

HOUSE FINANCE COMMITTEE
February 24, 2015
1:32 p.m.

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CALL TO ORDER

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

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Bryce Edgmon
Representative Les Gara
Representative Lynn Gattis
Representative David Guttenberg
Representative Scott Kawasaki
Representative Cathy Munoz
Representative Lance Pruitt
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Randall Hoffbeck, Commissioner Designee, Department of Revenue; Laura Stidolph, Staff, Representative Kurt Olson; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Sara Chambers, Acting Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development.

PRESENT VIA TELECONFERENCE

Cheryl Corrick, Chair, Board of Certified Direct-Entry Midwives.

SUMMARY

HB 26 EXTEND CERT. DIRECT-ENTRY MIDWIVES BOARD

HB 26 was HEARD and HELD in committee for further consideration.

HB 94 SUPPLEMENTAL/CAPITAL/OTHER APPROPRIATIONS

HB 94 was SCHEDULED but not HEARD.

CONFIRMATION HEARING:

DEPARTMENT OF REVENUE
RANDALL HOFFBECK, COMMISSIONER DESIGNEE

Co-Chair Thompson discussed the agenda for the day.

^CONFIRMATION HEARING: DEPARTMENT OF REVENUE, RANDALL HOFFBECK, COMMISSIONER DESIGNEE

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RANDALL HOFFBECK, COMMISSIONER DESIGNEE, DEPARTMENT OF REVENUE, introduced himself. He discussed his personal background. He had obtained a degree in forestry management in 1980. He relayed that he had first worked for the Bureau of Land Management in Alaska. He was assigned land law adjudication; adjudicating land claims under the Alaska Native Claims Settlement Act (ANCSA) and Alaska National Interest Lands Conservation Act (ANILCA). He subsequently operated a home construction business in the 1980's worked as a realtor and took a position as an appraiser supervisor for the Municipality of Anchorage. Afterwards, he participated on an oil and gas audit team for the North Slope Borough (NSB) where he worked as a senior oil and gas appraiser and then as a tax manager until the late 1990s. Successively, he was appointed the Parks and Beautification Manager for over one year in Anchorage. He subsequently provided tax administration support for the Department of Revenue (DOR) until 2001. He had then been offered the state petroleum tax assessor position with the department and worked in the position until 2006. In his capacity as assessor he rewrote administrative regulations for AS 43.56 and was a member of the stranded gas line negotiating team for former Governor Frank Murkowski for two years. He returned to NSB and accepted a position as the Director of Administration and Finance in 2007 and held the position until 2011 when the NSB Mayor Charlotte Brower appointed him Chief of Staff.

Commissioner Hoffbeck elaborated that the borough operated like a small version of the state of Alaska because of its dependence on oil and gas. The NSB director job had been very similar to the commissioner of DOR position. The finance director was the chief investment officer for the borough, managing up to \$1 billion in investments. He had also been the budget manager, debt manager, and treasurer. In addition, he had also been in charge of accounting, grants benefits, risk management, insurance purchasing, shipping and receiving, and records management. He had retired in 2012 and had completed a seminary degree with a master's degree in pastoral counseling and divinity and intended to embark on a career in seminary. However, he was asked by Governor Walker to serve as the commissioner and had decided to accept the position.

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Co-Chair Neuman asked what he saw as the role of the commissioner of DOR. Commissioner Hoffbeck replied that DOR was tasked with collecting and managing the revenue for the state. He detailed that as commissioner he would provide support and make policy decisions for the department.

Co-Chair Neuman wondered where he thought the state's revenue streams would be generated from in five years. Commissioner Hoffbeck replied that the situation would be difficult depending on what happened with oil prices. He stated that it was not possible to live off of savings forever. He believed a conversation on imposing broad based taxes, changing fee structures, and spending investment earnings from the Permanent Fund would need to take place in the coming year. He noted that it may be necessary to reassess oil and gas taxes.

Co-Chair Thompson noted that Representative Gara, Representative Pruitt, and Representative Munoz had joined the meeting.

Co-Chair Neuman referenced spending earnings from the permanent fund and asked whether the governor was considering the scenario. Commissioner Hoffbeck replied in the affirmative. He related that the governor would consider all revenue generating options. He clarified that the permanent fund itself nor the dividend would be at risk; only the undesignated earnings were available and being considered for expenditure.

Co-Chair Neuman remarked that the former commissioner of the Department of Transportation and Public Facilities (DOT) was dismissed shortly after providing the current administration advice. He wondered whether Commissioner Hoffbeck had "his own voice" in discussions with the governor. Commissioner Hoffbeck replied in the affirmative. He related that he had a working relationship with the governor for over 20 years. He noted that over the years they had agreed and disagreed on issues. He voiced that the governor had made it clear that he wanted to hear differing opinions including the pros and cons on issues.

Co-Chair Thompson noted that Representative Gattis had joined the meeting.

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Co-Chair Thompson referenced the creation of a municipal advisory group under the Stranded Gas Act. He shared that he had been a member of the group as mayor of Fairbanks and had previously worked with the commissioner. He asked whether the governor was going to introduce a property tax bill during the legislative session.

Commissioner Hoffbeck replied that he was uncertain that a property tax bill would be introduced by the governor during the current legislative session. He elaborated that the administration had recently met with the municipal advisory group and determined that a PILT (payment in lieu of taxes) structure was agreeable. The structure, which was "more of a formula driven value than a PILT" had been accepted and the advisory group requested to run some models to see how the PILT would unfold over time. He notified the committee that a meeting was scheduled for March 13, 2015 for concurrence of the proposed PILT. With concurrence, the PILT would be presented to the AKLNG negotiations group to factor into the economics of the project. Discussions would begin regarding impact payments during construction with representatives of the Federal Energy Regulatory Commission (FERC) and the advisory group to determine whether the advisory group would adopt the FERC process for impact payments. One more discussion would ensue to determine how the revenue would be allocated throughout the state that would take place between the state and municipalities. He offered that until something comes out of the negotiation process there isn't anything concrete the administration could share with the

legislature on the matter. He provided a scenario where a \$50 billion pipeline based on a 20 mil levy totaled \$1 billion per year on property taxes, which reflected a significant portion of the total take of the pipeline revenue. The economic model needed to have flexibility built-in in the early stages versus "locking it down tight early and having to build the project around it."

Co-Chair Thompson recalled that when he chaired the municipal advisory group one of the concerns was the PILT and the impact to the communities to accommodate mass amounts of workers moving in. He relayed that the idea of advancing funds to the municipalities for preparedness was discussed. He wondered if the issue was currently being addressed. Commissioner Hoffbeck replied that the issue of impact payments would be discussed during the March meeting. Co-Chair Thompson asked how often the municipal advisory board met. Commissioner Hoffbeck answered that the group attempted to meet once a month with the goal of meeting every 2 weeks. He revealed that the "biggest player" regarding property taxes and the gasline was the state. He remarked that property taxes was a "significant" constant revenue stream for the state as well as the municipalities; "one that would not fluctuate with gas prices."

Vice-Chair Saddler asked about the department's ability to predict state revenue. Commissioner Hoffbeck replied that predicting revenue essentially derived from one stream, was difficult at best. He indicated that he would not change the forecasting process and thought that no entity could accurately predict the price of oil. He surmised that if the state could broaden its revenue sources then predicting revenue would become more accurate going forward. He remarked that as long as the state was primarily relying on oil revenue, the department was taking a conservative forecasting approach.

Vice-Chair Saddler wondered who should pay the costs for public services. He asked what the role of industry, municipalities, and the public was. Commissioner Hoffbeck answered that the "pay as you go method" did not work very well. He expounded that fees for services was a reasonable model. He believed that a "broader range of services that the government provided were not fee driven" therefore the government dispersed the state's "accumulation of wealth."

He believed oil and gas industry taxes were an appropriate source of revenue for the state.

Vice-Chair Saddler wondered whether the administration would consider increasing the "royalties" on fishing or mineral extraction in the attempt to raise more revenue. Commissioner Hoffbeck answered in the affirmative. He believed that everyone understood and anticipated that revenue sources needed to be broadened. He assured that the administration would work with the various industries when determining the amount of increases.

Representative Kawasaki cited the Trans-Alaska Pipeline System (TAPS) valuations from 2014. He detailed that the pipeline owners valued the system at \$2.7 billion, municipalities estimated the number at \$13.8 billion and DOR valued the pipeline at \$5.8 billion. The State Assessment Review Board (SARB) finally assessed TAPS at \$10.2 billion. He wondered what the commissioner thought about the differences in the value of TAPS.

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Commissioner Hoffbeck recounted that ten years earlier in his role as a state oil and gas property assessor, the state obtained a three year settled agreement on the value of TAPS. He elaborated that when the agreement expired and work had been done to determine the value going forward he discovered "issues" regarding the way pipelines were valued. He felt that the practice of "discounting a regulated rate" did not fairly determine the market value of an asset. He argued that the pipeline had "a use value" versus "the rate of return on its regulated tariff." The case was heard in the state Supreme Court who sided with the state's position of "use value" but modified some of the assumptions and raised the value above the state's assessed value. Currently, statute was based on the use value and the industry maintained its disagreement. He relayed that in the prior year the state had determined the value of TAPS partially from the use valuation and partly from a more recent superior court decision in 2009 that was challenged and the state was currently waiting for the impending Supreme Court decision. He recently worked with the current state assessor and developed a more focused way to value TAPS for the next valuation. He reported that of late, he had worked "diligently" with the municipalities and the mediator to attempt to resolve ten years of

litigation on the value of TAPS. He remarked that once the value of TAPS was decided the industry and municipalities agreed to participate in further discussions.

Representative Kawasaki wondered whether the commissioner would be arguing on behalf of the state in front of the Supreme Court. Commissioner Hoffbeck replied that last year he withdrew from TAPS litigation. He revealed that in the past he had represented both sides of the issue. He had asked the attorney general for an opinion regarding the legality of his participation in the current mediations with the municipalities in his capacity as commissioner. Both the industry and the municipalities requested his current participation in the mediations, therefore with the approval of the attorney general's office he remained engaged in the negotiations.

Representative Guttenberg discussed that the AKLNG project would only access 20 miles of the Fairbanks North Star Borough in its current route. He felt that the impacts from the project would still be significant for the City of Fairbanks as well as the borough. Based on a mileage plan the borough would not receive much of the impact money. He shared that he had lived through the Trans-Alaska Pipeline System (TAPS) in Fairbanks and the impacts were "unimaginable." He wondered how the state would mitigate the borough's costs.

Commissioner Hoffbeck agreed that there would be substantial impacts on the Fairbanks area during construction of AKLNG but not as much when in operation. He alluded to a prior study by Information Insights during the Stranded Gas Act discussions that examined the "massive impacts" on schools, crime, and various other issues that impacted Fairbanks during TAPS. He intended to start working through the issues during the March 13, 2015 meeting with the municipalities. He anticipated that the impact funding would be paid from the project and there might be an additional state component. He was sensitive to the issue.

Representative Guttenberg referred to the Gleason Decision on the valuation of TAPS. He pointed out that with every TAPS assessment a lawsuit ensued. He "wanted to ensure that the state was in a strong position to keep up its obligation to its tax base." He wondered how long the litigation would go on.

Commissioner Hoffbeck replied that "everyone was weary of the litigation." He noted that a tremendous amount of litigation had not yet occurred. The 2007 to 2009 litigation was currently before the Supreme Court and the 2010 to present cases had not yet reached the Superior Court. He believed that the forthcoming Supreme Court decision would "reaffirm the initial decision." He hoped that subsequently most of the issues would be resolved and the parties could agree to a value. He reported that the state had a difficult time keeping up with the litigation costs and was "caught in the middle." He commented that the state was the taxing authority and had to "set the foundation" for the valuation and typically allowed the other two opposing parties to "duke it out." He wanted the state to act more proactively going forward by bringing the parties together. He did not want another court case on TAPS and hoped for a negotiated resolution.

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Co-Chair Thompson asked about the department's role in Governor Walker's pipeline ownership strategy. Commissioner Hoffbeck replied that the department's role would be to look at financing options to determine how much of the state's equity stake was affordable versus inviting equity partners and how that would be structured. The department would also examine the projects revenue generation to ensure that the ownership structure generated a reasonable rate of return.

Co-Chair Thompson noted that there were two pipeline projects that appeared to be in conflict with each other. He wondered whether the commissioner had a conflict of interest. Commissioner Hoffbeck replied that he was not on the Alaska Gasline Development Corporation (AGDC) board and was specifically excluded from board membership by statute in SB 138 (Gas Pipeline; AGDC; Oil & Gas Prod. Tax - 2014) along with the Department of Natural Resources (DNR) Commissioner Meyers. He delineated that he had not yet signed the confidentiality agreement and was not privy to the confidential information regarding AKLNG. He relayed that the governor believed competition was positive and his goal was to move both projects along which gave the state options.

Co-Chair Neuman saw an issue with the huge investments impending for the AK LNG project that were required by the

state. He asked how the commissioner could appropriately advise the governor on revenue options regarding a gas pipeline if the commissioner did not have access to all of the information available. Commissioner Hoffbeck replied that the Deputy Commissioner Donna Keppers had signed a confidentiality agreement and had access to the information. He elaborated that the attorney general's office was developing a definition of confidentiality regarding the project. The administration believed in transparency. When the parameters were implemented the commissioners would sign the confidentiality agreement and have access to the information. He also wanted to ensure that the public had as much access to the information as possible.

Co-Chair Neuman spoke to the definition of confidentiality and thought that confidentiality guarded certain business plans that was not public. He wondered whether the administration was looking at changing the definition of confidentiality so the commissioner had the ability to sign confidentiality agreements. Commissioner Hoffbeck replied that the attorney general was looking at narrowing what needed to be confidential.

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Representative Gara surmised that the commissioner of DOR may be one of the most important revenue generators in the state. He recalled the Amarata Hess case where the state was underpaid royalties by \$1 billion. He observed that currently the state was faced with low oil prices and negative production tax revenue over the next several years. The probability existed that some oil companies had underpaid their taxes under the Alaska's Clear and Equitable Share (ACES) tax regime. He reported that the state still had not completed a single ACES audit. He asked how the commissioner would ensure that the state received any revenue due and whether the state was up against auditing deadlines and could lose the ability to retrieve underpaid royalties.

Commissioner Hoffbeck acknowledged that the department had been bumping up against statutory deadlines related to audits. He assured that the department would not miss a statutory deadline for audits. The department had recently finished the last of the Petroleum Production Tax (PPT) audits. He stated reasons for the delays but acknowledged

that it was not fair to the state or tax payer to wait 6 years for an audit. He implemented a plan to catch up within 3 years and maintain audits within a 2 to 3 year cycle. He indicated that DOR had well trained audit staff. He was confident the audits would be done well and that the issue was over areas of dispute with the producers.

Representative Gara expressed skepticism. He had heard assurances before from prior administrations. He stated that DOR had not retained extra audit staff since the prior administration. He wondered how the audits would be exhaustively completed in time to collect every penny of underpaid taxes. Commissioner Hoffbeck replied that DOR's implementation of its new tax management system enabled the audit staff to concentrate on audits. He purported that with the completion of PPT taxes, audits were more focused on ACES. Work on the audits was being performed but needed completion.

Representative Pruitt observed that the commissioner brought experience, and a wealth of knowledge to the job. He wondered whether the state should proceed with the Alaska Stand Alone Pipeline (ASAP) line or the AKLNG Project. Commissioner Hoffbeck replied that he did not believe the projects were mutually exclusive. He related that the governor had made it clear that he wanted to support the AKLNG project and he also wanted to move forward with the expansion of ASAP.

Representative Pruitt wondered whether the ASAP project represented more of a "plan B" as the prior administration had viewed it. Commissioner Hoffbeck answered that the governor presented ASAP as a competing project. He detailed that AKLNG would drive the agenda because ASAP could never catch up and would continue to be the primary project.

Representative Pruitt indicated that a smaller gasline owned by the state would generate less revenue for municipalities. He stated that the revenue impact on municipalities was significant and wanted to ensure that would be considered. Commissioner Hoffbeck replied that the issue had already been discussed along with the impacts of a 25 percent state share of the AKLNG project and its impacts on municipal revenue.

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Vice-Chair Saddler commented on the commissioner's comment that ASAP was a competing project. He wondered why the producers would continue to participate with the state on the AKLNG project if the ASAP project was in competition. Commissioner Hoffbeck believed the goal was to "level the playing field." He voiced that each of the producers involved in AKLNG had competing projects all over the world as well and were weighing returns. He believed the governor needed to convince everyone that the state was still negotiating in "good faith" on AKLNG and would continue to "push" for the project.

Vice-Chair Saddler wondered whether he observed any impacts with the producers involvement in AKLNG based on the governor's announcements regarding expanding ASAP. Commissioner Hoffbeck replied in the negative. He shared that the governor had contacted the heads of the various companies prior to the announcement. He thought that the challenge was maintaining a "firewall" within the state to ensure that both projects information remained confidential from one another. Vice-Chair Saddler observed that one of the benefits of the previous arrangement between both projects was the opportunity to share information and that a firewall increased the costs of both projects. Commissioner Hoffbeck replied that it was a reasonable statement that costs would increase with a firewall.

Representative Gara wondered whether both projects "provided negotiating leverage" with the producers and benefited the state by creating options. Commissioner Hoffbeck responded in the affirmative. He felt that both projects "strengthened the state's hand and leveled the playing field."

Vice-Chair Saddler asked whether he discussed what would make him a successful commissioner with the governor. Commissioner Hoffbeck shared that he discussed revenue shortfalls, implementing a resulting long-term economic plan and moving forward with an investment decision on a gasline project with the governor. It was decided that the measure of success would be determined by the outcomes on both issues.

Co-Chair Neuman asked whether he could share both revenue shortfall and gasline plans with the committee. Commissioner Hoffbeck replied that the revenue shortfalls was an opportunity to "rethink government" and what the

states core services were. He could not add any more information regarding plans.

Representative Pruitt asked whether the administration would lead the conversation on various issues. He pointed to challenges related to marijuana, Medicaid reform, and revenues. He wondered whether the administration would lead or would the legislature be expected to introduce legislation. Commissioner Hoffbeck answered that when the governor's administration was "in order" he would be ready to lead the discussion on revenue programs.

Representative Pruitt asked "what if they were not ready." Commissioner Hoffbeck replied that the public, private sector, legislature, and governor would need to work together on the issue. He did not believe the public was convinced that the state was operating as efficiently as necessary; currently revenue discussions would be premature. He felt that next fiscal year's round of budget cuts would be so significant that the public would be ready to consider revenue discussions. Representative Pruitt agreed that the state needed to start with budget cuts. He desired more leadership from the administration to help the legislature understand how the governor would develop the budget over the ensuing years.

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Representative Wilson wondered what his view of "significant" budget cuts was in order to prompt the revenue discussion with the public. Commissioner Hoffbeck answered that he estimated the budget cuts to amount to less than 10 percent this fiscal year. The governor's target over the next two years was 25 percent which will entail cutting entire programs. He expected engagement with the public at that point.

Representative Wilson wondered whether the state could "really make it" with only a 25 percent cut over the next two years and its reserve accounts. Commissioner Hoffbeck responded that currently the state's savings accounts balance was roughly \$9.5 billion and after the next fiscal year the balance would be reduced to approximately \$6 billion. If the price of oil remained low the state would have to find other ways to balance the budget. He did not believe the budget could be balanced by budget cuts alone.

Representative Wilson did not believe it was possible to tax the state's way out of debt.

Co-Chair Thompson read a statement related to the confirmation hearing. He stated that signing the committee report did not reflect the individual member's approval or disapproval of the appointee. He reminded the committee that the House Finance Committee report (according to AS 24.60.130) accompanied the nomination to the full legislature where confirmation or rejection will ultimately take place.

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HOUSE BILL NO. 26

"An Act extending the termination date of the Board of Certified Direct-Entry Midwives; and providing for an effective date."

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LAURA STIDOLPH, STAFF, REPRESENTATIVE KURT OLSON, read a statement to the committee:

Before you today is HB26, this legislation extends the termination date for the Board of Certified Direct-Entry Midwives to June 30, 2017.

Each year the Division of Legislative Audit reviews state boards and commissions to determine if they should be reestablished per AS 24.44. The Division of Legislative Audit reviewed the activities of the Board of Certified Direct-Entry Midwives. The purpose of this audit was to determine whether there is a demonstrated public need for the board's continued existence and whether it has been operating in an effective manner.

As the members noted in their review of the audit in their packets, it is the opinion of the Division of Legislative Audit that the board be extended two years

to June 30, 2017. You saw that in the opinion of our auditors, the board is serving the public's interest by effectively licensing certified direct-entry midwives and apprentices. Additionally, it was found that the board continues to improve the profession by modifying and adopting midwifery regulations to conform to current standards of care.

As the members also may have noted from the audit, there were four findings and recommendations, including having the Department pursue disciplinary cases, increasing licensing fees to eliminate the board's operating deficit, having the board communicate certificate requirements to continuing education providers, as well as approving apprentice applications in accordance with statutes. To speak to the recommendations, Kris Kurtis of Legislative Audit and Sara Chambers of the Department of Commerce are here, and Cheryl Corrick, the CDM Board Chair is on line from Anchorage.

In closing, the Board of Certified Direct-Entry Midwives serves an important role in protecting the well-being of Alaskans by identifying individuals who are willing to pursue technical training and meet specified technical qualifications necessary for license as midwives. The continuation of this board is very important to the health and safety of Alaska's women and children.

Thank you for your support of this legislation.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, relayed that the division had conducted a sunset audit and concluded that the board was operating in the public's interest. However, the audit had found that the Division of Corporations, Business and Professional Licensing (DCBPL), Department of Commerce, Community and Economic Development (DCCED) failed to carry out timely disciplinary sanctions related to four midwife investigations. Therefore, the division only recommended a two year extension. The audit contained four recommendations; the most serious was to DCCED's commissioner to "take immediate action to pursue disciplinary sanctions for certified direct-entry midwives (CDM) cases when warranted." She detailed that disciplinary sanctions were not actively pursued for four related

investigations involving two people, which supported disciplinary sanctions. She continued to read from the audit report:

In all four CDM cases, the respondents refused to sign a CA. Rather than file an accusation and pursue an administrative hearing, DCBPL staff followed alternate procedures. Two of the four cases were forwarded to the Department of Law's (DOL) Office of Special Prosecutions and Appeals (OSPA) without a sufficiency of evidence review by an AAG. A year after the cases were forwarded to OSPA, no action had been taken. According to OSPA, the cases represent their lowest priority as the related offenses were categorized as Class B misdemeanors...

Due to staff turnover, it is unclear why DCBPL staff did not pursue a civil licensing action as required by standard operating procedures. At a minimum, licensing action should be pursued concurrently to ensure the public is protected from incompetent, negligent, or unlicensed practitioners. By not pursuing licensing action, the respondents were allowed to continue practicing, and the public's safety was placed at risk.

Ms. Curtis noted that the other three recommendations were administrative.

Co-Chair Neuman surmised that the board had done a very good job. He observed that the members had worked to modify and adopt regulations to conform to current standards of care. He felt that the fault lied with DCBPL. He wondered why the audit recommendation only extended the board for two years when it was the department that failed in carrying out its duties.

Ms. Curtis replied that typically when the division of audit identified issues within DCBPL that needed correction audit followed up the following year especially related to a system or procedure that was central to all of the occupations. She elaborated that specific to the midwives case the investigations were related to the midwifery board. The sunset mechanism was the only mechanism that was available for follow up and due to the seriousness of the deficiency a shorter period was warranted to ensure correction. She agreed that the board was operating in the

public's interest. Two of the audit's recommendations to the board were simple housekeeping recommendations that did not warrant an extension change. The other two recommendations were directed at the department.

Co-Chair Neuman wondered whether it was common practice that DCBPL was not getting its job done. Ms. Curtis replied that it was fairly unusual and did not find that the deficiency was characteristic of DCBPL.

Vice-Chair Saddler asked whether DCCED responded to recommendation number one. Ms. Curtis replied that the responses were included at the back of the audit; DCCED had concurred with the recommendations. Vice-Chair Saddler asked about recommendation number two related to license fee changes and noted the board carried a deficit since 2010. He asked what the reason for the deficit was.

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Ms. Curtis could not speak to the deficit directly but offered some perspectives. During the last audit in 2006, the auditor had found that the board was suffering from a deficit and at that point the board had the highest occupational fees of over \$2 thousand. The deficit was not a new problem for the board. The board had had incurred high investigation costs and had only a small number of licensees.

Representative Guttenberg wondered whether the investigation expenses came as a result of investigating people that were not licensed. He detailed that the board assumed costs for unlicensed practitioners and the licensees acting within the law bore the cost of the investigations. He asked whether the expense was related to dealing with people who were not licensed.

Ms. Curtis responded that the investigation information was not public. She elaborated that in general it was common for audit to find investigations related to unlicensed activity on occupational boards.

Representative Guttenberg reiterated his question whether the investigation expense was related to people who were not licensed. Ms. Curtis responded in the affirmative.

Representative Wilson referenced recommendation number two and asked whether the deficit was expected to grow in the next ten years. Ms. Curtis cited pages 14 and 15 of the audit that contained the board's financial information since 2010. She noted the board's deficit in 2006 was "significant" and the fee was over \$2 thousand. She found it unusual that the certification fee in 2010 was lowered to \$500. The low fee could have driven the deficit as well as four significant investigations.

Representative Wilson pointed to the FY 2010 direct expenditures of \$22,600. She understood why the deficit happened but noted the growth of expenditures. She deduced that even if fees were increased to \$2,000 the deficit would still continue to grow. Ms. Curtis deferred to the department for a more detailed answer. She revealed that investigations or regulatory projects drove board's personal services costs.

Representative Wilson wondered how much the audit cost for the board were. She wondered why the audit charges were not charged back to the board. Ms. Curtis replied that the Division of Legislative Budget and Audit (LBA) had a personal services allocation to perform its work. She offered that LBA's work encompassed financial, sunset, special request, and federal compliance audits. She reported that there had never been an attempt to recover the costs from the boards.

SARA CHAMBERS, ACTING DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, related that the division concurred with the audit findings. The department agreed that there was a serious need for improvement within the department. She delineated that within the past year the division incorporated changes to the structure of its investigative unit. The division currently worked "more closely" with DOL and OSPA to ensure "the processes were codified" and the cases were recognized as a priority when sent to DOL. The division's chief investigator had set up a meeting every 30 days with DOL to confirm that cases were acted upon. She added that the division was "closing in on definitive action" regarding the cases identified in the audit.

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Co-Chair Thompson asked how many registered midwives there were in Alaska. Ms. Chambers answered that there were approximately 50 registered midwives including apprentices. Co-Chair Thompson pointed to the \$115,000 deficit; he wondered whether it was possible for the board to catch up. Ms. Chambers replied that the board and the division had been working over the past several years to chip away at the deficit. She detailed that an increase to a \$4 thousand to \$5 thousand licensing fee would be unsustainable for midwives. She anticipated that the deficit costs could be recovered over a period of time. The division with the board's concurrence increased licensing fees over the last two previous licensing cycles and would continue to do so. She continued that prior to 2010 the division had provided incorrect information to boards that "was not reconciled with the state accounting system." The midwifery board was given incorrect information and based on the misinformation set the fee too low. She revealed that the division discovered the mistake which affected several other boards that incurred large deficits.

Co-Chair Thompson asked if there was a fear that a continual increase in fees would reduce the number of midwives. Ms. Chambers replied in the affirmative. She stated that however, as long as the fees were mandated to cover all of a board's expenses including investigations she believed that "it was a cost of doing business."

Representative Wilson surmised that according to statute there was not a choice "to chip away" at a board's deficits. She wondered what gave the division the authority to not collect the full deficit amount in fees by the next licensing cycle. Ms. Chambers answered that the division attempted to clarify the issue since 2011. She indicated that the Division of Legislative Audit and the Division of Legislative Finance (LFD) interpreted AS.08.01.065 as a requirement for the division to analyze fees each year but not necessarily increase fees each year to recover the costs.

Representative Wilson asked why the midwifery "industry" would not be safe without a board since the licensing requirements would still be mandated.

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Ms. Chambers replied that the division maintained safety standards with or without boards. A professional board ensured timely information on regulatory issues to keep current with standards of practice. Representative Wilson asked whether not only the midwifery board but any board could regulate itself voluntarily. She restated her skepticism that the board could recover costs and pay for itself with only 50 licensees. Ms. Chambers answered that the model often used in professions without boards employed "quite a bit of input from the professional community and associations." Those professions lacked the statutory authority to take action therefore; a volunteer board's meetings would have to be subject to open meetings laws regarding drafting regulations. She thought that the board's value was "in keeping current with continuing education." She related that the division's licensing staff may not be aware of nuanced information that could affect regulation without a board. She remarked that a possibility existed that the midwifery board's activities could be assumed by another board.

Vice-Chair Saddler asked what the standard board extension was. Ms. Chambers replied that legislative audit could extend a board for up to eight years. Vice-Chair Saddler asked how long the midwifery board was in existence and what percentage of births were assisted by midwives in the state. Ms. Chambers deferred the question to the board.

Representative Guttenberg commented that the issue was part of a "larger structural issue" that had been encountered before. He pondered how many of the professional boards' costs resulted from dealing with people who were not licensed. He wondered how many boards were in financial trouble due to investigations of unlicensed people who were outside of a board's regulatory authority. He suggested that perusing unlicensed individuals was the state's responsibility instead of putting the burden onto the licensed professional acting within the law. He believed that scenario was the "larger issue."

Ms. Chambers answered that the division did not have a specific statistic to offer. She stressed that according to statute, each board was mandated to pursue unlicensed individuals if discovered by the division's investigative unit.

[3:07:32 PM](#)

Co-Chair Thompson redirected the conversation back to the midwifery board.

Representative Pruitt wondered whether the division had the authority to recoup the investigative costs from the unlicensed individual, which would help limit the costs to the midwives. Ms. Chambers replied in the negative. She delineated that all fines collected were deposited into the general fund. Licensees with or without a board covered the investigative costs. The division had requested an attorney's opinion on whether the division could "bill" the individual for the investigative costs but did not currently possess the authority.

Representative Kawasaki noted that the board requested increased fees for certified midwives and apprentices but that the division denied the increase. He requested clarity. Ms. Chambers answered that the issue had recently been resolved and all of the fees were increased.

Representative Gattis wondered what would happen if the board was allowed to sunset. Ms. Chambers replied that the board would sunset but the licensing program would continue and deferred to Ms. Curtis for technical answers.

CHERYL CORRICK, CHAIR, BOARD OF CERTIFIED DIRECT-ENTRY MIDWIVES (via teleconference), provided a statement and addressed members questions. She stated that the board was an important part of the profession and worked tirelessly to regulate and update midwifery in the state. She elaborated that the board was working arduously to improve its budget and investigation issues. She relayed that the division was restructuring its investigative procedures to address the board's concerns. Previous investigative practices had increased the public's risk. She added that the division was working with the board to implement cost saving measures including administrative overhead. She planned to eliminate the deficit through increasing licensing fees over several licensing cycles. She addressed the \$500 licensing fee in FY 2010. She communicated that she was a member of the board at the time and recalled the collective concern from the licensees and board over the low fee. The board's request for an increase was denied by the division.

Ms. Corrick informed the committee that the board had been in existence since 1988 and that approximately 10 percent

of the births in the state were attended by midwives. In reference to questions concerning the public's safety without a board, she added that an obstetrician and a certified nurse midwife were board members. She discussed that the team worked hard to ensure regulations were updated to national standards. She deemed that the cost of the board was minimal and that the higher costs were associated with administration and investigations.

[3:15:20 PM](#)

Representative Munoz wondered whether the four ongoing investigations were related to uncertified activity. Ms. Corrick replied that two of the cases were related to uncertified activity. Representative Munoz wondered how many uncertified midwives were operating in Alaska. Ms. Corrick guessed that there were two.

Vice-Chair Saddler referred to Ms. Corrick's letter in response to the audit's recommendations. He noted that the board was researching the possibility of a legal defense fund to help smaller boards with investigative costs. He requested more information.

Ms. Corrick responded that the midwives were interested in working with other professions regarding the idea but that no action had been taken to date.

HB 26 was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT

[3:17:52 PM](#)

The meeting was adjourned at 3:17 p.m.