

HOUSE FINANCE COMMITTEE  
March 16, 2015  
1:31 p.m.

1:31:45 PM

CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 1:31 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Bryce Edgmon

ALSO PRESENT

Representative Mike Chenault, Sponsor; Tom Wright, Staff,  
Representative Mike Chenault; Ed Fogels, Deputy  
Commissioner, Department of Natural Resources; Laura  
Stidolph, Staff, Representative Kurt Olson; Sara Chambers,  
Director, Division of Corporations, Business and  
Professional Licensing, Department of Commerce, Community  
and Economic Development.

PRESENT VIA TELECONFERENCE

Kris Curtis, Legislative Auditor, Alaska Division of  
Legislative Audit.

SUMMARY

HB 26            EXTEND CERT. DIRECT-ENTRY MIDWIVES BOARD

HB 26 was REPORTED out of committee with a "no recommendation" recommendation and with one previously published fiscal impact note: FN1 (CED).

HB 115 AK SOVEREIGNTY;US TRANSFER LAND TO ALASKA

HB 115 was HEARD and HELD in committee for further consideration.

[1:32:33 PM](#)

Co-Chair Thompson discussed the meeting agenda.

#hb115

HOUSE BILL NO. 115

"An Act relating to the transfer of public land from the federal government to the state and to the disposal of that land; and providing for an effective date."

[1:32:50 PM](#)

REPRESENTATIVE MIKE CHENAULT, SPONSOR, read the sponsor statement (copy on file):

Committee Substitute for House Bill 115 (RES) enacts the Alaska Sovereignty and Transfer of Federal Public Lands to Alaska Act. The bill requires that the United States to transfer title to public lands to Alaska on or before January 1, 2017. The bill also affirms Alaska's state sovereignty under the Ninth and Tenth Amendments to the U.S. Constitution.

Although there are a number of state and federal constitutional issues regarding the provisions contained within the bill, this bill was introduced since the 35-year deadline from the time Alaska was admitted into the Union as provided within the Statehood Act, PL 85-508, is long past. I believe there is a breach of good faith since the state is still entitled to and awaiting the transfer of the remaining 5.5 million acres. Thus far the state has received patent to about 99.5 million acres.

Currently, the state has 10.9 million acres of selections from which to receive its 5.5 million acres of entitlement as well as 10.2 million acres of top-filings that may eventually become selections should applicable withdrawals be lifted. These withdrawals come in numerous varieties of federal action and processes. Two common executive branch actions that create withdrawals are Public Land Orders (PLOs, issued by the Department of the Interior) and Executive Orders issued by the President.

The committee substitute for House Bill 115 (RES) requires the federal government to turn over all lands held by the federal government to the state subject to acceptance by the state with the exception of lands used for military purposes including military reservations.

At this time according to the Department of Natural Resources, there are approximately 222 million acres within Alaska under federal ownership.

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Representative Chenault relayed that he was open to questions.

Co-Chair Thompson pointed to the Legislative Legal opinion that the bill would be unconstitutional.

Representative Chenault agreed that the bill might be unconstitutional, but that the court system would need to make the final determination, not the legal opinion of one lawyer.

Representative Gara felt that the legal opinion clearly stated that the bill was unconstitutional. He queried whether the sponsor knew of any provision in the U.S. Constitution that allowed a state to take federal land from the federal government.

TOM WRIGHT, STAFF, REPRESENTATIVE MIKE CHENAULT, replied in the negative.

Representative Gara noted that similar laws had been enacted; a 1982 initiative that had demanded that the federal government return all federal land within the state

was deemed unconstitutional by the U.S. Attorney General, no movement had occurred on the issue for 32 years. He furthered that in Utah a similar bill had been passed, which had forced that state to set aside \$2 million for litigation purposes. He feared that the bill would result in future litigation cost to Alaska.

Mr. Wright answered that the path to litigation would be determined by the courts system and the governor. He shared that the "Tundra Rebellion", passed in 1983, was not enacted because the U.S. Attorney General took issue with the law. He argued that the state had been waiting for 35 years to receive approximately 5.5 million acres, which required that a strong message be sent to Congress.

Representative Gara wondered whether the bill could be limited to the transfer of lands that had been promised to the state upon statehood.

Mr. Wright replied that it would be up to the will of the committee.

Co-Chair Thompson noted that department staff were online for questions.

Vice-Chair Saddler spoke to the zero fiscal note. He asked where anticipated legal expenses to defend the legislation would come from.

Mr. Wright pointed out that the fiscal note was indeterminate, not zero, because the legal costs were yet unknown.

Vice-Chair Saddler asked about the Legislative Research Services Brief that discussed land outside of wildlife refuges and monuments. He wondered about the timing of the bill.

Mr. Wright replied that the bill was related to timing due to the president's orders to set aside more of Alaska's land for conservation.

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Representative Guttenberg wondered whether the state was behind in the survey work necessary to transfer most of the

land and, if so, should the state be working on that issue while simultaneously pushing the legislation.

Representative Chenault deferred the question to the Department of Natural Resources. He added that there could be reasons to hold back on certain land selections because other selections could become available.

Representative Guttenberg asked whether the ninth and tenth amendments had ever been used successfully when arguing similar cases on court.

Mr. Wright replied that the amendments had been included in the backup documents for the bill in order to highlight state sovereignty over certain issues.

Representative Guttenberg restated his question.

Mr. Wright believed that Utah was currently using those amendments to argue a similar court case.

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ED FOGELS, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, added that of the 100 million acres of land received by the state through the Statehood Land Entitlement, 65 million had been surveyed and patented to the state; approximately 35 million had yet to be surveyed and were considered "tentatively approved." He furthered that the 35 million acres essentially belonged to the state, to manage as it wished, and that the survey backlog was not currently limiting the state's ability to fully utilize its lands.

Representative Guttenberg spoke to the conflict of property transfers among land owners sharing property lines. He wondered how far along the state was concerning resolution on native allotment and over-selection issues.

Mr. Fogels thought that the question was broad and would require an extended amount of time for a response. He explained that the issues were ongoing and that the department was mandated by law to transfer lands to municipalities; some municipalities had completed their entitlements, some had not. He continued that there were many issues related to native allotments and the Bureau of

Land Management (BLM) had conveyed many allotments to-date. He opined that the world of land management was complex.

Representative Guttenberg asked how quickly the state could take the transfer of land, were the issues to be settled, and the legislation were to pass.

Mr. Fogels felt he could not answer the question. He said that if the courts determined the additional 200 acres would be awarded to the states then it would be a significant task to identify which lands, in addition to the Statehood Land Entitlement lands, would be given to the state.

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Representative Wilson felt that the fiscal note should be zero, and not indeterminate, because there would be no fiscal impact until a decision was made to litigate the issue.

Mr. Fogels responded that the department's fiscal note was based on the assumption the bill would be successful. He said that the note accounted for the process and the additional land management by DNR. He added that additional revenues to the state could be expected. He stressed that the fiscal note was purely related to land management and did not consider litigation expenses.

Representative Wilson felt that the fiscal impact of the bill should be viewed as a budget issue for the sake of accuracy.

Mr. Fogels replied that the department had been asked to provide a fiscal note for potential costs due to additional land management.

Representative Wilson hoped that the department would further scrutinize the fiscal note.

Co-Chair Neuman wondered whether the federal government, or the state, would decide which lands would be returned.

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Mr. Wright replied that approximately 5.4 million acres of land had been allotted to the state through the statehood

act, 10.9 million acres of selections to receive the allotment, and 10.2 million additional acres of land that was considered "top filed", a contingent selection where the land would be subject to federal restrictions or withdrawals; the state could not take these lands but by executive order on the federal level. He gave an example of land that was rich with mineral deposits along Trans-Alaska Pipeline System (TAPS) that was currently under top filing status and was unavailable to the state. He noted that no wilderness refuges had been included in the bill. He thought that it would be financially prudent to exclude national parks from the bill because the state would not be able to afford to maintain them.

Co-Chair Neuman surmised that the legislation asked the federal government to turn requested lands back over to the state for resource development.

Mr. Wright believed there was wide national support for western states to win the transfer of federal public land back to states, mainly to open up utilization of the public land.

Co-Chair Neuman repeated the question as to whether the bill would allow the state to select lands that it felt would be beneficial to the state.

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Mr. Fogels responded that the state had 5.4 million acres left to go in its entitlements and that the state had selections on approximately 10.1 million acres, and an additional 10.3 top filed. He said that the state had to complete the statehood land entitlement process. He stated that the bill offered a strong recommendation that public land orders be lifted by the federal government to allow the state to broaden its selection pool of land. He shared that valuable lands had been identified that the state would like to control. He said that the bill would require the federal government to give additional lands; not specified, and lands could be rejected that were deemed to not be in the state's best interest.

Co-Chair Neuman surmised that the state needed the land in order to diversify the economy. He believed that the bill would create jobs for the state.

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Representative Kawasaki asked about the acreage of state park land managed by the state. Mr. Fogels replied that the state currently had approximately 3 million acres in the state park system.

Representative Kawasaki wondered whether the fiscal note for the bill would be increased by the state adopting the entire 54 million acres of park land currently under the federal government.

Mr. Fogels replied that there was the possibility that revenue could be generated by acquiring the additional lands, but that a way to zero out the fiscal note had yet to be determined.

Representative Kawasaki thought that if the state were to assume the 54 acres of federal park land it would be a cost to the state. He opined clean water responsibilities that the state took over in 2008, as well as wetlands permitting in 2013, both of which had been of additional cost to the state, and wondered if the legislation would produce similar results.

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Mr. Wright replied that the sponsor intended to ask one of the finance committee members to introduce an amendment that would exclude national parks.

Vice-Chair Saddler pointed to page 2, lines 5 through 6:

(b) The affirmation, reservation, and assertion in (a) of this section include the reservation of the rights of the state to claim a credit or setoff for any amount or injury inequitably or unlawfully caused or claimed by the federal government.

Vice-Chair Saddler asked whether there was a listing of the possible amounts identified in the section, and whether there was an estimate of the potential value of those injuries.

Mr. Fogels answered that he would provide the information to the committee at a later date.

Representative Gara asked whether the 5.4 million acres left to transfer to the state from the federal government were in dispute.

Mr. Fogels replied no, the 5.4 million acres were the remaining land entitlement. He reiterated that there were 10.1 million acres of land in "selection status", of which selections had been prioritized, and that the state could ask for conveyance of those lands at any time. He shared that the "choicest" lands to the state were in the second group of top filed lands and amounted to an additional 10.3 million acres. Those choice lands were currently off-limits to the department because of the federal land withdrawals. He stressed that it was important that the Department of the Interior list the public land orders so that the state could broaden the selection pool to the full 20.4 million acres to choose from. He argued that the public land orders no longer served a purpose and should be lifted by the Department of the Interior.

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Vice-Chair Saddler wondered if there had been any indication of willingness, or resistance, by the BLM to comply with the goals of the bill. Mr. Fogels believed that the BLM and Department of the Interior were reluctant to lift the public land orders. He relayed that Governor Walker had met with Department of the Interior Secretary Sally Jewell to discuss the issue. He state that the BLM would convey the state anything that was a valid state selection fairly expeditiously. He reiterated that he was speaking only to the statehood land entitlement; he could not answer how the federal government would react to the bill in regard to additional lands.

Vice-Chair Saddler asked whether passage of the bill would encourage federal authorities to move more expeditiously with the conveyance of state lands or other federal lands to the state.

Mr. Fogels thought that the bill would help to lift the public land orders.

Representative Gara reiterated concern that the bill was unconstitutional. He hypothesized that if Alaska could take whatever federal land it wanted, what would stop other

states from acting similarly, to the detriment of the country.

Mr. Wright thought that decisions pertaining to the hypothetical situation would be determined on a state-by-state basis.

Representative Gara offered the example of the state of Kentucky taking over the United States Mint and subsequently destroying the economy on the federal level.

Mr. Wright responded that he could not speak to the example.

Representative Gara added that Pennsylvania could take and sell the Liberty Bell.

Mr. Wright rebutted that he could not speak to the intentions of other state, nor answer rhetorical questions.

Co-Chair Thompson deduced that Representative Gara was speaking to material things, whereas the bill discussed land and the states right to the land after 50 years of waiting.

Representative Gara stated that his concern was for passing a bill that was unconstitutional. He requested a fiscal note and an opinion from the Department of Law.

Co-Chair Thompson argued that the committee was not at the point of appropriating money, but bringing the subject to the forefront by alerting the federal government that the state was ready to take back the land.

Representative Gara shared that the State of Utah had passed a similar bill, which had garnered little response from the federal government. He said that nothing had happened in Utah for two years because the bill was unenforceable. He stated no litigation had been filed because the bill was unconstitutional. He wondered whether the bill was the appropriate vehicle for gaining the attention of the federal government.

Co-Chair Thompson contended that if more states filed bill of a similar type, the federal government might revisit the issue of conveyance of lands to states. He believed that the bill was a good start in a possible national movement.

Vice-Chair Saddler requested an overview of the development of public land ownership in the Eastern United States verses the Western United States.

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Representative Chenault replied that he could not provide a history. He said that as states became states, more land from each wound up under federal control. He related that the biggest problem that Congress faced when Alaska became a state was the state's small population and large land mass; there was fear that Alaska would become another colony, leaving the federal government to take care of the state's needs. He felt that, because approximately 62 percent of the Alaska's land was currently under federal authority, the state had not been able to develop its resources to sustain its economy. He suggested that the state might not have to rely on federal dollars for certain programs if it was allowed to develop its lands in a responsible manner. He remarked that that initial fear of Congress was what had occurred, not because of Alaska's lack of ingenuity, but because the federal government had not allowed the state to develop its land. He believed that the legality of the bill should be decided in court.

Representative Munoz understood that lands that were top-filed related to new land designations on preliminarily selected lands. She asked whether the top-filing happened before or after the lands had been identified by the state.

Mr. Wright deferred the question to the department.

Mr. Fogels answered that top-filed meant that the land was wanted by the state, but that the land could not become an officially selected parcel because of federal action. He said that clean federal land, managed by the Bureau of Land Management would be a valid selection; top-filings were a selection on top of a federal withdrawal and not an official selection allowed by Alaska National Interest Lands Conservation Act (ANILCA).

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Representative Munoz surmised that top-filing could include designations for refuges, parks, and national forest land.

Mr. Fogels replied in the negative. He explained that all of the selections and top-filings were on BLM land, multiple use federal lands, and the state had no selections on refuges. He shared that national forests were handled differently, the state had a special "flavor" of selection, particularly in Southeast Alaska. He provided an example of the pipeline corridor; when TAPS was first built BLM put a withdrawal called Public Land Order 5150 from Prudhoe Bay to Valdez. He explained that any BLM within the corridor was withdrawn from state selection, resulting in a narrow right-of-way. He furthered that the selections within the corridor were not valid selections, but top-filings, meaning that as soon as the federal government lifted the public land order the top-filings would turn into valid selections.

Representative Munoz asked why the state was not selecting land within the 10.1 million acres that were still valid for selection. Mr. Fogels replied there was valuable land in the 10.1 million acres of selected lands, the issue was that there was also valuable and in the other 10.3 million acres of top-filed land, some of which was even more desirable.

Representative Munoz surmised that the 10.1 million acres was unencumbered with top-filing and the legislation would lift the top-file designation on the 10.3 million acres, further expanding the pool of land that state could request.

Mr. Fogels replied in the affirmative.

Vice-Chair Saddler asked for verification that the bill would not require the transfer of military bases. Mr. Wright replied in the affirmative.

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Representative Guttenberg understood that asking the federal government remove its restrictions would allow the state to expand its selection criteria.

Mr. Fogels reiterated that the state was entitled to 5.4 million acres under the Statehood Land Entitlement, where those 5.4 million acres were chosen from was the question. The state wished to grow the pool to choose that acreage from to 20.4 million acres.

Representative Guttenberg wondered how many employees in the department interacted with federal land managers. Mr. Fogels replied that the department interacted with federal employees on many issues, on a daily basis. He said that he could not provide a number related to the issue.

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Representative Guttenberg asked whether the department was actively pursuing lands that were rich in heavy metals.

Mr. Fogels replied that most of the lands currently managed by the state were open to mineral entry; there were a number of mineral prospects begin worked throughout the state. He said that the state encouraged and increase in the mining industry and recognized that responsible mining practices contributes greatly to Alaska's economy. He assured the committee that the department was encouraging additional responsible mining in the state.

HB 115 was HEARD and HELD in committee for further consideration.

Co-Chair Thompson requested to be a co-sponsor of the legislation.

#hb26

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, relayed that the bill would extend the sunset date of certified direct entry midwives to June 30, 2017; a two-year extension. She noted that the board's deficit and audit issues had been discussed during a previous hearing and that there were people on hand to speak to those specific issues.

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Co-Chair Thompson relayed that the fiscal note reflected \$5,500 of expenditures for board travel and advertising of

meetings. He related that in FY 14 the board's revenue total was \$3,990, while expenditures were \$55,795; a deficit of \$51,805. He said that the board had a current operating deficit of over \$115,000, and had been in deficit spending since 2008. He shared that licensing fees had increased, and were due for another increase in spring 2014, but with the limited number of midwives in the state, how the board would catch up with the deficit was questionable.

Ms. Stidolph answered that with the board bearing the burden of the large cost of investigations, even an increase in the board's fees would not cover the deficit. She deferred the question to the department for further detail.

Co-Chair Thompson understood that Legislative Budget and Audit (LB&A) had been tasked with reviewing the board and would be coming forward with recommendations.

SARA CHAMBERS, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, stated that the fiscal note spoke to the expenses that were particular to the board; if the board were to sunset the division would continue to license midwives and would relieve licensees of the expense of board travel, which was the only isolatable expense in regard to the board itself. She agreed that the board had been in a deficit position and had been working toward an assertive and meaningful to the budget. She relayed that fees had been increased for both midwives and apprentices; midwives now paid the highest licensing fee charges by the division: \$1,750 every two years. She added that the apprentice fees had risen from over \$100 to over \$900 in 2013. She noted that it would take several more increases and continued attempts to rein in spending and get out of the deficit position, but with a very small number of licensees that could take several licensing cycles.

Co-Chair Thompson observed that most of the deficit was due to investigations. Ms. Chambers replied in the affirmative. She added that investigations figured prominently in the legislative audit findings.

Co-Chair Thompson highlighted the LB&A criticism of the department for not pursuing 4 different midwifery cases.

Ms. Chambers responded that there were several cases that had been referred to the Department of Law's Office of Special Prosecutions and Appeals that had not been followed up on and had been deemed a low priority. She said that at the time the agency had not done its due diligence to follow up on the cases, but that since had corrected the issue putting new safeguards into place to double check files sent over to sister agencies; in addition, an expert witness had been retained to review the cases to determine which of the agencies was most appropriate for each case. She explained that the licensees involved in the cases in question had refused to sign a consent agreement. She assured the committee that the division was actively pursuing remedies to the problems.

Co-Chair Thompson asked if there was any chance of recouping the investigation expenditures.

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Ms. Chambers answered no. She shared that there was a proposal in the budget that would give the board and the division the opportunity recoup fines to help mitigate some of the expenses.

Co-Chair Thompson observed terminating the board would cost the state more money than renewing the sunset date.

Ms. Chambers replied that she was not familiar with the numbers.

Representative Wilson queried the difference between retaining the board, and allowing the licenses to be handled by the department.

Ms. Chambers replied that the board currently had the ability to review and approve licenses, which would revert back to the division. She said that the board handled most of the administrative elements, including investigative, which allowed for public deliberation that would not be allowed under the department.

Representative Wilson expressed concern that the fiscal note did not reflect the \$115,000 deficit. She asked who paid the \$115,000 when it was not being paid by the board.

Ms. Chambers answered that the division had appropriation authority. She added that board was in a deficit position, which department was working actively to correct, and the appropriation authority was being covered by boards that were in a surplus position. She stated that that this happened on an annual basis by nature because there was one time, every two years that a board would bring in revenue that was meaningful during their renewal period and offset the programs that had opposing biennial revenue periods. She stated that the funds were not mixed in the sense that the operations were being paid for by another because of the carry forward, but at the higher appropriation level all of the licensing programs were able to be solvent to stay in the black.

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Representative Wilson wondered if another audit when the bill would be up again for sunset in two years.

Ms. Chambers deferred the question to the Division of Legislative Audit.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT (via teleconference), replied if the board received an extension, another sunset review would be triggered by statute. She said that given the sort timeframe since the last audit she expected the field work would take less time, but another audit would be conducted.

Co-Chair Thompson understood that LB&A planned to examine the board and make a recommendation.

Ms. Curtis answered that the current review by that committee had not factored into the suggested sunset date.

Representative Wilson asked how much the most recent audit had cost. Ms. Curtis replied that the division did not track the cost of audits. She shared that an hourly rate of approximately \$67 per hour had been calculated, so that could be multiplied by the 1,100 hours it took to conduct the audit. She explained that a typical sunset occupational board audit took approximately 500 to 600 hours to complete. She relayed that this particular board audit took longer because of the nature of the problems that were found and because it had been done by a new auditor.

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Representative Gattis felt that not hearing from the board was limiting the conversation. She queried the purpose of the board. She asserted that she was pro-midwife, but she believed the board had struggled. She relayed that she took issue with extending the board another two years.

Ms. Chambers noted that the department had invited the board to address the committee. She believed it would be appropriate for the board to provide input during committee discussions.

Co-Chair Thompson asked whether the increase in fees would affect the number of midwives paying into the licensing pool.

Ms. Chambers replied that it was a possibility. She said that it was always a concern, not specific to midwifery, that a rise in fees would cause people to drop out of licensure.

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Representative Guttenberg pointed out that the audit cited a division failure for some of the board's issues. He wondered how much of the financial problems of the board could be attributed to the department.

Ms. Curtis answered that 100 percent of the cause for the reduced extension was due to the division and not the board. She related that areas for improvement would always be found; but in regards to the severity of the problems, the majority were at the division level.

Representative Gara surmised that the board had done nothing wrong, and queried the logic of the limited extension.

Ms. Curtis did not view the recommendation as a punishment. She asserted that legislative audit was the legislatures monitoring mechanism; the two-year extension was given because the issues were so important and worth the cost to come back to the table to ensure that the problems recognized in the audit were handled.

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Representative Gara argued that the audit punished the board by creating uncertainty. He did not think that threatening the board was the proper way to get the department to do its job.

Ms. Curtis relied that it was difficult to explain the reasoning pertaining to board action versus division action, and how that factored into an extension. She reminded the committee that it was only a recommendation; she would present the report and provide information but it would be up to policy makers to make the final decision.

Representative Gara recommended that the board be given a full extension. He asked if fee increases were the only way that the board could maintain its finances.

Ms. Chambers answered that the department was fully in compliance with legislative audit's recommendations and took full responsibility in the areas of deficiency. She stated that the division would set fees with the advice and input of the board. She believed that some of the responsibility lay with the board continuing to rein in spending and refining decision making processes to reduce expenditures.

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Representative Pruitt read from the letter from the Board of Direct-Entry Midwives chair, Cheryl Corrick, located within the audit:

"Recommendation No. 2:

I concur with this recommendation, with reservations. The Board has requested that, in addition to the proposed increases in licensing fees for CDMs, the Division also increase apprentice licensing fees to 50% of CDM fees. The Board sees this as a potential way to help meet the shortfall. So far, the Board's request has been denied over the past two years."

Representative Pruitt wondered why the board's suggestion had not been considered.

Ms. Chambers answered that the increase had been implemented but that it affected a small number of midwives. She said that fees would need to be increased

again in order to keep up with rate of spending while trying to chip away at the negative carry forward.

Representative Pruitt wondered whether the division had the ability to recoup costs of the investigations from individuals found to be at fault. He asked whether the department had, or should have, the ability to recoup costs of investigations involving unlicensed individuals.

Ms. Chambers answered that the division did not currently have the ability to recoup costs from licensed or unlicensed individuals; it would require a statutory change.

Representative Pruitt asked whether the challenges found by the audit were related to the board or the department.

Ms. Curtis replied that most of the problems stemmed from the department.

Representative Pruitt asked whether similar challenges were faced by other boards. He requested suggestions from legislative audit on how to fix the problem.

Ms. Curtis replied that the extension reduction was being driven by the investigative problems, which were specific to the midwife cases and were not found in other boards; this was not a division-wide problem. She spoke to fee setting. She relayed that if a board was significantly in a deficit, legislative audit would make a recommendation that the board work with the division to set fees appropriately. She pointed out to the committee that a fee schedule could be found in the audit. She said that deficits could vary widely and that the situation could be tricky when setting fees as a response to a spike in expenditures. She furthered that the audit performed in FY 06, had an annual licensing fee of over \$2,000 biannually. She stressed that this was not a new problem for the board.

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Representative Wilson pointed to page 2 of the fiscal note. She wondered what the licenses would cost if the board were to dissolve.

Ms. Chambers answered that the numbers in the fiscal note would be different if the division were to manage the licensing program differently.

Representative Wilson wondered who would pay for the investigations if the board were dissolved.

Ms. Chambers replied that licensees always recouped the costs of investigations, the existence of the board would not change the licensing structure.

Representative Wilson surmised that no matter what, the licensees would have to pay the fee if they wanted to remain legally licensed.

Ms. Chambers replied in the affirmative.

Representative Wilson expressed unhappiness with the problems faced by the midwives. She worried that midwives would end up with licensing fees that they could not afford.

Representative Pruitt clarified that licensing would still exist even if the board disbanded. He felt that the midwives would be penalized if the bill did not go forward in the process. He thought that the legislation highlighted that something was broken within the department and not with the board or the midwives.

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Representative Gattis reiterated her concern that the committee had not heard from the board. She strongly believed input from the board was needed.

Ms. Stidolph agreed that a board member's input would be valuable.

Co-Chair Thompson believed the board needed to exist. He expressed concern at the cost of the audit for a board that oversaw few licensees. He felt that the problem should be reexamined in 2 years after the legislature received a recommendation from Legislative Budget and Audit. He thought that passing the legislation would allow the board to continue to be involved in the ongoing education and certification of midwives.

Representative Wilson reiterated concern of what could happen if the committee immediately did nothing.

Representative Gara requested clarification on the cost of the audit.

Co-Chair Thompson explained that the audit took 1,100 hours, billed out at \$67 per hour, resulting in approximately \$74,000 total.

Representative Gara moved a conceptual amendment to extend the termination date to 3-years.

Co-Chair Thompson said that the problem was that the costs of investigations were being placed on boards that were not responsible for the problems being investigated. He reiterated that it would be prudent to wait for the recommendations that LB&A would provide in 2 years.

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Representative Gara withdrew the conceptual amendment.

Co-Chair Neuman MOVED to REPORT HB 26 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HB 26 was REPORTED out of committee with a "no recommendation" recommendation and with one previously published fiscal impact note: FN1 (CED).

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

#

ADJOURNMENT

[3:06:23 PM](#)

The meeting was adjourned at 3:06 p.m.