine the actual cost, just that there have been "logic flaws" producing errors.

[10:17:00 AM](#)

MS. CURTIS returned to the PowerPoint, to slide 7, which read as follows [original punctuation provided, with some formatting changes]:

**5. Temporary Assistance for Needy Families Program Deficiencies**

Material Weakness and Material Noncompliance Over Eligibility and Special Tests and Provisions

- 13 of 45 cases (29%) lacked documentation to support the request and use of data exchanges necessary for determining eligibility and benefit amount.
- 6 of 12 child support noncooperation alerts tested (50%) were not assessed a penalty to reduce benefits when determined necessary.
- 37 of 45 cases tested (82%) reported work activities that were inaccurate, unsupported, or unverified.
- Of 15 case files of clients that were not engaged in work activities and did not have a good cause exemption, 8 were not assessed a penalty, even though

documentation showed that a penalty should have been assessed, and 3 lacked sufficient documentation to determine whether a penalty should have been assessed.

Single Audit Findings (Reference)

- 2021-032, 2021-036, 2021-037, 2021-038

MS. CURTIS noted that the Temporary Assistance for Needy Families Program (TANF) is found in the new Department of Health's Division of Public Assistance, and the Legislative Audit Division has reached out to get the status on the type of action taken by the agency to address this issue. In response to Chair von Imhof, she said the federal government relies on the state audit of this program. The department provides corrective action. Notwithstanding that, the federal government will sometimes do its own review if it sees a problem not being addressed. She added that the federal government can assess a penalty, and the state can choose to use that amount of money instead toward corrective action. In response to a follow-up question, she said she does not think the path of communication between TANF and the federal government is searchable. The Legislative Audit Division receives copies of the management decision; however, the summary of prior year audit findings can be accessed in the back of the single audit, and that information is available to the public.

[10:19:38 AM](#)

MS. CURTIS returned to the presentation, to slide 8, which read as follows [original punctuation provided, with some formatting changes]:

#### **6. Alaska Mental Health Trust Authority**

2021 Audit Made Five Recommendations  
Audit Control Number 04-30099-21

1. The Authority's board of trustees should consider liquidating the Trust Land Office managed commercial real estate investments or transferring the investments to the Alaska Permanent Fund Corporation as inflation-proofing.
2. The board of trustees should develop written procedures to ensure that annual withdrawals are correctly calculated.

3. The board of trustees should develop written policies to ensure Trust income reserves are correctly determined.

4. The board of trustees should consider developing written policies that require inflation-proofing occurs annually if Trust income reserves are sufficient.

5. The board of trustees should develop written policies to annually evaluate whether Trust income must be transferred to the General Fund.

MS. CURTIS said these recommendations come out of the division's review of the use of trust cash principal for the purchase of commercial real estate investments instead of sending that principal to the Permanent Fund Corporation for investment. She explained that the FY 21 audit is a follow-up of the FY 18 audit. She recommended the Legislative Budget and Audit Committee reach out to the authority to request the current status of resolving these recommendations. She remarked that the authority has a lot of new trustees, and the chair that existed when the division last did the audit has moved on, as has the director.

[10:20:42 AM](#)

REPRESENTATIVE JOSEPHSON asked, "What is the [Alaska] Mental Health Trust Authority's disposition toward the argument that they shouldn't be doing this at all?"

MS. CURTIS responded that initially, back in 2018, the authority's response to the audit was that it was still evaluating whether to agree or disagree. She stated, "They have stopped doing it." She noted that the authority had transferred "a piece of the investments" - some reserves - to the authority, which definitely addressed the problem. She stated that the Legislative Audit Division had some concerns about that corrective action "because we felt it really took their reserves down to if it was a downturn in the market that might put them in a precarious position." Further, the division recognized that "they weren't inflation-proofing" in a timely and prudent manner, thus the division made a list of recommendations. She noted that the Trust Land Office posts these findings on its web site, with a response to the findings for public access. Ms. Curtis stated that she thinks "they were very cooperative" and

there was a team effort in figuring out what has been done and can be done. Further, she pointed out that disposing of commercial assets would be "something you'd want to do over time, you know, finding the right time to ... dispose of them."

[10:22:28 AM](#)

SENATOR STEDMAN said he thinks there had been some reluctance on liquidating the real estate assets. He noted that one or more of them have substantial negative cash flow performance issues. That said, he offered his understanding that "they're slowly working through the issues." He indicated that he thinks a current status update in January or February from the authority board to the legislature would "probably be a good idea." He offered his understanding that since the first audit, "they are moving forward" but with no real estate acquisitions, so there has been "a directional change."

[10:23:45 AM](#)

REPRESENTATIVE TUCK remarked that initial resistance to the audit resulted in slow response at first; however, "they're coming around." He recalled there had been a purchase of undesirable real estate primarily in Texas that later increased in value. He offered his understanding that "this money" was "supposed to have been deposited and invested through the Permanent Fund Corporation." He asked, "Is there any way that we could just turn over these assets to the Permanent Fund Corporation?"

[10:24:47 AM](#)

MS. CURTIS indicated she had spoken with the previous director of the Alaska Permanent Fund Corporation about that issue. She said that in the audit itself, she addresses "their reluctance to do that" and expresses concerns related to quality and the management of assets. She said, "So, [that] they did not want ... them is the gist that I got." She said she recommended a transfer and inflation-proofing as an option. She said she thinks the board is still trying to figure out "whether they want to sell them or not." It is a matter of timing, and considering the pandemic's impact on commercial real estate, it's really not the right time, she concluded.

[10:26:06 AM](#)

REPRESENTATIVE TUCK asked Ms. Curtis to confirm that by "they" she means the Alaska Permanent Fund Corporation doesn't want the assets. He said if the corporation does not want the assets, the only way to correct that is to sell them. He said he can understand the hesitancy to sell the assets when the market is currently not good. He suggested the committee let this process occur according to the best timing.

MS. CURTIS responded that legally the management of the assets is the responsibility of the authority. The legislature's role is more of an oversight. She indicated this was part of a settlement, which makes it difficult to change the law. She offered a big picture observation that "all of these board members that were involved in these decisions back in the day have all gone," and there is a new authority board that has learned from the results of the audit.

[10:27:29 AM](#)

MS. CURTIS returned to the presentation and discussed slide 9, which read as follows [original punctuation provided, with some formatting changes]:

## **7. Alcoholic Beverage Control Board**

2021 Audit Made Five Recommendations  
Audit Control Number 08-20127-21

1. The Department of Commerce, Community, and Economic Development (DCCED) commissioner should ensure the Alcohol and Marijuana Control Office (AMCO) staff vacancies are filled in a timely manner and the AMCO director should implement written licensing procedures.
2. The board should significantly enhance or replace its licensing database and automate the application process where possible.
3. The board and AMCO director should strengthen procedures for entering restricted purchasers in the statewide database of written orders.
4. The board and AMCO director should implement procedures to ensure municipalities receiving refunds of biennial licensing fees are actively enforcing alcoholic beverage laws.

5. The AMCO director should improve procedures and fill vacancies in a timely manner to ensure refunds to municipalities are appropriately reviewed.

MS. CURTIS directed attention to slide 10, which read as follows [original punctuation provided, with some formatting changes]:

**8. Board of Pharmacy Controlled Substance Prescription Database**

2021 Audit Made Three Recommendations  
Audit Control Number 08-20126-22

1. Applicable occupational boards and the Division of Corporations, Business and Professional Licensing (DCBPL) director should continue to coordinate efforts to improve the monitoring and enforcement of the Controlled Substance Prescription Database (CSPD) requirements.

2. DCCED's commissioner should allocate sufficient resources to ensure licensees holding a Drug Enforcement Administration registration number are consistently recorded in DCBPL's licensing database.

3. DCCED's commissioner should allocate sufficient resources to ensure the CSPD requirements are enforced.

MS. CURTIS noted that there had been numerous meetings of the House Finance Committee on this issue. She said the Department of Commerce, Community & Economic Development (DCCED) had secured funding to conduct a study to produce information to provide to the legislature, and she recommended that the Legislative Budget and Audit Committee ask about the status of that study.

MS. CURTIS concluded her presentation on slide 11, which read as follows [original punctuation provided]:

**Next Steps - LB&A Oversight**

Legislative Auditor sends letters on behalf of the LB&A Committee to the auditees asking for the status of corrective action. A summary of the responses will be presented at the December LB&A meeting. For those

audit findings that warrant consideration by other legislative committees, the findings will be forwarded to the appropriate committees for consideration during the 2023 legislative session.

[10:29:43 AM](#)

CHAIR VON IMHOF explained that the presentation was the action to a previous motion passed by the Legislative Budget and Audit Committee. She said it will be up to the new legislature to progress based on these findings. She said she thinks it will be important to work with the committee to determine what the next top findings will be.

[10:30:24 AM](#)

REPRESENTATIVE KAUFMAN, as a point of housekeeping, commented that "some of these are bundles of items"; therefore, the top eight items may end up segmented, because sometimes "the closure of one gets ahead of the closure of a second or the third."

[10:30:59 AM](#)

CHAIR VON IMHOF responded that the committee is in the infancy of this process, which would likely be tweaked going forward.

#### **EXECUTIVE SESSION**

[10:31:11 AM](#)

CHAIR VON IMHOF announced that the next order of business would be an executive session to consider the final audit report for the Alaska State Medical Board sunset and a preliminary audit report for the Board of Certified Direct-Entry Midwives sunset and the special audit of the Alaska State Commission for Human Rights.

[10:31:30 AM](#)

REPRESENTATIVE TUCK moved that the Legislative Budget and Audit Committee go into executive session under Uniform Rule 22(d)(3) for the discussion of matters that may, by law, be required to be confidential. He asked that the following persons remain in the room or online: Kris Curtis, the legislative auditor, and necessary staff to the auditor; any legislators not on the committee; staff for legislators that are on the committee; and

House Finance staff in Juneau for access to their office. There being no objection, it was so ordered.

[10:32:27 AM](#)

The committee took an at-ease from 10:32 a.m. to 11:21 a.m. for the purpose of executive session.

[11:21:16 AM](#)

CHAIR VON IMHOF called the Legislative Budget and Audit Committee back to order at 11:21 a.m. Representatives Josephson, Spohnholz, Tuck, Foster, and Kaufman and Senators Stedman, Micciche (via teleconference) and von Imhof were present at the call back to order. Senator Kiehl (via teleconference) was also present.

#### **FINAL AND PRELIMINARY RELEASE OF AUDITS**

[11:21:43 AM](#)

CHAIR VON IMHOF announced that the next order of business would be motions for the final and preliminary release of audits.

[11:21:55 AM](#)

REPRESENTATIVE TUCK moved that the Legislative Budget and Audit Committee release the State Medical Board Sunset Audit as a final audit report. There being no objection, it was so ordered.

[11:22:11 AM](#)

REPRESENTATIVE TUCK moved that the Legislative Budget and Audit Committee release the following preliminary audits to the agencies for response: the Department of Commerce, Community & Economic Development Board Certified Direct-Entry Midwives sunset audit; and the Office of the Governor Alaska State Commission on Human Rights special audit. There being no objection, the audits were released.

#### **REVISED PROGRAMS - LEGISLATIVE**

[Contains discussion of HB 281.]

[11:22:37 AM](#)

CHAIR VON IMHOF announced that the final order of business would be consideration of Revised Programs - Legislative.

CHAIR VON IMHOF noted that earlier that day, the Office of Management & Budget (OMB) withdrew four revised programs - legislative (RPLs), numbered 08-2023-0130 through 08-2023-0133 and replaced them with two RPLs, numbered 08-2023-0165 and 08-2023-0166. The other two RPLs on the schedule, relating to the Department of Natural Resources (DNR) and "the Judiciary Department" are unchanged.

[11:23:37 AM](#)

The committee took an at-ease from 11:23 a.m. to 11:28 a.m.

[11:28:30 AM](#)

CHAIR VON IMHOF named those available to speak to the RPLs.

[11:29:04 AM](#)

NEIL STEININGER, Director, Office of Management & Budget (OMB), Office of the Governor, explained that OMB had submitted four RPLs for the Department of Commerce, Community & Economic Development (DCCED) in order to distribute grants to seafood processors. The breakdown into four RPLs was to accommodate the overall grant amount from the U.S. Government of just over \$30 million and ensure this fit under the restrictions provided in HB 281 limiting RPLs to no more than \$10 million per RPL. Subsequently, it was determined that this manner of dividing the funds did not align with the standards set under the legislation; therefore, OMB has provided the two aforementioned replacement RPLs: one that falls within the Division of Community and Regional Affairs and one that falls within Serve Alaska, both entities housed within DCCED. He indicated that the two new RPLs would provide for at least \$21 million of the approximately \$31 million in grant awards to be distributed to seafood processors. He confirmed that the new two RPLs are numbered 08-2023-0165 and 08-2023-0166.

MR. STEININGER stated another RPL, [numbered 10-2023-5089], is for DNR, in the Division of Geological and Geophysical Surveys, and is related to an award from the Federal Emergency Management Agency (FEMA); another RPL, [numbered 41-2023-0001], is for the judicial system and is related to a Fairbanks Wellness Court enhancement project.

[11:30:56 AM](#)

CHAIR VON IMHOF reviewed that the original four RPLs were related to funds from the U.S. Department of Agriculture (USDA) Seafood Processors pandemic response due to COVID-19, and the money has been "trying to get out the door for the last year or so." She expressed her desire to issue the money sooner than later. She said the committee is trying to figure out a way to do this under the parameters of the aforementioned legislation. She asked Mr. Steininger to explain the delay in issuing the funds and how the new RPLs work with the parameters set forth by the legislature "last spring."

[11:32:42 AM](#)

MR. STEININGER named factors that led to the delay in distribution of funds. First, the federal award was delayed "a month or so" from the anticipated delivery early in the calendar year. Second, in attempting to issue the grant guidance, "we had some delays in our ability to actually set up the grant portal in order to have the grantees apply." Further, during that process some of the grantees requested an extension in time to provide their responses. Those factors resulted in OMB being unable to have the grant applications and determinations by the close of the fiscal year; this meant the appropriation had "turned," and it was no longer possible to issue those grants. He said OMB now has the applications and needs access to the funds in order to spend federal receipt authority to make the payments.

MR. STEININGER stated that the first set of RPLs would have exceeded the \$10 million restriction set by HB 281, because although they were four RPLs each for less than \$10 million, they all addressed the same appropriation item. The two RPLs replacing the original four address two separate items. They are the appropriation allocation and the allocation to Serve Alaska, both within the Division of Community and Regional Affairs. He said both allocations would be provided by the division as grant opportunities to fish processors throughout Alaska.

[11:35:25 AM](#)

CHAIR VON IMHOF clarified her wish to have the full \$35 million distributed to the food processors, and that the two replacement RPLs would get \$20 million to them, leaving the distribution of \$15 million a conundrum. She requested Megan Wallace discuss

this issue as it relates to an Alaska Supreme Court decision in Wielechowski v. State of Alaska and whether the Legislative Budget and Audit Committee can appropriate however it sees fit, regardless of statute.

[11:36:50 AM](#)

MEGAN WALLACE, Director, Legislative Legal & Research Services, Legislative Affairs Agency, stated that "the legislature remains the appropriating body." She continued:

The Legislative Budget and Audit Committee is an interim oversight committee, and under AS 37.07.080(h), which is also known as "the RPL process," the governor can submit an RPL asking for increase of an appropriation item based on additional federal, or other program receipts. And then LB&A has the power to review and approve those RPLs. If the LB&A committee does not approve or does not take action, there's a 45-day wait period before the governor can then proceed with expending the additional federal, or other program receipts requested in the RPL.

There are several legal issues with ... the two RPLs that are now before the Legislative Budget and Audit Committee based on my office's quick review of the two RPLs sent over this morning. The issues we have flagged really center on the ... RPL ... that is associated with the appropriation on page 5, line 18, of HB 281, and I believe that is RPL 08-2023-0166. And so, that RPL seeks to increase the appropriation for the Serve Alaska allocation. In HB 281, ... the legal issue with respect to that RPL is that while there are multiple RPLs that were submitted, from the text of the RPLs themselves, it just appears to be a singular program, and separating RPLs into multiple RPLs appears to be an attempt to circumvent that Section 77(e) of HB 281, which is now Chapter 11 SLA 2022, ... taking the limit of an increase, those two in appropriation, items FY 23, to no more than \$10 million. And so, what this really looks like is a \$20 million increase to this program, which was originally approved as an RPL back in December of 2021 by this committee using the appropriation authority for the [Division of] Community and Regional Affairs

allocation, which is the allocation that is used in RPL 0165.

The other issue that I see with using the Serve Alaska allocation is that it raises appropriation constitutional issues similar to the CARES Act RPLs that came before this committee back in 2020, in that there is no program for the Serve Alaska allocation that is currently used for this purpose. And the RPL statute, under [AS] 37.07.080(h), are arguably not as tended to be used to create appropriations; it's to be used to increase appropriations for items that the legislature has already appropriated for, and the ... legislature cannot delegate to a singular committee to make appropriations during the Interim.

[11:41:36 AM](#)

REPRESENTATIVE JOSEPHSON asked whether the opportunity would lapse or whether this matter could be attended to in mid- to late January.

[11:42:13 AM](#)

HANNAH LAGER, Acting Director, Division of Administrative Services, Department of Commerce, Community & Economic Development, explained that the division's concern with distributing the funding is "the continued function of the seafood processors." She indicated that the division has received a number of inquiries from processors anxious to receive the much needed funding. She added, "From the timing of their inquiries it appears that many of their fiscal years may end in December, and so that would be our largest concern would be with January - getting the funding in their current fiscal year."

[11:43:11 AM](#)

SENATOR STEDMAN spoke about collateral damage in the last budget cycle, "when we put the \$10 million [cap] on." He noted that this appropriation was "not even on the radar screen" the previous year, "so we end up with an issue in front of us today." He emphasized it is just a matter of sequence and timing to get the money distributed, and he opined that "we need to ... move this quickly as we can to disburse these funds like we have the other COVID relief funds throughout multiple appropriations, without tripping up litigation or disputes with

the administration to slow it down." That said, he also emphasized the need to follow statutory guidelines. He expressed concern about the potential of adding some of these funds into a supplemental bill, which although intended as "a fast-track supplemental" is not guaranteed to be quick. He concurred with Representative Josephson that although it is technically possible that the legislature can take quick action once it convenes as a body on an appropriation bill, it is highly unlikely because of the number of members with varying opinions and ideas for additions that result in "an out-of-control appropriation." He stated that he hopes the committee, collectively with the administration, moves forward today to "move as much money on these RPLs through the street as possible." He recommended addressing the "RPL ending in 166" and talking about how to "deal with the rest of them," and he emphasized that "the legislature thought this would be gone in the previous fiscal year, and here it is November, and it should have been sent out by July 1<sup>st</sup>."

[11:46:51 AM](#)

MS. LAGER, in response to Representative Spohnholz, proffered that the difference between the two RPLs is just the appropriation.

[11:48:00 AM](#)

REPRESENTATIVE SPOHNHOLZ expressed concern about the seafood processor industry facing difficulties because the legislature is failing to get the funds delivered. She expressed further concern that the committee may be circumventing statute by advancing two RPLs that are essentially the same, each with a \$10 million legal limit. She stated, "I think we would be getting ahead of ourselves by doing that."

[11:49:45 AM](#)

MS. LAGER, to a question from Representative Tuck regarding the total requested, said she does not have the total of the demand, but award amounts that have been calculated are 28 percent of each grantee's requested need, so over \$90 million has been identified. In response to follow-up questions, she said the largest calculated grant amount at this point is \$7.4 million for one grantee, with the smallest being just over \$800. She said the original RPL was passed on 12/15/21, after a delay of the application process from May. She informed Representative Tuck that Serve Alaska has a commission responsible for awarding

grants through the program, but those are grants that come through specific federal funding streams.

REPRESENTATIVE TUCK asked, "Could this be one of those federal funding streams?"

MS. LAGER answered no.

[11:52:43 AM](#)

REPRESENTATIVE TUCK commented that while the legislature has appropriation authority, the Legislative Budget and Audit Committee does not. He said because of "poor past practices of this committee" the legislature has put a limit on how much the Legislative Budget and Audit Committee can approve during the Interim. He said he has no problem with "the first" RPL but that the "second one" is "a bit of a stretch." He spoke further about timing with the legislature.

[11:54:46 AM](#)

SENATOR STEDMAN commented on the cap and reiterated that the funds did not get out in a timely manner, and indicated that the Legislative Budget and Audit Committee is "on the front lines during the Interim."

CHAIR VON IMHOF suggested it would make sense to pass RPL 08-2023-0165, for \$10 million. She said this money has been in limbo for a while. She pointed out that the committee would meet again in December 2022 and could address the remaining \$25 million then. She said, "This money that we're talking about was passed ... December 21, 2020, under the Trump Administration and signed into law on 12/27/20." She said HB 281 specifically calls out the 117<sup>th</sup> and 118<sup>th</sup> Congress in terms of applying the limitations; however, these funds are from the 116<sup>th</sup> Congress. For that reason, she suggested the committee may decide it has the wherewithal to put in the other \$25 million through the original process. She suggested everyone educate themselves between now and the next meeting in order to make a "timely, thoughtful decision."

[11:57:43 AM](#)

REPRESENTATIVE TUCK spoke to the function of the Finance Committee in ensuring money goes where needed. He said an RPL process done on the fly does not allow him to do his homework. He emphasized the committee had just received the two

replacement RPLs. He indicated that he has a lot of questions, and he further indicated approval of Chair von Imhof's suggested process going forward.

CHAIR VON IMHOF remarked that considering the unusual circumstances, it would benefit the committee to extend the discussion "30 more days."

[11:59:47 AM](#)

REPRESENTATIVE JOSEPHSON agreed with the extension of time but emphasized that he would "strictly construe this law." He said the Legislative Budget and Audit Committee has existed for 60 years and has not been challenged in court, but he agrees with Representative Tuck that its members stand for the other members of the legislature during Interim. Further, the legislature's attorney has given two reasons that the RPLs are problematic.

[12:00:49 PM](#)

CHAIR VON IMHOF said she thinks it is important to weigh all evidence between now and the next meeting. She said she thinks the committee is looking at "a disaster declaration," and the committee "kicked it forward," and there was some question that that may have been a violation of statute and authority, but the committee "went ahead and did it anyway" and then ratified it. Whether the current situation can have the same circumstances applied to it is up for debate, she stated.

[12:01:46 PM](#)

MR. STEININGER, at the invitation of Chair von Imhof, addressed the remaining RPLs in the committee packet. He reviewed that RPL 10-2023-5089 is for the Division of Geological Geophysical Surveys, within the Department of Natural Resources. The award is from FEMA for an amount just under \$3 million. He further reviewed that RPL 41-2023-0001 is for the Judiciary in the amount of \$128,300 to work on the Fairbanks Wellness Court enhancement project.

[12:02:56 PM](#)

REPRESENTATIVE TUCK moved that the Legislative Budget and Audit Committee approve the following revised programs - legislative: RPL 08-2023-0165, Department of Commerce, Community & Economic Development, USDA Seafood Processors pandemic response and safety block grant program, for \$10 million for federal

operating receipts; RPL 10-2023-5089, Department of Natural Resources, Division of Geological and Geophysical Surveys, for \$2.96 million of federal operating receipts; and RPL 41-2023-0001, Judiciary, Fairbanks Wellness Court enhancement project, for [\$128,300] for federal operating receipts.

[12:03:58 PM](#)

REPRESENTATIVE KAUFMAN asked for confirmation on the amount of the RPL for Judiciary.

REPRESENTATIVE TUCK confirmed it should be for \$128,300.

[12:04:38 PM](#)

CHAIR VON IMHOF announced that there being no objection, the RPLs were approved.

[12:05:08 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the 12:05 p.m. meeting was adjourned at 12:05 p.m.