

SENATE FINANCE COMMITTEE
January 18, 2012
9:02 a.m.

9:02:00 AM

CALL TO ORDER

Co-Chair Stedman called the Senate Finance Committee meeting to order at 9:02 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Lesil McGuire, Vice-Chair
Senator Johnny Ellis
Senator Dennis Egan
Senator Donny Olson
Senator Joe Thomas

MEMBERS ABSENT

None

ALSO PRESENT

Diane Barrans, Executive Director, Postsecondary Education Commission, Department of Education; Kimberli Poppe-Smart, Deputy Commissioner, Medicaid and Healthcare Policy, Department of Health and Social Services; Kelly Henriksen, Assistant Attorney General, Department of Law; Jerry Burnett, Director, Administrative Services Division, Department of Revenue; Joanne Gibbens, Deputy Director, Senior Disability Services, Department of Health and Social Services.

PRESENT VIA TELECONFERENCE

Robynn Wilson, Audit Supervisor, Tax Division, Department of Revenue; Scott Sterling, Department of Elder Fraud and Assistance; Elizabeth Russo, Supervising Attorney, Public Guardian Section, Office of Public Advocacy; Katherine Monfreda, Chief of Criminal Records and Identification Borough, Division of Statewide Services, Department of Public Safety.

SUMMARY

SB 2 LICENSE PLATES: NATIONAL RIFLE ASSN.

SB 2 was SCHEDULED but not HEARD.

SB 16 SPECIAL REQUEST LICENSE PLATES

SB 16 was SCHEDULED but not HEARD.

SB 86 PROTECTION OF VULNERABLE ADULTS/MINORS

SB 86 was HEARD and HELD in Committee for further consideration.

CSHB 104(RLS)

ALASKA PERFORMANCE SCHOLARSHIPS

CSHB 104(RLS) was HEARD and HELD in Committee for further consideration.

#hb104

CS FOR HOUSE BILL NO. 104(RLS)

"An Act renaming the Alaska performance scholarship and relating to the scholarship and tax credits applicable to contributions to the scholarship; relating to Alaska Advantage education grant funding and to Alaska performance scholarship funding; establishing an account and fund for those purposes; making conforming amendments; and providing for an effective date."

9:04:54 AM

Co-Chair Stedman discussed the agenda and the rules of decorum.

DIANE BARRANS, EXECUTIVE DIRECTOR, POSTSECONDARY EDUCATION COMMISSION, DEPARTMENT OF EDUCATION, testified in support of the legislation and expressed appreciation on behalf of the administration for the bill being heard so early in the process. She stated that the governor's original request modified the name of the program to deal with copyright infringement and provided a stable funding source for statewide scholarships. She added that the governor was seeking to establish a recurring fund source. The current bill had been modified to include funding for Alaska Performance Scholarships (APS) and Alaska Advantage Education Grants. She observed that Alaska Advantage

Education Grants provided the state's only needs-based financial aid program for postsecondary education.

[9:11:54 AM](#)

Ms. Barrans discussed Sections 1 through 4, 7, 9, 13, and 16; these sections were the program's "housekeeping components" as they renamed the scholarship program. She informed the committee that Section 5 clarified a new process in the event of a funding shortfall and furthered that if a shortfall was experienced, no new students would be accepted into the scholarship program. Section 6 added requirements that are applicable to postsecondary institutions seeking to participate in APS; this section required that participating institutions must provide mandatory counseling and insured that the courses needed for a student to complete their program on time were available. She related that Sections 8, 10, and 14 established the accounts, as well as a fund into which appropriations would be made; these sections specified that income earned on investments and donations to the fund were permitted and also provided a funding scheme. She looked at Sections 11, 12, and 19; these Sections created tax credits for corporate citizens to make contributions to the APS and Education Grant funds and also ensured that contributions remain eligible for the credit in the years subsequent to the sunset date.

Ms. Barrans indicated that Section 15 contained transition language, while Sections 17 through 20 dealt with effective dates. She noted that ideally, new requirements for institutions would have an effective date of one year later in order to allow institutions to meet the requirement changes. She stated that funds were set aside by passing SB 76 the prior session and that conforming changes to the bill were appropriate. She stressed that "We stand ready to work with the committee to bring back a bill that is acceptable to all parties."

[9:15:40 AM](#)

Co-Chair Stedman indicated that not everyone was familiar with the legislation and requested an explanation of the HB 104. Ms. Barrans explained that the bill modified a program that was put into statute in 2009; it created a program that incentivized Alaskans to succeed in school and score well on national exams. The high school graduating class of 2011 was the first class of students eligible to receive the scholarship. She said that the original bill required that the Commission on Postsecondary Education, the Department of Education (DEED), the Department of

Labor (DLWD), and the University of Alaska report on the outcomes of the scholarship program; the report was due within ten days of the start of the current session.

Ms. Barrans highlighted the upcoming report and pointed out that approximately 2400 Alaskans were eligible in 2011 for the scholarship, but that only a little over 900 made use of the program. She furthered that due to the tentative nature of funding the prior year, many students chose to attend institutions in other states. She expounded that the scholarships could not be used at institutions outside of the state and noted that out of those eligible, almost as many students attended institutions outside the state as those who attended in-state institutions. She concluded that over time, more trend data would be available regarding the scholarship's eligibility and utilization.

Co-Chair Hoffman wondered how the fund would be split between the Alaska Advantage Education Grants and APS. Ms. Barrans replied that there was no prescribed formula for a split. She continued that there was discussion during the prior session regarding a formula, but that the offered bill version did not address that aspect.

Co-Chair Hoffman stated that there was a lot of interest in the Alaska Advantage Education Grant Fund and that legislators wanted assurances about what portion would be allocated to that fund. He queried if the administration had a recommended split. Ms. Barrans responded that there was a discussion about a one-third/two-thirds split.

[9:19:35 AM](#)

Co-Chair Hoffman wondered if the administration felt that the \$400 million set aside would be adequate under a one-third/two-thirds split. Ms. Barrans replied that the funding was adequate. She stated that the utilization rates for the scholarship had been determined based on a proxy, but indicated that the rates had been adjusted based on actual experiences that year. The adjusted rates were slightly lower and were reflected in the updated fiscal notes. She deferred to the Department of Revenue (DOR) for a discussion regarding what income could be generated off of the \$400 million allocation.

Senator Thomas queried what kind of marketing was in place to promote the scholarship program. Ms. Barrans replied that the Commission on Postsecondary Education had been working closely

with DEED and the governor's office to coordinate the marketing. There was a staff person at DEED who was charged with disseminating information about the program to the schools, counselors, principals, and superintendents. The commission used direct marketing approaches. Information from DEED and the Permanent Fund Division was used to identify and target students in order to send information about the program directly to them. The commission's outreach staff, based in Anchorage, gave public service announcements that were targeted at students who were planning for college. She added that the program had no operating funds and did not have a specific marketing budget.

[9:22:37 AM](#)

Senator Ellis expressed concern that rural students could not realistically access the courses needed to qualify for merit scholarships. He queried if any changes could be made to HB 104 to address the realistic access of rural students to the courses needed to compete for scholarships. Ms. Barrans responded that Commissioner Hanley from DEED was in the room and that he might want to respond to the question personally. She interjected that she did not believe the statutory language had been altered to affect that change. She furthered that data showed that students from small, remote areas were making it into the program, but acknowledged that it was more of a challenge for rural students to qualify. She spoke about the need to make the required courses "readily available" to all students.

Co-Chair Hoffman asked if an analysis had been done comparing qualifying students from rural versus urban districts. Ms. Barrans responded that the analysis was included in the report.

Ms. Barrans stressed that federal privacy laws prevented them from reporting small graduating classes where the number was below an established threshold. Reporting on very small numbers, such as two or three, could lead to the students being identified as individuals. In order to satisfy federal requirements, the commission was required to "roll up numbers" to a district or region level in schools where the graduating class was too small.

[9:26:30 AM](#)

Senator Thomas queried if the increases in the tuition had prompted any discussion in the administration about increasing scholarship funding levels. Ms. Barrans replied that the administration had not had a discussion regarding funding

levels. She indicated that the scholarship levels were fixed to the 2010-2011 tuition and would have less "buying power," but added that the dollar levels were set in statute and could be changed.

Senator Egan wondered how many needs-based requests they had been receiving. Ms. Barrans replied that they had received about 4400 applicants that year and were able to fund just over 2000 with education grants. Based on the current application volume, just under \$7 million would be needed to fund all student applicants.

Senator Egan asked if the number of funded students represented just less than half of the applicants. Ms. Barrans replied that Senator Egan was correct.

Senator Olsen expressed the importance of a good education. He noted that HB 104 seemed to put rural school districts at a disadvantage. He indicated that he would have a hard time supporting this type of legislation until rural and urban students were on more equal footing and emphasized to Co-Chair Stedman that he had "some pretty strong feelings" on the issue.

[9:29:34 AM](#)

Co-Chair Stedman stressed the importance of using the sign-up sheet if you would like to testify on a bill. He listed the five updated fiscal notes as follows: two zero fiscal notes from DOR, Treasury and Tax Division, one zero fiscal note from DEED, and two fiscal impact notes from the Alaska Commission on Postsecondary Education. One note from the Alaska Commission on Postsecondary Education contained a \$2 million dollar increment for APS while the other reflected a \$3.996 million request in administration and operating costs. Both fiscal notes included increasing out-year cost estimates. He mentioned that one of the fiscal notes had been received that morning and was new to him.

ROBYNN WILSON, AUDIT SUPERVISOR, TAX DIVISION, DEPARTMENT OF REVENUE (via teleconference), introduced herself and stated that she was available for questions. Co-Chair Stedman inquired what the tax credit's net effect was on the state's credit mechanism. Ms. Wilson replied that HB 104 did not change the amount of credit available, but it added a category under which an education credit could be claimed.

[9:32:03 AM](#)

Senator Olson wondered if there had been indication that the private sector wanted to participate in the tax credit program. Ms. Wilson responded that they had not yet received the tax returns that would report private sector participation.

Senator Olson furthered that he assumed there was a study regarding possible private sector participation. He wondered whether the state would fully fund the program. Ms. Wilson indicated that DOR did not have a study regarding private sector participation and furthered that as HB 104 was written, the state would be fully funding the program.

[9:33:36 AM](#)

AT EASE

[9:34:19 AM](#)

RECONVENED

Co-Chair Stedman expressed his surprise that no one had signed up to testify on HB 104.

Co-Chair Hoffman had a question in reference to a fiscal note prepared by Diane Barrans. He noted that from FY 13 to FY 18, the number of students entering the program was anticipated to grow by 35 percent and that the expected payout of the fund will increase from \$6.9 million to \$9.6 million. He queried how the fund would be managed to address the increase in payouts and whether the fund would be adequate if no additional dollars were added.

Ms. Barrans asked for clarification on which fiscal note Co-Chair Hoffman was referring to. Co-Chair Hoffman replied that he was referring to the fiscal note that the Office of Management and Budget (OMB) noted as number 2738.

Co-Chair Hoffman reiterated his question. Ms. Barrans replied that her discussions with DOR led her to believe that investments from the fund would be based on expected pay outs and that investment decisions would be aimed at insuring that the fund was able to cover the costs. She deferred to Jerry Burnett for a more detailed answer.

Co-Chair Hoffman noted that a high rate of return would be needed to offset increases in student payouts.

[9:37:42 AM](#)

Co-Chair Stedman asked for an explanation of the \$400 million set aside for the fund and wondered what revenue might be earned off that allocation, including projected shortfalls or surpluses.

JERRY BURNETT, DIRECTOR, ADMINISTRATIVE SERVICES DIVISION, DEPARTMENT OF REVENUE, replied that when the bill was originally introduced, the \$400 million was to be invested in a fund with an annual real rate of return of 5 percent. He stated that the fund was to be inflation proofed and would earn 7.75 to 8 percent in the current market place. The fund was projected to earn \$20 million the first year and would grow each year. He noted that "we're looking at less than \$20 million in those first years". DOR would consider the program's costs and would customize an asset allocation designed to build the fund, based on the \$400 million allocation and the expected future payments. He observed that the \$400 million had earned interest throughout the year in the general investment fund and that as a result, the Alaska Housing Capital Corporation had more than the initial allocation available.

[9:39:29 AM](#)

Co-Chair Hoffman queried what interest rate the fund had earned during the first 6 months. Mr. Burnett replied that he was unsure, but that he could get that information. He added that over the past several years, the fund had earned 3 to 4 percent. He reiterated that the allocation would be customized based on the future needs of the fund and remarked that fiscal the note in the packet indicated that based on the house bill's language, the money would have to be left in the general investment fund.

Co-Chair Hoffman queried if the \$400 million would grow by the anticipated 35 percent between FY 13 to FY 18 in order to meet the expected payout. Mr. Burnett responded that he believed the \$400 million allocation could potentially earn enough to meet the payout in FY 18 and expounded that in order to meet the payouts, DOR could customize an asset allocation that had a lower probability of loss.

Co-Chair Stedman requested that DOR come back to the committee with a forecast projecting the initial \$400 million input, including expected withdrawals and payouts. He specified that the forecast should go through FY 18 or whatever fiscal year DOR was comfortable projecting to. He observed the similarity to the Power Cost Equalization program, where the payouts had reached 7 percent and erosion of the principal was a concern. He continued

that the fund could become part of a larger discussion when oversight was done on various pools of funds.

[9:42:27 AM](#)

Co-Chair Hoffman queried if the interest earned from the \$400 million was going to pay for the first year of operating expenses or if additional money would be requested. Mr. Burnett replied that he made no assertions about how the program would be funded during the first year and elaborated that because the \$400 million had been earning interest in a segregated fund that kept its earnings, there was more than \$400 million available. He added that the appropriation to fund was only \$400 million.

Senator Ellis queried if students who get GED's qualify for the merit based scholarship programs and wondered how the program dealt with students from tumultuous backgrounds, like those attending military academies and alternative high schools. Ms. Barrans replied that students would be required to obtain a high school diploma in order to qualify.

Senator McGuire inquired if the current meeting was the last hearing on HB 104. Co-Chair Stedman stressed that this was the first hearing on HB 104 and that more hearings would be held.

[9:45:27 AM](#)

Senator McGuire requested that Ms. Barrans give further explanation of what led to HB 104 and what it accomplished. She stated that the bill would not be the scholarship for every Alaskan, but that it was an opportunity for exceptional students. She continued that special options could be explored to help rural students and indicated an interest in hearing how Louisiana had dealt with their rural townships. She stated that Galena's student program was a model that could be used to create a program for Alaska's rural students and stressed the need to enable rural districts to bring students into compliance, rather than having rigid standards to qualify for scholarships. She expressed her approval of the intent of HB 104 and a desire to work with DOR through the process. She added that declining production of the Trans-Alaska Pipeline System (TAPS) would tighten the state's budget and force the state to make choices. She indicated that funding might not always be there for certain programs and that it was DEED's job to "sell" the program to the legislature.

Ms. Barrans pointed out that HB 104 was not the bill that created the program. There were many hearings on the original bill and the legislature had put the program into statute the prior year. She emphasized that the program had been operating less than a year and stressed the benefit of several years of progress before making substantive changes to the program. The legislation was intended to change the program's name and to fund the program. She urged that it was important to give the program time to operate before attempting to fix it and related that the program was intended to help students make the right decisions early. She acknowledged that the program was not the end solution, but that it was a good starting place.

Senator Olson noted that DOR expected to be able to achieve the 7.75 to 8 [percent] interest rate. He wondered what mechanisms were in place to insure that qualified children were not overlooked if the expected interest did not accrue. He furthered that his real question was if DOR was setup to use the funds that were already in place. Mr. Burnett replied that he was unable to answer because DOR needed to examine models for future funding in order to establish an asset allocation for that purpose. He added that the program could be set up as an endowment or as fixed income investments that were based on timing.

[9:51:56 AM](#)

Co-Chair Stedman noted that the committee would await the analysis that Mr. Burnett had referred to and observed that in the future the committee would look at a multi-year period, rather than using a six month period and extrapolating it further out. He announced that the Permanent Fund and the retirement system would be reviewed in the committee at a later date. He pointed out that there would be a presentation on the growth in the Gross Domestic Product (GDP) relative to debt levels; the presentation would give them a "better feel for what we can expect out of the performance of our pile of assets that we've set aside, our cash."

Senator Thomas asked for a written explanation of Ms. Barrans' response to Senator Egan's question. Ms. Barrans agreed to provide the information.

[9:53:38 AM](#)

House Bill 104 was HEARD and HELD in committee for further consideration.

[9:53:59 AM](#)

AT EASE

[9:54:20 AM](#)

RECONVENED

#sb86

SENATE BILL NO. 86

"An Act relating to the protection of property of persons under disability and minors; relating to the crime of violating a protective order concerning certain vulnerable persons; relating to aggravating factors at sentencing for offenses concerning a victim 65 years or older; relating to the protection of vulnerable adults; amending Rule 12(h), Alaska Rules of Criminal Procedure; amending Rule 45(a), Alaska Rules of Criminal Procedure; amending Rule 65, Alaska Rules of Civil Procedure; amending Rule 17, Alaska Rules of Probate Procedure; amending Rule 9, Alaska Rules of Administration; and providing for an effective date."

[9:54:35 AM](#)

KIMBERLI POPPE-SMART, DEPUTY COMMISSIONER, MEDICAID AND HEALTHCARE POLICY, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, testified in support and introduced the bill and stated that the legislation was a collaborative, cross-agency effort.

[9:57:38 AM](#)

JOANNE GIBBENS, DEPUTY DIRECTOR, SENIOR DISABILITY SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, testified in support of SB 86 and highlighted important elements of the legislation, which covered existing gaps in the services provided to vulnerable adults. She stated that the most important element of the bill created a process for appointing a temporary conservator to someone at risk of eminent harm to their financial status or healthcare decision making. The legislation allowed the court to impose emergency conservatorships which could be removed or renewed as needed. She furthered that the bill assisted in protecting financial assets, managing financial affairs, and preventing eminent waste or fraudulent dissipation of assets. She declared that the second most important element of the bill created a process for the imposition of financial protective orders. The legislation imparted the ability to apply for a 20-day ex parte protective order that gave courts the

tools to stop or prevent financial exploitation. She noted that these tools were not currently available to Adult Protective Services or others who assist with vulnerable adults. She added that another notable element of the legislation was that it mandated that anyone working at a healthcare or educational facility must report suspected abuse of vulnerable adults. She expounded that currently, only administrators were mandated reporters. Under SB 86, the mandate would be expanded to apply to educational facilities. The legislation also defined "undue influence" as a reportable harm. Undue influence meant that a person of trust was abusing or misusing their power and applying undue influence to a vulnerable adult in order to gain control over their healthcare decision making, assets, or finances. She felt that the addition of undue influence and mandated reporters would give the state earlier detection and intervention for individuals who were vulnerable to loss of their property or decision making. The bill enabled earlier protective orders, facilitated more thorough and successful investigations, provided protection of assets during an investigation, and enhanced criminal penalties when the victim was elderly. She concluded that in broad summary, the bill would provide Alaska the additional tools necessary to combat the growing problem of financial abuse among elderly and disabled populations.

[10:01:16 AM](#)

Ms. Gibbens explained the financial exploitation issues among vulnerable adults. She indicated that Adult Protective Services had experienced a slow increase in the number of calls regarding the financial exploitation of vulnerable adults. She stated that the majority of the calls were regarding adults over 60-years-old, but some calls were concerning developmentally disabled or traumatic brain injury victims. She remarked that in FY 10 Senior & Disability Services (SDS) substantiated 100 cases of financial exploitation; that number rose to 125 in FY 11 and during the current fiscal year, SDS had already substantiated 85 cases. She indicated there was a trend developing in the rising number of cases of financial exploitation and that most instances of exploitation involved family members taking advantage of other family members. In many abuse cases, the offender had Power of Attorney (POA) over the victim. She discussed the ways inner-family financial abuse occurs. She continued that under SB 86, the undue influence statute, the ability to impose financial protective orders, and the ability to appoint temporary conservators enabled the state to respond faster and more effectively to abuse. She related the reasons

that caused people to give up their POA and explained the dynamics between the offender and the victim.

[10:06:57 AM](#)

Co-Chair Hoffman wondered if any of the 210 cases the prior year and a half had involved the identity theft of vulnerable adults. Ms. Barrans indicated that she did not have the exact numbers with her, but confirmed that there were cases involving identity theft. She agreed to provide the exact numbers at a later date.

Co-Chair Hoffman inquired how the legislation addressed identify theft. Ms. Barrans deferred the question to one of the attorneys, but added that she did not believe that SB 86 mentioned identity theft specifically.

Senator Egan observed that when vulnerable adults relinquished their POA, they may not have had the reasoning capacity necessary to recognize that someone was taking advantage of them. He wondered how cases where the victim was unaware of being taken advantage of were dealt with. Ms. Gibbens explained that there was a process through which an evaluation was done to determine the victim's cognitive ability and added that when the victim was unaware of being abused, a phone call was needed for SDS to act

Senator Egan asked if SB 86 required employees of an assisted living facility to report the abuse of seniors. Ms. Gibbens responded that under the bill, employees of an assisted living facility were mandated to report any possible abuse.

[10:09:58 AM](#)

Senator Thomas noted that SB 86 required temporary conservators to fill out an annual reporting form that detailed how funds were spent. He furthered that the annual reporting increased accountability and he thought it made fraud unlikely. He wondered what documents a conservator signed regarding their responsibilities and if abuse was substantiated, what penalties were enforced. Ms. Gibbens replied that she was not familiar with the conservatorship process, but indicated that Kelly Henriksen was present to discuss the specifics of the bill.

[10:11:24 AM](#)

Co-Chair Stedman addressed the updated fiscal notes attached to SB 86. He introduced a zero fiscal note from the Department of

Health and Social Services (DHSS), a zero fiscal note the Department of Administration (DOA), a zero fiscal note from the Department of Law (DOL), a zero fiscal note from the Department of Public Safety (DPS), Alaska State Troopers Detachment, a zero fiscal note from the Department of Corrections (DOC), and a zero fiscal note from the Alaska Court System (COURT). He discussed a fiscal impact note from DPS, Statewide Support, in the amount of \$48,000 in General Funds for the purposes of developing new protective order forms, updating the Alaska Public Safety Information Network (APSIN), and training.

[10:13:37 AM](#)

AT EASE

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RECONVENED

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Co-Chair Hoffman noted that there were no provisions in SB 86 that dealt with how the state interfaced with tribal courts regarding the protection of vulnerable adults. He wondered how Ms. Russo saw the relationship between the two courts and queried if she believed, as he did, that it needed to be specifically addressed in the legislation. Ms. Russo responded that it was her experience that tribal courts had not actively taken a role in conservatorship proceedings. She furthered that the reason it was not included in the bill was because the tribal courts had not participated in the past. Co-Chair Hoffman stressed that the relationship between Alaska and tribal courts should be spelled out before it became a problem.

Senator Thomas reiterated his prior question regarding the accountability of conservators and expanded it to encompass children in the foster care system. Ms. Russo replied that SB 86 did not specifically address the issue of children in the foster care system. She related that not all fiduciaries were required to report finances, but that only appointed guardians and conservators were subject to reporting responsibilities. She indicated that the gap in accountability was the reason SB 86 had addressed the POA issue. Appointed guardians and conservators were required to undergo training, an hour of education, and to sign a letter of acceptance that stated they understood the reporting requirements. Guardians and conservators could be held liable if it had been determined that they had acted outside their fiduciary responsibilities. Senator Thomas asked if there was a statute that gave consideration to

other persons that might have fiduciary responsibilities over vulnerable individuals, particularly regarding the foster care system. Ms. Russo deferred to Mr. Sterling and noted that he would be better able to answer the question. She concluded that SB 86 focused on vulnerable adults and not on the foster care system.

10:25:02 AM

SCOTT STERLING, SUPERVISING ATTORNEY, OFFICE OF ELDER FRAUD AND ASSISTANCE, OFFICE OF PUBLIC ADVOCACY, DEPARTMENT OF ADMINISTRATION (via teleconference), began a sectional analysis of SB 86(copy on file). He reviewed the following sections:

- Section 3 makes the knowing violation or attempted violation of a financial protective order (introduced in section 10 of this legislation to protect vulnerable adults and elders) a crime.
- Section 4 amends AS 11.56.740(c), which defines "protective orders," by including financial protective orders issued under AS 13 .26.207 -13 .26.209 to that definition. This change brings financial protective orders within the class of protective orders subject to sanction under the criminal code.
- Section 5 amends AS 12.55.155(c) by adding a new paragraph (35) which makes the fact that a defendant knowingly directed criminal conduct at a person 65 years of age or older an aggravating factor at sentencing.
- Section 6 amends AS 13.26.165(1) by substantively adding several new paragraphs and changes or additions in definitions to enhance protection of vulnerable persons in conservatorship proceedings as follows:
 - amends AS 13.26.165 by deleting the words "make another" and inserting the words "issue another" regarding the authority of the court to issue a protection order for a protected person in conservatorship proceedings;
 - creates new paragraph (A) to authorize the court to issue orders protecting a minor with money or property that needs protection or who otherwise needs protection and substitutes the word "that" for the word "which" in the authorizing language;

- creates a new paragraph (B) specifying that the authority of the court to issue protective orders extends to minors with business affairs that may be in jeopardy and substitutes the word "that" for the word "which" in the authorizing language;
- creates a new paragraph (C) ensuring that protection extends to any need to protect a minor's funds or obtain funds for a minor and deletes the unnecessary use of the word "that" twice in the authorizing language;
- Section 7 amends AS 13.16.1S0(a) by adding "a person's attorney or other legal representative." to the list of persons who may petition for a conservatorship and further adds "or caregiver, the Department of Health and Social Services" to that list. This change is necessary to broaden the list of specific persons authorized to petition for a conservatorship in aid of a vulnerable adult and specifically to ensure that the Department of Health and Social Services is authorized to do so when necessary.

[10:28:10 AM](#)

Mr. Sterling summarized the remaining sections and explained that they added financial protective orders, which would operate similarly to domestic violence protective orders. The legislation also added ex parte relief that would enable a vulnerable adult or an intermediary, without a lawyer, to go to any court and apply for protection to stop ongoing abuse. He explained that it had become easy to steal someone's money and identity through technology, and when people became aware of the problem, they needed help immediately. He furthered that the rationale behind the ex parte relief provision was to enable victims to get immediate help and added that other sections allowed for temporary conservators. Currently, the statutes allowed for temporary guardians but not conservators. He related that it was his experience that courts were reluctant to grant conservatorships because they were not expressly permitted by statute. The legislation authorized by law the appointment of temporary conservators. He stated that the clarification would enhance the ability of victims and DHSS to obtain immediate relief for victims of financial abuse. He explained that other portions of bill, which were largely definitional, expanded or added the definition of things such as fraud, while other sections added "undue influence" into statute. Under the undue influence statute, there were specific grounds to assert that a fiduciary was abusing their responsibility.

10:30:56 AM

Mr. Sterling responded to Senator Thomas's earlier question, and indicated that the only fiduciaries in Alaska that were required to be vetted by a court were guardians and conservators. He stated that trusts were a private matter and furthered that although there was a section in Title 13 that dealt with trusts, there were no requirements that a trustee be vetted in any way. He described Alaska's POA statute, found in Section 13, as "a maximum utility, minimal regulation, and minimal liability statute." There were currently no requirements for serving as POA and there were no standards, licensing, or liability provisions to deal with abuse. He explained that "maximum utility" resulted in a greater risk of abuse of fiduciary responsibility from POA.

In response to an earlier question from Co-Chair Hoffman, Mr. Sterling indicated that he was not looking at how the tribal courts interfaced with state courts when he drafted SB 86. He felt that taking a look at this aspect was a "meritorious" idea and furthered that he would be "happy" to take a look at it.

10:33:19 AM

KELLY HENRIKSEN, ASSISTANT ATTORNEY GENERAL, HUMAN SERVICES, DEPARTMENT OF LAW, introduced herself. She stated that half of SB 86 dealt with Adult Protective Services, which was the office she represented. She indicated that Mr. Sterling had presented the part of bill that dealt with conservatorships and financial protective orders, which is found in Title 13. The part that she had drafted, found in Title 47, dealt with Adult Protective Services. The highlights of the Adult Protective Services Sections, which began at Section 16 of the bill, added the concept of "undue influence" to the entire Adult Protective Services code. The legislation updated the Adult Protective Services code to meet the practical needs of the time. She stated that because it permeated what Adult Protective Services did, the term "undue influence" was added anyplace in the statutes where it specified what kinds of activities someone might make a report of harm about, such as abuse, neglect, or self-neglect. She related that most of the Sections in the Adult Protective Services part of the bill simply added the term "undue influence", but that there were no other substantive changes in those Sections. She remarked that another important thing the Adult Protective Services portion of SB 86 did was

that it updated and added definitions in the statutes to more accurately reflect reality.

Ms. Henriksen offered that the final element worthy of note from the portion of SB 86 that she had drafted was that it expanded the list of what services Adult Protective Services was able to provide, short of a guardian or conservator being appointed. She cited examples of these services as follows: staying a financial transaction at a bank, assistance with a rental application, providing food, and providing other care services an adult needed. She indicated that instead of doing a guardian's duties, Adult Protective Services had discovered a need to have a clearer definition of what they could do as an intermediary. She concluded by stating that other than the three elements she had pointed out, there was not anything significant in the Alaska Protective Services portion of the sectional.

Senator Olsen stated that he assumed the victimization of elders represented the minority of cases of financial abuse. Ms. Henriksen responded that she was unsure if that statement was correct, but indicated that Ms. Gibbens might be able to respond to the question. Senator Olsen queried if there was strain being placed on individuals who were complying with the law and were legitimately trying to obtain guardianship or conservatorship. He expressed concern that responsible children could have a difficult time obtaining guardianship or conservatorship from parents who were not being abused. Ms. Gibbens replied that she did not believe that to be true and furthered that the process followed to gain guardianship or conservatorship was the same whether or not an individual was attempting to take advantage of an elder.

[10:37:31 AM](#)

Senator Thomas referenced a 25 percent increase in the abuse rate on the system over the last year and asked if anything in SB 86 specifically addressed the issue. Ms. Henriksen specified that the ability to impose financial protective orders and temporary conservators were two additions that addressed the increase in abuse.

Senator Thomas queried if Ms. Henriksen thought there should be a more thorough vetting process, such as a background check, when a guardian or conservator was appointed. Ms. Henriksen responded that if Adult Protective Services received a report of harm, their investigation was "very thorough". She mentioned that during an investigation informal background checks were

performed, so that when the case was heard any issue about a potential guardian or conservator would be raised in open court. She concluded that in her experience, Adult Protective Services did not take chances when allegations of abuse had been raised. She furthered that Adult Protective Services gathered as much information as possible, so that the judge could make the decision on who was appropriate.

Ms. Henriksen revealed that the transfer of POA was a private matter that did not require any state involvement or time before a judge and explained that because of this, the state was unaware and unable to affect that process. She continued that Adult Protective Services could only get involved when they received a report of harm, but that once they were involved, the process was thorough.

Senate Bill 86 was HEARD and HELD in Committee for further consideration.

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ADJOURNMENT

[10:41:09 AM](#)

The meeting was adjourned at 10:41 AM.