

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

Anchorage, Alaska

August 30, 2023

8:23 a.m.

MEMBERS PRESENT

Representative Ben Carpenter, Chair
Representative DeLena Johnson (via teleconference)
Representative Sarah Vance
Representative Frank Tomaszewski (via teleconference)
Representative Andy Josephson
Senator James Kaufman (via teleconference)
Senator Scott Kawasaki (via teleconference)

MEMBERS ABSENT

Senator Bert Stedman, Vice Chair
Senator Bill Wielechowski
Senator Lyman Hoffman
Representative Mike Cronk (alternate)
Senator Click Bishop (alternate)

OTHER MEMBERS PRESENT

Representative Julie Coulombe

COMMITTEE CALENDAR

APPROVAL OF MINUTES
RPL(S)
EXECUTIVE SESSION
PRELIMINARY AUDIT RELEASE
PROCUREMENT
ALASKA MENTAL HEALTH TRUST AUTHORITY
OTHER BUSINESS

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

ALEXEI PAINTER, Director
Legislative Finance Division
Legislative Agencies and Offices

Juneau, Alaska

POSITION STATEMENT: Presented RPL 18-2024-0351.

MEGAN KOHLER, Administrative Director
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion on RPL 18-2024-0351.

JASON OLDS, Director
Division of Air Quality
Department of Environment Conservation
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of an RPL.

LAUREN HUGHES, Staff
Representative Ben Carpenter
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Read a document regarding the Alaska Mental Health Trust Authority request.

KRIS CURTIS, Legislative Auditor
Division of Legislative Audit
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Answered questions during discussion of the Alaska Mental Health Trust Authority request.

ACTION NARRATIVE

[9:06:46 AM](#)

CHAIR BEN CARPENTER called the Legislative Budget and Audit Committee meeting to order at 9:06 a.m. Representatives Johnson (via teleconference), Vance, Tomaszewski (via teleconference), Josephson, and Carpenter and Senators Wielechowski (via teleconference) and Kaufman (via teleconference) were present at the call to order.

^APPROVAL OF MINUTES

APPROVAL OF MINUTES

[9:08:13 AM](#)

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

9:08:23 AM

REPRESENTATIVE KAUFMAN moved to approve the minutes from the 8/2/23 Legislative Budget and Audit Committee meeting. There being no objection, the 8/2/23 minutes were approved.

^RPL(S)

RPL(S)

9:08:45 AM

CHAIR CARPENTER announced the next order of business would be consideration of RPLs.

9:09:13 AM

ALEXEI PAINTER, Director, Legislative Finance Division, Legislative Offices and Agencies, presented RPL 18-2024-0351, Department of Environmental Conservation, Air Quality Appropriation and Allocation, for \$900,000 of federal funds, code 1002, an operating budget RPL. He offered the background that the Department of Environmental Conservation (DEC) received a federal grant of \$3 million to conduct the community emissions inventory project. The award was granted in May 2023; therefore, it was too late to be included in this year's state budget. He continued:

The agency reports that this project will expand the available community emissions inventory data for criteria pollutants and green house gasses and will culminate in community-level breakdown of source data, methodology, and aspects. It will also include an online geospatial dashboard and modeling tool. This RPL expands federal receipt authority and air quality appropriation and allocation from \$2 million to \$2.9 million.

MR. PAINTER said the agency plans to accept the full grant amount of \$3 million over the four-year period that the grant runs, but that will require additional receipt authority in fiscal year 2025 (FY 25); it is expected to be part of the governor's budget for that year. He said that the agency estimates that it needs \$1.1 million of federal authority this year; it has \$200,000 in existing authority that it can use for

this, "and then this RPL has \$900,000 to use that \$1.1 million." Mr. Painter stated that the Legislative Finance Division does not see any technical issues with this RPL; it fits withing the existing activities of the division and expands an existing fund source.

[9:11:29 AM](#)

REPRESENTATIVE VANCE asked whether the RPL is required to fulfill any statutory requirements.

MR. PAINTER deferred to Megan Kohler of DEC.

[9:12:09 AM](#)

MEGAN KOHLER, Administrative Director, Department of Environmental Conservation, indicated that currently the intent is to accept federal dollars, which will provide better baseline data, without which some communities will not be eligible. In response to a follow-up question, she indicated that the funds relate to greenhouse gas emissions and "additional criteria pollution" - the ability to determine air quality in rural communities. She explained that having more data helps DEC "understand on a more granular level what the data looks like."

REPRESENTATIVE VANCE expressed concern that this level of information may not be helpful to Alaskans at this time, and she said she does not support the RPL at this time.

[9:16:22 AM](#)

SENATOR TOMAZEWSKI asked if receipt of the funding would result in future obligations by the state to continue this type of funding.

MS. KOHLER answered no. She said the data would provide baseline data that the department does not have currently, which will allow communities to request funding through anticipated future federal dollars for projects related to greenhouse gas and emissions.

[9:17:20 AM](#)

The committee took an at-ease from 9:17 a.m. to 9:20 a.m.

[9:20:06 AM](#)

CHAIR CARPENTER sought further questions from committee members.

[9:20:33 AM](#)

REPRESENTATIVE JOSEPHSON commented related to the precedence of such an RPL, and he offered his understanding that the desire for baseline data is to discover what is achievable in Alaska; there would be no strings attached. He asked that the RPL be approved.

[9:22:10 AM](#)

REPRESENTATIVE JOHNSON mentioned opportunity costs and questioned what the outcome might be if the RPL were not approved. For example, would this be necessary in order to go forward with any other types of research or projects.

[9:23:16 AM](#)

MR. PAINTER, in response to Representative D. Johnson and Chair Carpenter, spoke to the issue of opportunity costs. He explained that the RPL statute states that 45 days shall lapse before commencement of the revised programs unless the Legislative Budget and Audit Committee earlier recommends that the state "take part in the activity." This means that after 45 days, the governor may choose to uphold an RPL that the legislature did not support. He continued:

In this case, since the agency does have \$200,000 of existing receipt authority, they may not face timing issues with that, ... because essentially they would have to wait a month from now. But the governor has also, in the past, indicated that they do take the recommendation of the committee and won't necessarily go forward when the committee recommends it not go forward. It's not a guarantee that the government will go forward.

[9:27:05 AM](#)

MS. KOHLER suggested Jason Olds could address opportunity costs further.

[9:27:11 AM](#)

JASON OLDS, Director, Division of Air Quality, Department of Environment Conservation, advised that "this funding allows more

work to continue for the planning phase of these Inflation Reduction Act grant funds." He added, "They're a sort of competitive grant process that's scheduled to take off sometime early next year." He explained that not being granted those funds could significantly hamper DEC's ability to proceed with the planning phase for contract work "and some of our partnership to prepare for those competitive grant processes," which could jeopardize the assets of those 4 billion federal dollars to community tribes.

[9:28:23 AM](#)

CHAIR CARPENTER asked Mr. Olds to describe for the committee the purpose of the funds.

MR. OLDS stated that these funds typically are built for emissions from energy sector pollutants or infrastructure projects where a baseline needs to be established to show what communities' proposals would do to reduce baseline emissions. He said the baseline emissions are provided to communities that aren't able to produce them themselves so that they can compete against other communities on projects that are eligible for those funds. He explained that larger communities have already been able to fund their baseline data, and smaller communities will be left behind if they can't get these resources.

CHAIR CARPENTER asked Mr. Olds to speak regarding the Fairbanks area's air quality issue resulting from wood stove use.

MR. OLDS replied, "Those would be standards for national ambient air quality, and this is non-regulated pollutants - greenhouse gasses." He explained that there is not a regulatory "hook or action" that would occur that "would trigger any sort of attainment process or further regulations from this baseline."

[9:33:09 AM](#)

REPRESENTATIVE JOSEPHSON asked whether, if Alaska does not take the federal funds, another state would "come into the cue and take it from us."

MR. OLDS offered his understanding that, yes, states and tribes "have all lined up for these dollars."

[9:34:58 AM](#)

The committee took a brief at-ease 9:35 a.m.

[9:35:44 AM](#)

REPRESENTATIVE VANCE asked for clarification that the baseline for emissions is a necessary component to eligibility for grant monies.

MR. OLDS answered that is correct. He added, "They would have to ... compare the reductions of their project against something with the granular level of details necessary for ... competitively bidding." In response to a follow-up question, he said there are no sufficiency standards in terms of actual air quality. He reiterated that [the RPL] would allow DEC to work with the smaller communities to establish baseline emissions so that they can apply for the grants.

[9:38:29 AM](#)

REPRESENTATIVE JOSEPHSON offered past processes related to RPLs.

[9:39:46 AM](#)

REPRESENTATIVE VANCE moved that the Legislative Budget and Audit Committee approve RPL 18-2024-0351. There being no objection, it was so ordered.

[9:40:14 AM](#)

The committee took a brief at-ease at 9:40 a.m.

^EXECUTIVE SESSION

EXECUTIVE SESSION

[9:40:39 AM](#)

CHAIR CARPENTER announced that the next order of business was executive session.

[9:41:05 AM](#)

The committee took an at-ease from 9:41 a.m. to 9:47 a.m.

[9:47:08 AM](#)

CHAIR CARPENTER asked Representative Vance for a motion.

[9:47:28 AM](#)

REPRESENTATIVE VANCE moved that the Legislative Budget and Audit Committee go into executive session under Uniform Rule 22(b)(3) for the discussion of matters that may, by law, be required to be confidential. She asked that the following persons remain in the room or online: The legislative auditor and, if necessary, staff for the auditor; any legislators not on the committee; and staff of legislators on the committee. There being no objection, it was so ordered.

[9:47:59 AM](#)

The committee took an at-ease from 9:48 a.m. to 10:54 a.m. for the purpose of executive session.

[10:54:27 AM](#)

CHAIR CARPENTER called the Legislative Budget and Audit Committee back to order at 10:54 a.m. Present at the call back to order were Representatives Vance, Tomaszewski, via teleconference, Josephson, and Carpenter and Senators Wielechowski, via teleconference and Kaufman, via teleconference. Senator Kawasaki arrived via teleconference as the meeting was in progress. Also present was Representative Coulombe.

^PRELIMINARY AUDIT RELEASE

PRELIMINARY AUDIT RELEASE

[10:56:12 AM](#)

CHAIR CARPENTER announced the next order of business would be preliminary audit release.

[10:57:50 AM](#)

REPRESENTATIVE VANCE moved that the Legislative Budget and Audit Committee release to the Department of Law the preliminary audit related to Janus, as presented. There being no objection, it was so ordered.

[10:58:19 AM](#)

REPRESENTATIVE VANCE moved that the Legislative Budget and Audit Committee release the preliminary audit on Big Game Commercial Services Board Sunset, Department of Commerce, Community &

Economic Development, as presented. There being no objection, it was so ordered.

^PROCUREMENT

PROCUREMENT

[10:58:52 AM](#)

CHAIR CARPENTER announced that the next order of business would be procurement.

[10:58:57 AM](#)

REPRESENTATIVE VANCE moved that the Legislative Budget and Audit Committee approve the legislative auditor to contract for a review of the management structure of the Office of Children's Services for an amount not to exceed \$518,000. There being no objection, it was so ordered.

[10:59:35 AM](#)

REPRESENTATIVE VANCE moved that the Legislative Budget and Audit Committee authorize the legislative auditor to amend the March 2022 contract with Berry, Dunn, McNeil, & Parker, LLC for information technology expertise to extend the contract for the review of the FY 24 general and application controls of the state's accounting and reporting systems for an increase in original contract amount not to exceed \$175,000. There being no objection, it was so ordered.

^ALASKA MENTAL HEALTH TRUST AUTHORITY REQUEST

ALASKA MENTAL HEALTH TRUST AUTHORITY REQUEST

[11:00:18 AM](#)

CHAIR CARPENTER announced the next order of business would be discussion of the Alaska Mental Health Trust Authority request.

[11:00:31 AM](#)

The committee took an at-ease from 11:00 a.m. to 11:02 a.m.

[11:02:02 AM](#)

LAUREN HUGHES, Staff, Representative Ben Carpenter, Alaska State Legislature, read a memorandum from Chair Carpenter [included in

the committee packet], which read as follows [original punctuation provided]:

In response to concerns over management of the Alaska Mental Health Trust, an audit was requested in 2016. After completing the audit in 2018, the Legislative Auditor concluded that the Alaska Mental Health Trust Authority's Board of Trustees violated State statutes and terms of the State v. Weiss settlement by diverting \$44.4 million in cash principal from the Alaska Permanent Fund Corporation (APFC). The audit found that despite statutory requirements that Trust principal be managed and invested by the APFC, the Authority's Board of Trustees suspended transfers of cash principal to the APFC for almost 10 years. Instead of transferring cash to the APFC for investment, \$39.5 of \$44.4 million was directly invested in seven commercial real estate properties (five located out-of-state) using the Trust Land Office within the Department of Natural Resources to facilitate the commercial real estate investment transactions and to manage the properties.

A follow-up audit was requested in 2020 to evaluate the Authority's corrective actions including, in part, the status of the commercial real estate investments and the Authority's intent regarding future management of the investments. The audit found that the Authority used Trust income to restore the Trust cash principal illegally diverted from the APFC and found that the Department of Natural Resources Trust Land Office continued to manage the commercial real estate investments, which were considered Trust income investments after the transfer. The audit criticized this decision on the basis that the Trust Land Office did not have expertise in financial investing, particularly knowledge and expertise in managing a nation-wide commercial real estate investment program. The audit also raised concerns that converting Trust income into illiquid assets may negatively impact the Authority's ability to meet its spending goals in a down market. The follow-up audit recommended the Board of Trustees consider liquidating the commercial real estate investments or transferring the investments to the APFC as inflation-proofing.

During the 2023 legislative session, the Authority reported that the commercial real estate investments continued to be managed by the Trust Land Office with the assistance of a third-party real estate advisor. Since that time, it has come to my attention that the Authority's Board of Trustees terminated the agreement with its third-party real estate advisor. It has also come to my attention that the commercial real estate properties are not subject to independent audits, and it has been alleged that related financial information is not accurate. It has also been alleged that the Trust Land Office has not complied with the Board of Trustees approved management policies and that their activities are not subject to prudent governance by the Trustees. Given these concerns and the importance of managing the Alaska Mental Health Trust Fund for future generations of trust beneficiaries, I request an audit be approved to include the following objectives:

- Evaluate the Trust Land Office's compliance with Trustee approved management policies.
- Evaluate the financial health of the commercial real estate properties.
- Examine the Board of Trustee's oversight of the Trust Land Office's operations.
- Follow up on any other related concerns the Legislative Auditor identifies during the audit

[11:06:28 AM](#)

REPRESENTATIVE VANCE asked whether this is the best process through which to use legislative authority "to encourage corrective action by the board" and at what point it would be appropriate to engage the court to resolve this.

[11:07:11 AM](#)

KRIS CURTIS, Legislative Auditor, Division of Legislative Audit, Legislative Offices and Agencies, explained that the State v. Weiss settlement had established the mechanism of managing the trust; it established the Alaska Mental Health Trust Authority (AMHTA) as the fiduciary of the fund; it is AMHTA's responsibility to ensure the fund is managed prudently. While the legislature has its role in appropriating, the fund has its role in managing the investment, and the Department of Natural Resources (DNR) has its role in managing the land corpus. She

indicated that the second audit followed up on the corrective action from the first [audit], and the Legislative Audit Division concluded that legally, what AMHTA did, in terms of using trust income to reconstitute the fund principal was "fine," except that the division has "some criticisms of what it could mean in the future," in regard to illiquid income investments, which aren't readily available to meet the needs of an offiiciary. As written in its memorandum, the division also believes that the Trust Land Office was the appropriate entity to manage a nationwide (indisc.) program. Ms. Curtis noted that in AMHTA's response, the authority highlighted a third-party advisor that had assisted in prudently managing its investments. She said it is the advisor portion that is no longer there, "or at least we've been led to believe."

REPRESENTATIVE VANCE asked for the timeline of this particular audit.

MS. CURTIS answered that because of two other significant projects, she does not envision this audit starting until a year and a half from now.

[11:10:04 AM](#)

REPRESENTATIVE TOMASZEWSKI expressed concern about the seven properties and asked if there had been any consideration regarding who owned the properties.

MS. CURTIS answered that the first audit studied how the purchase came about and how it was done. The division did look at ethics issues throughout the board's actions and has "some things to say," but "nothing conclusively about the legality of the purchases." She said the division's criticism pertains mainly to the focus on commercial real estate and lack of diversification; three of the commercial properties were in Texas. She said further that there was a lack of documentation to show the process that led to the purchases in Texas. She said the division made a lot of recommendations about AMHTA's external polices and hired an external company to evaluate those policies. She said she would send to the committee a link to the first and second audits.

[11:12:08 AM](#)

REPRESENTATIVE JOSEPHSON asked about the date of the State v. Weiss settlement.

MS. CURTIS answered that litigation lasted 10 years, and she recollected the settlement occurred in 1992 and resulted in rules laid out regarding the reconstituting of the trust. She explained that statute was woven into the settlement; therefore, the state is "a bit limited in altering those statutes."

REPRESENTATIVE JOSEPHSON expressed support for the language of the audit but expressed incredulity that "we have to do this." He said he is surprised that the Alaska Permanent Fund Corporation never asked where the resources it was supposed to receive were. He said he thought the authority had been "sufficiently admonished" and that it was going to "stop doing this."

MS. CURTIS expressed she had hoped the last audit would have been the final one. She said the Alaska Permanent Fund Corporation does not see itself as having any responsibility to make sure the money it is given is "complete and accurate." It is an investment corporation that invests whatever money it is given.

REPRESENTATIVE JOSEPHSON speculated that there is nothing in law that states that the hiring of a third-party real estate advisor is curative.

MS. CURTIS replied that there are prudent investor laws that guide fiduciary action regarding trusts. She said the boards have adopted certain acts of management policy that should be governing the actions of "the trust's land office." She indicated that she would need to look into it, which is why the committee has been presented with the audit request.

[11:16:03 AM](#)

CHAIR CARPENTER said he is recommending a third audit to be reviewed by the committee.

MS. CURTIS indicated the committee could also write a letter.

CHAIR CARPENTER said he chose not to go with a letter but instead an audit request.

[11:18:24 AM](#)

REPRESENTATIVE VANCE moved that the Legislative Budget and Audit Committee request an audit of the Alaska Mental Health Trust Authority. There being no objection, it was so ordered.

^OTHER BUSINESS

OTHER BUSINESS

[11:18:51 AM](#)

CHAIR CARPENTER announced that the final order of business would be in the category of other business.

CHAIR CARPENTER offered his recognition to Linda Day, who was retiring after 25 years with the Legislative Audit Division, and he thanked her for her service to the state.

[11:19:36 AM](#)

ADJOURNMENT

There being no further business before the committee, the Legislative Budget and Audit Committee meeting was adjourned at 11:19 a.m.