

SENATE FINANCE COMMITTEE

April 19, 2023

1:32 p.m.

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CALL TO ORDER

Co-Chair Stedman called the Senate Finance Committee meeting to order at 1:32 p.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Donny Olson, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Click Bishop
Senator Jesse Kiehl
Senator Kelly Merrick

MEMBERS ABSENT

Senator David Wilson

ALSO PRESENT

Pete Ecklund, Staff, Senator Bert Stedman; Alexei Painter, Director, Legislative Finance Division; Ken Alper, Staff, Senator Donny Olson; Senator Matt Claman, Sponsor; Emma Potter, Staff, Senator Matt Claman; Angela Harris, Self, Juneau; Angie Kemp, Director, Criminal Division, Department of Law; Dayna Mackey, Budget Analyst, Department of Law; Matt Davidson, Special Assistant to the Commissioner, Department of Family and Community Services; Samantha Cherot, Director, Alaska Public Defender Agency; James Stinson, Director, Office of Public Advocacy, Department of Administration; Mark Regan, Legal Director, Disability Law Center of Alaska.

SUMMARY

SB 53 FIVE-YEAR INVOLUNTARY COMMITMENTS

SB 53 was HEARD and HELD in committee for further consideration.

SB 107 PERMANENT FUND DIVIDEND; POMV SPLIT

CSSB 107(FIN) was REPORTED out of committee with three "no recommendation" recommendations and with two "do pass" recommendations and with one "amend" recommendation, and one new fiscal impact note from the Department of Revenue.

CSHB 39(FIN) am(brf sup maj fld)(efd fld)
APPROP: OPERATING BUDGET/LOANS/FUND; SUPP

CSHB 39(FIN) was HEARD and HELD in committee for further consideration.

CSHB 41(FIN) am
APPROP: MENTAL HEALTH BUDGET

CSHB 41(FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Stedman reviewed the agenda. He relayed that the committee would adopt a Committee Substitute (CS) for HB 39, the operating budget. The committee would move on to the mental health budget and adopt a CS. The director of the Legislative Finance Division (LFD) would provide an update of the fiscal picture, after which Co-Chair Olson would take the gavel and consider legislation.

#hb39

CS FOR HOUSE BILL NO. 39(FIN) am(brf sup maj fld)(efd fld)

"An Act making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; repealing appropriations; amending appropriations; making reappropriations; and making supplemental appropriations."

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Senator Merrick MOVED to ADOPT proposed committee substitute for CSHB 39 (FIN), Work Draft 33-GH1347\R (Marx, 4/17/23).

Co-Chair Stedman OBJECTED for discussion.

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PETE ECKLUND, STAFF, SENATOR BERT STEDMAN, discussed the proposed CS. He read from a document called Report "A" (copy on file) and highlighted Column 4, "SCS 1". He noted that Report A showed Unrestricted General Funds (UGF) for a total of \$4.257 billion including numbers and language for agency operations, and another \$401 million of statewide items for a total of \$4.65 billion UGF. He referenced Report B (copy on file), which showed all funds for numbers and language. He highlighted that Column 4 showed "SCS 1" and indicated that there was just over \$9.8 billion in agency operations, and another \$584 million in statewide operations for a total of \$10.44 billion in all funds.

Mr. Ecklund addressed a document entitled Report "C" (copy on file) which showed supplemental items. The UGF and operating budget supplementals combined for a total of \$102.79 million. He noted that there would also be supplemental items in the capital budget.

Mr. Ecklund noted that there would be many additional reports available on the LFD website after the committee meeting.

Mr. Ecklund referenced a document that outlined the changes from the governor's introduced operating budget to Version R of HB 39, entitled "OPERATING BUDGET DIFFERENCES BETWEEN THE GOVERNOR'S ORIGINAL OPERATING BUDGET AND THIS COMMITTEE SUBSTITUTE" (copy on file).

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AT EASE

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RECONVENED

Mr. Ecklund addressed changes to the bill outlined in the document:

OPERATING BUDGET DIFFERENCES BETWEEN THE GOVERNOR'S ORIGINAL OPERATING BUDGET AND THIS COMMITTEE SUBSTITUTE

SB40 (VERSION A) TO SENATE CS FOR HB39 (VERSION R)

SUPPLEMENTAL NUMBERS SECTION

1. Sections 7-12 incorporated all of the Governor's numbers section supplemental requests except for the following.

- Replaced \$44.9 of UGF with Higher Ed money for the WWAMI program (Washington, Wyoming, Alaska, Montana, Idaho)
- Replaced \$904.2 GF/Program Receipts in the Department of Public Safety's numbers section with a language section that appropriates funding for criminal justice information system updates and improvements for FY23 and FY24.
- \$117.0 UGF was added to the legislature's budget to fund a housing stipend increase, from \$30 to \$37.50 per day, for out-of-town legislative staff.
- \$200.0 UGF for an Alaska Family Justice Center Model Study in the FY23 budget was removed and replaced with a multi-year language section (Sec 20(b)) for FY23 and FY24, to allow for the completion of this project.

Mr. Ecklund shared that there had been quite a few supplemental language sections and noted that the executive branch had recently reviewed the supplemental. He explained that all the supplemental were incorporated into the CS with the exception of a Clean Air Fund appropriation that he would address later. He continued to address the document:

The Senate CS incorporates a number of SUPPLEMENTAL APPROPRIATIONS in the following language sections.

2. Sec 13 extends the lapse date for the Alaska Housing Finance Corporation's federal receipts for various housing programs. This is a Governor's request.

3. Sec 16 extends the lapse date for DCCED's reinsurance appropriation. A total of \$55 million of UGF was appropriated in FY18 and this language extends the appropriation through FY28. This was requested by the Governor.

4. Sec. 15 is a NEW SECTION that appropriates the balance of the Abandoned Motor Vehicle Fund on June 30, 2023 to DOA to reimburse municipalities for the cost of removing abandoned vehicles for FY23 and FY24.

5. Sec. 17. Department of Education and Early Development. There are several supplemental language sections for the Department of Education and Early Development.

- o The following were requested by the Governor
- o Sec 17(d) extends the lapse date for federal receipts in the Department of Education and Early Development to June 30, 2025.
- o Sec 17(e) allows DEED to accept any available FY23 federal funds and pass that funding through to other educational entities.

o The following were added or revised in the Senate CS:

- o Sec 17(f) corrects the Governor's lapse extension language for the proceeds from the sale of state-owned Mt. Edgecumbe High School land. The proceeds from the sale will be available for Mt. Edgecumbe High School's maintenance and operations for FY23-FY25.

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AT EASE

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RECONVENED

Co-Chair Stedman relayed that there had been a printing malfunction and members were missing part of the written explanation. He asked Mr. Ecklund to highlight larger issues on each page and pause for discussion.

Mr. Ecklund continued to address the summary of differences on the top of page 2:

- o The following were added or revised in the Senate CS:
 - o Sec 17(f) corrects the Governor's lapse extension language for the proceeds from the sale of state-owned Mt. Edgecumbe High School land. The proceeds from the sale will be available for Mt. Edgecumbe High School's maintenance and operations for FY23-FY25.

Co-Chair Stedman asked Mr. Ecklund to address item 9.

Mr. Ecklund spoke to item 9:

9. Sec. 21. SUPPLEMENTAL FUND CAPITALIZATION

o Sec. 21a appropriates up to \$10 million of SDPR to the Alaska Gasline Development Corporation. This subsection clarifies the FY23 effective date that was requested by the Governor.

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Mr. Ecklund addressed page 3 of the summary of changes document:

10. Sec. 22. Extends the lapse date for the Redistricting Board operations through the end of FY24. This was a legislative addition.

11. Sec. 23 adds SUPPLEMENTAL SALARY AND BENEFIT ADJUSTMENTS language to ensure that salary adjustments resulting from bargaining unit agreements that are included in the supplemental numbers section are funded. This is a Governor's request.

12. Sec. 24. Approves the Governor's requested SUPPLEMENTAL RATIFICATIONS OF OVEREXPENDITURES for several departments.

Mr. Ecklund discussed FY 24 Language Changes as listed on the document:

FY24 LANGUAGE CHANGES

13. Sec. 27 is a legislative addition of up to \$75.0 UGF to the Alaska Court System's Commission on Judicial Conduct for special council costs related to unanticipated investigations. This language was recommended by the subcommittee.

14. DELETED SECTION: The AIDEA Dividend section appropriating \$17,904,000 from AIDEA to the general fund was deleted. The Senate Finance Committee will work with AIDEA to determine an appropriate amount for the AIDEA Dividend.

15. Sec. 29. ALASKA PERMANENT FUND. The legislature made the following changes from the Governor's requested Permanent Fund language.

- o To align with statute, subsection c appropriates the entire Percent of Market Value draw, totaling \$3,526,087,852, to the general fund.

(The Governor's language had appropriated funding from the Earnings Reserve Account as follows:

- \$2.47 billion to the dividend fund to pay a full statutory dividend, and
- The remaining balance, estimated to be \$1.055 billion, was appropriated to the general fund.)

o The Senate CS deletes the appropriation to the dividend fund to pay for a dividend. The permanent fund dividend discussion will need to be decided by the full Finance Committee.

o The Senate CS revises the Permanent Fund inflation proofing appropriation (subsection e) by capping the amount appropriated for inflation proofing at \$1.413 billion. The Governor's language was an open-ended appropriation.

16. Sec. 30 incorporated the Governor's amendment to appropriate funding from the ALASKA TECHNICAL AND VOCATIONAL EDUCATION PROGRAM ACCOUNT to various departments as prescribed by statute. Because the amount available varies annually, the Governor submitted an amendment replacing the funding in the numbers section of the budget with this language.

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Mr. Ecklund continued to address the document:

17. Sec. 31 and Sec 55. As occurred in last year's operating budget bill, the legislature added a section to clarify that funding included in the budget for BONUSES FOR CERTAIN EMPLOYEES OF THE EXECUTIVE BRANCH is contingent upon

- o the state and the applicable bargaining unit of the employee entering into a letter of agreement for the bonus AND
- o the Department of Administration providing a copy of the letter of agreement to the

legislative finance division in electronic form not later than 30 days after the department enters into the letter of agreement.

18. Sec 32(g). DEPARTMENT OF ADMINISTRATION. The Senate CS amended the open-ended appropriation to the Department of Administration for actuarial costs associated with bills by adding a requirement that the appropriation is valid only for actuarial costs of bills in the finance committee of each house.

19. Sec 33g corrects the fiscal years in the language for the Division of Insurance's reinsurance program by replacing "June 30, 2023 and June 30, 2024," with "June 30, 2024 and June 30, 2025."

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Senator Merrick asked about Section 29 subsection e, which capped the amount of inflation-proofing of the Permanent Fund at \$1.413 billion. She asked about the source of the number.

Mr. Ecklund relayed that in the original bill the estimate for inflation-proofing was \$1.4 billion, which he thought used Callan's projected inflation rate of 2 percent or 2.25 percent. He referenced presentations by both LFD and the Alaska Permanent Fund Corporation (APFC) that mentioned the danger of the Earnings Reserve Account (ERA) becoming low, and explained that the CS proposed to cap the amount appropriated for inflation-proofing.

Co-Chair Stedman recalled that inflation-proofing could be as high as \$4.2 billion. He relayed that the committee had thought that it would be nice to have some inflation-proofing.

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Mr. Ecklund item 20 on the document:

20. DELETED SUBSECTION. The Senate Finance CS deleted an open-ended federal appropriation to the Alaska Broadband Office.

21. Sec. 35(f). The Senate Finance CS incorporates the Governor's amendment for \$17.8 million, of which \$8.9

million is UGF, to the Department of Health, to redetermine Medicaid eligibility for enrolled Alaskans. This appropriation is valid for FY24 and FY25.

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Mr. Ecklund addressed page 5 of the document:

22. DEPARTMENT OF LAW

- Sec 37(a) appropriates \$5 million UGF to the for litigation relating to STATEHOOD DEFENSE for FY24-FY26.
- Subsection 37(b) adds intent that the funding is not used for any action that may erode existing federal or state subsistence rights.

This section is intended to replace a \$10 million capital appropriation that was requested by the Governor.

23. Sec 40(b) revises the Governor's Alaska Marine Highway System backstop language to mirror last year's language. If federal receipts received by the AMHS fall short of the amount appropriated in the numbers section,

- o The Governor's backstop language appropriates Alaska Marine Highway System funds for any federal revenue shortfall. This could lead to an inadequate AMHS Fund balance.
- o Instead, the Senate CS backstop language appropriates up to \$20 million of UGF to cover any federal revenue shortfall.

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Mr. Ecklund continued to address page 5 of the document:

24. Sec 41(b) through (e) adds Fuel Trigger language. At the Spring Forecast for FY24, this language estimate is \$1 million.

Mr. Ecklund shared an aside that the committee was expecting the Office of Management and Budget (OMB) to

provide some additional language to replace the current language in the bill.

Mr. Ecklund continued to address the document:

25. Sec 43g incorporates the Governor's Debt Service amendment. This amendment replaces 2012A and 2013B bonds with 2023A bonds for a net savings of \$603.0.

26. Sec 44(e) was added to prevent the Alaska Gasline Development Corporation (AGDC) from being able to receive and expend federal or statutory designated program receipts through the Legislative Budget and Audit's RPL process.

27. Like the Governor's request, Sec. 45(s) fully pays off any remaining Oil and Gas Tax Credits. However, due to the price of oil, the estimate has been revised from \$42.7 million to \$55.7 million.

28. Sec 45(t) incorporates a Governor's amendment adding a total of \$1.2 million to the election fund. \$1 million is federal receipts and \$200.0 of general funds.

29. DELETED SUBSECTIONS FROM FUND CAPITALIZATION. The Senate Finance CS deleted the following two subsections relating to the Alaska Gasline Development Corporation.

- o Open-ended statutory designated program receipts received by AGDC in FY23, and
- o Open-ended federal authority for funding received by AGDC in FY23.

30. Subsection 45(u) is a NEW SUBSECTION adding \$30 million of general funds to the Community Assistance Fund. This maintains the current level of funding for communities in FY25. Without this addition, the FY25 distribution to communities would be reduced from \$30 million to \$20 million.

31. Sec 46(o) incorporates the Governor's \$7.5 million UGF appropriation to the Renewable Energy Grant Fund.

32. Sec. 46(p) is a legal services change. Legal Services moved the appropriation of \$100,000 of general fund program receipts to the Abandoned Motor

Vehicle Fund from the Fund Capitalization section to the Fund Transfers section. This change was made to clarify that expenditures from the fund require further appropriation.

33. Sec. 48(a) (9) and (10) adds two bargaining units, the Teachers' Association of Mt. Edgecumbe and the Inlandboatmen's Union of the Pacific, Alaska Region, to the SALARY AND BENEFIT ADJUSTMENTS language. It also deleted the Governor's blanket approval language for monetary terms of letters of agreement.

34. Sec 52 repeals a \$1.65 million appropriation for the WWAMI program (Washington, Wyoming, Alaska, Montana, and Idaho). Between the other funding appropriated in FY23 and FY24, the WWAMI program's funding is sufficient to fund all existing, and the proposed expanded number of program recipients.

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Co-Chair Stedman WITHDREW his OBJECTION. There being NO further OBJECTION, it was so ordered. The CS for CSHB 39(FIN) was ADOPTED.

CSHB 39(FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Stedman set the bill aside for further review. He asked members to review the document and set an amendment deadline of 2 o'clock p.m. for Friday, April 21. He asked the committee staff to work with Mr. Ecklund. He mentioned subcommittee issues and reminded members to keep a close eye on budget growth during the current time of fiscal constraints.

#hb41

CS FOR HOUSE BILL NO. 41(FIN) am

"An Act making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program; and providing for an effective date."

[2:04:09 PM](#)

Senator Bishop MOVED to ADOPT proposed committee substitute for CSHB 41(FIN), Work Draft 33-GH1349\S (Marx, 4/17/23).

Co-Chair Stedman OBJECTED for discussion.

Mr. Ecklund addressed page 7 of the document, which addressed changes to the proposed mental health bill.

MENTAL HEALTH BUDGET LANGUAGE CHANGES
SB42 (VERSION A) TO SENATE CS FOR HB41 (VERSION S)

There only differences in the Mental Health budget language are the sections designed to mirror the operating sections for the salary adjustment language and for the bonuses. The details are below.

1. Revision of Sec 10, which is language related to salary and benefit adjustments for bargaining units. Two additional bargaining units were added to the language to incorporate additional unions and the addition to clarify Bonuses for certain employees of the executive branch.

2. Addition of Section 8 and Section 12. This language states that funding included in the budget for BONUSES FOR CERTAIN EMPLOYEES OF THE EXECUTIVE BRANCH is contingent upon

- o the state and the applicable bargaining unit of the employee entering into a letter of agreement for the bonus AND that
- o the Department of Administration provide a copy of the letter of agreement to the legislative finance division in electronic form not later than 30 days after the department enters into the letter of agreement.

Mr. Ecklund noted that the changes mirrored proposed changes in the operating budget.

Co-Chair Stedman WITHDREW his OBJECTION. There being NO further OBJECTION, it was so ordered. The CS for CSHB 41(FIN) was ADOPTED.

CSHB 41(FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Stedman relayed that the committee would consider amendments and set an amendment deadline of 2 o'clock p.m. for Friday, April 21. He relayed that the director of the non-partisan LFD would give an update of the state's fiscal picture. He noted that there were a couple of large items that were not in the budget, primarily the Permanent Fund Dividend (PFD) and education funding. He emphasized that there were items that needed to be included in future CSs but contended that the state could not have an unbalanced budget.

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ALEXEI PAINTER, DIRECTOR, LEGISLATIVE FINANCE DIVISION, spoke to a document entitled "LFD 1" (copy on file). He cited that the simplified document put numbers to what Co-Chair Stedman discussed. The first line showed the Department of Revenue's (DOR) Spring Forecast, based on \$73/bbl price of oil. He noted that the Alaska Industrial Development and Export Authority (AIDEA) dividend was currently not in the proposed budget, which reduced revenue. The amount available on line 3 showed about \$6.25 billion, while line 4 showed the agency operations numbers in HB 39 and HB 41. Line 5 had statewide items.

Mr. Painter continued that Line 6 showed the capital budget from the first CS that was released the previous week, plus the mental health budget capital items that were also in the CS that was just adopted. The capital budget was \$190.7 million compared to the governor's amended capital budget that was a bit over \$300 million. Line 7 showed total appropriations of about \$4.85 billion, and Line 8 showed \$1.4 billion remaining for the PFD and additional education or other items as the committee chose.

Co-Chair Stedman asked if Mr. Painter had any slides prepared that might show what it would look like to pay a statutory dividend versus a 50/50 or other amount PFD's.

Mr. Painter relayed that he did not have any prepared slides but could tell the committee the numbers.

Co-Chair Stedman noted that the other body had proposed a 50/50 dividend to total \$1.763 billion. He asked Mr. Painter about the calculations if the budget were to pay the amount out of the \$1.4 billion.

Mr. Painter cited that the dividend level proposed in the other body would leave a deficit of approximately \$360 million based on the CSs in front of the committee.

Co-Chair Stedman noted that the deficit would occur without including additional education funding or additional capital budget funding.

Mr. Painter agreed.

Senator Merrick asked if \$190 million for the capital budget captured all federal funds.

Mr. Painter thought that the CS for the capital budget captured all the federal funds but did not invest in state-funded projects beyond that amount.

Co-Chair Stedman asked about the roughly projected revenue if the committee decided to appropriate funds for K-12 education and a 75/25 percent PFD. He asked about projected revenue for education and capital projects if there was lower than expected revenue.

Mr. Painter explained that the 75/25 dividend was \$880 million, which would leave about \$620 million remaining that could go to additional capital funds or K-12 education funding. For reference, he cited that the other body had considered \$175 million in funding outside the education funding formula. The amount was not funded due to the failure of the vote to access the Constitutional Budget Reserve (CBR). The bill currently before the committee was roughly \$100 million more.

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Co-Chair Stedman asked if Mr. Painter had indicated that there was no K-12 funding in any currently proposed budget.

Mr. Painter affirmed there was no funding proposed in addition to the K-12 education funding formula in either the House or Senate budget. He continued that both the CS being considered and the House version of the budget funded the K-12 statutory formula as it currently existed. The House had included an amendment to include funding outside the formula funding from the CBR. When the required vote failed the funding was deleted from the bill. Both the CS

being considered, and the other body's budget only contained formula funding.

Co-Chair Stedman thought the previous year the legislature had added \$58 million to the formula funding, so if nothing additional was funded in the current year it would actually be a reduction.

Mr. Painter affirmed that there had been \$57 million funded outside the formula. He continued that while there was a \$30 Base Student Allocation (BSA) increase in the current year, it was nowhere near to the size of the previous year's increase.

Co-Chair Stedman asked Mr. Painter to prepare a summary sheet for members with illustrated options such as what it would take to fund a 50/50 or 75/25 dividend. He noted that members would have to consider a range for funding the BSA. He thought there was a desire by all committee members to increase the BSA and have a number in excess of the previous year's funding to varying degrees. He thought a summary would also assist in consideration of the capital budget. He wanted committee members to consider the possibility of revenue in excess of expectations, as well as the possibility of a backstop in the case that revenue fell below expectations. He mentioned a waterfall provision for the purpose of forward funding of education or other items. He discussed the possibility of revisiting the budget in January and February to add additional capital and maintenance money.

CSHB 41(FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Stedman handed the gavel to Co-Chair Olson.

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AT EASE

[2:20:21 PM](#)

RECONVENED

Co-Chair Olson relayed that the committee would consider two bills.

#sb107

SENATE BILL NO. 107

"An Act relating to the Alaska permanent fund; relating to income of the Alaska permanent fund; relating to the amount available for appropriation and appropriations from the earnings reserve account; relating to the permanent fund dividend; and providing for an effective date."

[2:20:36 PM](#)

Co-Chair Olson noted that SB 107 had been before the committee several times. He noted that the committee had adopted a Committee Substitute (CS).

KEN ALPER, STAFF, SENATOR DONNY OLSON, reminded that the committee had adopted a CS (version P) the previous Monday. He explained that the bill was intended to set the split of the annual percent of market value (POMV) draw from the Permanent Fund including the size and portion that would go towards paying PFDs in the future. He noted that the bill would not affect the current year's PFD that was in the budget cycle. The effective date of the bill was the following year. The core sections of the bill would set the PFD at the 75/25 level, which signified that 75 percent of the POMV draw would be available for general government spending, and 25 percent of the bill (about \$880 million) would pay the annual PFD. The PFD would be roughly \$1,300 given the average number of annual applicants.

Mr. Alper continued and described a "trigger" in the bill that would change the formula to revert to a 50/50 ratio. The CS had changed the trigger, which was currently comprised of two factors. The action required a certain amount of new revenue, equal to \$1.3 billion per year passed through new legislation passed after January 2023. The second condition was a savings minimum of \$3.5 billion in the CBR, which had an inflation provision starting in 2025. If both conditions were met by 2031 and met the required written agreement of the DOR commissioner and LFD director, the PFD would go to the 50/50 amount.

Co-Chair Hoffman MOVED to report CSSB 107(FIN) out of Committee with individual recommendations and the accompanying fiscal note.

CSSB 107(FIN) was REPORTED out of committee with three "no recommendation" recommendations and with two "do pass"

recommendations and with one "amend" recommendation, and one new fiscal impact note from the Department of Revenue.

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AT EASE

[2:30:44 PM](#)

RECONVENED

#sb53

SENATE BILL NO. 53

"An Act relating to involuntary civil commitments."

[2:30:48 PM](#)

Co-Chair Olson welcomed Angela Harris to the committee. He explained that Ms. Harris was very involved in the bill and would offer testimony.

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SENATOR MATT CLAMAN, SPONSOR, relayed that his office began work on SB 53 at the request of other legislators and in response to the tragic experience of his constituent Angela Harris. He relayed that Ms. Harris was returning books to the Loussac Library in Anchorage when a man stabbed her in the back. The perpetrator had attacked two other women less than two months earlier and had been released by the court after he was found incompetent to stand trial. He believed that the individual should not have been released in the community. A petition for involuntary commitment should have been filed based on his prior attacks and his psychiatric condition, which made him a danger to the community.

Senator Claman noted that the bill dealt with Title 12, which was related to criminal charges in Title 47, which was related to civil proceedings. The determination of if an individual was competent or incompetent to stand trial, in addition to restoration to competency, was a process set forth in the code of criminal procedure in Title 12. The standard for determining an individual's competency to stand trial was found both in statute and a long history of case law. A simple explanation of competency was whether an individual understood the charges against them, could assist their lawyer, and was able to plead guilty or not

guilty to the charges. He explained that competency was not a defense and was unrelated to the mental state of the individual at the time of the crime.

Senator Claman continued to discuss the bill. He asserted that in order to protect constitutional due process rights of individuals in the legal system, persons who were incompetent to stand trial could not be convicted of a crime. This rule is because a person has the right to understand a crime that they are being charged with, as well as the consequences of the crime if convicted. A separate process was used for involuntary commitment in Title 47. The standard for involuntary commitment was whether an individual, as a result of mental illness, was a danger to themselves or others. The bill would create a duty for the Department of Law to petition seeking involuntary commitment when a defendant was found incompetent to stand trial at the expiration of the period for competency restoration the defendant was charged with a felony offense against a person or felony arson, and presented a danger to themselves or others.

Senator Claman discussed working with his constituent. He explained that the legislation created an involuntary hold of up to five years for individuals who met the following qualifications: having been found incompetent to stand trial in a felon offense against a person or felon arson, having been previously subject to involuntary commitment orders of 30/90/180 days, having a history of felony against a person or felony arson, and presenting a danger to themselves or others.

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Senator Claman continued that a five-year hold for individuals that met the standards reflected the reality that there were a small number of individuals who, as a result of their mental illness, presented a danger and were not suitable for community-based treatment options. The bill proposed a hold of up to five years for a limited number of individuals who needed long-term treatment. He noted that the proposed involuntary hold for up to five years had raised some questions during the committee process. He noted that Alaska statutes already allowed for an involuntary commitment for an unlimited duration under AS 12.47.090, which was for individuals found not guilty for reason of insanity. He continued that the courts had

imposed the unlimited and involuntary commitment, and those being held for the unlimited period had not challenged the longer period in court.

Senator Claman asserted that the proposed longer commitment period would have fewer disruptions for mandatory court proceedings and was a shorter period than the unlimited involuntary commitment under AS 12.47.090. He asserted that as a matter of protecting due process rights of individuals in the state's care, the bill included language that the respondent may petition for early discharge. The court must find, in order to grant a petition for early discharge, that the respondent was not a risk to themselves or others. The bill added notification for victims of the time and place of the civil commitment hearing, the length of time for which the respondent was committed, and when the respondent was discharged. The bill created a five-year commitment option.

Senator Claman asserted that the five-year commitment option would allow for longer treatment plans and better coordination of care. Additionally, the bill also reduced the number of psychiatrists and psychologists needed for evaluation under the insanity defense from two to one. The bill added a requirement that the court must make a finding when there was a request for a competency evaluation and increased the time for competency restoration from one to two years in serious cases. The bill provided that the court could release defendants on bail for competency evaluation, examination, and treatment.

Co-Chair Olson asked the sponsor if he could comment on any significant changes to the bill that had taken place in previous committees, and whether he was in favor.

Representative Claman commented that he supported all the changes made in prior committees, which his staff would address in her comments.

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EMMA POTTER, STAFF, SENATOR MATT CLAMAN, reviewed a Summary of Changes from the previous versions of the bill. She noted that she would review substantive changes made in the Senate Health and Social Services (HSS) Committee and the

Senate Judiciary Committee. The HSS Committee had passed a CS that reflected collaborative work with the Department of Law and the Alaska Court System. The CS reduced the number of psychiatrist or psychologist evaluations for the affirmative insanity defense from two to one to match the number of evaluations required in other areas of statute for competency evaluations and involuntary commitment. The change included the removal of the requirement that the psychologist have a certification by the American Board of Forensic Psychology. The sponsor had learned that Alaska did not have any psychologists currently practicing in the state that met the standards, which complicated criminal process under the insanity defense.

Ms. Potter continued that the bill version that came out of the HSS Committee also included a requirement that attorneys make motions in writing requesting a competency evaluation. The provision was later amended and refined in the Senate Judiciary Committee. The written requirement had prompted an indirect court rule change, which was not the intention. She added that conversations with the Public Defender Agency helped inform the changes in the next committee. The bill required the court to make findings of fact and conclusions of law before ordering a competency evaluation.

Ms. Potter explained that the CS added references to bail conditions and bail release conditions in order to incorporate out-patient competency examinations, evaluations, and treatment into the competency restoration process. The change reflected a request from the Department of Law. She noted that shifting individuals to out-patient services when appropriate and possible would decrease the system overload for competency restoration. She discussed another change requested by the department, which involved an increase to the maximum total time for competency restoration holds for one to two years for charges of a felony against a person or felony arson. The bill asserted a standard of dangerousness that would make a person eligible for an up-to five-year commitment. At the request of the Department of Law, the CS was amended to include felony crimes of arson.

Ms. Potter specified that the CS also included notice provisions for victims, and a dismissed criminal case when the individual case was found incompetent to stand trial and committed involuntarily after a felony crime against a

person or felony arson. The final change in the Senate HSS Committee included provisions that were drafted to close the gap between dismissed criminal charges due to incompetency, and the start of civil commitment proceedings. The process was refined in the Senate Judiciary Committee, which had passed out the current Version P of the bill.

Ms. Potter continued that the CS removed the requirement that attorneys make written motions when requesting competency evaluation and instead required that the court make findings of fact and conclusions of law that justified an examination before ordering a defendant examined for competency. The change reflected a compromise between interested parties, the Department of Law, and the Public Defender Agency. The CS narrowed the arson standard to felony arson only.

Ms. Potter identified that the most substantial change contained in the CS was the new section AS 47.30.706 which allowed for a smooth transition for dangerous individuals, based on the legislation standard, from dismissed criminal charges due to incompetency to the start of civil commitment proceedings immediately upon dismissal of criminal charges. The section created a duty for the Department of Law to file a petition for emergency evaluation under the new section.

[2:41:51 PM](#)

Co-Chair Olson asked about the reason for the change related to incompetency evaluations done by a psychologist.

Ms. Potter asked Co-Chair Olson to repeat the question.

Co-Chair Olson thought he had heard that Ms. Potter had indicated that the CS removed the requirements for a psychologist or psychiatrist.

Representative Claman explained that the change was specific to the affirmative defense of insanity. Under current statute, there was a requirement to appoint two people to evaluate the defendant. In all other areas, only one evaluator was required. The change would only require one psychologist or psychiatrist. He furthered that the practice of a second psychiatrist or psychologist added an unnecessary complication and expense without adding

additional analysis of the case. He added that the prosecution and defense were both likely to hire evaluators.

Co-Chair Olson understood the change.

[2:44:02 PM](#)

Ms. Potter addressed a Sectional Analysis document (copy on file):

Section 1

AS 12.47.070. Psychiatric examination

Amends subsection (a) to reduce the number of qualified psychiatrists or psychologists from two to one for evaluation under the affirmative defense of insanity. Removes the requirement that the psychologist is certified by the American Board of Forensic Psychology.

Section 2

AS 12.47.100. Incompetency to proceed

Amends subsection (b) by adding the requirement that the court make findings of fact and conclusions of law that justify an examination when having the defendant examined for competency.

Section 3

AS 12.47.100. Incompetency to proceed

Adds a new subsection (i), which states that the court may order a defendant on bail to be examined at an outpatient clinic or other facility under AS 12.30. This section includes requirements that the court shall consider, in addition to applicable requirements under AS 12.30, for the conditions of a defendant's release under this section: (1) any medical information provided by the Department of Family and Community Services; (2) the defendant's mental condition; (3) the defendant's level of need for evaluation and treatment under this chapter; (4) the defendant's ability to participate in outpatient treatment; and (5) the defendant's history of evaluation and treatment under this chapter.

Adds a new subsection (j) which states that when a qualified psychiatrist or psychologist is conducting an examination for competency under (b) of this

section, they may, at the same time, evaluate the defendant to determine whether the defendant meets the standards for involuntary commitment.

Adds a new subsection (k) which states that a court may rely on a defense attorney's representation, including privileged information provided at an ex parte hearing, in making its findings of fact and conclusions of law when having the defendant examined for competency.

Section 4

AS 12.47.110. Commitment on finding of incompetency
Amends subsection (b) to increase the maximum total time for competency restoration hold from one year to two years when the defendant is charged with a felony offense against a person or felony arson and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency. This change is reflected by amending "six" months to "18" months.

Section 5

AS 12.47.110. Commitment on finding of incompetency
Adds a new subsection (f), which states that the court may order a defendant on bail to receive further evaluation and treatment at an outpatient clinic or other facility under AS 12.30. This section includes requirements that the court shall consider, in addition to applicable requirements under AS 12.30, for the conditions of a defendant's release under this section: (1) any medical information provided by the Department of Family and Community Services; (2) the defendant's mental condition; (3) the defendant's level of need for evaluation and treatment under this chapter; (4) the defendant's ability to participate in outpatient treatment; and (5) the defendant's history of evaluation and treatment under this chapter.

Adds a new subsection (g), which states that, upon the court finding that the defendant charged with a felony offense against a person or felony arson remains incompetent at the expiration of the period for competency restoration, the prosecutor shall: (1) file a petition seeking involuntary commitment under the new AS 47.30.706 before dismissal of charges; (2)

notify the civil division of the Department of Law within 24 hours after filing the petition; and (3) provide the court's findings to the civil division of the Department of Law within 24 hours after the court's ruling.

[2:47:43 PM](#)

Ms. Potter continued to address the Sectional Analysis:

Section 6 AS 47.30.706. Commitment after finding of incompetence Creates a new section AS 47.30.706: Commitment after finding of incompetence. Subsection (a) states that if a person who has been charged with a felony offense against a person or felony arson has been found incompetent to proceed with criminal charges, an attorney with the Department of Law shall petition the court to have the person delivered to the nearest evaluation facility for an evaluation.

Subsection (b) states that upon receiving the petition under (a) of this section, the court shall: unless the presumption is successfully rebutted, issue an ex parte order stating that there is probable cause to believe the respondent is mentally ill and that condition causes the respondent to present a likelihood of serious harm or self to others; appoint an attorney to represent the respondent; and may direct that a peace officer take the respondent into custody and deliver the respondent to the nearest appropriate facility for evaluation. The court shall set a date, time, and place for a 30-day commitment hearing, to be held within 72 hours.

Subsection (c) states that a person taken into custody for evaluation under this section may not be placed in a jail or other correctional facility except for protective custody purposes and only while awaiting transportation to an evaluation facility.

Subsection (d) states that an individual charged with a felony offense against a person or felony arson who is found to be incompetent to stand trial is rebuttably presumed to be mentally ill and present a likelihood of serious harm to self or others. This creates the basis upon which the court can issue the ex parte order and initiate the 30-day commitment

proceedings. This section states that in its evaluation whether a defendant is likely to cause serious harm, the court may consider the conduct with which the defendant was charged.

The new subsection (e) states that after a respondent is committed under this section, the civil division of the Department of Law shall provide records related to evaluation, examination, and treatment of the respondent to the criminal division of the Department of Law.

Section 7 AS 47.30.710. Examination; hospitalization Adds reference to the new section AS 47.30.706: Commitment after finding of incompetence to subsection (a) of AS 47.30.710.

Section 8 AS 47.30.725. Rights; notification Adds new subsections (g) and (h), which create notification provisions for the victim of the dismissed criminal case. Subsection (g) states that the victim shall be notified of: the time and place of a civil commitment hearing; the length of time for which the respondent is committed and findings of fact made by the court; and when the respondent is discharged from commitment. Subsection (h) states that subsection (g) does not give the victim in a dismissed criminal case access to a record or information that is confidential under AS 47.30.845.

Section 9 AS 47.30.771. Additional five-year commitment Adds a new section creating an additional involuntary commitment of up to five years. Five-year commitment petitions are filed at the expiration of 180-day commitments for individuals who meet the following criteria: the respondent is mentally ill and as a result is likely to cause harm to self or others; the respondent has a history of a felony offense against a person under AS 11.41 or felony arson; the respondent has been found incompetent to stand trial under AS 12.47.100 and 12.47.110 for a felony offense against a person under AS 11.41 or arson; and commitment of the respondent for greater than 180 days but not greater than five years is necessary to protect the public.

Clarifies that findings of fact relating to the respondent's behavior made at 30-day, 90-day, and 180-day commitment hearings shall be admitted as evidence and may not be rebutted except that newly discovered evidence may be used for the purpose of rebutting the findings. Instructs the department to submit an annual report to the attorney general, public defender, public advocate, Alaska Court System, and the attorney of record of the respondent detailing how many respondents are committed under this section and how much time remains on each order of commitment.

[2:51:31 PM](#)

Ms. Potter continued to address the Sectional Analysis:

Section 10 AS 47.30.780. Early discharge Amends subsection (a) to include reference to new subsection (c) of AS 47.30.780.

Section 11 AS 47.30.780. Early discharge Adds new subsections that require that the professional person in charge may not discharge respondents from involuntary commitment unless the court enters an order officially terminating the involuntary commitment after a hearing. This section requires a court decision on discharge of a respondent from involuntary commitment.

Section 12 AS 47.30.805. Computation, extension, and expiration of periods of time Amends section (a) to include five-year commitments. States that a five-year commitment period expires at the end of five years after the 180-day period of treatment.

[2:52:44 PM](#)

ANGELA HARRIS, SELF, JUNEAU, shared her story of being stabbed at the Loussac Library in Anchorage on Sunday, February 13, 2020. She recounted that her assailant had stabbed her and penetrated her spinal cord before being arrested later that afternoon. The stabbing had left her paralyzed from the waist down and with decreased sensation and strength in her upper extremities, which required major changes to her life including modifications to her house. She discussed the resources necessary for her care, and her long ongoing recovery. She reported that her assailant had

a history of assaulting women, and in 2018 he violently attacked a family member. He attacked two other women on December 10, 2021. He was declared incompetent and not restorable and released back into the public on January 6, 2022, after being held for only 28 days. On February 10, 2022, he was arrested for trespassing at the Captain Cook Hotel.

Ms. Harris contended that after her stabbing, her assailant was declared incompetent and could be released after his next incompetency hearing the following month. She asserted that the state needed improvements to its mental health system, particularly regarding violent offenders, and needed to close the loop on current laws that allowed for release of people after committing violent crimes. She asserted that it should not be left up to victims to pursue a civil commitment if an assailant was being released due to incompetence. She asserted that SB 53 closed the loophole for dangerous individuals such as her assailant.

Ms. Harris summarized that the bill was written to address the narrow group of individuals such as the man that assaulted her. She believed that jail was an inappropriate place for her assailant given his serious mental illness. She also believed the community was an improper placement.

[2:55:58 PM](#)

Ms. Harris acknowledged concerns about the protection of civil liberties, and stressed the importance of prioritizing the rights of victims to safely live in communities while allowing individuals to receive necessary long-term care.

Ms. Harris discussed the difficulty of knowing her assailant could be released. She questioned why funds were not spent towards a better process. She thought without the chance for competency, perpetrators should be provided long-term placement options. She asserted that it was not fair to victims or perpetrators of violent harm to allow them to cycle through the system repeatedly without improvement to mental health. She noted that her assailant had been in and out of the state's criminal and mental health system for decades. She hoped to share her story to prevent further violence.

Ms. Harris discussed filing a claim with the Victims Compensation Board and only received a response after a year. She emphasized the need to build out state mental health facilities and laws. She discussed the limitations of API, which had periods of operating at decreased capacity. She stressed the need to address inadequate mental health services for violent offenders and victims. She thought an offender's rights should be weighed against the rights of a victim. She thought the bill was a good starting point.

Co-Chair Olson thanked Ms. Harris for her testimony.

Senator Bishop shared that he had spoken with Ms. Harris previously. He discussed her family and the pain that was caused by her attack.

[3:01:34 PM](#)

ANGIE KEMP, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, introduced herself and relayed that she was present to answer questions and address the fiscal note.

Co-Chair Olson asked if the bill made it so that there would not be repeated tragedies such as the one described by Ms. Harris.

Ms. Kemp thought the bill took steps in the right direction towards dealing with the crisis. She discussed the requirement that a petition for hospitalization be filed. She assumed that everyone knew that historically the petition could have been filed by a variety of individuals and wasn't required until the bill was proposed.

Co-Chair Olson asked how to balance the measure with the civil liberties of an individual that had not been convicted.

Ms. Kemp thought that the matter could be challenging. She thought there was a careful balance, and highlighted crafting the bill in a way that targeted offenders that were committing assault or arson, in targeting the most violent. She thought her colleagues in the civil law division could speak about some of the constitutional parameters implicated by longer periods of commitment. She noted that the criminal division had not been typically

involved in filings related to petitions to hospitalizations. She referenced AS 47.30.

Co-Chair Olson shared concerns about mental illness in rural areas. He mentioned two recent shootings in Golovin, one of which had resulted in a fatality. He noted that in some cases there was only a Village Public Safety Officer (VPSO), and that many places did not even have a VPSO.

Ms. Kemp thought a two-phased approach was needed including dealing with criminal behavior as well as addressing mental health issues as necessary. She acknowledged that the issues Co-Chair Olson mentioned would need to be dealt with by law enforcement and addressed to ensure accountability.

[3:06:02 PM](#)

Senator Kiehl appreciated Ms. Kemp's reference to the bill and making it someone's explicit job to file a petition for hospitalization, and thought it was a strong benefit of the legislation. He asked to discuss changes regarding holds to restore competency when a person was found initially incompetent to stand trial. He asked Ms. Kemp to address the extended periods of competency restoration available in the bill, and what she considered the state's capacity to restore more people during the time period.

Senator Kiehl clarified that he was asking if there would be more individuals going to trial as a result of the longer holds for competency restoration.

Ms. Kemp was not sure she could specifically answer Senator Kiehl's question. She reminded that the court could not try persons who were not competent to proceed because of due process interest and a constitutional requirement to be competent in order to be taken to trial. She thought the proposed lengthening of time to 18 months could facilitate the state's ability to restore people to competency to stand trial. She noted that she was not involved in the nuanced process for restoration. She thought the change would provide an opportunity to explore methods such as medication.

Senator Kiehl relayed that he asked the question since the sponsor had pointed out that it was possible to hold someone indefinitely that was not guilty by reason of insanity, but that individual had been to trial and had an

oppositional case in front of a jury. He mentioned that other provisions of the bill dealt with people that had not been yet found guilty of anything. He thought if the department believed the state could restore more people to competency, it was a strong argument that resources should go in that direction.

Ms. Kemp thought Senator Kiehl had made an astute point. She noted that current case law required that in order to restore an individual after the first 90 days, it would require the trial court to make a determination in conjunction with medical providers that there was a substantial likelihood the person would be restored. She mentioned due process. She mentioned greater lengths of time and the civil division's prerogative. She thought the civil division could speak to its own constitutional analysis as it related to five-year commitment periods, but relayed that the criminal division believed it was constitutionally permissible to hold a person for that length of the time for the purposes of restoration.

Co-Chair Olson asked about the department's stance on the bill.

Ms. Kemp stated that the department was neutral on the bill.

Co-Chair Olson thanked Ms. Kemp for her testimony.

Co-Chair Olson noted that there were four fiscal notes to consider for the bill.

[3:11:49 PM](#)

DAYNA MACKEY, BUDGET ANALYST, DEPARTMENT OF LAW, addressed a new fiscal impact note for the Department of Law, OMB Component 2202. The note showed a total of \$478,800 for FY 24. She noted that the fiscal note proposed three full-time positions.

Ms. Mackey detailed from the analysis on page 2 of the fiscal note:

Personal Services: \$377.8 per year for one partially exempt Attorney 5 (range 25), one Law Office Assistant 2 (range 13), and one Paralegal 1 (range 14)

Travel: \$3.0 in FY2024 for new employee to attend training, and \$8.0 for contested hearings

Services: \$75.0 for statewide and department allocated core services costs

Commodities: \$15.0 in FY2024 only for setup costs for new employees

Senator Merrick thought that the state was having a hard time recruiting and retaining attorneys, and wondered if the state would be able to hire for the positions listed on the fiscal note.

Ms. Kemp thought the department was doing a good job filling existing positions. She offered the caveat that she could not say all the positions were currently filled, but the department was engaged in hiring. She noted there was an uptick in hiring that had coincided with graduations. She hoped the positions could be filled.

Co-Chair Olson asked about the responsibilities of the attorney hired at rate 25 as specified in the fiscal note.

Ms. Kemp explained that the department would not necessarily hire an attorney 5. She wanted the position that would assist in the role of eliminating human error. She shared a concern about attorneys having the experience to file the petitions without risk of human error. She noted that there was potential for hiring an attorney 3 or attorney 4.

Co-Chair Olson thought Ms. Kemp had voiced a valid consideration.

[3:16:52 PM](#)

MATT DAVIDSON, SPECIAL ASSISTANT TO THE COMMISSIONER, DEPARTMENT OF FAMILY AND COMMUNITY SERVICES, addressed a new fiscal note from the Department of Family and Community Services (DFCS), OMB Component 3311, for inpatient mental health at the Alaska Psychiatric Institute (API). He noted that the majority of the fiscal note was included in the FY 24 budget request of \$800,000 to stand up a community-based restoration program and a jail-based restoration program to increase capacity to provide restoration services. He noted that API was currently full. There were 10 restoration beds

out of 80 total beds. The administration was pursuing two restoration programs for lower-level offenders.

Mr. Davidson noted that the fiscal note included a request for an update of a 2018 forensic restoration study. With the bill proposing the double restoration time frames, the department felt it needed to improve the study of how to move forward with forensic restoration in a timely way. Additionally, the department was looking at a modest expansion of the jail-based restoration program that proposed the hire of two new positions over two years.

Senator Kiehl asked if Mr. Davidson could discuss capacity and the expectation of whether the additional restoration programs included in the governor's budget would meet the needs if the bill passed that doubled hold times for restoration.

Mr. Davidson thought the department was keenly aware of the delays in restoration services. He noted that the plan of doing jail-based and community-based restoration programs was to lower the backlog. He estimated that there was a backlog of 30 defendants awaiting restoration services, and a delay of up to 150 days. The expansion into 2 years would give more time for the most serious defendants to receive services. He shared a concern that there could be further delays in some cases, while others would be addressed.

[3:20:43 PM](#)

Senator Kiehl expressed concern about potential growth of the waitlist. He pondered whether the budget request was sufficient.

Senator Kiehl asked about the notification element of the fiscal note from DFCS. He noted that DFCS would need to develop better notification, but thought it was not included in the fiscal note. He asked if the department had an estimate of what was needed to do the notification.

Mr. Davidson relayed that the new notification requirements that had been in the earlier version of the bill had been removed in the Senate Judiciary Committee. The most recent fiscal notes reflected that the requirement had moved to the Department of Law, because of its robust victim notification program. He noted that there would be no cost to DFCS for the notifications.

Co-Chair Olson considered that there were four new people proposed to be hired in FY 24 and FY 25. He asked if the fiscal note reflected the hire of eight new individuals, or if the total was for the same four people.

Mr. Davidson relayed that LFD had asked the department to display the information in the way shown on the fiscal note. He continued that in FY 24, the department planned to hire five new positions, and the following year the positions would still be in effect, with one new position in FY 26 and one new position in FY 28. The note showed a total of 7 new positions.

Co-Chair Olson asked if the fiscal note was for one-time funding.

Mr. Davidson relayed that the one-time funding was for the additional forensic study, with the rest expected to be ongoing. He thought refreshing the forensic study would help inform how to meet the forensic and civil needs in the state.

[3:24:05 PM](#)

SAMANTHA CHEROT, DIRECTOR, ALASKA PUBLIC DEFENDER AGENCY, spoke to FN 4 from the Department of Law. The note showed a total of \$464.5 thousand designated for each year, primarily consisting of personal services funds for an attorney 4 position and an attorney 5 position. The attorney 4 position would be to help absorb the anticipated increase in workload related to the bill, which would handle commitment matters. The attorney 5 position would be expected to be a more experienced attorney with expertise in criminal law and civil commitment. The position would also first supervise a unit of attorneys in Anchorage handling the civil commitment matters. The position would also serve as a subject matter expert for other areas of the state. She thought the scope of changes proposed in the bill made the supervisory position essential.

[3:25:40 PM](#)

JAMES STINSON, DIRECTOR, OFFICE OF PUBLIC ADVOCACY, DEPARTMENT OF ADMINISTRATION, spoke to FN 5 from the Department of Administration (DOA), OMB Component 43. He thought the fiscal note was straightforward, with \$357.6

thousand for two positions at the Office of Public Advocacy (OPA). One position was an attorney 1 through 4 "flex" position. The reasons were due to the need to for some litigation and legal expertise as described by the Public Defender Agency. He noted that OPA would have a much smaller overall number of commitment cases. He discussed public guardian positions, which would be involved in discharge planning and housing for wards of the state. He thoguht the fiscal note was sufficient for OPA.

Senator Kiehl observed that both the Public Defender Agency and OPA both had a line in the fiscal notes about the civil commitment of up to five years, and the bill's flipping of the burden from the government (proving a person was dangerous) to the individual (proving that a person was not dangerous). He asked if the standards were well established, or if a series of appellate cases were expected to get the matter resolved.

Ms. Cherot agreed there would be an increase in workload handling hearings representing individuals when there was a petition to end the commitment period earlier than five years. She did not know that the standard was clearly delineated as written. She could foresee there could be litigation and thought the burden would be placed on the respondent.

[3:28:58 PM](#)

Co-Chair Olson OPENED public testimony.

[3:29:14 PM](#)

MARK REGAN, LEGAL DIRECTOR, DISABILITY LAW CENTER OF ALASKA, addressed two aspects of the bill. He addressed the five-year hold on the civil side and the resources the state needed to devote to competency restoration. He referenced people in jails awaiting competency restoration that should be taking place at API. He asserted that what had gone wrong in Ms. Harris' case was not a matter of the time frame, but rather a problem of a petition for civil commitment not being filed when the perpetrator was dropped from the criminal system. He explained that once a person got into API on the civil side, there was a practice of applying repeated 180-day commitments.

Mr. Regan discussed the burden on victims, and explained that once a person was civilly committed, it was not the burden on the victim to continue the process. Instead, it was a matter of the existing system (particularly at API). He hoped that as the committee considered the positive aspects of the bill, it would drop the five-year hold from the bill. He mentioned the burden of proof and noted that there was not a standard in the bill on whether the hold should be 18 months, or a number of years. He thought the standards of the length of commitment periods should be addressed by the legislature rather than the courts.

Mr. Regan addressed the "broken" competency restoration system and referenced a forensic study completed in 2019. The study had indicated that 10 beds at API was not enough, and that often people were stuck in jail for 150 days or longer awaiting competency restoration. He thought more competency restoration spaces were needed in different settings. He supported the updated study referenced in the fiscal note for DFCS, which could identify a better way of doing competency restoration.

[3:34:21 PM](#)

Co-Chair Olson asked if Mr. Regan was in favor of the bill.

Mr. Regan relayed that the Disability Law Center would not object to parts of the bill that addressed extended competency restoration, or provisions that addressed victim notification. He thought there was a problem with the proposed five-year hold, and thought the larger problem was that more pressure would be put on the competency restoration system without provided needed services. He continued that the appropriations provided for people to do the work at the psychologist end of the process but did not provide for a facility to provide the services. He thought it would be a shame if the legislature, in response to the tragedy, made the system worse for competency restoration services.

Co-Chair Olson thought Mr. Regan was in favor of the bill but with significant change.

Mr. Regan agreed that the center was opposed to the five-year hold but was very much in favor of increased competency restoration services.

3:36:20 PM

Co-Chair Olson CLOSED public testimony.

Co-Chair Olson asked the sponsor if he wanted to offer comments on the testimony.

Senator Claman referenced questions by Senator Kiehl regarding the standard for a person that was in a commitment of up to five-years and who sought to be released. He thought it was a challenge that to enter the five-year commitment the court would have to make findings about the person's dangerousness to self or others. He continued that the court having already made a decision to hold them for that period, it would not make sense for a person to annually file a petition for restoration with no evidence, after which the department would have to hold another hearing and present the same evidence. He expected that the Court System would apply the structure of the bill as to how the hearings were structured, but the respondent would have to present evidence.

Representative Claman referenced John Hinkley Jr., who had attempted to assassinate former President Ronald Reagan in 1981. He recounted that Mr. Hinkley Jr. was found not guilty for reasons of insanity, after which he went through over 40 years of efforts with petitions to the court to reduce his level of supervision and custody. He pointed out that the burden of proof was always on Mr. Hinkley to show changed circumstances, who had worked with a psychiatric hospital and was released from custody after 42 years. He thought there were case examples that the court could look into.

Co-Chair Olson referenced concern about competency restoration and asked if the sponsor wanted to comment.

Representative Claman pondered that many people that were currently classified as incompetent had been through the system previously and were known to likely remain incompetent. He suggested that the state could spend a lot of resources to try and restore competency, but there was a low likelihood of success. He thought the question was how to make smart decisions about who to invest the restoration process in when there was evidence that some people could not be restored. He mentioned outpatient restoration services as proposed in the bill, available to those who

were able to safely do so. He thought the Department of Law had indicated there were 178 people in 2022 that had been subject to competency restoration proceedings, and the significant majority of the people would not fit the felony against a person category.

Co-Chair Olson set the bill aside.

SB 53 was HEARD and HELD in committee for further consideration.

Co-Chair Olson discussed the agenda for the following day.

#

ADJOURNMENT

3:42:26 PM

The meeting was adjourned at 3:42 p.m.