

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3324

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SB 82/

SB 83

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DEVELOPMENT

Change Record Detail With Description
Department of Education and Early Development

Scenario: FY2007 Supplemental - Governor (5770)
 Component: School Finance & Facilities (2737)
 RDU: Education Support Services (400)

Scenario/ Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP
FY2007 Supplemental - Governor												
Lawsuit - Moore vs. State												
	Suppl	100.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0	0	0
1004 Gen Fund	100.0											
Supplemental funding of \$100.0 general fund receipts is requested to cover legal and expert services due to the Moore vs. State lawsuit. The lawsuit pertains to adequate funding levels for school districts, and these costs are related to services already provided for trial work.												
Totals		100.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0	0	0

Sec. 4(a)

Change Record Detail With Description
Department of Education and Early Development

Scenario: FY2007 Supplemental - Governor (5770)
 Component: Mt. Edgecumbe Boarding School (1060)
 RDU: Mt. Edgecumbe Boarding School (64)

Scenario/ Change Record	Trans Title Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP
FY2007 Supplemental - Governor												
Teachers Education Association of Mt. Edgecumbe Arbitration Award												
	Suppl	107.9	107.9	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1004 Gen Fund	107.9											
<p>This is a one-time payment for an arbitration award issued on March 4, 2005. The arbitrator interpreted the Teachers Education Association of Mt. Edgecumbe (TEAME) bargaining unit agreement in a manner that was neither anticipated nor consistent with the monetary terms previously reported to the legislature. With the issue resolved, Mt. Edgecumbe currently is paying the correct amount. However, these monies are owed to those who were on payroll at the time of the complaint.</p>												
Totals		107.9	107.9	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0

Sec. 4(b)

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Summary of Activity
TEAME V. State 05-T-108

March 4, 2005 an arbitration award was issued by Arbitrator Howell Lankford, in this award the Arbitrator interpreted the Teachers Education Association of Mount Edgecombe (TEAME) contract in a manner that was neither anticipated nor consistent with the monetary terms previously reported to the Legislature.

As a result, the Department of Administration submitted the increased monetary terms to the legislature and the Office of Management and Budget in May 2005. No action was taken to approve these terms requiring appropriation. (See attached packet)

July 18, 2005 the National Education Association representing the Teachers filed a petition to enforce the Arbitrators award with the Alaska Labor Relations Agency (ALRA) claiming that the State did not request funding from the legislature in a timely manner.

February 13, 2006 the ALRA issued Decision and Order No. 277 dismissing and denying the petition. There has been no further action taken on this case since the issuance of D&O 277. It was not resubmitted to the Legislature nor has payment been made to date.

I was notified on December 14, 2006 by Jan DeYoung, Assistant Attorney General at Department of Law that NEA had retained counsel to seek payment of this award. The Department of Law's recommendation is to resubmit the award for legislative approval. Failure to make reasonable efforts to obtain funding from the legislature could be construed as bad faith or an unfair labor practice under AS 23.40.110 (a). It is DOL's opinion that the union recourse would likely be an enforcement action in superior court.

Please let me know if you have questions.
Dianne Kiesel 465-4429

1/24/07 DKiesel

Sec. 4(b)

**ALASKA LABOR RELATIONS AGENCY
3301 EAGLE STREET, SUITE 208
ANCHORAGE, ALASKA 99510-7026
(907) 269-4895
Fax (907) 269-4898**

TEACHERS EDUCATION ASSOCIATION)
MOUNT EDGEcombe,)
NEA-ALASKA, NEA,)
Complainant,)
vs.)
STATE OF ALASKA)
Respondent.)

CASE NO. 05-1398-CBA

RESPONDENT'S RESPONSE TO PETITION TO ENFORCE CONTRACT

- 1) Respondent admits that the Petitioner (hereinafter TEAME) is an employee organization within the meaning of AS 23.40.250 (5).
- 2) Respondent admits that it is a public employer within the meaning of AS 23.40.250 (7).
- 3) Respondent admits that the bargaining unit in question is Teachers Education Association of Mount Edgecumbe (TEAME).
- 4) Respondent denies that date of certification of the unit was 1992. Respondent submits that the parties mutually agreed to recognition in 1994.
- 5) Respondent admits that the expiration of the current agreement is June 30, 2006.
- 6) Respondent admits that the collective bargaining agreement Article 5 Section 5 states in part, "... Should either party fail or refuse to abide by the decision of the arbitrator, the prevailing party shall be free to take whatever action it deems necessary, and such action will not be considered in violation of this agreement." The Respondent also submits that Article 5 Section 5 further states, "...The arbitrator shall have no authority to rule contrary to, to amend, add to, subtract from, or

eliminate any terms of this agreement. The arbitrator shall have the power to return a grievant to employee status with or without restoration of back pay, or mitigate the penalty as equity suggests under the facts."

- 7) Respondent admits that the parties engaged in an arbitration hearing on January 31, 2005 and that an award was issued on March 4, 2005.

Respondent denies that it was untimely in its submission to the Legislature. The respondent believes that Arbitrator exceeded his authority when he awarded the teachers pay for time within the "work day" for which they were already receiving compensation, further there were no contractual provisions for the pay ordered by the Arbitrator. Based on the Respondents position, the award required review from the Department of Law and ultimately on March 23, 2005 the Respondent filed a Motion to Reconsider. The Respondent received the denial of Motion to Reconsider on April 21, 2005.

Respondent denies that the Complainant has not been advised of the status of the pending obligation. On April 29, 2005 the Respondent communicated to the complainant, by email " *We are working on the calculations since the contract only addresses per diem in a daily formula*". The totality of the sum had to be determined prior to submission for legislative approval. On May 3, 2005 the monetary terms were submitted to the legislature for approval. On May 6, 2005 the Respondent forwarded to the Complainant, in its entirety, the packet that was submitted to the Legislature.

Respondent denies speaking with Willie Anderson on July 13, 2005. However, admits advising Mr. Anderson on July 14, 2005 that the information was submitted to the Legislature and that it had not been advised of any action taken.

The respondent adamantly denies that it has made any attempt to "block" the honoring of the arbitrators award.

Respondent asserts the following defenses:

The March 4, 2005 arbitration award interpreted the TEAME contract in a manner that was neither anticipated nor consistent with the monetary terms previously reported to the legislature. The Respondent had interpreted the language to mean that the teachers would be afforded preparation time, within the contractual eight (8) hour day, equivalent to a class period.

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The cost resulting from the award was \$107,865.28. In accordance with the Alaska Labor Relations pamphlet no. 900, Sec. 23.40.215 and Sec. 23.40.250 (4) the arbitrator's award was submitted to the Legislature in a timely manner.

The Respondent has no authority to compel the Legislature to respond to supplemental amendments in a specified period of time.

For the forgoing reasons, Respondent requests that this petition be denied.

Respectfully submitted on behalf of the State of Alaska on this 22nd day of July, 2005:

ARTHUR CHANCE
DIRECTOR

By: Dianne Kiesel
Dianne K. Kiesel
Labor Relations Analyst
Department of Administration
P.O. Box 110220
Juneau, Alaska 99811-0220
(907) 465-4404

I hereby certify that on this 22nd day of July 2005 a true and correct copy of this document was faxed and mailed to ALRA and TEAME.

Junita Rauch
Junita Rauch

STATE OF ALASKA

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FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF ADMINISTRATION

DIVISION OF LABOR RELATIONS

P.O. BOX 110220
JUNEAU, ALASKA 99811-0220
PHONE: (907) 465-4404
FAX: (907) 465-2269

May 6, 2005

Willie E. Anderson
UniServ Director NEA- Alaska
114 Second ST
Juneau, AK 99801

Dear Mr. Anderson,

Re: Arbitration Award from Howell Lankford

Enclosed is the packet that was submitted for legislative approval in regard to the above arbitration award. NEA will be notified once legislative action is taken.

Sincerely,



Art Chance
Director

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

Sec. 4(b)
FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110020
JUNEAU, ALASKA 99811-0020
PHONE: (907) 465-4660
FAX: (907) 465-3008

May 4, 2005

The Honorable Lyda Green
The Honorable Gary Wilken
The Honorable Mike Chenault
The Honorable Kevin Meyer
Alaska State Legislature
State Capitol
Juneau, AK 99801

Dear Finance Committee Co-Chairs:

Please consider the following late-breaking supplemental amendment:

Amend the Dept. of Education and Early Dev. section by adding a new subsection to read:

() The sum of \$107,865.28 is appropriated from the DEED CIP fund equity account to the Department of Education and Early Development, Mt. Edgecumbe boarding school, for increased operating costs resulting from a recent arbitrator's decision regarding Teachers Education Association Mt. Edgecumbe (TEAME) compensation that reinterpreted the monetary terms previously reported to, and approved by, the legislature, for the fiscal year ending June 30, 2005.

(needs a retroactive effective date of July 1, 2004)

Back-up information on the amendment is attached along with an updated spreadsheet with the new amendment in bold. If you have any questions, please call me (465-4660) or Joan Brown (465-4681).

Sincerely,

Joan Brown
for Cheryl Frasca
Director

cc: David Teal
Legislative Finance

STATE OF ALASKA

Sec. 4(b)

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF ADMINISTRATION

DIVISION OF LABOR RELATIONS

P.O. BOX 110220
JUNEAU, ALASKA 99811-0220
PHONE: (907) 465-4404
FAX: (907) 465-2269

May 2, 2005

The Honorable Ben Stevens
Alaska State Senate
Senate President
State Capitol
Juneau, Alaska 99801-1182

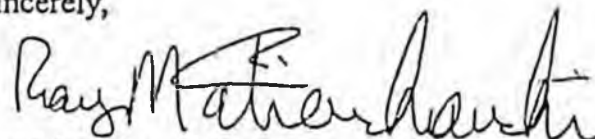
Re: Increase to monetary terms of the July 1, 2004- June 30, 2006 Bargaining Agreement between the State and the Teachers Education Association Mt. Edgecombe (TEAME) due to recent Arbitration Award

Dear Senator Stevens:

In a recent arbitration award issued on March 4, 2005 by Arbitrator Howell Lankford he interpreted the TEAME contract in a manner that was neither anticipated nor consistent with the monetary terms previously reported to the legislature. The State had and has interpreted the language to mean that the teachers would be afforded preparation time, within the contractual eight (8) hour day, equivalent to a class period.

Pursuant to AS 23.40 215 this award constitutes a monetary term and must be approved by the legislature. Attached please find the documentation sent to Office of Management & Budget, the request for an appropriation will be submitted separately.

Sincerely,



Ray Matiashowski
Commissioner

Enclosure

Memorandum

Department of Administration
Office of the Commissioner

Sec. 4(b)

To: Cheryl Frasca, Director
Office of Management & Budget

Date: May 3, 2005

From: Ray Matiashowski
Commissioner

Phone: 465-5671

Ray Matiashowski

Subject: Increase to monetary terms of the July 1, 2004- June 30, 2006 Bargaining Agreement between the State and the Teachers Education Association Mt. Edgecombe (TEAME) due to recent Arbitration Award.

Terms Requiring Appropriation.

I. Change in Productive Work Hours.

In a recent arbitration award issued on March 4, 2005 by Arbitrator Howell Lankford (attached) he interpreted the TEAME contract in a manner that was neither anticipated nor consistent with the monetary terms previously reported to the legislature. The State had and has interpreted the language to mean that the teachers would be afforded preparation time, within the contractual eight (8) hour day, equivalent to a class period.

The arbitrator ruled that the preparation time must fall within the student contact day and that the teachers be made whole at the usual per diem rate for the additional class they taught as a result of that contract violation. The teachers at Mt. Edgecombe High School (MEHS) currently teach four (4) eighty-minute classes with an eighty-minute preparation period from 8:00 a.m. to 9:20 a.m. and eighty minutes of free time or passing time.

The usual per diem rate in the collective bargaining agreement is calculated at 1/188 of the contracted annual salary hereby developing a daily pay rate (the teachers contract is for 188 days, however the pay is spread out for a 12 month period). The agreement does not provide for any other calculation that could be interpreted to allow for additional daily pay to subsidize the standard eight (8) hour workday. The Teachers did not perform duties outside the eight (8) hour workday.

In effort to calculate a monetary value the daily rate has been broken down in to an amount per minute and multiplied by the 65 minutes of teaching that is in addition to last year, but not outside the contractual eight (8) hour day (see attached spreadsheet).

Since the collective bargaining agreement only provides for daily per diem, one must reduce the daily rate to an amount per minute. The Teachers taught three (3) eighty-five minutes classes last year and are teaching four (4) eighty minute classes this school year, an additional sixty-five (65) minutes. Please see the attached spreadsheet for the estimated increase of monetary terms.

Pursuant to AS 23.40 215 this award constitutes a monetary term and must be approved by the legislature. Please prepare the necessary appropriation request for submission.

Sec. 4(b)

cc: Roger Sampson, Commissioner,
Department of Education and Early Development

Karen Rehfeld, Deputy Commissioner,
Department of Education and Early Development

Eric Swanson, Administrative Services Director,
Department of Administration

Kim Garner, Director Division of Finance,
Department of Administration

Art Chance, Director, Division of Labor Relations,
Department of Administration

Mila Cosgrove, Director, Division of Personnel,
Department of Administration

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Official Business

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 213
Juneau, Alaska 99801-1184
Phone: (907) 465-3701
Fax: (907) 465-2832
Email: senate_secretary@legis.state.ak.us

MEMORANDUM

TO: Senator Green, Cochair
Senator Wilken, Cochair
Senate Finance Committee

FROM: Kirsten Waid *KW*
Secretary of the Senate

SUBJECT: Referral of Monetary Terms Agreement

Date: May 5, 2005

In accordance with AS 23.40.215, President Stevens has referred the following report to your committee:

Monetary terms for the collective bargaining agreement reached with the Teachers Education Association of Mt. Edgecumbe

KW/jcs
Attachments

Sec. 4(b.)

In the Matter of the Arbitration

between Teachers' Education Association of Mt.
Edgecombe ("Association")

and

State of Alaska, Mt. Edgecumbe High School ("School").

Findings,
Discussion and
Award.

Case Numbers:	Arbitrator's case No. FB6.
Representing the Association:	Willie Anderson, UniServ Director, NEA-Alaska, 114 Second Street, Juneau, AK 99801.
Representing the Company:	Dianne Kiesel, Labor Relations Analyst, Division of Labor Relations, State of Alaska, Dept. Of Administration, P.O. Box 110201, Juneau, AK 99811-0211.
Arbitrator:	Howell L. Lankford, Esq., P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the Employer's facilities in Sitka, Alaska on January 31, 2005.
Witnesses for the Association:	Lu Seapy and Kathleen McCrossin.
Witnesses for the Company:	Kari Brookover, Wilhelm Denkinger, and Penny Beiler.
Post-hearing argument received:	February 28, 2005 (by e-mail), both timely mailed on that date.
Date of this award:	March 4, 2005.

This is a dispute over contract interpretation. The Employer made substantial changes in the class schedule—and, particularly, in the schedule of prep time—for the 2004-2005 school year, and the Association grieved. The parties stipulate that the exact issue presented in arbitration is:

Did the Employer violate Articles 1, 7, or 9 of the collective bargaining agreement, or its definitions, when it mandated the schedule for SY 2004-2005, and, if so, what is the appropriate remedy?

There are no preliminary issues of substantive or procedural arbitrability; and the parties agree that the burden is on the Association to show, more likely than not, that the Employer violated the collective bargaining agreement as alleged. The hearing was orderly. Both parties had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case.

FACTS

The facts are neither complex nor contested. Mt Edgecombe High School is a State-run, residential school for grades nine through twelve located in Sitka, Alaska. The facility has grown quite substantially in recent years and now houses about 375 students. The teaching staff is about 17 (with a residential and support staff of about 40). Those 2004-2005 numbers represent a growth of about 30 in the student population over 2003-2004, with essentially no increase in teaching staff.

There is no dispute that the State mandated an increase of nearly 10% in the size of the student body for SY 2004-2005 but provided no increase in the school's budget to cover that increase. The dispute at issue here arises from one part of the School's attempt to deal with that increased student body without any increase in operating funds.

In previous years, the teachers' class schedule has always provided each teacher with one student class period of prep time. In recent years, the student day has been divided into four periods with a 50 minute lunch period. That pattern has shown some variation—in 1994-1995, for example, there were seven periods—but inevitably, as far back as the record extends, whether there were four class periods or seven, each teacher has been assigned one of the class periods as his or her prep period. The "Preparation Time" language of the contract (Article 7, Teacher Rights, Section 7) provides: "Each teacher . . . shall have, in addition to his/her meal period, one full class period daily [of] preparation time during which the teacher shall not be assigned to any other duties."

Late in SY 2003-2004, the State advised the School that the School would have to increase its student body for the coming school year by about 30 students. It was not

immediately clear whether there would be any increase in funding to go along with that almost 10% increase in size, but the Superintendent feared the worst. Because the High School is residential, an increase in the student body automatically brings increases in housing, food, and supervision costs.¹ The Superintendent was determined to find some way to avoid a substantial increase in average class size in the face of the coming increase in student population without, probably, any increase in teaching staff budget.

There were already ongoing discussions of class schedule problems even before the ominous prospect of an unfunded increase in student population appeared on the horizon. The SY 2003-2004 schedule was a variation of the A/B-block pattern with the same number class period being, e.g., English and some form of social studies on alternating days.² Some subjects were offered *every* day, with no A/B variation. The teachers were dissatisfied with that pattern for a variety of reasons, and the School had established an Academic Steering Committee to explore possible alternatives. The Academic Principal attended the first meeting of that Committee, but she found that the teachers were unwilling to even consider scheduling their prep time all together and apart from the student contact day; and she attended no further meetings of the Committee.

Despite the undisputed fact that the teachers made it pretty clear, in a variety of ways, that they would not accept a schedule revision separating their prep time from the student contact day, the Superintendent decided that the only way to maintain the average class size from SY 2003-2004 was to assign each teacher to an additional class period and move every teacher's prep time to the "period" from 8:00 to 9:20 a.m., before the beginning of classes. The Superintendent informed the Association of the coming change sometime around the end of the 2003-2004 school year (although the teachers were not individually informed of their forthcoming schedules until quite late in August, 2004). The Association grieved the new schedule.

1. It also increases transportation costs substantially because admission to the High School includes State-paid transportation to and from school.

2. One of the subjects ran Monday and Wednesday and the other ran Tuesday and Thursday, with alternating Fridays. Some schools achieve the same division by simply alternating classes A, B, A, B, A, B... week after week.

DISCUSSION

The goal in resolving contract interpretation disputes is always the same, to determine what the parties should have understood their deal to be. There are three usual sources of evidence in that search: the language of the written contract itself, the bargaining history of that language (e.g., how did the parties explain it to one another in negotiations), and the parties' actions in the past in situations where their understanding of the disputed language would have made a difference in those actions. The first of those three—the language of the written agreement itself—has more than mere pride of place: a majority of American labor arbitrators continue to honor the “clear language” rule:

If the language of an agreement is clear and unequivocal, an arbitrator generally will not give it a meaning other than that expressed. As Arbitrator Fred Witney has stated, an arbitrator cannot “ignore clear-cut contractual language,” and he “may not legislate new language, since to do so would usurp the role of the labor organization and employer.” Even though the parties to an agreement disagree as to its meaning, an arbitrator who finds the language to be unambiguous will enforce the clear meaning. Elkouri & Elkouri, *How Arbitration Works*, (IV ed., BNA) at 348-349.³

In this case, both parties argue that the language of Article 7, Section 7 is pretty clear: “Each teacher . . . shall have, in addition to his/her meal period, *one full class period* daily [of] preparation time during which the teacher shall not be assigned to any other duties.” Interestingly, the Academic Principal's recounting of that language from memory at hearing was slightly different: “I have to give them prep time equal to a class period.” The School's post-hearing brief offers that same approximation as the basis of its “clear language” argument; so that difference between the Principal's recollection and the actual contract language accurately expresses the heart of this dispute.

That difference also compels the result in this arbitration: what the contract actually says is *not* “time equal to a class period;” what the contract actually says is “one full class period.” That difference is not trivial. If a teacher has a right to one actual class period as prep time, then that teacher *cannot* be assigned to *teach* every single class

3. The fifth edition of *Elkouri* (at 434-439) offers a far more technical and critical (and perhaps less illuminating) discussion of the “plain meaning rule” (which the 5th Edition admits is “still dominant”). The case at hand illustrates just how questionable Farnsworth's observation is (§ 7.8, quoted by the Fifth Edition at 437) that “It is a rare contract that needs no interpretation.” On the contrary, most contracts, in most respects, need no outside interpretation most of the time. Otherwise, the whole idea of entering into contracts would never have caught on in the first place. Even when, rarely, a disagreement over interpretation drives the parties to arbitration, what arbitrators end up saying more often than not, I submit, amounts to “read just exactly what the contract says, and do that.”

period. Of course, that was exactly the Superintendent's primary motivation for the change: with prep time "equal to" a class period, but not scheduled during the student contact day, every teacher ended up teaching one additional class period every day. The time before the students' day begins, which is now designated as prep time, was always part of the teachers' workday and was generally used for preparation for the upcoming class day. Thus the change from the contract's "one full class period" to the School's interpretation, "*equal to a class period*," resulted in less out-of-class time to prepare for a third more in-class time. The difference between what the contract actually says and what it would have to say in order to support the High School's interpretation is clearly substantial.⁴

Even if the contract language were not clear by itself, none of the other traditional sorts of evidence in the record provides any support for the School. There is no evidence at all of the actual bargaining history behind this particular language. But when we consider the past actions of the parties, as far as the record shows, until the 2004-2005 school year, the School has always scheduled its teachers to have "one full *class period*" of daily prep time. That record is consistent with the Association's interpretation and does nothing to support the School's.

If we look further, past the three traditional sources of evidence in contract interpretation disputes, the School's situation only gets worse. In terms of common practice in the industry and the usual bargaining dynamics behind such language, it would be difficult to imagine a teachers' union that did not bargain hard for contract language assuring bargaining unit members of prep time *during the student contact day*. In my experience, most teacher collective bargaining agreements include such language; and teachers' unions have been vigilant in defending such language through contract arbitration.⁵ The reason for that vigilance is obvious: apart from simple considerations of workload, the guarantee of one class period as prep time—i.e. of prep time during the student contact day—means that most of the teachers in the bargaining unit will get a break from constant student contact sometime during the course of the day. (Even the teachers assigned to prep in the first or last class periods of the day at least face a consecutive student contact period which is reduced by the time of that one class period.)

4. The School points to an unfortunate arithmetic inconsistency between the contract's definitions of "academic school day" and "standard work day." Those provisions apparently somewhat befuddled the parties' discussions; but none of those provisions is inconsistent with the clear language of Article 7, Section 7, which addresses prep time.

5. Throughout the Northwest, teachers' unions have also been generally successful—through the ULP process—in preventing school districts from moving prep time to outside the student contact day without bargaining.

Teaching straight through the day without a break from student contact is, in the opinion of very many teachers, quite unacceptable.⁶ When this consideration is added to the arithmetic consequences of removing prep time from the student contact day—i.e. one class period more work for no increase in pay—it can be no surprise that teachers always fight hard for exactly the language that is in this prep time provision and fight hard against the misinterpretation of that language offered by the School in this case.⁷

There is a subsidiary issue in this case: the parties disagree about the interpretation of part of the contract's arbitration provision: "The cost of the services for the arbitrator, and his/her travel and subsistence . . . will be borne as designated by the arbitrator." That sentence is composed of *part* of the language usually found in a "loser pays" provision: That usual language is ". . . will be borne by the losing party as designated by the arbitrator." The School proposes to interpret the provision as "loser pays" language. The Association disagrees but does not offer any attractive alternative. I took notice that many of the State's collective bargaining agreements include loser pays language; but the record shows that NEA-Alaska has always vigorously resisted loser pays proposals. There is no other evidence of the intent of the parties behind this contract language.

That record provides me with little guidance about the parties' expectations as to *how* an arbitrator would designate the allocation of fees under this contract, although it seems clear that I am *not* to automatically split the fees and expenses. The best touchstone, perhaps, is by asking whether either party had a clear opportunity to avoid the cost of arbitration and to allocate these expenses to that party (if one exists). In the case at hand, the prep period contract language is quite clear, even if it is quite brief—the result of forcing the Association to go to arbitration is simply a declaration that Article 7, Section 7 means *exactly* what it says on its face—and there is no dispute that the teachers made their vigorous opposition to the contemplated schedule change known to the

6. Most Northwest school districts are now K-12, so the bargainers also encounter the scheduling problem or assuring that *elementary* teachers, too, will have prep time as a break in the constant student contact of their day.

7. The contract language, "one full class period," would allow the School to schedule any number of class periods, as long as every teacher gets one of those periods as prep time. That is one of the traditional complications that must be factored into schedule design: if there are more class periods, then the time lost to passing time (the time required for students to get from one classroom to the next) is increased, but the time "lost" to prep time is reduced. Because one *class period* of prep time is such a common feature of high school teacher collective bargaining agreements, the literature on schedule design usually begins with the recognition of those basic considerations.

Superintendent in advance.⁸ Moreover, the record does not suggest any Association responsibility for the ultimate necessity to resort to arbitration. In the face of that record, it is appropriate to allocate all these costs to the School.

The final issue is the determination of the appropriate remedy. There is no doubt that the School must make the teachers whole for the additional classes taught under the improperly revised schedule. I greatly regret the additional expense, particularly in light of the what amounts to a thinly disguised reduction of more than 10% in the School's budget for this school year. There is no doubt that the School was in a bind. But that choice by the State to decrease the per-student funding of the School did not grant the School the authority to increase the teachers' workload without any bargaining and contrary to the language of the prep time provision of the collective bargaining agreement. The School's unilateral change clearly breached that prep time provision; and the teachers actually performed the substantial additional work which was required by the School's breach of that provision, an additional workload above and beyond the workload the Association agreed to in the collective bargaining agreement. (This was as far beyond the Association's bargain with the School as if a contractor agreed on a fixed price to build a three-bedroom house only to have the owner insist that the contractor provide a much larger, four-bedroom house at the price agreed for three.) The teachers must be made whole for the additional work at the appropriate per diem rate for every day that they have worked (or will work during the rest of the year) one class period too many.

8. Much of the parties' attention throughout the grievance process was misdirected at the differences between the contract's definitions of "academic school day" ("the day starting at 8 a.m. and ending at 4 p.m. ...") and "standard workday" ("eight . . . hours exclusive of a [30 minute] meal period."). But the Association President specifically pointed to Article 7, Section 7 in her final, August 17 remonstrance to the Superintendent.

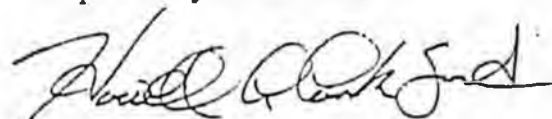
Sec. 4(b)

AWARD

The School violated Article 7 of the collective bargaining agreement when it mandated the schedule for SY 2004-2005. The School shall make the teachers whole—at the usual per diem rate—for the additional classes they taught as a result of that contract violation. Beginning with the next, 2005-2006 school year, the School shall once again schedule each teacher to have a full duty free prep period at the time of one of the regular class periods during the regular student contact day. The School shall also pay the entire expenses and fees of the arbitrator.

By stipulation of the parties, I retain jurisdiction for the limited purpose of resolving issues that might arise under the general "make whole" language of this award. That retained jurisdiction shall lapse 30 days from the date of this Award unless it is previously invoked or is extended by mutual agreement or for good cause shown.

Respectfully submitted,



Howell L. Lankford
Arbitrator

Sec. 4(b)

Subject: TEAME Arb. Award

From: dianne kiesel <dianne_kiesel@admin.state.ak.us>

Date: Fri, 29 Apr 2005 10:58:23 -0800

To: "Anderson, Willie [AK]" <Willie.Anderson@neaalaska.org>

CC: Bill Denkinger <bill.denkinger@mehs.us>

Willie, I am in receipt of your memorandum dated April 25, 2005 regarding State case number 05-T-108. You are correct the State believes that the Arbitrators award initiated a monetary term not previously approved by the legislator, therefore the monetary terms must be submitted for approval (AS 23.40.215)

We are working on the calculations since the contract only addresses per diem in a daily formula (Article 13, Section 2). The calculations the State plans to submit are as follows:

FY05 Salary divided by 188 days equals the daily rate. Daily rate divided by 480 minutes gives amount per minute. 65 minutes ("extra" being taught this year) times the minute rate then multiplied by the number of days the teacher physically taught in the year. Once we compile the final numbers I will provide you with a copy of the spreadsheet that will be submitted to the Legislature. For the remainder of the year we will assume that unless there is a leave slip in and approved the teachers will be working. Unexpected leave will be adjusted for at the end of the school year.

Please let me know if you have questions. Dianne

Sec. 4(b)

ALASKA LABOR RELATIONS AGENCY
1016 WEST 6th AVENUE, SUITE 403
P.O. BOX 107026
ANCHORAGE, ALASKA 99510-7026
(907) 269-4895
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TEACHERS EDUCATION ASSOCIATION)
MOUNT EDGE CUMBE, NEA-ALASKA, NEA)
)
Petitioner,)
)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
)

Case No. 05-1398-CBA

DECISION AND ORDER NO. 277

The A.L.R.A. Board (Vice Chair Aaron Isaacs, Jr., and Members Colleen Scanlon and Gary Atwood) heard this petition to determine timeliness of payment of an arbitrator's award. Petitioner Teachers Education Association of Mount Edgecumbe (TEAME) was represented by Uniserve Director Willie Anderson, and Respondent State of Alaska was represented by Labor Relations Analyst Dianne Kiesel. The parties agreed to have the Agency Board decide this matter based on the written record and briefing. The record closed on Friday, December 16, 2005, when the Board deliberated this matter.

Digest: The State submitted a request to the Alaska Legislature, for payment of monetary amounts awarded by an arbitrator to TEAME, in a timely manner.

DECISION

Statement of the Case

TEAME filed this petition seeking enforcement of monetary amounts awarded by an arbitrator. TEAME alleges that the State failed to timely request payment, by legislative appropriation, of the arbitrator's award. TEAME asks us to find that the State failed to timely submit payment of the arbitrator's award to the Alaska Legislature.

The State denies it submitted the award untimely. The State contends it submitted the award within a reasonable time after determining the amounts required to be paid under the award.

Issues

1. Did the State request funding of the arbitrator's award in a timely manner?

Findings of Fact

The Panel, by a preponderance of the evidence, finds the facts as follows:

1. TEAME represents the teachers at Mount Edgecumbe High School, which is located in Sitka.
2. TEAME and the State entered into a collective bargaining agreement effective July 1, 2004, through June 30, 2006. (Exh. J-1).
3. During the fall semester of 2004, a dispute arose over payment for preparation time spent by the teachers. The parties' grievance/arbitration procedure is contained in Article 6. This process consists of four steps with the last step culminating in arbitration. (Exh. J-1, Article 6, Section 3). TEAME filed a grievance on behalf of the teachers, and the dispute eventually ended in arbitration.
4. On March 4, 2005, arbitrator Howell Lankford found the State violated Article 7, Section 7 of the parties' collective bargaining agreement and ordered the State to "make the teachers whole." (Exh. J-2 at 8).
5. The State filed a Motion to Reconsider on March 23, 2005. (Exh. J-3). TEAME filed an objection to the State's motion on March 24, 2005. (Exh. J-4). Arbitrator Howell issued a denial of the State's motion on April 15, 2005. (Exh. J-5).
6. On April 25, 2005, Uniserv Director Willie Anderson wrote Labor Relations Analyst Dianne Kiesel and asked that the State "execute the award" of Arbitrator Lankford. Anderson concluded: "Please reply to this request on or before May 5, 2005. Thank you for your attention to this request." (Exh. J-6).
7. On April 29, 2005, Kiesel responded to Anderson by email: "Willie, I am in receipt of your memorandum dated April 25, 2005 You are correct the State believes that the Arbitrator[']s award initiated a monetary term not previously approved by the [legislature], therefore the monetary terms must be submitted for approval (AS 23.40.215)[.] . . . Once we compile the final numbers, I will provide you with a copy of the spreadsheet that will be submitted to the Legislature." (Exh. J-7).

8. On April 29, 2005, Kiesel again emailed Anderson and informed him the State would calculate based on daily rate divided by 480 minutes. "65 minutes ("extra" being taught this year) times the minute rate then multiplied by the number of days the teacher physically taught in the year." (Exh. J-8).

9. Anderson replied in a May 3, 2005, email: "My understanding is that the class periods are 80 minutes not 65 minutes as per the schedule at arbitration. My email has been down for the last five days." (Exh. J-8).

10. The parties continued an email 'debate' on whether the calculation should be based on an extra 65 minutes per day or 80 minutes per d.y. (Exh. J-9). On May 3, 2005, they reached consensus on how to calculate the per diem amounts.

11. On May 4, 2005, Cheryl Frasca, Director of the State Office of Management and Budget, sent Legislative leaders a request to "consider the following late-breaking supplemental amendment." Frasca requested that the Legislature appropriate \$107,865.28 to pay the Mount Edgecumbe teachers as a result of the arbitrator's award.

ANALYSIS

AS 23.40.215(b) provides in part: "The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session." TEAME argues that "the State has not met the '10 legislative days' requirement for submitting [the monetary calculation] for legislative approval and has not established an estoppel." (TEAME October 14, 2005 Brief at 2). TEAME contends that under the 10-day requirement, the State should have submitted a request to the Legislature "prior to March 17, 2005," 10 days after TEAME received the arbitrator's opinion.

TEAME has the burden to prove all the elements of its petition by a preponderance of the evidence. TEAME suggests that this dispute is similar to *International Brotherhood of Electrical Workers, Local Union 1547 vs. Kodiak Island Borough*, Decision and Order No. 190 (July 21, 1995), because in D&O 190, the Kodiak Island Borough refused to submit a collective bargaining agreement for approval by the Borough Assembly. However, in D&O 190, the Kodiak Island Borough refused to recognize that an agreement even existed between the parties. A major dispute in the case was whether the parties had actually reached agreement on a contract. There was no issue regarding the timeliness of submission of an agreement by the Borough to the Borough Assembly.

Further, D&O 190 differs from the dispute between TEAME and the State because here the State did submit the monetary terms for legislative approval. TEAME's

primary contention is that the State delayed unreasonably in submitting the monetary terms of the arbitrator's opinion for approval.

TEAME also argues that *Alaska Public Employees Association AFT Local 4900 AFL-CIO vs. State of Alaska*, Decision and Order No. 180 (November 25, 1994), is similar to the dispute here. But D&O 180 concerned the State's refusal to arbitrate grievances because it claimed it had "run out of money" until the beginning of the next fiscal year. (D&O 180 at 3).

Here, the State exercised its legal right to request reconsideration of the arbitrator's award. After it requested reconsideration, the State held off requesting payment from the Legislature because the arbitrator could have ruled in the State's favor and the State may not have owed any money from the dispute. Only when the litigation was final would the State be obligated to pay under the arbitrator's order. In D&O 180, by contrast, the State was literally refusing to arbitrate grievances at all.

Uniserv Director Anderson received the arbitrator's denial of reconsideration and requested that the State "execute the award." He requested that the State reply to his April 25, 2005, request "on or before May 5, 2005. During the ensuing days, the State and TEAME batted around the alternative ideas on what constitutes making the Mount Edgecumbe teachers whole under the arbitrator's opinion. The parties reached consensus on May 3, 2005, and the State immediately submitted the monetary terms to the Legislature for approval. We find that the State submitted the monetary terms of the arbitrator's opinion within a reasonable time after agreeing with TEAME on a method of calculation of those monetary terms. We will deny TEAME's petition.

CONCLUSIONS OF LAW

1. Teachers Education Association of Mount Edgecumbe is an organization under AS 23.40.250(5), and the State of Alaska is an employer under AS 23.40.250(7).
2. As petitioner, Teachers Education Association of Mount Edgecumbe has the burden to prove each element of its case by a preponderance of the evidence.
3. Teachers Education Association of Mount Edgecumbe failed to prove by a preponderance of the evidence that the State's submission of monetary calculations under Arbitrator Lankford's opinion was untimely.

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ORDER

1. Teachers Education Association of Mount Edgecumbe 's petition is denied and dismissed.

2. The State is ordered to post a notice of this decision and order at all work sites where members of this bargaining unit affected by the decision and order are employed, or, alternatively, personally serve each employee affected. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Aaron T. Isaacs, Jr., Vice Chair

Colleen E. Scanlon, Board Member

Gary A. Atwood, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

Sec. 4(b)

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order No. 277, in the matter of *Teachers Education Association of Mount Edgecumbe, NEA-Alaska, NEA, vs. State of Alaska, Case No. 05-1398-CBA*, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 13th day of February, 2006.

Sherry Ruiz
Administrative Clerk III

This is to certify that on the 13th day of February, 2006, a true and correct copy of the foregoing was mailed, postage prepaid to:
Willie Anderson, NEA-Alaska
Dianne Kiesel, State of Alaska

Signature

FISH +
GAME

Change Record Detail With Description

Department of Fish and Game

Scenario: FY2007 Supplemental - Governor (5770)

Component: Wildlife Conservation Special Projects (474)

RDU: Wildlife Conservation (147)

Scenario/ Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP
FY2007 Supplemental - Governor												
Fund switch from SDPR to EVOS for Harlequin Duck Research Project												
	Suppl	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
1018	EVOSS	30.0										
1108	Stat Desig	-30.0										
<p>The Division of Wildlife Conservation was awarded funding from the EVOS Trustee Council in the fall of 2006 for use during FY07. This \$86.7 Harlequin Duck Population Dynamics project in the Prince William Sound, will measure recovery from the Exxon Valdez oil spill.</p> <p>When the division built its budget in November 2005 for FY07, \$50.0 for EVOS projects was maintained based upon prior activity. This project funded in 2006, was not prepared until the 2006 RFP process. This request will make it possible for field staff to complete research during FY07 by adding \$30.0 of EVOS authority to the division.</p> <p>The division does not require \$30.0 of Statutory Designated Program Receipts (SDPR) spending authority for projects during the remainder of FY07.</p>												
Totals		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0

Sec. 5(a)(6)

HEALTH +
SOCIAL
SERVICES

Department of Health and Social Services

SB 83 Section 1 (f)

Section 1 (g)

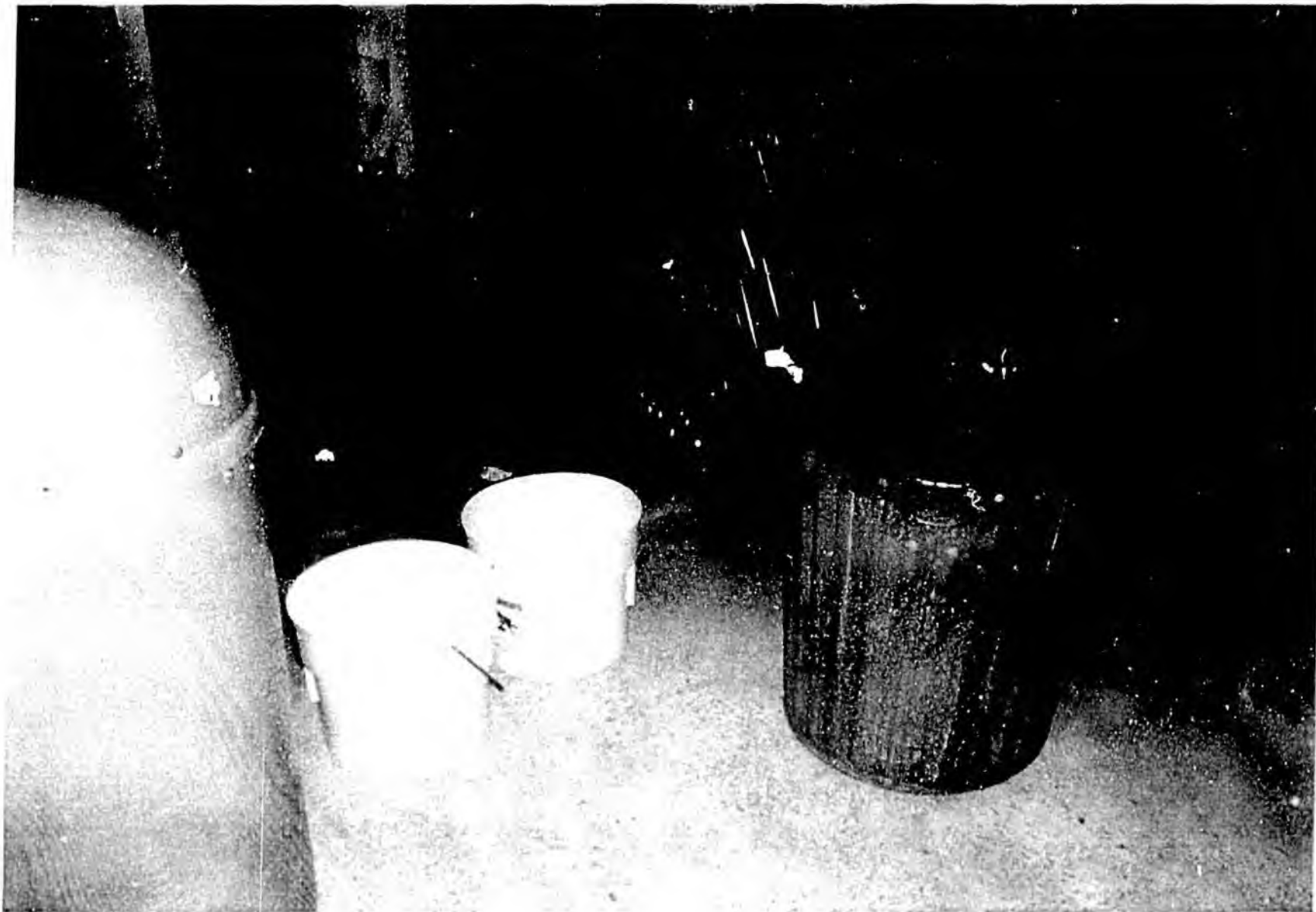
Enlarged Photographs



Proposed site of Virology Lab



Proposed site of Virology Laboratory – Connects to BiRD Facility on left



Existing roof leaks at Sitka Pioneer Home - South Wing



Existing roof leaks at Sitka Pioneer Home – North Wing

Change Record Detail With Description

Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)

Component: Pioneer Homes (2671)

RDU: Alaska Pioneer Homes (503)

Scenario/ Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP
FY2007 Supplemental - Governor												
Increase in RSS collections for Nursing Salary; uncollectible federal receipts; and sanitation and supply needs												
	Suppl	800.0	317.9	0.0	0.0	482.1	0.0	0.0	0.0	0	0	0
1156 Rcpt Svcs	800.0											
<p>The department is requesting additional Receipt Supported Services authorization for the Pioneer Homes component: Alaska Pioneer Homes is currently projecting approximately \$800.0 in receipt supported services collections above their budget authorization for FY07. The division requests additional authorization to spend these receipts for the purposes below. Funds are available from payments by Pioneers to live in the homes. The Legislature has consistently appropriated these funds back to the Pioneer Home system so that revenues collected can be used for the benefit of the Pioneers.</p> <p>Nursing Salary Increase: \$86,900 Receipt Supported Services In FY07 the Legislature approved additional general funds for nursing salaries. The nursing salary increase also impacted non general funding sources. However the division does not have enough existing authorization to use the collections for this purpose. This request of \$86.9 in Receipt Supported Services will provide the authorization for these receipts to be used towards the increased nursing salary costs. An increment for this purpose was added in the FY08 Governor's budget for the same purpose as this is for on-going costs.</p> <p>Offset Uncollectible Federal Receipts: \$231,000 Receipt Support Services The Palmer Pioneer and Veterans' Home is still awaiting federal approval. Until approval has been obtained, the Pioneer Home is unable to collect the budgeted federal receipts. The federal receipt authorization will be restricted.</p> <p>Safety and Sanitation Costs for Homes: \$482,100 Receipt Supported Services During the summer of 2006 the department reviewed and compiled a comprehensive list of all necessary repairs to State-owned facilities. In addition to capital repair needs, the Pioneer Homes have a wide range of safety and sanitation issues that need to be addressed. Homes contain furnishings that are damaged or broken that pose a risk of injury to a resident, such as broken corners on night tables, unstable legs on chairs, etc. In many areas the draperies are beyond repair or cleaning and need to be replaced so they don't pose a health hazard with germs or mold. As the resident population requires a higher level of care, accommodating equipment, bed and/or mattress replacement becomes an issue as well. This funding will allow the resident receipts to be used towards these various on-going needs that cannot be met with the existing supply line budget.</p>												
Totals		800.0	317.9	0.0	0.0	482.1	0.0	0.0	0.0	0	0	0

See 6/2)

Change Record Detail With Description
Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)
 Component: Behavioral Health Medicaid Services (2660)
 RDU: Behavioral Health (483)

Scenario/ Change Record	Trans Title Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP
FY2007 Supplemental - Governor												
Increase SDPR Authorization for Overpay Recoveries												
	Suppl	600.0	0.0	0.0	0.0	0.0	0.0	600.0	0.0	0	0	0
1108 Stat Desig	600.0											
<p>The Department is requesting \$600,000 additional Statutory Designated Program Receipt authority to comply with provisions of AS 47.05.200(c) related to audits. This provision was established under Chapter 66, SLA 2003 (SB 41 Establishing independent audits) and requires the recovered overpayments from audits to be collected in this manner.</p> <p>Medicaid is an entitlement program created by the federal government, but administered by the state to provide payment for medical services to low income citizens. People qualify for Medicaid by meeting federal income and asset standards and by meeting specified eligibility categories. Once it has been determined that a client qualifies for Medicaid, payment will be made to the provider for medical expenses. Through the audit process, it may be discovered that there was a claiming discrepancy or an incorrect eligibility determination. Once this finding has been made, the State will bill the agency to collect the overpayment. This payment is received as statutory designated program receipts in the Medicaid component.</p> <p>The additional statutory designated program receipt authorization will allow the Behavioral Health Medicaid program to collect and expend these revenues above the current authorization.</p> <p>In calendar year 2006, the department collected \$579.8 for the total Medicaid program as follows:</p> <p>\$ 16.9 January through March \$125.7 April through June \$163.1 July through September \$274.1 October through December</p>												
Totals		600.0	0.0	0.0	0.0	0.0	0.0	600.0	0.0	0	0	0

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Change Record Detail With Description
Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)
 Component: Children's Medicaid Services (2661)
 RDU: Children's Services (486)

Scenario/ Change Record	Trans Title	Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
											PFT	PPT	NP

FY2007 Supplemental - Governor

Increase SDPR Authorization for Overpay Recoveries

	Suppl		100.0	0.0	0.0	0.0	0.0	0.0	100.0	0.0	0	0	0
1108 Stat Desig		100.0											

The Department is requesting \$100,000 additional Statutory Designated Program Receipt authority to comply with provisions of AS 47.05.200(c) related to audits. This provision was established under Chapter 66, SLA 2003 (SB 41 Establishing independent audits) and requires the recovered overpayments from audits to be collected in this manner.

Medicaid is an entitlement program created by the federal government, but administered by the state to provide payment for medical services to low income citizens. People qualify for Medicaid by meeting federal income and asset standards and by meeting specified eligibility categories. Once it has been determined that a client qualifies for Medicaid, payment will be made to the provider for medical expenses. Through the audit process, it may be discovered that there was a claiming discrepancy or an incorrect eligibility determination. Once this finding has been made, the State will bill the agency to collect the overpayment. This payment is received as statutory designated program receipts in the Medicaid component.

The additional statutory designated program receipt authorization will allow the Children's Services Medicaid program to collect and expend those revenues above the current authorization.

In calendar year 2006, the department collected \$579.8 for the total Medicaid program as follows:

- \$ 16.9 January through March
- \$125.7 April through June
- \$163.1 July through September
- \$274.1 October through December

Totals			100.0	0.0	0.0	0.0	0.0	0.0	100.0	0.0	0	0	0
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See table

Change Record Detail With Description

Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)

Component: Medicaid Services (2077)

RDU: Health Care Services (485)

Scenario/ Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Dobt Service	Positions		
										PFT	PPT	NP
FY2007 Supplemental - Governor												
Medicaid Rate Settlement with Alaska Regional												
	Suppl	8,000.0	0.0	0.0	0.0	0.0	0.0	8,000.0	0.0	0	0	0
1002 Fed Rcpts		4,606.4										
1003 G/F Match		3,393.6										

The Department is requesting \$8,000,000 (\$4,606,400 federal authorization and \$3,393,600 general funds) to settle a Medicaid rate dispute between the State of Alaska and Alaska Regional Hospital.

The department and Alaska Regional Hospital have negotiated a settlement on a disputed rate for Medicaid services. The rates under appeal include Medicaid payment rates for the years 1991 through 2000. The department has been seriously addressing these issues in the legal environment since 1992. However, the complexity of the appeals and the realities of navigating the legal system from the department appeal processes through the court system have prevented timely resolution of the issues. The hospital is asking for \$8,000,000 to settle 10 years of claims (1991-2000). The settlement would resolve all rate issues through 2000. In 2001 our rate setting was changed and since then we have had very few appeals from Alaska Regional. The settlement is eligible for reimbursement through Medicaid at the regular FMAP of 53.22% for SFY 2007.

The Department of Law is recommending settlement of this long standing rate dispute. The settlement agreement is attached.

See. 6 (d)

Sec. 6(d)

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into between the State of Alaska, Department of Health and Social Services ("State"), and Galen Hospital Alaska, Inc. d/b/a Alaska Regional Hospital ("Alaska Regional" or "the Facility"). The State and Alaska Regional are sometimes referred to in the Agreement collectively as the "parties".

RECITALS

A. Alaska Regional operates a facility for acute care in Anchorage, Alaska and provides medical assistance services to eligible persons under the Alaska Medicaid program, AS 47.07.010, et. seq.

B. In connection with its provision of medical assistance services under the Alaska Medicaid program, Alaska Regional has pending in various stages of administrative appeal before the Commissioner of Department of Health and Social Services the following administrative appeals of its Medicaid rates:

1. *In The Matter of Alaska Regional Hospital Medicaid Rate Appeals for FY 1991 - 1993 and FY 1994, Case No. 93-MRC-06 (Cons.);*
2. *In The Matter of Alaska Regional Hospital Medicaid Rate Appeals for FY 1995, Case No. 95-AU-04 (Cons.);*
3. *In The Matter of Alaska Regional Hospital Medicaid Rate Appeals for FY 1996 and FY 1997, Case No. 97-MRC-05 (Cons.);*
4. *In The Matter of Alaska Regional Hospital Medicaid Rate Appeal for FY 1998, Case No. 99-MRC-01;*

5. *In The Matter of Alaska Regional Hospital Medicaid Rate Appeal for FY 1999, Case No. 99-MRC-08; and*
6. *In The Matter of Alaska Regional Hospital Medicaid Rate Appeal for FY 2000, Case No. 01-MRC-03.*

C. For all purposes of this Agreement, *In The Matter of Alaska Regional Hospital Medicaid Rate Appeals for FY 1991 – 1993 and FY 1994, Case No. 93-MRC-06 (Cons.)* includes that portion of the administrative appeal before the Commissioner on remand from the Superior Court in *Alaska Regional Hospital, Inc. etc v. Department of Health and Social Services et al*, Case No. 3AN-01-07103 CI.

D. The parties now desire to settle all the remaining claims asserted in the Medicaid appeals referred to in Paragraphs B and C whether or not denominated as Medicaid rate claims, as well as claims that Alaska Regional could have asserted against the State regarding facts, such as acts or omissions that arose or existed prior to and through the date of settlement, that relate in any way to any claim asserted by Alaska Regional in these pending appeals or to claims which Alaska Regional could have asserted in the pending appeals.

NOW, THEREFORE, in exchange for the mutual promises contained in this Agreement, the parties agree as follows:

1. Release. Alaska Regional hereby releases, acquits, and forever discharges the State of Alaska, its departments, agencies and other subdivisions, officials, officers and/or employees, partners, contractors, successors

Sec. 6(d)

and/or predecessors in interest, agents, attorneys, and any other persons or entities acting through or on behalf of the State of Alaska ("the State") from any and all actions, causes of action, suits, controversies, claims, demands of every kind and nature, whether mature or to mature in the future, and whether or not the existence or nature of any such cause of action or claim is now known or contemplated, arising out of or relating in any respect to Alaska Regional's FY 1991, FY 1992, FY 1993, FY 1994, FY 1995 (including the FY 1995 'stub period'), FY 1996, FY 1997, FY 1998, FY 1999 and FY 2000 Medicaid payment rates.

2. Dismissal of Appeals. Concurrently with the execution of this Agreement, the parties shall execute stipulations for dismissal with prejudice in the following matters: *In the Matter of Alaska Regional Hospital*, Case Nos. 93-MRC-06 (Cons.), 95-AU04 (Cons.), 97-MRC-05 (Cons.), 99-MRC-01, 99-MRC-08, and 01-MRC-03. its Medicaid rate appeals for FY 1991, FY 1992, FY 1993, FY 1994, FY 1995 (including the FY 1995 'stub period'), FY 1996, FY 1997, FY 1998, FY 1999 and FY 2000. The stipulations for dismissal with prejudice will be filed with the Office of Hearings and Appeals and the Office of the Commissioner of Department of Health and Social Services as appropriate. The parties shall take whatever additional actions may be necessary, if any, in order to accomplish dismissal of the subject matters with prejudice to their refiling.

Sec. 6(d)

3. Payment to Alaska Regional. The parties agree that the State will pay Alaska Regional \$8,000,000.00 (\$8 million) in full payment of Alaska Regional's FY 1991, FY 1992, FY 1993, FY 1994, FY 1995 (including the FY 1995 'stub period'), FY 1996, FY 1997, FY 1998, FY 1999 and FY 2000 Medicaid rate claims. The State's warrant or warrants in the total amount of \$8 million will be payable to Alaska Regional Hospital and shall be presented to Alaska Regional Hospital, 2801 DeBarr Road, Anchorage, Alaska 99508, to the attention of Ed Lamb, Chief Executive Officer and Administrator. The Facility acknowledges that the State must obtain an appropriation prior to payment of the entire settlement amount. The State, through the Department of Health and Social Services, will exercise due diligence to obtain the appropriation in a timely manner. The State agrees that if the Department determines that other money (i.e. money that does not come from the appropriation noted above) is available to make a partial payment of the full amount owed to Facility, the State will make such partial payment, at its sole discretion, prior to obtaining an appropriation for the full amount owed to Facility. Enforcement of the Agreement is dependent upon payment to the Facility of the settlement amount. If full payment of the settlement amount is not received by Alaska Regional within 60 days of the close of the 2007 legislative session of the Alaska State Legislature, this Agreement may, upon written notification to the State and return to the State of all partial payments made under this Paragraph, be declared void by Alaska Regional

Sec. 6(d)

Hospital. If this Agreement is declared void by Alaska Regional Hospital under this paragraph, the parties shall have the rights and defenses that they had prior to the execution of this Agreement with respect to prosecuting the matters listed in Paragraphs B and C, above.

4. Effect of Settlement. (a) The parties agree that this Settlement Agreement is a comprehensive and finite settlement for Alaska Regional's Medicaid rates for its fiscal years 1991 - 2000. The parties agree that this Agreement does not have, and may not be read to have, any impact of any kind on the Medicaid rates established for any year subsequent to Alaska Regional's FY 2000. The \$8 million settlement is a lump-sum settlement for all of the Medicaid Rate Appeals listed in Paragraphs B and C, above. The parties agree that this Agreement does not apportion the \$8 million settlement amount in Paragraph 3 among the rate years or contested issues in the Medicaid appeals referred to in Paragraphs B and C above.

(b) Notwithstanding subparagraph (a) above, the parties agree that the issue of whether the Plaza purchase price is to be reallocated has been definitively resolved and that the portion of the reallocation allotted to the Plaza purchase is to be based on the 1983 appraisal of that property provided during the course of litigation in the matters listed in Paragraphs B and C above. The parties further agree that for Medicaid rate years subsequent to the Facility's FY 2000, if the Facility files a timely appeal and the issue of reallocation of the purchase price

is raised in the Statement of Issues, resolution of that issue is limited to the actual reallocation calculation.

5. Fees and Costs. Each party will bear its own costs, attorneys' fees and consultants' fees.

6. Complete Agreement. The parties intend this Agreement to incorporate the complete settlement between the parties with respect to all issues raised in the pending appeals that are the subject of this settlement and as further set forth in Paragraph 1 above. All prior negotiations, representations, and agreements, whether written or oral, concerning the subject matter of the Medicaid Rate Appeals referred to in Paragraphs B and C, above, are hereby merged into this Agreement. This Agreement may only be amended by a signed writing executed by both parties, which specifically refers to this Agreement.

7. No Admission. This Agreement is the result of the compromise of disputed claims and does not constitute an admission of liability by either party to this Agreement. Specifically, the parties acknowledge that there has been no agreement between them on the legal issues and calculations concerning year-end-conformance (YEC) and roll forward amounts as applied to the rate years settled by this Agreement. Nothing in this Agreement is intended to affect the claims or defenses of any person or entity other than the parties to this Agreement. This Agreement may not be used as precedent for similar or

dissimilar issues raised by Alaska Regional or any other facility in an appeal of its Medicaid rates.

8. Construction/Severability. This Agreement is made and entered into in the State of Alaska and shall in all respects be interpreted, enforced, and governed by and according to the laws of Alaska. Each party acknowledges that the terms of this Agreement are contractual and not mere recitals, and further represent that they have read them carefully, fully understand them, and voluntarily accept them for the purposes of making a full and final compromise of any and all claims, disputed or otherwise, for and on account of any injuries and damages mentioned herein.

All parts of this Agreement shall be construed fairly according to their terms. No presumption shall be applied for or against either party based on which party originated the documents or drafts thereof. Paragraph headings are for convenience only and shall not be construed to alter or otherwise affect the meaning of the text of any section. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions shall not be affected thereby, and said illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement, provided that the parties agree that the court shall, if possible, construe this Agreement so as to give full force and effect to each of its provisions.

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The pending matters referred to in the Recitals at Paragraphs B and C above did not involve any allegations or proof of, or defenses to, any claims of potential or actual administrative, civil, or criminal liability relating to any alleged wrongful receipt of Medicaid payments from the State of Alaska. Therefore, any such allegations, claims, proof, and defenses are outside the scope of this agreement. This agreement does not address in any way potential or actual wrongful actions by the Facility relating to participation in the Alaska Medicaid program. Nothing in this Agreement will be used to bar the State or federal government from administrative, civil, and/or criminal sanctions for, or relating to, wrongful actions by the Facility, or any person or entity, under the Alaska Medicaid program. Failure by the Facility to follow Medicaid billing practice requirements, or other Medicaid requirements, during the Facility's participation in the Alaska Medicaid program is outside the scope of this Agreement, and this Agreement is not a bar to collection by the State from the Facility of amounts, if any, owed by the Facility to the State because of the Facility's failure to follow Medicaid billing practice requirements, or other Medicaid requirements, of the Alaska Medicaid program. Nothing in this Agreement shall be construed as a limitation of any kind of any of the rights and privileges of the Facility to oppose through proper legal process any claim of failure by the Facility to follow Medicaid billing practice requirements, or other Alaska Medicaid Program

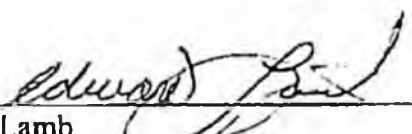
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requirements, during the Facility's participation in the Alaska Medicaid program, if such claim is made by the State in the future.

IN WITNESS WHEREOF, the parties have executed this Settlement and Release Agreement on the respective dates set forth opposite their signatures.

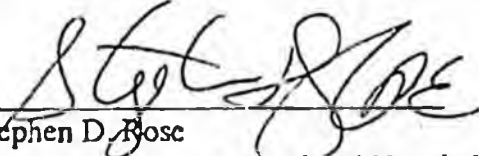
GALEN HOSPITAL ALASKA, INC. d/b/a
ALASKA REGIONAL HOSPITAL

Date: 2 Nov 2006

By: 
Ed Lamb
Chief Executive Officer and Administrator

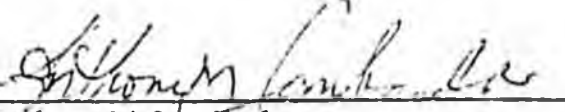
PRESTON, GATES AND ELLIS, LLP

Date: November 6, 2006

By: 
Stephen D. Rose
Attorneys for Alaska Regional Hospital

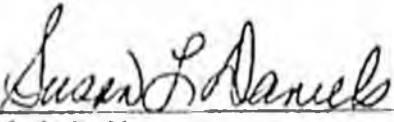
STATE OF ALASKA DEPARTMENT OF
HEALTH AND SOCIAL SERVICES

Date: November 8, 2006

By: 
Anthony M. Lombardo
Deputy Commissioner
Department of Health and Social Services

DAVID W. MARQUEZ
ATTORNEY GENERAL

Date: November 8, 2006

By: 
for Linda L. Kesterson
Assistant Attorney General
Attorneys for the State

Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)
 Component: Medicaid Services (2077)
 RDU: Health Care Services (485)
 Title: Increase SDPR Authorization for Overpay Recoveries and School Based Services

Decision: None
 Category: None
 Subcategory: None

New GF Revenue:
 New Other Revenue:
 Short Title:

Brief Description:

	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP
	Suppl	1,000.0	0.0	0.0	0.0	0.0	0.0	1,000.0	0.0	0	0	0
1108 Stat Desig		1,000.0										

The department is requesting \$1,000,000 additional Statutory Designated Program Receipt authority to comply with provisions of AS 47.05.200(c) related to audits. This provision was established under Chapter 66, SLA 2003 (SB 41 Establishing independent audits) and requires the recovered overpayments from audits to be collected in this manner.

Medicaid is an entitlement program created by the federal government, but administered by the state to provide payment for medical services to low income citizens. People qualify for Medicaid by meeting federal income and asset standards and by meeting specified eligibility categories. Once it has been determined that a client qualifies for Medicaid, payment will be made to the provider for medical expenses. Through the audit process, it may be discovered that there was a claiming discrepancy or an incorrect eligibility determination. Once this finding has been made, the State will bill the agency to collect the overpayment. The department is requesting \$700,000 statutory designated program receipt authority to allow for overpay recoveries.

The department is requesting \$300,000 for School Based Services. These services allow schools to bill and receive Medicaid reimbursement for health services provided in the school situation. For example, a teacher who provides referrals to a student for physical, occupational or speech therapy provided by the school would document time spent and bill Medicaid. Once the billing is received, Medicaid will make full payment. The school is responsible to pay the match portion of this, which is received as statutory designated program receipts.

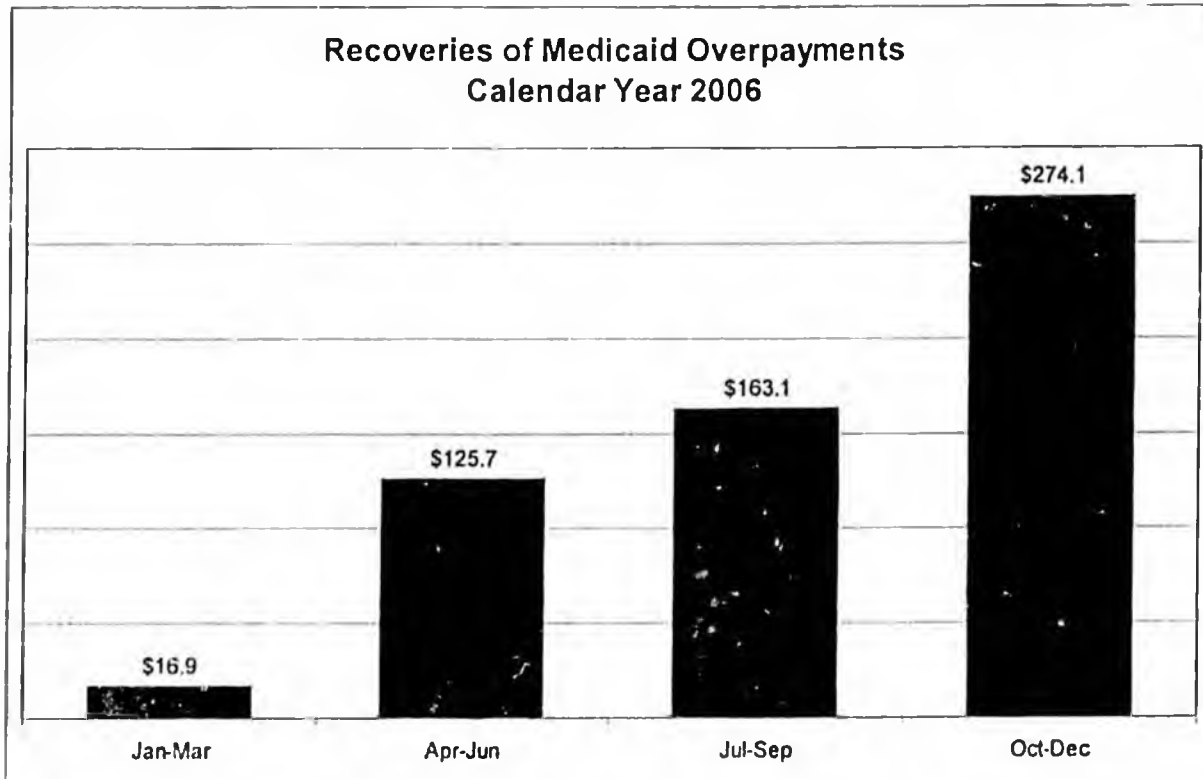
The additional statutory designated program receipt authorization will allow the Medicaid program to collect and expend these revenues above the current authorization.

The following chart demonstrates the collections this year for the total Medicaid program across the department:

Totals	1,000.0	0.0	0.0	0.0	0.0	0.0	0.0	1,000.0	0.0	0	0	0
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See table

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Change Record Detail With Description

Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)

Component: Probation Services (2134)

RDU: Juvenile Justice (319)

Scenario/ Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP

FY2007 Supplemental - Governor

Court Ordered Costs

	Suppl	206.5	0.0	0.0	0.0	0.0	0.0	206.5	0.0	0	0	0
1004 Gen Fund	206.5											

The Department of Health and Social Services, Division of Juvenile Justice, is requesting supplemental funding of \$206,500 in general funds to pay for court-ordered costs. Per legislation direction these costs are not budgeted, but are part of the annual supplemental process.

These costs are incurred for guard hires for escorts, travel for juveniles that is not Medicaid eligible, psychiatric evaluations that are not Medicaid eligible, and other miscellaneous court ordered costs. Recipients of the funds are youths either in division custody or under court order to receive specified services.

The division does not specifically budget for these court ordered costs and in previous years these costs have been provided through supplemental funding.

Attached to this request is a more detailed spreadsheet of the court ordered costs incurred to-date totaling \$86,011.91. We then assume that 5.5 months worth of invoices have been paid. Using a straight-line projection and adding 10%, the total request for FY07 is \$206,428.59.

Currently, the funds are being expended from the Probation Services component within the Juvenile Justice RDU. We do not anticipate the lapse of any funds in FY07, either with respect to these funds or anywhere else within the RDU. If this supplemental request is not approved, the division would have to cut other programs (e.g., probation services, community programs, or youth courts) to fund these costs.

This is not an unanticipated need. The direction from the legislature has been to request these funds each year in the supplemental bill similar to the Department of Law's Judgments and Claims process.

Totals		206.5	0.0	0.0	0.0	0.0	0.0	206.5	0.0	0	0	0
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COMIS	LOCATION	TYPE of SERVICE	PAYEE	DATE of SVC/TRVL	COST
00003692	Ketchikan	Travel	Ak Airlines	7/6/06	713.00
00003692 Total					713.00
00006528	Kodiak*	Guard Fee	Detec	07/11/06	375.50
00006528	Kodiak*	Client Travel	Era Aviation	07/11/06	343.51
00006528 Total					719.01
00007444	Kodiak*	Client Travel	Era Aviation	07/17/06	403.49
00007444 Total					403.49
00008614	Kodiak*	Guard Fee	Detec	01/31/06	76.00
00008614 Total					76.00
00011216	Barrow	Travel	AK Airlines	8/29/2006	1,233.50
00011216 Total					1,233.50
00013168	Nome	Travel	Bering Air	7/6/2006	717.00
00013168 Total					717.00
00016850	Barrow	Travel	AK Airlines	11/22/2006	1,002.52
00016850 Total					1,002.52
00018895	Barrow	Travel	Frontier/AK Airlines	7/12/2006	491.30
00018895 Total					491.30
00020644	Kotzebue	Travel	AK Airlines	9/25/2006	230.50
00020644	Kotzebue	Travel	Bering Air	9/22/2006	674.00
00020644 Total					904.50
00020645	Kotzebue	Travel	AK Airlines	9/25/2006	643.00
00020645	Kotzebue	Travel	AK Airlines	10/26/2006	1,531.43
00020645	Kotzebue	Travel	AK Airlines, Bering Air	11/3/2006	856.09
00020645 Total					3,030.52
00021046	Barrow	Travel	AK Airlines	12/7/2006	620.50
00021046 Total					620.50
00023216	Barrow	Travel	AK Airlines	7/11/2006	1,439.94
00023216 Total					1,439.94
00026280	Kotzebue	Travel	Bering Air	9/20/2006	724.45
00026280	Kotzebue	Travel	Bering Air	8/8/2006	812.00
00026280	Kotzebue	Travel	Bering Air	10/11/2006	247.00
00026280	Kotzebue	Travel	Bering Air	8/22/2006	230.00
00026280 Total					2,013.45
00027265	Barrow	Travel	AK Airlines	11/9/2006	301.01
00027265	Barrow	Travel	AK Airlines	10/3/2006	300.51
00027265 Total					601.52
00027542	Ketchikan	Travel	Ak Airlines	9/22/06	598.00
00027542 Total					598.00
00028730	Craig	Travel	Promech	7/18/06	135.00

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COMIS	LOCATION	TYPE of SERVICE	PAYEE	DATE of SVC/TRVL	COST
00028730	Craig	Travel	Promech	8/28/06	576.50
00028730	Craig	Travel	Inter Island Ferry	9/18/06	78.44
00028730 Total					789.94
00029747	Kodiak*	Client Travel	Alaska Airlines	11/06/06	427.60
00029747	Kodiak*	Escort Travel	Alaska Airlines	11/5-6/06	836.71
00029747	Kodiak*	Client Travel	Era Aviation	11/08/06	297.49
00029747	Kodiak*	Escort Travel	Era Aviation	11/08/06	297.49
00029747 Total					1,859.29
00031099	Ketchikan	Travel	Ak Airlines	12/6/06	837.00
00031099 Total					837.00
00034526	Barrow	Travel	AK Airlines	10/3/2006	915.52
00034526	Barrow	Travel	AK Airlines	11/9/2006	311.31
00034526 Total					1,226.83
00036748	Fairbanks	Assessment	Volunteers of America	7/6/2006	75.00
00036748 Total					75.00
00038668	Craig	Travel	Promech	7/18/06	262.25
00038668 Total					262.25
00039003	Ketchikan	Travel	Ak Airlines	12/1/07	308.50
00039003 Total					308.50
00040245	Ketchikan	Travel	Ak Airlines	8/28/07	1,118.49
00040245	Ketchikan	Travel	Ak Airlines	8/28/06	1,060.50
00040245 Total					2,178.99
00041186	Kotzebue	Travel	AK Airlines/Bering	9/6/2006	813.36
00041186	Kotzebue	Travel	Bering Air	9/7/2006	125.00
00041186 Total					938.36
00041379	Kenai*	Psych Eval	Dr. Paul Turner	08/14/06	1,000.00
00041379 Total					1,000.00
00041974	Ketchikan	Travel	Ak Airlines	9/20/06	164.00
00041974	Ketchikan	Travel	Sunrise Aviation	8/24/06	1,125.00
00041974 Total					1,289.00
00042528	Valdez*	Client Travel	Era Aviation	09/06/06	123.00
00042528	Valdez*	Escort Travel	Era Aviation	09/06/06	228.99
00042528	Valdez*	Guard Fee	Detec	09/06/06	253.75
00042528 Total					605.74
00043087	Dillingham*	Guard Fee	Detec	12/20/05	437.00
00043087 Total					437.00
00043370	Kotzebue	Travel	Bering Air	9/26/2006	486.00
00043370 Total					486.00
00043763	Kodiak*	Guard Fee	Detec	01/06/06	163.00

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COMIS	LOCATION	TYPE of SERVICE	PAYEE	DATE of SVC/TRVL	COST
00043763	Kodiak*	Guard Fee	Detec	01/31/06	383.00
00043763 Total					546.00
00043801	Kotzebue	Travel	AK Airlines	10/25/2006	581.04
00043801 Total					581.04
00044677	Dillingham*	Guard Fee	Detec	01/04/06	116.50
00044677 Total					116.50
00045460	Ketchikan	Travel	Ak Airlines	8/2/06	178.01
00045460	Ketchikan	Travel	Ak Airlines	9/15/06	187.50
00045460 Total					365.51
00045473	Fairbanks	Psych Eval	Samaritan Counseling	10/11/2006	325.00
00045473 Total					325.00
00045809	Craig	Travel	Promech	9/13/06	273.00
00045809 Total					273.00
00045817	Ketchikan	Travel	Inter Island/Promech	10/26/06	144.84
00045817 Total					144.84
00045836	Ketchikan	Travel	Ak Airlines	12/7/06	358.80
00045836	Ketchikan	Travel	Promech	10/2/06	91.00
00045836 Total					449.80
00046285	MatSu*	Client Travel	Era Aviation	08/18/06	94.00
00046285	MatSu*	Escort Travel	Era Aviation	08/18/06	171.00
00046285	MatSu*	Guard Fee	Detec	08/18/06	306.25
00046285 Total					571.25
00046315	Kotzebue	Travel	Bering Air	7/3/2006	728.50
00046315	Kotzebue	Travel	Bering Air	7/5/2006	129.50
00046315 Total					858.00
00046565	Fairbanks	Travel	AK Airlines	10/9/2006	601.90
00046565 Total					601.90
00046697	Juneau	Travel	Wings	11/9/06	77.50
00046697 Total					77.50
00046798	Valdez*	Client Travel	Era Aviation	08/23/06	123.00
00046798	Valdez*	Escort Travel	Era Aviation	08/23/06	228.99
00046798	Valdez*	Guard Fee	Detec	08/23/06	223.00
00046798 Total					574.99
00046995	Dillingham*	Client Travel	Alaska Island Air	12/28/06	100.00
00046995	Dillingham*	Client Travel	Frontier Flying Svc	12/28/06	218.50
00046995	Dillingham*	Escort Travel	Frontier Flying Svc/PenAir	12/28-29/06	499.50
00046995	Dillingham*	Escort Hotel	Springhill Suites	12/29/06	80.00
00046995	Dillingham*	Escort Car	Budget Car Rental	12/29/06	37.30
00046995	Dillingham*	Escort Meals	Blinn Dull	12/28-29/06	32.00

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PMIS	LOCATION	TYPE of SERVICE	PAYEE	DATE of SVC/TRVL	COST
00046995	Dillingham*	Escort Travel	Alaska Island Air	12/28/06	217.50
00046995 Total					1,184.80
00047148	Bethel	Travel	AK Airlines	10/4/2006	1,131.49
00047148 Total					1,131.49
00047343	Juneau	Travel	Ak Airlines	11/14/06	205.00
00047343 Total					205.00
00047387	Craig	Travel	Ak Airlines	11/16/06	481.10
00047387 Total					481.10
00047420	Kotzebue	Travel	Bering Air	9/19/2006	224.00
00047420 Total					224.00
00047455	Kodiak*	Client Travel	Era Aviation	09/19/06	397.50
00047455	Kodiak*	Escort Travel	Alaska/ERA	09/19/06	179.00
00047455	Kodiak*	Guard Fee	Jerel Lampl	09/18/06	100.00
00047455	Kodiak*	Client Travel	Era Aviation	08/09/06	341.01
00047455	Kodiak*	Escort Travel	Era Aviation	08/09/06	341.01
00047455	Kodiak*	Guard Fee	Detec	08/09/06	414.50
00047455	Kodiak*	Client Travel	Alaska/ERA	09/14/06	397.50
00047455	Kodiak*	Escort Travel	Alaska/ERA	09/14/06	397.50
00047455	Kodiak*	Guard Fee	Detec	09/14/06	422.00
00047455	Kodiak*	Guard Fee	Steve McCormick	9/19-20/06	625.00
00047455 Total					3,615.02
00047816	Kodiak*	Guard Fee	Detec	07/26/06	178.00
00047816	Kodiak*	Client Travel	Era Aviation	08/23/06	179.00
00047816	Kodiak*	Guard Fee	Detec	08/23/06	241.00
00047816	Kodiak*	Client Travel	Era Aviation	07/26/06	181.50
00047816 Total					779.50
00047909	Barrow	Travel	AK Airlines	12/20/2006	886.30
00047909 Total					886.30
00047984	Juneau	Travel	Ak Airlines	11/6/06	998.21
00047984 Total					998.21
00048126	Kotzebue	Travel	AK Airlines	9/6/2006	863.50
00048126 Total					863.50
00048163	Dillingham*	Guard Fee	Detec	12/28/05	204.25
00048163 Total					204.25
00048205	Barrow	Travel	Frontier Flying	7/11/2006	293.50
00048205 Total					293.50
00048571	Ketchikan	Travel	Ak Airlines	10/23/06	205.00
00048571 Total					205.00
00048618	Ketchikan	Travel	Inter Island/Promech	9/13/06	168.44

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COMIS	LOCATION	TYPE of SERVICE	PAYEE	DATE of SVC/TRVL	COST
00048618	Ketchikan	Travel	Ak Airlines	11/2/06	1,136.40
00048618	Ketchikan	Travel	Ak Airlines	11/2/06	1,137.40
00048618	Total				2,442.24
00048809	Sitka	Travel	Ak Airlines	12/5/06	164.50
00048809	Total				164.50
00048816	Valdez*	Guard Fee	Detec	11/29/06	162.50
00048816	Total				162.50
00048830	Kodiak*	Guard Fee	Detec	09/20/06	587.00
00048830	Kodiak*	Guard Fee	Steve McCormick	09/14/06	175.00
00048830	Kodiak*	Client Travel	Era Aviation	09/14/06	196.00
00048830	Kodiak*	Escort Travel	Alaska/ERA	09/14/06	341.01
00048830	Kodiak*	Client Travel	Era Aviation	09/20/06	414.50
00048830	Kodiak*	Escort Travel	Era Aviation	09/20/06	397.50
00048830	Total				2,111.01
00049133	Nome	Travel	Frontier Flying	9/25/2006	696.00
00049133	Nome	Travel	AK Airlines	12/7/2006	675.50
00049133	Total				1,371.50
00050021	Valdez*	Client Travel	Alaska/ERA	07/11/06	405.00
00050021	Valdez*	Guard Fee	Detec	10/03/06	251.50
00050021	Valdez*	Client Travel	Era Aviation	10/03/06	112.00
00050021	Valdez*	Escort Travel	Era Aviation	10/03/06	207.00
00050021	Total				975.50
00050059	Craig	Travel	Ak Airlines	7/13/06	662.49
00050059	Total				662.49
00050615	Valdez*	Guard Fee	Detec	10/26/06	165.00
00050615	Valdez*	Client Travel	Alaska Airlines	10/26/06	262.31
00050615	Total				427.31
00050769	Dillingham*	Client Travel	PenAir	09/06/06	121.00
00050769	Dillingham*	Escort Travel	PenAir	09/06/06	121.00
00050769	Total				242.00
00050849	Ketchikan	Travel	Ak Airlines	7/27/06	1,062.59
00050849	Ketchikan	Travel	Ak Airlines	8/2/06	190.00
00050849	Total				1,252.59
00050889	Fairbanks	Travel	AK Airlines	9/19/2006	1,288.78
00050889	Fairbanks	Travel	AK Airlines	9/19/2006	335.60
00050889	Total				1,624.38
00050949	Kodiak*	Client Travel	Era Aviation	10/11/06	157.00
00050949	Kodiak*	Escort Travel	Era Aviation	10/11/06	296.99
00050949	Kodiak*	Guard Fee	Elinor Ramos	10/11/06	162.50

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OMIS	LOCATION	TYPE of SERVICE	PAYEE	DATE of SVC/TRVL	COST
00050949	Kodiak*	Guard Fee	Steve McCormick	10/11/06	225.00
00050949	Kodiak*	Client Travel	Era Aviation	10/24/06	296.99
00050949	Kodiak*	Escort Travel	Era Aviation	10/24/06	296.99
00050949 Total					1,435.47
00051416	Fairbanks	Travel	Warbelow Air	7/17/2006	190.50
00051416 Total					190.50
00051630	Nome	Travel	Frontier Flying	10/23/2006	117.00
00051630	Nome	Travel	Frontier Flying	10/23/2006	(50.00)
00051630 Total					67.00
00051671	Ketchikan	Psych. Eval	John Kesserling	10/6/06	1,500.00
00051671	Ketchikan	Travel	Ak Airlines	10/25/06	366.98
00051671	Ketchikan	Travel	Ak Airlines	09/22/06	328.01
00051671	Ketchikan	Travel	Ak Airlines	11/22/06	173.00
00051671 Total					2,367.99
00051689	MatSu*	Client Travel	PenAir	08/16/06	521.00
00051689 Total					521.00
00051759	Ketchikan	Travel	Ak Airlines	9/27/06	791.95
00051759 Total					791.95
00051964	Ketchikan	Travel	Ak Airlines	7/11/06	387.50
00051964	Ketchikan	Psych. Eval	John Kesserling	10/6/06	1,500.00
00051964 Total					1,887.50
00052052	Ketchikan	Travel	AK Marine Hwy.	12/6/06	41.00
00052052 Total					41.00
00052096	Kodiak*	Client Travel	Era/Alaska Airlines	11/26-27/06	368.00
00052096	Kodiak*	Escort Travel	Era/Alaska Airlines	11/26-27/06	368.00
00052096	Kodiak*	Psych Eval	Dr. Martin Atrops	11/27/06	800.00
00052096 Total					1,536.00
00052140	Juneau	Travel	Ak Airlines	12/7/06	506.61
00052140	Juneau	Travel	Ak Airlines	12/20/06	767.92
00052140 Total					1,274.53
00052183	Dillingham*	Escort Travel	Alaska Airlines	9/8-9/06	513.00
00052183	Dillingham*	Escort Hotel	Springhill Suites	9/8-9/2006	80.00
00052183	Dillingham*	Escort Meals	Blinn Dull	9/8-9/06	64.00
00052183	Dillingham*	Escort Travel	Tucker Aviation	09/08/06	190.00
00052183	Dillingham*	Guard Fee	Detec	09/08/06	65.00
00052183	Dillingham*	Client Travel	Alaska Airlines	09/08/06	284.50
00052183	Dillingham*	Client Travel	Tucker Aviation	09/08/06	95.00
00052183 Total					1,291.50
00052324	Fairbanks	Counseling	Counseling/Doug Polmery	7/3/2006	336.00

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COMIS	LOCATION	TYPE of SERVICE	PAYEE	DATE of SVC/TRVL	COST
00052324 Total					336.00
00052488	Kotzebue	Travel	Bering Air	10/10/2006	156.00
00052488	Kotzebue	Travel	Bering Air	10/30/2006	67.00
00052488	Kotzebue	Travel	Bering Air	10/24/2006	258.97
00052488 Total					481.97
00052489	Kotzebue	Travel	Bering Air	10/10/2006	156.00
00052489	Kotzebue	Travel	Bering Air	12/20/2006	113.50
00052489	Kotzebue	Travel	Bering Air	10/30/2006	67.00
00052489	Kotzebue	Travel	Bering Air	10/24/2006	50.00
00052489	Kotzebue	Travel	AK Airlines	11/30/2006	1,217.90
00052489 Total					1,604.40
00052535	Ketchikan	Travel	Ak Airlines	10/25/06	205.00
00052535 Total					205.00
00052764	Juneau	Psych. Eval	John Kesserling	9/19/06	1,500.00
00052764 Total					1,500.00
00052797	Kotzebue	Travel	AK Airlines	7/21/2006	233.00
00052797 Total					233.00
00052798	Kotzebue	Travel	AK Airlines/Bering	7/14/2006	409.00
00052798 Total					409.00
00052831	Kotzebue	Travel	AK Airlines	9/6/2006	300.51
00052831 Total					300.51
00052912	Craig	Travel	Promech	9/27/06	91.00
00052912 Total					91.00
00052959	Anchorage*	Psych Counseling	Dr. Bruce Smith	11/20-5/9/07	290.00
00052959 Total					290.00
00053000	MatSu*	Psych Eval	Dr. Michael Rose	11/02/06	900.00
00053000 Total					900.00
00053081	Kodiak*	Guard Fee	Kenneth Parker	08/08/06	100.00
00053081	Kodiak*	Guard Fee	Detec	08/08/06	76.00
00053081	Kodiak*	Client Travel	Era Aviation	08/08/06	179.00
00053081	Kodiak*	Escort Travel	Era Aviation	08/08/06	341.01
00053081	Kodiak*	Guard Fee	Detec	08/10/06	302.00
00053081	Kodiak*	Client Travel	ERA	08/10/06	196.00
00053081	Kodiak*	Escort Travel	ERA/Alaska Air	08/10/06	559.50
00053081	Kodiak*	Guard Fee	Elinor Ramos	8/6-7/06	250.00
00053081	Kodiak*	Guard Fee	Steve McCormick	8/6-7/06	350.00
00053081	Kodiak*	Guard Fee	Dory Parker	8/6-8/06	575.00
00053081 Total					2,928.51
00053240	Kotzebue	Travel	Bering Air	8/29/2006	719.00

FY07 COURT ORDER

Sec. 6(f)

COMIS	LOCATION	TYPE of SERVICE	PAYEE	DATE of SVC/TRVL	COST
00053240 Total					719.00
00053331	MatSu*	Psych Eval	Dr. Michael Rose	10/06/06	1,350.00
00053331 Total					1,350.00
00053342	Kotzebue	Travel	Bering Air	9/13/2006	770.00
00053342 Total					770.00
00053464	Anchorage*	Monitoring	Alaska Monitoring Services	10/20/06	1,395.00
00053464 Total					1,395.00
00053551	Dillingham*	Guard Fee	Detec	10/13/06	67.50
00053551	Dillingham*	Client Travel	PenAir	10/11/06	387.00
00053551	Dillingham*	Escort Travel	PenAir	10/11/06	469.00
00053551	Dillingham*	Escort Travel	PenAir	10/11/06	225.00
00053551	Dillingham*	Client Travel	Tucker Aviation	10/11/06	95.00
00053551	Dillingham*	Escort Travel	Tucker Aviation	10/11/06	95.00
00053551	Dillingham*	Client Travel	Alaska Airlines	10/13/06	300.51
00053551	Dillingham*	Client Travel	Alaska Airlines	12/21/06	298.50
00053551	Dillingham*	Escort Travel	Alaska Airlines	12/21/06	579.50
00053551 Total					2,517.01
00053617	Dillingham*	Escort Travel	PenAir	10/21/06	469.00
00053617	Dillingham*	Escort Travel	PenAir	10/20/06	225.00
00053617	Dillingham*	Guard Fee	Detec	10/21/06	66.00
00053617	Dillingham*	Client Travel	PenAir	10/21/06	402.00
00053617	Dillingham*	Escort Hotel	Bristol Inn	10/20/06	136.80
00053617	Dillingham*	Escort Meals	Aaron Parker	10/20/06	42.00
00053617	Dillingham*	Guard Fee	Detec	12/01/06	68.50
00053617	Dillingham*	Client Travel	Alaska Airlines	12/01/06	285.00
00053617	Dillingham*	Escort Hotel	Springhill Suites	12/01/06	89.60
00053617	Dillingham*	Escort Meals	Blinn Dull	12/01/06	44.00
00053617	Dillingham*	Escort Travel	Alaska Airlines	12/01/06	285.00
00053617	Dillingham*	Escort Travel	Frontier Flying Service	12/02/06	207.50
00053617 Total					2,320.40
00053705	Kotzebue	Travel	AK Airlines/Bering	12/6/2006	231.00
00053705	Kotzebue	Travel	Frontier Flying	11/3/2006	529.50
00053705 Total					760.50
00053713	Kotzebue	Travel	Frontier Flying	11/3/2006	122.00
00053713	Kotzebue	Travel	AK Airlines/Bering	12/6/2006	523.00
00053713 Total					645.00
Grand Total					86,011.91

FY07 COURT ORDER

Sec. 6(f)

COMIS	LOCATION	TYPE of SERVICE	PAYEE	DATE of SVC/TRVL	COST
			Total in AKSAS Through 12/31/2006		86,011.91
			Dived by 5.5 Months		15,638.53
			Multiplied by 12 months		187,662.36
			Add 10%		18,766.24
			Total amount of Supplemental Request		206,428.59

Change Record Detail With Description
Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)
 Component: Adult Public Assistance (222)
 RDU: Public Assistance (73)

Scenario/ Change Record	Trans Title Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP

FY2007 Supplemental - Governor

Reduction In Adult Public Assistance Caseload/Costs

	Suppl	-750.0	0.0	0.0	0.0	0.0	0.0	-750.0	0.0	0	0	0
1004 Gen Fund		-750.0										

The Department of Health and Social Services, Division of Public Assistance is offering up a reduction of \$750,000.in general funds from a projected surplus in the Adult Public Assistance formula program due to lower caseload and costs.

The Adult Public Assistance Program (APA) provides access to financial assistance and medical care to elderly and disabled Alaskans. The program was created to supplement Social Security benefits and provides the recipient with the income support needed to remain as independent as possible in the community. To be eligible for APA, a low-income individual must be over 64 years of age, or at least 18 years of age and blind, or diagnosed by a physician as permanently disabled, chronically ill, or terminally ill.

APA program changes helped reduce the rate of APA caseload and expenditure growth in FY04, FY05 and FY06. The rate of caseload increase declined due to a new medical screening process implemented in September 2003, and stricter Supplemental Security Income application criteria that resulted in a reduction in Interim Assistance approvals and expenditures.

Lower than expected formula APA caseloads in FY06 and FY07, together with APA policy changes implemented in July 2004 to implement cost containment measures, will generate APA savings that exceed initially planned levels in FY07.

The attachment gives a caseload summary and a table showing the calculation of the surplus funds.

Totals		-750.0	0.0	0.0	0.0	0.0	0.0	-750.0	0.0	0	0	0
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Sec. 6(g)

Sec. 6(g)

APA Caseload Summary FY03-06

	FY03	FY04	FY05	FY06	FY07
APA Cases	15,429	15,859	16,019	16,356	16,745
Caseload Increase	781	430	160	338	388
Percent Change	5.3%	2.8%	1.0%	2.1%	2.4%
APA Formula Expenditure	\$56,665.6	\$57,137.1	\$54,567.5	\$55,432.5	\$56,981.4
Expenditure Change	\$2,542.6	\$471.5	(\$2,569.6)	\$865.1	\$1,548.8
Percent Change	4.7%	0.8%	-4.5%	1.6%	2.8%

	FY 07	Auth	Projected	Balance
APA	57,731.4	57,731.4	56,981.4	750.0
Total	57,731.4	57,731.4	56,981.4	750.0
Fed	1,030.0	1,030.0	1,030.0	0.0
GF	52,838.4	52,838.4	52,088.4	750.0
PFD HH	<u>3,863.0</u>	<u>3,863.0</u>	<u>3,863.0</u>	<u>0.0</u>
Total	57,731.4	57,731.4	56,981.4	750.0

Change Record Detail With Description

Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)

Component: Senior Care (2760)

RDU: Public Assistance (73)

Scenario/ Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP
FY2007 Supplemental - Governor												
Senior Care Pharmacy Assistance Caseload/Cost Reduction												
	Suppl	-1,500.0	0.0	0.0	0.0	0.0	0.0	-1,500.0	0.0	0	0	0
1004 Gen Fund		-1,500.0										
<p>The Department of Health and Social Services, Division of Public Assistance is offering up a reduction of \$1,500,000 in general funds from the SeniorCare program.</p> <p>SeniorCare helps low-income elderly Alaskans by providing a cash or prescription drug benefit. The prescription drug component of the SeniorCare program has been used at a lower rate than originally estimated. Survey information indicates that many seniors have other insurance coverage available that reduces their need for the SeniorCare prescription drug benefit.</p>												
Totals		-1,500.0	0.0	0.0	0.0	0.0	0.0	-1,500.0	0.0	0	0	0

Sec. 6(h)

Change Record Detail With Description
Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)
 Component: Senior and Disabilities Medicaid Services (2662)
 RDU: Senior and Disabilities Services (487)

Scenario/ Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP

FY2007 Supplemental - Governor

SDS Medicaid Slower Growth Rate/Realized Cost Containment Savings

	Suppl	-5,000.0	0.0	0.0	0.0	0.0	0.0	-5,000.0	0.0	0	0	0
1003 G/F Match	-5,000.0											

The Department of Health and Social Services, Division of Senior and Disability Services (SDS) is offering up a reduction of \$5,000,000 general fund match as a result of a slower rate of growth than originally projected in the Medicaid component.

Recent projections of SDS Medicaid expenditures indicate a slower rate of growth than originally projected for SFY07. Expenditure growth is the result of an increase in caseload which has been mitigated by a decrease in utilization of services. This is mostly due to regulatory changes to the Personal Care Attendant program which resulted in lower utilization of services.

The revised projection of an increase in average monthly number of persons receiving benefits through SDS Medicaid in SFY07 is 9%, down from earlier projections of 15% growth. Under the new Personal Care Attendant program regulations, assessments of need are done using a standardized tool. As a result of these assessments, approximately 11% of clients were determined to be ineligible to receive personal care services.

In SFY07, the average annual expenditure per person is projected to decrease by 6% from \$52,500 to \$49,250. The personal care assessments have resulted in an 11% net weighted average reduction in hours authorized.

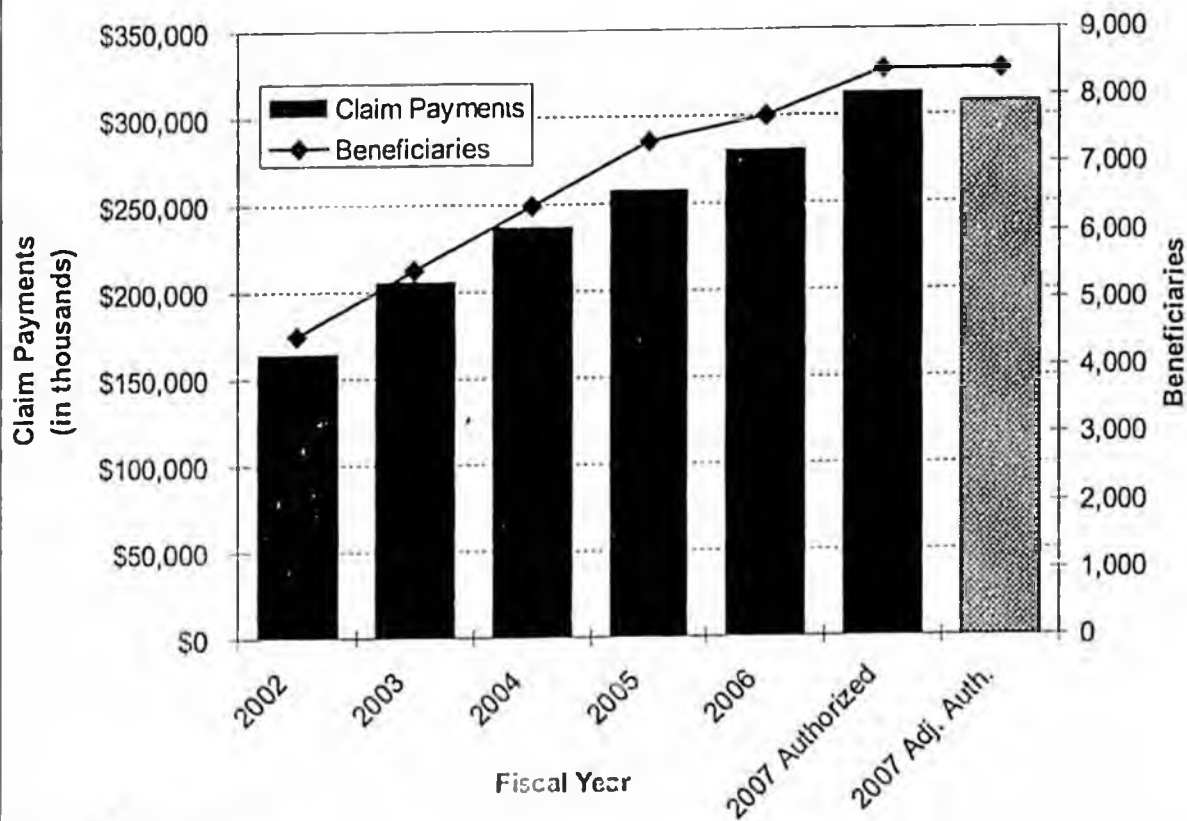
The attached chart shows claim payments and beneficiaries from SFY02 through SFY07.

Totals		-4,200.0	0.0	0.0	0.0	0.0	0.0	-1,200.0	0.0	0	0	0
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Sec. 6(1)(5)

Sec. 6(i)+(j)

Senior and Disabilities Medicaid Services Beneficiaries and Claim Payments



Source: MMIS-JUCE data.

Change Record Detail With Description

Department of Health and Social Services

Scenario: FY2007 Supplemental - Governor (5770)

Component: Senior and Disabilities Medicaid Services (2662)

RDU: Senior and Disabilities Services (487)

Scenario/ Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Dobt Service	Positions		
										PFT	PPT	NP
FY2007 Supplemental - Governor												
Increase SDPR Authorization for Overpay Recoveries												
	Suppl	800.0	0.0	0.0	0.0	0.0	0.0	800.0	0.0	0	0	0
1108 Stat Desig	800.0											

The Department is requesting \$600,000 additional Statutory Designated Program Receipt authority to comply with provisions of AS 47.05.200(c) related to audits. This provision was established under Chapter 66, SLA 2003 (SB 41 Establishing independent audits) and requires the recovered overpayments from audits to be collected in this manner.

Medicaid is an entitlement program created by the federal government, but administered by the state to provide payment for medical services to low income citizens. People qualify for Medicaid by meeting federal income and asset standards and by meeting specified eligibility categories. Once it has been determined that a client qualifies for Medicaid, payment will be made to the provider for medical expenses. Through the audit process, it may be discovered that there was a claiming discrepancy or an incorrect eligibility determination. Once this finding has been made, the State will bill the agency to collect the overpayment. This payment is received as statutory designated program receipts in the Medicaid component.

The additional statutory designated program receipt authorization will allow the Senior and Disabilities Services Medicaid program to collect and expend revenues above the current authorization.

In calendar year 2006, the department collected \$579.8 for the total Medicaid program as follows:

- \$ 16.9 January through March
- \$125.7 April through June
- \$163.1 July through September
- \$274.1 October through December

See 6/12)

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER
FINANCE AND MANAGEMENT SERVICES

SARAH PALIN, GOVERNOR

P.O. Box 110650
Juneau, AK 99811-0650
Phone: (907) 465-3082
Fax: (907) 465-2499

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March 2, 2007

MAR 07 2007

The Honorable Lyman Hoffman, Co-Chair
The Honorable Bert Stedman, Co-Chair
The Honorable Charlie Huggins, Vice-Chair
Senate Finance Committee
State Capitol, Room 518, 516 and 119
Juneau, AK 99801-1182

COPY

Dear Senators Hoffman, Stedman and Huggins:

In response to your inquires on February 27, 2007 at the SB83 Supplemental hearing, please see the responses below:

The first four questions are in reference to the Fairbanks Virology Laboratory.

➤ *How much of the 24.2 million has been expended?*

The funding source for the \$24.2 million appropriated in FY06 was Certificates of Participation. To date nearly \$1 million has been expended. Funds have been expended for the following:

- Selling of Certificates of Participation
- Architectural and Engineer. Services
- DOT/PF - ICAP and Project Management
- General Contractor Pre-Construction Services
- UAF Building Permits and Administrative Support

➤ *How much has the department used for administrative purposes?*

The Department has not spent any of the appropriation for administrative costs. DOT/PF administrative costs are allowed as bondable costs. DOT/PF ICAP rate is 2% of the project amount. DHSS intends to expend up to \$200.0 from the full project amount of \$30.7 million to offset the cost of DHSS project administration. This is the only administrative expenses that DHSS will have and it is less than 0.7% of the project.

- *Can the state's virology needs be addressed in Juneau, Anchorage or another city? Can it be done cheaper somewhere else?*

The location for the laboratory was looked at extensively during the planning process. We looked at the cost of expanding the Anchorage Laboratory to accommodate virology, as well as locating the laboratory in Fairbanks off campus. No consideration was given to locating it in Juneau since the Department closed the old Juneau laboratory in the late 1990s to increase efficiencies and decrease operational expenses. The cost for adding on to the Anchorage laboratory would have been comparable to building in Fairbanks. However, the benefits of keeping it in Fairbanks would have been compromised.

The driving factor for keeping the laboratory on the Fairbanks campus was the desire for collaboration between the virology staff and UAF researchers. The UAF West Ridge is becoming the research hub in Alaska. The university is expanding its biomedical research program on infectious diseases and sees strong potential for collaboration with the state-operated virology laboratory. The laboratory would be connected to the Biological Research and Diagnosis facility (BiRD). Also, keeping the laboratory in Fairbanks allows for a level of redundancy in the event of a man-made or natural disaster for both the Anchorage and Fairbanks locations. Following the decision to keep the laboratory in Fairbanks, it only made sense to keep it on campus where it would be most beneficial for staff and research.

- *Who is paying for stainless steel apparatuses? Assume more costs coming, who will pay for these?*

The Department of Health and Social Services is responsible for all costs for construction of the laboratory that will be used by the Division of Public Health. This includes all stainless steel apparatuses including fume hoods, bio-safety cabinets, and other equipment.

- *What are the number of residents and the capacity of the Sitka Pioneer Home?*

The Sitka Pioneer Home (SPH) has 63 residents and 75 licensed beds and as of January.

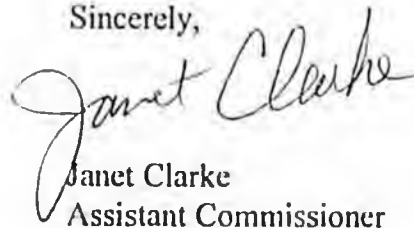
In SFY 07, the SPH had four additional positions (one Registered Nurse and three Certified Nurse Aides) added to their budget and these positions are now filled. Sitka's staff is working at increasing residency. The staff is expected to be able to properly care for 75 residents with the current staffing level.

- *When cost containment was implemented in the interim assistance program, how many people did not qualify for benefits?*

The Division of Public Assistance implemented the in-depth medical review process for Interim Assistance (IA) applicants in September 2003. The Interim Assistance caseload has decreased 56%, from 1,471 IA recipients in August 2003 (the month before the IA medical review process was implemented) to 817 recipients in January 2007.

If you have additional questions regarding this issue, please contact me at 465-1630.

Sincerely,



Janet Clarke
Assistant Commissioner

cc: Senator Kim Elton, Capitol Building, Room 506
Senator Donny Olson, Capitol Building, Room 514
Senator Joe Thomas, Capitol Building, Room 510
Senator Fred Dyson, Capitol Building, Room 121
Karleen Jackson, Commissioner
Anthony Lombardo, Deputy Commissioner
Bill Hogan, Deputy Commissioner
Sherry Hill, Special Assistant
Laura Baker, Budget Chief, Finance and Management Services
Mary Sutton, Budget Analyst, Office of Management and Budget
Gary Zepp, Fiscal Analyst, Legislative Finance
Jay Butler, Director, Division of Public Health
Virginia Smiley, Director, Alaska Pioneer's Homes
Ellie Fitzjarrald, Director, Division of Public Assistance
Arnold Liebelt, Facilities Chief, Finance and Management Services

LAW

Change Record Detail With Description

Department of Law

Scenario: FY2007 Supplemental - Governor (5770)

Component: Deputy Attorney General's Office (2205)

RDU: Civil Division (35)

Scenario/ Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants & Benefits	Misc./Debt Service	Positions		
										PFT	PPT	NP
FY2007 Supplemental - Governor												
Judgments and Claims												
	Suppl	92.6	0.0	0.0	92.6	0.0	0.0	0.0	0.0	0	0	0
1004 Gen Fund	92.6											
The actual amount of the FY2007 Judgments and Claims that are finalized as of February 1, 2007 is \$92,509.85.												
Totals		92.6	0.0	0.0	92.6	0.0	0.0	0.0	0.0	0	0	0

Sec. 17(a)(15)

Sec. 7(a)



FY 2007 JUDGMENTS AND CLAIMS

Department of Law

FY07 Judgments & Claims - General Funds

Item #	Case Name	Description	Date	Amount	Interest	Total
1	Robinson & Associates itf Michael Grunert	Supreme Court finding reversing lower court's judgment, holding that Board of Fish regulation illegally allocated within a single fishery.	4/21.06 & 8/2	1,845.27	164.74	2,010.01
2	James B. Gottstein itf Faith Meyers	Public interest litigant status in re: constitutionality and due process issues re administration of psychotropic drugs by API	8/23/2006	82,240.00	5,781.02	88,021.02
3	Baxter, Bruce & Sullivan O'Bryan Baun Cohen Kuebler v.State, Workers' Comp	Ruling that information regarding seafood processing plant employee injuries is not exempt from Alaska Public Records Act (AS 40.25)	1/1/2006	2,206.96	271.86	2,478.82
						92,509.85

RECEIVED

DEC 22 2006

DEPT. OF LAW
ADMIN. SERVICES

Department of Law

JUDGMENTS/CLAIMS/SETTLEMENTS FOR PAYMENT

(Please Type)

**This form will be used for the purpose of standardizing the submission of claims to the Legislature. Complete and accurate information will expedite payment to the claimants, thereby reducing the amount of interest required to be paid by the state. Please submit this form to the Director, Administrative Services Division, P.O. Box 110300, Juneau, AK 99811, or call (907) 465-3673.

PART ONE

1. Case Name: State of Alaska v. Michael Grunert, et al.
2. Case Number: S-11951/11991
3. Judge/Justices: Alaska Supreme Court
4. Date Judgment entered: Fees: April 21, 2006; Costs: August 23, 2006
5. Did the date of the cause of action accrue on or after August 7, 1997? Yes.
6. Amount to be paid: \$1,250 (Fees) + \$595.27 (Costs) = \$1,845.27 (Total)
7. Interest Rate: 8.25% Effective Date: Fees: 4/21/06; Costs 8/23/06
8. Requested hourly rate and total compensation of attorneys to be paid: No fees are normally requested on appeal.
9. Court approved/ordered hourly rate and total compensation of attorneys to be paid: Fees: Routine award of \$1,250 for appeal; court ordered costs of \$595.27.
10. Payable to: Robinson & Associates, in trust for Michael Grunert, 35401 Kenai Spur Highway, Soldotna, Alaska 99669
11. EIN: 571151089 or SSN: Submit separately
12. Send check to: above address Departmental contact: _____

Departmental attorney contact:
Lance B. Nelson
Lance B. Nelson, Sr. Ass't Atty. Gen.

(907) 269-5241
Telephone Number

Departmental Approval:
Craig J. Tilley
Deputy Attorney General
12/22/06
Date

Department of Law

JUDGMENT/SETTLEMENT FUNDING REQUEST
QUESTIONNAIRE

PART TWO

The following information needs to be provided on all judgment awards and/or settlements made against the State.

Case Name: State of Alaska v. Michael Grunert, et al.

Case No.: S-11951/11991

1. Describe the circumstances or events resulting in this case and ultimately this judgment/settlement against the State. The plaintiffs filed a complaint challenging the validity of the emergency regulation adopted by the Board of Fisheries to reestablish a cooperative commercial salmon fishery in Chignik. The superior court agreed with plaintiffs' arguments that the changes in the regulation were not sufficient to cure the lack of statutory authority for the co-op regulation cited by the Alaska Supreme Court in an earlier case challenging the original co-op regulation, *Grunert v. State*, 109 P.3d 924 (Alaska 2005) (*Grunert I*), and granted summary judgment to the plaintiffs. The superior court entered final judgment, including costs and attorney fees as outlined in part one of this form). Although the Alaska Supreme Court granted our motion to stay the superior court's judgment for the 2005 season, the Court eventually affirmed the lower court's judgment on appeal, effectively removing any possibility of a valid cooperative fishery regulation, and requiring the payment of costs and fees as requested here. The Supreme Court opinion issued on April 21, 2006. Although a petition for rehearing was not decided until August 22, 2006, and the issues in the petition for rehearing would not have changed the result.

2. Describe issues of State policy or law involved in this case, if they are relevant to and resulted in substantial effort and expense for the department to bring or defend this case. This case involved the authority of the Board of Fisheries to adopt a regulation, presumed valid, to establish a framework for a voluntary cooperative commercial salmon fishery in an effort to keep the fishery economically viable for as many participants as possible. This was a novel legal question that required many hours of research and writing and preparation of exhibits, as well as preparation for, and presentation of, oral arguments before the supreme court.

3. Did the State prevail on any issues? If so, describe. The state prevailed in the superior court on two issues: (1) the adequacy of the Board's finding of emergency, and (2) the reasonableness of the Board's determination that the emergency regulation allocated fish between two separate fisheries, rather than within one fishery. On appeal, the Supreme Court ultimately agreed with us that the emergency finding issue was moot, but reversed the lower court's judgment in the allocation issue, holding that the regulation illegally allocated within a single fishery.

4. Did we challenge plaintiffs' request for costs and fees or in other ways seek to reduce the costs to the State? If so, describe to what extent we were successful. No, the hours and rates were reasonable and consistent with Civil Rule 82 and cases interpreting it.

5. What was the source of the State's liability in this case? The Board of Fisheries lack of clear statutory authority to adopt a cooperative fishery regulation.

6. What, if any, preventative action has been taken by the involved agency to prevent or reduce the potential for such liability in the future? The Board has repealed two regulations that were inconsistent with the Supreme Court's opinion.

7. If the information is available to you, has the agency involved taken any corrective action as a result of this case? If the information is not protected from publication by statute, privilege, or right to privacy, indicate what the corrective action was. The Board of Fisheries repealed a similar permanent regulation it had adopted after the expiration of the 2005 emergency regulation and another similar regulation for the Nunivak Island herring fishery.

8. Any recommendations concerning cases of this type in the future? We should keep in mind that the Alaska Supreme Court will give very close scrutiny to any commercial fishing regulation that allows a type of fishing that it deems to be a radical departure from the historical model of commercial fishing, and likely invalidate such regulations.

9. Any recommendations for changes in statutes, regulations or policy? Cite any applicable statutes or regulations. Yes, the Department of Fish and Game and the Board of Fisheries should seek a legislative amendment to clarify that the Board can allocate within a fishery for reasonable purposes.

Attorney completing form:

Lance B. Nelson

Senior Assistant Attorney General
Title

Date:

December 21, 2006

(907) 269-5241
Phone Number

Order Regarding Fees and Costs

State of Alaska, Board of Fisheries, Fish & Game v. Michael Grunert, et al.

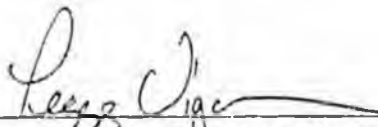
Supreme Court No. S-11951/S11991

Date of Order: 4/21/06

Under Appellate Rules 508(e) and (f)(1), attorney's fees of \$1250.00 are awarded to the appellees/cross-appellants. On or before 5/1/06, the appellees/cross-appellants shall serve and file with this court an itemized and verified bill of costs.

Entered at the direction of an individual justice on 4/21/06.

Clerk of the Supreme Court


Peggy Vigoren, Deputy Clerk

cc: Authoring Justice
Trial Court Appeals Clerk/Anchorage

Distribution:

Lance B Nelson
Asst Attorney General
1031 West Fourth Avenue, Suite 200
Anchorage AK 99501

Arthur S Robinson
Robinson & Associates
35401 Kenai Spur Highway
Soldoma AK 99669

Gregory F Cook
Attorney at Law
P O Box 240613
Douglas AK 99824

Grunert

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AUG 23 2006

In the Supreme Court of the State of Alaska

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
3RD JUDICIAL DISTRICT
ANCHORAGE, ALASKA

State of Alaska, Board of Fisheries,)
Fish & Game,)

) Supreme Court No. S-11951/S-11991

Appellants/Cross-Appellees,)

v.)

Michael Grunert, et al.,)

Appellees/Cross-Appellants.)

Order
Costs and Fees

Date of Order: 8/23/06

Trial Court Case # 3AN-05-07909CI

On consideration of the cost bill, filed on 4/26/06, and no opposition having been filed,

IT IS ORDERED:

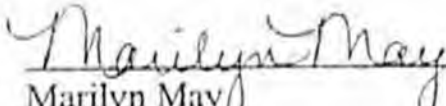
1. Appellants/Cross-Appellees shall pay \$595.27 for the following costs:

Filing fee in S-11991	\$150.00
Copies of briefs	\$112.92
Postage for briefs	\$ 48.85
Printing of briefs	\$283.50
Total	\$595.27

2. Check number 149028 in the amount of \$750.00 is sent to the Appellees/Cross-Appellants for return of the cost bond in S-11991.

Entered under Appellate Rule 508.

Clerk of the Appellate Courts


Marilyn May