

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE

March 3, 2006

2:03 PM

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Gary Wilken, Vice Chair
Senator Lyda Green
Senator Kim Elton
Senator Donny Olson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 250

"An Act extending the termination date of the Council on Domestic Violence and Sexual Assault; and eliminating statutory references to the network on domestic violence and sexual assault."

MOVED SB 250 OUT OF COMMITTEE

SENATE BILL NO. 235

"An Act relating to a public school performance incentive program; and providing for an effective date."

MOVED SB 235 OUT OF COMMITTEE

SENATE BILL NO. 281

"An Act relating to interdistrict operation of public schools; relating to enrollment of students by school districts and regional educational attendance areas; and relating to charter schools and correspondence programs."

SCHEDULED BUT NOT HEARD

Overview: DHSS Personal Care Attendant Regulations

PREVIOUS COMMITTEE ACTION

BILL: SB 250

SHORT TITLE: DOMESTIC VIOLENCE/SEXUAL ASSAULT COUNCIL

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

01/26/06 (S) READ THE FIRST TIME - REFERRALS

01/26/06 (S) HES, FIN
02/17/06 (S) HES AT 1:30 PM BUTROVICH 205
02/17/06 (S) Heard & Held
02/17/06 (S) MINUTE(HES)
02/22/06 (S) HES AT 1:30 PM BUTROVICH 205
02/22/06 (S) Heard & Held
02/22/06 (S) MINUTE(HES)
03/01/06 (S) HES WAIVED PUBLIC HEARING NOTICE, RULE
23
03/03/06 (S) HES AT 2:00 PM BUTROVICH 205

BILL: SB 235

SHORT TITLE: SCHOOL PERFORMANCE BONUSES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/13/06 (S) READ THE FIRST TIME - REFERRALS
01/13/06 (S) HES, FIN
02/01/06 (S) HES AT 1:30 PM BUTROVICH 205
02/01/06 (S) -- Rescheduled to 02/03/06 --
02/03/06 (S) HES AT 1:30 PM BUTROVICH 205
02/03/06 (S) -- Rescheduled from 02/01/06 --
02/08/06 (S) HES AT 1:30 PM BUTROVICH 205
02/08/06 (S) Heard & Held
02/08/06 (S) MINUTE(HES)

WITNESS REGISTER

Pat Davidson, Legislative Auditor
Division of Legislative Audit
333 Willoughby Ave
Juneau, AK 99801-3300

POSITION STATEMENT: Commented on SB 250.

Chris Ashenbrenner, Program Coordinator for Training
Network for Domestic Violence and Sexual Assault
130 Seward Street, Suite 214
Juneau, AK 99801

POSITION STATEMENT: Opposed SB 250 as written.

John Sherwood, Medical Administrator
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Presented an update on Personal Care Assistant Program regulations.

ACTION NARRATIVE

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at [2:04:01 PM](#). Present were Senators Kim Elton, Donny Olson, Lyda Green, Gary Wilken and Chair Fred Dyson.

SB 250-DOMESTIC VIOLENCE/SEXUAL ASSAULT COUNCIL

CHAIR FRED DYSON announced SB 250 to be up for consideration. He said that SB 250 extends the termination date for the Council for Domestic Violence and Sexual Assault (Council). He added that the Legislative Budget and Audit Committee (LB&A) considered the auditor's report and suggested making changes to the board to avoid the appearance of a conflict of interest.

[2:06:22 PM](#)

PAT DAVIDSON, Legislative Auditor, reported her concern about the statutory requirement that the Governor consult with one specific organization, the Network for Domestic Violence and Sexual Assault (Network), in appointing the Council's public members. This requirement creates the appearance of impropriety because the Network is a recipient of grants from the Council. Authorizing the governor to consult with everybody and not make any particular organization first among equals is language and policy.

SENATOR ELTON asked how much money the Department of Public Safety (DPS) receives from the Council.

MS. DAVIDSON replied that the schedule of grants awarded in 2006 indicates the DPS received over \$180,000 under the federal Violence Against Women Act (VAWA).

SENATOR ELTON remarked that the so-called conflict is really a potential conflict because the Governor need not accept the Network's recommendations, but he sees another conflict of interest arising from the fact that the Attorney General and the Commissioner of the Department of Public Safety serve on the Council and thereby make decisions regarding the distribution of grant money destined to their own departments. He asked why the LB&A Committee is more concerned with the former potential conflict than with the latter one.

MS. DAVIDSON replied that she considers the latter potential conflict to be less serious because the VAWA grant money gets significant federal oversight.

SENATOR ELTON asked if the LB&A Committee recommended this legislation because it found the conflict of interest to be a factor contributing to the lack of oversight over Council requests.

MS. DAVIDSON answered that her concern is that the potential conflict may recreate the aforementioned problem at a later date.

SENATOR ELTON asked whether the Governor always follows the Network's advice.

MS. DAVIDSON replied that page 11 of the report indicates that the Governor recommended just two of the last five public members recommended by the Network.

[2:16:15 PM](#)

CHRIS ASHENBRENNER, Program Coordinator for Training, Network, said that Network director, Peggy Brown, supported a conceptual amendment to institutionalize what is now an informal practice of including the Network director in the Council meetings. She remarked that the Network does not support the bill as written.

SENATOR ELTON said that he is concerned that state employees are over-represented on the Council. He added that his amendment would preclude state employees from serving on the Council's public seats. He remarked that the Mental Health Trust Advisory Board, the Occupational Safety and Health Review Board, the State Board of Parole, the Permanent Fund Corporation Board of Trustees, the Personnel Board, the Alaska Railroad Board of Directors, and the Oil and Gas Advisory Board all preclude state workers from serving as public members on their boards.

CHAIR DYSON disclosed that his wife had received funds from the Office of Victim's Assistance in the past. He said that while this is no longer the case, and unlikely to ever be the case in the future, he wanted to mention it to the committee.

SENATOR ELTON moved to adopt Amendment 3.

24-LS1546\A.6
Cook/Kane

A M E N D M E N T 3

OFFERED IN THE SENATE
TO: SB 250

BY SENATOR ELTON

Page 1, line 2:

Delete the first occurrence of "and"

Insert "**relating to public members of the Council on Domestic Violence and Sexual Assault appointed by the governor**"

Page 1, line 3, following "assault":

Insert "**; and providing for an effective date**"

Page 1, line 7:

Delete "persons"

Insert "**public members who are not employed by the state or a state entity and who are** [PERSONS]"

Page 2, following line 14:

Insert new bill sections to read:

"* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. The provisions of AS 18.66.020(a)(1), as amended by sec. 1 of this Act, apply to vacancies among the public members of the Council on Domestic Violence and Sexual Assault that occur on or after the effective date of sec. 1 of this Act.

* **Sec. 5.** Section 1 of this Act takes effect August 1, 2007."

CHAIR DYSON called for a roll call vote. Senators Elton and Olson voted yea; Senators Green, Wilken and Chair Dyson voted nay. Therefore Amendment 3 failed.

SENATOR ELTON said that the committee is making a fairly substantial change to law based on the premise that there is a conflict of interest.

He said that from his standpoint the real conflict is not about the Network making recommendations, which are often ignored, but rather that there are people who make funding decisions concerning funds destined to their own departments.

SENATOR ELTON said protecting people that need protection is one of the most important functions of state government, and yet an amendment to ensure a seat for a victim has been vigorously opposed by the commissioners on the Council.

He asserted that he is greatly concerned that Commissioner Tandeske has made the Council his 24th priority out of 27. He remarked that this is surprising given that domestic violence is the leading cause of homicide in Alaska and Alaska leads all other states in men murdering women. He said that he hopes that as this bill moves through the system it is amended in such a way that it places the rights of victims above the rights of commissioners.

[2:26:50 PM](#)

CHAIR DYSON said that he shares Senator Elton's view that advocacy and protection is inordinately important. He remarked that he trusts that the Council members will be professional enough to continue to perform their duties in an exemplary way. He asserted that he would like to join Senator Elton in watching the Committee to see that it maintains its commendable service record.

SENATOR WILKEN moved to report SB 250 and attached fiscal notes from committee with individual recommendations. There being no objection, it was so ordered.

CHAIR DYSON called an at-ease at [2:27:47 PM](#).

SB 235-SCHOOL PERFORMANCE BONUSES

CHAIR DYSON called the meeting back to order at [2:29:16 PM](#) and announced the committee would take up SB 235.

SENATOR GREEN moved to report SB 235 and attached fiscal notes from committee with individual recommendations.

SENATOR ELTON objected.

SENATOR OLSON remarked that many of the people who will be directly affected by this bill have told him that they oppose it.

CHAIR DYSON mentioned that parents and teachers in the Chugach district were very enthusiastic about a similar measure that their district had instituted.

SENATOR ELTON said that he is concerned about initiating a \$10 million to \$15 million program whose effects are so difficult to predict and suggested testing the concept in a single-school

district before trying it across the state. He remarked that addressing the dropout rate should be given higher funding priority than a reward program and expressed reservations about whether teachers and administrators could work any harder than they are already working now.

SENATOR WILKEN said that he is convinced that properly designed incentive pay will be beneficial to the state.

CHAIR DYSON called for a roll call on the motion to move the bill from committee. Senators Green, Wilken, and Chair Dyson voted yea; Senators Elton and Olson voted nay. The motion passed.

[2:34:42 PM](#)

CHAIR DYSON announced that the committee would hear an overview regarding personal care attendant regulations.

JOHN SHERWOOD, Medical Administrator, Department of Health and Social Services (DHSS), presented an update on personal care regulations, which would become effective on April 1, 2006. He said there are two kinds of personal care available in Alaska - agency-based care, in which a provider manages all aspects of care and consumer-directed care, in which recipients or their representatives manage many aspects of personal care.

He said that many of these regulations were implemented in response to the tremendous recent growth in the consumer directed program. During the last five years, membership in the program increased by a factor of three and spending on the program increased by a factor of ten. He added that the regulations emphasize strengthening the eligibility criteria, provider standards, and assessment and authorization procedures.

MR. SHERWOOD said that the regulations would implement a new standardized assessment for care called "The Personal Care Assessment Tool" which would be performed by an independent organization. The regulations also require a physician's certification to confirm the need for personal care services - a potential recipient must need assistance with two daily-living activities to be eligible for personal care services. Standby assistance for all recipients except those that are at increased risk of falling was eliminated.

MR. SHERWOOD said that the regulations explicitly state that when other resources are available, they should take precedence over paid personal care services. He added that the regulations require personal care assistance providers (PCAPs) to have Medicaid certification as well as certain minimum levels of education and experience and that a single PCAP would provide assistance in cases in which multiple recipients live in the same household. They also place certain prohibitions against direct solicitation of clients by PCA agencies.

[2:40:49 PM](#)

CHAIR DYSON asked when the consumer directed program was first offered.

MR. SHERWOOD replied that it was initiated six years ago and that the state has offered personal care services since the late 1980's.

CHAIR DYSON said that there is evidence that some people have taken advantage of the subsidy program.

MR. SHERWOOD responded that the department is aware that there have been some inappropriate situations. He added that the program entails a dual responsibility - it requires recipients and providers to use the system fairly and it requires that DHSS establish proper parameters and explain them adequately.

[2:44:36 PM](#)

CHAIR DYSON remarked that several people have called his office and told him that these regulations have made it impossible for them to get the subsidy to help their relatives. He asked whether their complaints are overstated.

MR. SHERWOOD replied that while federal law prohibits spouses, parents, and minor children from providing assisted living services for their relatives, DHSS believes these people should be able to provide the services if they are qualified to do so. He said that the regulations strengthen the qualification requirements, but they allow eligible people to provide certain services for their relatives.

SENATOR ELTON asked if it would be appropriate for members of the HESS committee to contact him with questions regarding the regulations.

MR. SHERWOOD replied that while he would always be happy to answer questions from the committee, it would be best if questions were directed to the Division of Senior and Disability Services.

SENATOR OLSON asked if these regulations would address the claims of widespread abuse associated with the program.

MR. SHERWOOD answered yes.

SENATOR OLSON asked whether a PCA would be entitled to receive travel expenses to accompany a recipient on a trip.

MR. SHERWOOD replied that the program covers traveling expenses for a medical escort to accompany recipients traveling for medical reasons. He added that the program covers a PCA's traveling expenses if he accompanies a recipient on some kinds of trips such as those for funerals and other kinds of personal business. He added that the regulations have established absolute limits on the amount of time that a PCA can serve outside the resident's home community.

[2:49:32 PM](#)

SENATOR WILKEN expressed great concern over the exponential growth of the cost of the program. He wanted to see an estimate of what the program would cost the state over the next several years and how the state's expenditures on personal care services compare to that of other western states.

[2:53:50 PM](#)

CHAIR DYSON asked if there have been any cases of fraud related to this program that were so flagrant that the state had tried to litigate the perpetrators or recover the funds.

MR. SHERWOOD replied that there was at least one such case, but he did not know if the state was able to recover any of the funds involved.

CHAIR DYSON remarked that he is interested in making public examples of people that are fraudulently stealing public money, which limits the availability of that money for others that may have a greater need. He noted that CPR and first aid are required of all PCAs and asked whether it is difficult to provide training to them in rural communities.

MR. SHERWOOD replied that it is difficult to provide such training in some villages. He added that a number of providers train their own supervisory staff to teach CPR and first aid so they can provide that training while performing oversight operations in rural communities. He mentioned that the regulations allow for some exceptions to the requirements for PCAs in rural areas.

CHAIR DYSON asked if the department has a waiver process for PCAs working under the aforementioned exceptions.

MR. SHERWOOD replied yes. He added that the department has worked closely with the PCA Provider Association to effectively implement this program and minimize the impact of transition.

CHAIR DYSON asked if a person must be a member of the PCA Provider Association in order to provide personal care services.

MR. SHERWOOD answered no and added that many PCA agencies do not participate in the association.

CHAIR DYSON asked if a person must be affiliated with a PCA agency to provide personal care services.

MR. SHERWOOD replied that a person must be enrolled in an agency and meet its standards to receive payment from Medicaid. He mentioned that it is theoretically possible for a person to create his own agency and then provide direct services under it, but he is not aware of anyone doing that.

CHAIR DYSON asked for an example of how a concerned person could receive Medicaid funding for assisting an aging relative.

MR. SHERWOOD replied that such a person would contact a consumer directed personal care agency that would determine whether he was able to provide such care given his qualifications and the needs of his relative. Recipients are generally able to choose their personal care providers given that the providers pass a background check and have the appropriate training.

CHAIR DYSON asked how much of the money that the department pays to personal care agencies goes towards administrative costs.

MR. SHERWOOD answered that varies from agency to agency. He said the department pays agencies \$21 per hour for personal care services. He said PCAs receive \$12 per hour and a few dollars

per hour in benefits and the remainder goes to support administration.

CHAIR DYSON asked Senator Wilken to recount the information that he requested earlier.

SENATOR WILKEN said that he would like to see an estimate of the financial impact these regulations are expected to have over the next three years. He said that he would like to see how the effectiveness of these regulations is going to be assessed as well as a schedule for them. He added that he would like to know if there is a way to measure how the state's expenditures on PCA services compares with that of other western states. He requested this information be given to him by the end of this month.

CHAIR DYSON remarked that the legislature should know how much money to devote towards PCA services in the '07 budget.

There being nothing further to come before the committee, Chair Dyson adjourned the meeting at [3:03:18 PM](#).