

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 13, 2015

3:16 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Shelley Hughes, Vice Chair
Representative Jim Colver
Representative Cathy Tilton
Representative Andy Josephson
Representative Sam Kito

MEMBERS ABSENT

Representative Gabrielle LeDoux
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 49

"An Act relating to corporations, including benefit corporations, and other entities; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 26

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

- MOVED HB 26 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 49

SHORT TITLE: BENEFIT CORPORATIONS

SPONSOR(S): REPRESENTATIVE(S) SEATON

01/21/15	(H)	PREFILE RELEASED 1/16/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	L&C
02/13/15	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 26

SHORT TITLE: EXTEND CERT. DIRECT-ENTRY MIDWIVES BOARD

SPONSOR(s): REPRESENTATIVE(s) OLSON

01/21/15	(H)	PREFILE RELEASED 1/9/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	L&C, FIN
02/13/15	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 49.

SARA CHAMBERS, Acting Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community, & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions on HB 49.

ERIK TROJIAN, Director of Policy
B Lab
New York, New York

POSITION STATEMENT: Testified during the discussion of HB 49.

LAURA STIDOLPH, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 26 on behalf of the prime sponsor, Representative Kurt Olson.

KRIS CURTIS, Legislative Auditor
Legislative Audit Division
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Presented auditor findings and recommendations and answered questions during the discussion of HB 26.

SARA CHAMBERS, Acting Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community, & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions on HB 26.

CHERYL CORRICK, Chair
Board of Certified Direct-Entry Midwives (CDM)
Department of Commerce, Community & Economic Development
Fairbanks, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 26.

ACTION NARRATIVE

[3:16:08 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:16 p.m. Representatives Josephson, Kito, Hughes and Olson were present at the call to order. Representatives Tilton and Colver arrived as the meeting was in progress.

HB 49-BENEFIT CORPORATIONS

[3:16:21 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 49, "An Act relating to corporations, including benefit corporations, and other entities; and providing for an effective date."

[3:16:44 PM](#)

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, speaking as prime sponsor of HB 49, stated that this bill would expand the options for Alaskan entrepreneurs and investors by placing a new type of corporate entity, a benefit corporation, or "B Corp" in Alaskan statute. He explained a benefit corporation as a for-profit corporation that incorporates public benefits and community improvements into their business practices, no matter the principal services or products provided. Corporate law generally requires corporations to consider the financial impact to their shareholders as the top priority when making decisions.

REPRESENTATIVE SEATON asked to read a short paragraph from Dodge v. Ford Motor Company, 170 NW 668 (Mich 1919), which read:

A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in

the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non-distribution of profits among stockholders in order to devote them to other purposes.

REPRESENTATIVE SEATON said that maximizing corporate returns can interfere with other corporate goals, such as electing to do something beneficial for the community by enhancing social benefits. By electing in their articles of incorporation to become a benefit corporation (B-Corp), businesses simply gain the flexibility to include mission and social impacts in their business practices. Allowing the creation of benefit corporations will give business owners more choices in how to run their businesses and will bring to Alaska a slice of the \$6.6 trillion invested nationally by similar corporations.

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REPRESENTATIVE SEATON said that benefit corporations are formed voluntarily and have the same tax status as any other for-profit corporations. Twenty-seven other states and the District of Columbia have passed benefit corporation legislation and many more have benefit corporation bills in process. Over 1,440 benefit corporations have incorporated in other states, including Patagonia, Rasmussen College, Epic Coffee, and King Arthur Flour Company, which is America's oldest flour company. Each of these companies works to benefit the public and their communities in the way that matters most to them. He said that B Lab is a non-profit corporation that created a benefit corporation certification, similar to the LEEDS certification.

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CHAIR OLSON suggested the LEEDS certification is "green certification."

REPRESENTATIVE SEATON agreed.

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REPRESENTATIVE SEATON clarified that this bill does not require certification but incorporates the benefit corporation provisions into statute. Just as traditional corporations provides their shareholders with financial reports, a benefit corporation will additionally create and publish a biannual benefit report describing how the company has pursued the

general public benefit. This report, which is held against a third-party standard, would allow shareholders, investors, and the public to confidently invest in benefit corporations that share their values. A two-thirds majority vote is required to form or change any corporate status so shareholders will drive the decisions and the selection of the general community benefits that for-profit corporations might select.

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CHAIR OLSON recalled the last legislature had a similar non-controversial bill related to benefit corporations.

REPRESENTATIVE SEATON agreed that he had introduced a bill last legislature that passed out of the committee last year. He added that this bill will afford shareholders flexibility, but potential investors will be aware of the benefits prior to investing.

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REPRESENTATIVE SEATON provided a section-by-section analysis of the bill. He said that Section 1 would establish how corporations may be dissolved and statutory language was amended to include benefit corporations. Section 2 would add a new chapter to the corporate code for benefit corporations.

REPRESENTATIVE SEATON related that proposed Article 1 would establish how a new business corporation or existing entity may become a benefit corporation and it declares that an amendment of an existing corporation must be adopted by at least the minimum two-thirds vote.

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REPRESENTATIVE SEATON said that proposed AS 10.60.020 indicates that the plan of merger or status change must be approved by at least the minimum required vote if an existing corporate entity, that was not a benefit corporation but becomes a B-Corp as a result of a merger or other status change.

REPRESENTATIVE SEATON stated proposed AS 10.60.030 would require that in addition to the corporate purposes under existing AS 10.06.005, a benefit corporation shall have the purpose of creating general public benefit from all effects of its business and operations. In addition, creating the general public

benefit must be found to be in the best interest of the benefit corporation.

REPRESENTATIVE SEATON said that proposed AS 10.60.040 will allow a benefit corporation to identify or amend its articles to include specific public benefit purposes in addition to the general public benefit purposes, and it lists examples of specific public benefits.

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REPRESENTATIVE SEATON related that proposed AS 10.60.050 indicates a professional corporation formed under AS 10.45 does not violate this statute by being a benefit corporation. Proposed AS 10.60.060 provides that a benefit corporation may terminate its benefit status by amending its articles or by being party to a merger, but it must be approved by at least the minimum required vote. He stated that proposed AS 10.60.070 indicates if a benefit corporation disposes of all or substantially all of its assets the transaction must be approved by the minimum status vote required.

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REPRESENTATIVE SEATON directed attention to proposed Article 2, AS 10.60.100, of HB 49 will establish seven factors that the board of directors and individual directors of a benefit corporation shall consider while discharging their duties. However, the directors of the benefit corporation are not required to give priority to any one of these listed factors unless the intention to prioritize has been identified in the benefit corporation's articles of incorporation.

REPRESENTATIVE SEATON referred to proposed AS 10.60.110, which states that consideration of these factors does not constitute a violation of existing Alaska statutes regarding the duties and rights of corporate boards. Proposed AS 10.60.120 states that except as provided in the articles of incorporation, a director of a benefit corporation is not personally liable for monetary damages for action, inaction, or failure of the benefit corporation to create a general public benefit if the duties of the director were performed in compliance with this chapter.

REPRESENTATIVE SEATON said AS 10.60.130 clarifies that the director of a benefit corporation does not have a duty to a person solely because that person is a beneficiary of the

benefit corporation's general or specific public benefit purpose.

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REPRESENTATIVE SEATON said proposed AS 10.60.140 declares that directors of a benefit corporation who make business judgments in good faith fulfill their duties under this chapter, if they are not personally invested in the subject, are informed on the subject of the judgment, reasonably believe the business judgment is in the best interest of the benefit corporation, and have considered the interests and factors listed under AS 10.60.100.

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REPRESENTATIVE SEATON directed attention to proposed Article 3, which would allow the board to include a benefit director who is not financially liable if acting in good faith.

REPRESENTATIVE SEATON related that proposed Article 4, AS 10.60.230 directs an officer of a benefit corporation to consider the factors listed in AS 10.60.100. It states that an officer of a benefit corporation is not personally liable for monetary damages if their duties were performed in compliance with Alaska statutes.

REPRESENTATIVE SEATON directed attention to proposed Article 5, AS 10.60.300 which states that persons may bring an action or claim against a benefit corporation for a failure to pursue general or specific public benefits as set out in their articles or for a violation of duties under this chapter, but is limited to someone within the corporation. Thus someone within the community cannot bring a cause of action against the corporation for not fulfilling its duties. He stated that proposed Article 6 requires a benefit corporation to file a biennial benefit report in addition to the biennial report and provides details of what must be in the report.

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REPRESENTATIVE SEATON stated that proposed Article 7 would establish a status change for a merger or amendment for a benefit corporation or domestic entity other than a business corporation, which must be approved by at least a two-thirds vote of all shareholders entitled to vote. It also would establish statutory guidelines for third-party standards used as

an assessment tool in the required annual benefit report to ensure that the general or specific public benefits are being done.

REPRESENTATIVE SEATON stated that proposed Article 8 would allow the department to adopt regulations to implement the new style of corporation.

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REPRESENTATIVE COLVER asked whether this would be similar to "Newman's Own" style of corporation instead of being just a pure monetary profit driven corporation. He asked for further clarification of the difference between this model and the typical corporation model with a for-profit motive.

REPRESENTATIVE SEATON answered that the corporate categories are nonprofit and for-profit corporations. He suggested that a for-profit corporation may wish to do something to benefit the community or to have a specific benefit; for example, recreation may be vital to a sporting goods company that wants to improve trails in a community. The corporate shareholders and investors might object, but in a benefit corporation, they will be informed of the general and specific benefits, such as the improved trail motive. However, it doesn't mean the corporation is a nonprofit corporation; however, the benefit corporation has a general community social goal as well as making money.

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REPRESENTATIVE COLVER asked whether the goals and objectives of the benefit corporation would lie within the articles of incorporation and the bylaws or just be strictly stated in the corporate articles.

REPRESENTATIVE SEATON answered that seven parameters are listed on page 4 of the bill. If the corporation has a first priority, the board of directors would be held to that goal as the primary benefit, but if the corporation did not prioritize, the board would decide how to best exercise the general benefit for the community. He characterized it as being a very flexible arrangement; however, third-party standards can apply. For example, if the benefit corporation's mission was sustainable farming, it would be measured against the third-party standards that define sustainable farming. The benefit corporation report to its investors will allow them to measure if the benefit corporation has accomplished its goal.

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REPRESENTATIVE KITO asked whether the primary responsibility is to shareholders is subsidiary support for beneficial purposes or if it was possible for the primary component to be the benefit corporation with the subsidiary being the for-profit purpose.

REPRESENTATIVE SEATON answered that the mix was up to the corporation. He suggested the benefit corporation can mix and match its goals based on the board of directors and shareholders.

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REPRESENTATIVE KITO asked whether it could be nearly at the level of a nonprofit, in which 95 percent of the revenue is put towards its beneficial purpose.

REPRESENTATIVE SEATON answered that it would be up to the board and the shareholders, in essence, since the shareholders elect the board of directors.

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REPRESENTATIVE HUGHES offered her belief that the benefit corporate structure is laid out well. She offered that for-profit corporations already conduct charitable activities and set up charitable foundations. She asked whether they were limited by law. She understood the for-profit aspect would be according to the shareholders; however, she asked why a corporation would convert to a benefit corporation instead of funneling funds to a nonprofit to obtain a tax write-off.

REPRESENTATIVE SEATON answered that corporations could be subject to shareholder lawsuits since the corporate model for a for-profit corporation provides the legal framework. Some shareholders might object to reductions in stock dividends since the corporation has a fiduciary responsibility to provide profits. The benefit corporation's mission is clearly designed, such that the benefit corporation will further certain specific beneficial goals in the community. Thus, investors understand they won't just receive a return on investment, but will also promote the community goals listed in the benefit corporation's portfolio.

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REPRESENTATIVE HUGHES asked whether any current corporations want to transfer to benefit corporations.

REPRESENTATIVE SEATON replied that Gordon Blue, Executive Director of the Alaska Sustainable Fisheries Trust has expressed interest, as well as a coffee company in Homer that would like to improve the status of coffee growers. He referred to letters of interest in members' packets from groups who have expressed an interest, but he indicated that there wasn't anyone yet.

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REPRESENTATIVE HUGHES said nonprofit organizations cannot weigh in in on partisan or political matters during elections. Now that the [U.S. Supreme Court ruled on] Citizens United, corporations may seek to persuade the voting public through other means, including advertising. She asked whether benefit corporations could weigh in politically.

REPRESENTATIVE SEATON answered that nothing in HB 49 would expand or limit that ability. He stated that if shareholders are agreeable money could be funneled from a "C" corporation. He stated that a benefit corporation might decide it wants to improve the community by putting part of its profits into political campaigns, but regular corporations can also do so. It doesn't "fool" anyone since the benefit is transparent and will be listed on the corporate paperwork. He said that HB 49 doesn't expand the ability of benefit corporations to gain or lose tax credits. Therefore, benefit corporations are no more restrictive or permissive in terms of the structure, but investors will know what the social benefit will be for benefit corporations.

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REPRESENTATIVE JOSEPHSON asked if the benefit corporation could surprise its shareholders and pursue a political path through a political action committee (PAC) even if it wasn't the targeted benefit.

REPRESENTATIVE SEATON answered no; that he did not believe so. He reminded members that benefit corporations also must file reports.

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REPRESENTATIVE KITO said there might be potential for Alaska Native Regional Corporations to take advantage of benefit corporations since some fiduciary firewalls currently prohibit the corporation from putting funding back into the community or the tribe affiliated with the corporation. He offered his belief the benefit corporations will provide additional responsibility in the corporate bylaws that allow corporations to bring benefits back to their shareholders communities and not just to shareholders in the form of dividends. He saw some potential, whether or not the Native Regional Corporations will choose to do so. He thanked the sponsor for bringing this bill forward.

REPRESENTATIVE SEATON commented that those are the types of general or specific benefits that could be put forth in the findings of a benefit corporation.

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CHAIR OLSON directed attention to the fiscal note of \$40,000. He stated that the fiscal impact was for "one time" information technology and legal costs.

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REPRESENTATIVE KITO asked whether the division anticipates that the business licensing fee would be used to pay for some of the start-up costs.

SARA CHAMBERS, Acting Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, & Economic Development (DCCED), stated that the division is funded through program receipts. Thus the division would need to recover costs for filing fees to those corporations, she said.

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CHAIR OLSON opened public testimony on HB 49.

[3:50:42 PM](#)

ERIK TROJIAN, Director of Policy, B Lab, stated that his organization has had time to deliberate on how to take companies who instill beliefs and want to continuously grow. He reiterated that there is \$6 trillion available in social impact investment in the marketplace. That has actually doubled over

the past few years, he said, and continuously grows because people don't want to just think about the bottom line and their earnings, but also what happens with that money. He has observed that as young people graduate from college, they want to work for companies with morals and beliefs. He stated that profit must be the central part for all of the companies to pay employees and shareholders or the companies will go out of existence since making profits is central. As this bill was developed with their corporate attorney, the idea was to touch the areas that impact the ability for companies to exercise their morals and beliefs.

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MR. TROJIAN stated that the first benefit corporation law passed about four years ago, and in the last four years 27 states have passed it, including Delaware, which is seen as the home of corporate law. Last fall, now Chief Justice Leo Strine Jr., Delaware Supreme Court, wrote a 22-page article in the Harvard Law Review in support of the necessity of benefit corporations. If a company wants to think this way and act this way, this law needs to be put in place or he must rule against them. Recently, the U.S. Supreme Court ruled on the Hobby Lobby case [Burwell v. Hobby Lobby, 573 U.S. ____ (2014)] and the cited benefit corporations, which pertained to the Patient Protection and Affordable Care Act (PPACA) ruling that does have the right to have morals and beliefs. The dissenting view said that corporations can only maximize profits so how can Hobby Lobby have a religious belief in the company. The majority ruled that the only reason they can is because the beliefs are very closely held. However, if the company had been a general corporation with multiple shareholders, it could have been sued for having this religious belief in there company, but benefit corporations would allow companies to grow and bring in multiple shareholders who maintain this belief. Thus the corporate culture could range from a moral belief to a community belief. He stated that these are not quasi nonprofit companies, but benefit corporations are businesses that want to instill morals and beliefs however it wishes. He characterized it as deregulating the purpose of corporations. He stated that corporations are the method that companies use when going from small to big since that is the structure for multiple shareholders.

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MR. TROJIAN offered his belief that the structure has artificially constrained companies with a moral belief to a

small size. In four years' time there are well over 1,700 corporations and it just keeps growing and growing, with some states producing one or two benefit corporations per day. Other legislatures are working on benefit corporation legislation, such as Montana and Idaho. He stated that benefit corporations provide an option, which doesn't impact traditional companies. Benefit corporations must consider shareholders and the general public benefits equally so it isn't feasible to donate 95 percent of the profits to nonprofit organizations or shareholders will have a right to object. Thus the entities have to be treated equally and the shareholders have a right to oust the directors if they are not performing in a proper way. Benefit corporations have given shareholders increased rights that did not previously exist.

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MR. TROJIAN said the traditional corporation's duty is to maximize profits, but benefit corporations allow shareholders to hold the company to the standards that were understood when the stock in the company was purchased. Thus benefit corporations create legal protections on both parts - for the director and the shareholders in a fair and balanced way. He related a scenario to illustrate choices benefit corporations can make. If an Alaska manufacturer wanted to buy parts and the cheapest ones were in China, the corporation normally must purchase them at the lowest cost; however under the benefit corporation structure, the company could buy locally as part of its community benefits and absorb the additional costs since supporting the community has a value to the benefit corporation.

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REPRESENTATIVE KITO related his understanding that the value of selecting the benefit corporation model is to provide a benefit to shareholders and to the public. He expressed concern that allowing a corporation to withhold or withdraw a benefit means the benefit corporation wouldn't be providing a beneficial purpose. He asked for further clarification under the benefit corporation structure whether corporations would be allowed to deny or limit benefits to other individuals.

MR. TROJIAN said the benefit is in the "eye" of the directors of the shareholders, which is the unique part of this. It's not a benefit that government considers a benefit to society, but benefit corporations let the free market identify that benefit. Thus if a benefit corporation comes up with some crazy idea of

what benefits the community, it may well result in no one investing and no one purchasing the benefit corporation's products. The benefit corporation would fail and not succeed. That's the way the free market works. Through the annual benefit report the public, shareholders, and potential investors obtain transparency and make a determination on whether to support the company. This process results in a much better informed public and allows the free market to determine if the benefit corporation positively benefits the community.

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REPRESENTATIVE KITO related a scenario in which a benefit corporation that holds a specific religious value or belief as its community benefit, only hires people with that religious belief and denies other individuals employment, and the shareholders support this effort, it wouldn't provide a benefit. Instead it would allow for a restriction of commerce and a limitation for the ability of other people to participate in the workforce because the benefit corporation decides to only hire certain people. He expressed concern that this type of structure will actually allow companies to discriminate and obtain public support from shareholders to do so.

MR. TROJIAN responded that other laws also apply, which prevent companies from hiring based on their religion. In addition, this bill would not allow benefit corporations to shirk fair hiring practice laws. Thus, the aforementioned scenario would be illegal. Of course, the Hobby Lobby demonstrates that companies can currently hold values important. This bill would create a corporate form that allows a company to have multiple shareholders without the fear of shareholder lawsuit. He often hears that corporations can do this already and they can so long as they don't bring in multiple shareholders, which artificially limits companies with a moral or community belief to a certain size. This bill will remove that aspect, but it's also already been happening in many instances with LLCs or closely-held corporations.

[4:04:06 PM](#)

REPRESENTATIVE JOSEPHSON, with respect to Hobby Lobby, said it would be illegal or unconstitutional to ask applicants about their religious or cultural beliefs, but according to the U.S. Supreme Court decision because the company was closely held it could proscribe or prohibit certain types of health care coverage. He asked whether that was what happened.

MR. TROJIAN answered yes; but it did not have anything to do with the benefit corporation law. Companies have the right to do this, if they so wish; however, if shareholders object they have the right to sue for not maximizing profit.

[4:05:24 PM](#)

REPRESENTATIVE JOSEPHSON said the Calvert Investments, Inc. is an investment management firm that he described as an ethics fund, since it avoids investments that would contribute to tribal war or pollution. He asked whether that describes the benefit corporation model.

MR. TROJIAN said that is the beginning of it. He stated that approach is called negative screening, such as not investing in tobacco. However, the benefit corporations tend to go that extra step and do positive screens, such as investing in companies that purchase from local suppliers or hire people from within the community. Currently, the funds are very limited and corporations don't have the ability to enforce their investments as they pertain to general public benefits. This allows shareholders to hold corporations accountable, he said, noting that the Calvert Investments, Inc. has been very limited in how it can operate. He characterized it as being very myopic in terms of its view in how the economy can utilize this. He said he always thinks of the benefit corporation as beginning a whole new sector of the society. He acknowledged that some people will still want to buy the cheapest products and will want to obtain the maximum return on their money.

[4:07:25 PM](#)

MR. TROJIAN emphasized that there is a sector of the economy that wants this and new and innovative ideas will come up. For example, when he was debating this issue in Colorado, he discovered in a hearing that NASA [National Aeronautics and Space Administration] had expressed an interest. He related his understanding that NASA wants to commercialize patents but not purely for-profit but in terms of how patents can improve society as a whole. These are ways that these funds will have additional powers, rights, and grow and expand this sector of the economy, he said.

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CHAIR OLSON commented that he is familiar with a coffee merchant in Kodiak that sells fair trade coffee and although the coffee is more expensive, customers are willing to pay for it because the growers are paid fairly. He suggested that the company's shareholders are interested in fair trade.

MR. TROJIAN answered yes. He suggested that the second benefit corporation created was Blessed Coffee, a Maryland company. The specific benefit of Blessed Coffee is that it gives 40-50 percent of its profit to Ethiopian coffee growers. He pointed out this is something very specific that would not be allowed under a traditional corporation.

[HB 49 was held over].

[4:11:15 PM](#)

The committee took a brief at-ease.

HB 26-EXTEND CERT. DIRECT-ENTRY MIDWIVES BOARD

[4:11:44 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 26, "An Act extending the termination date of the Board of Certified Direct-Entry Midwives; and providing for an effective date."

[4:11:59 PM](#)

LAURA STIDOLPH, Staff, Representative Kurt Olson, Alaska State Legislature, on behalf of the prime sponsor, stated that HB 26 would extend the sunset date for the Board of Certified Direct-Entry Midwives to June 30, 2017. The Division of Legislative Audit conducts audits to determine if state boards and commissions should be reestablished. The division reviewed the activities of the Board of Certified Direct-Entry Midwives to determine if there is a demonstrated public need for the board's continued existence and whether it has been operating in an effective manner. She directed attention to a copy of the legislative audit in members' packets. The auditors recommended that the board be extended two years until June 30, 2017.

MS. STIDOLPH explained that auditors found the Board of Certified Direct-Entry Midwives has been serving the public's interest by effectively licensing certified direct-entry midwives (CDM) and apprentices. In addition, it was found that

the board continues to improve the profession by modifying and adopting midwifery regulations to conform to current standards of care.

MS. STIDOLPH highlighted that the auditors had four findings and recommendations, including the Department of Commerce, Community & Economic Development (DCCED) should immediately pursue disciplinary sanctions for CDM cases when warranted; increase licensing fees to eliminate the board's operating deficit; that the board should communicate certificate requirements to continuing education providers to facilitate compliance with centralized licensing regulations; and the board should approve apprentice permit applications in accordance with statute. In response to a question, she reiterated the chair of Board of Certified Direct-Entry Midwives (CDM) is Cheryl Corrick.

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REPRESENTATIVE JOSEPHSON referred to page 10 of the audit. He expressed concern about the failure of the certified direct-entry midwives (CDM) respondents to sign consent orders (CAs). He asked whether the committee should be concerned about anything in terms of the nature of the reason the CDMs wouldn't sign. He said he was concerned about this given that the legislature removed the statute and gave the board the liberty to create its own regulations.

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, answered that the division doesn't see any correlation or cause and effect related to last legislature's Senate Bill 136, which moved the requirement for what the profession could do from statute to regulations to give the board more flexibility. At the end of an investigation if any problems are found and sanctions are necessary, investigators draft consent agreements and ask the respondents to voluntarily agree to the sanctions. If that does not occur, the investigators can use standard procedures to elevate the matter to the commissioner, file an accusation, and move forward with civil licensing action through the Office of Administrative Hearings (OAH). However, it is not uncommon for respondents to refuse to sign consent agreements, she said.

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REPRESENTATIVE JOSEPHSON suggested that he felt less secure when the process changed. He read page 10, paragraph 2, as follows, "By not pursuing licensing action, the respondents were allowed

to continue practicing, and the public's safety was placed at risk." He went on to say that this referred to 4 of 52 providers, but he wanted to be sure a pattern wasn't developing that the legislature should be concerned about.

MS. CURTIS answered that the audit period covered four years. There were 28 complaints filed and investigated, with all addressed timely except for these four cases. She reported that the four investigations involved two people and investigators concluded the disciplinary sanctions should occur, but were not pursued timely. She explained that two of the four cases were forwarded to the Department of Law's Office of Special Prosecutions and Appeals (OSPA) for criminal action. At the time of the audit the cases had been at OSPA for over a year without action. OSPA regarded these cases as the lowest priority due to the cases being classified as class B misdemeanors. She stated that due to turnover, the auditors were not able to determine why the investigators did not pursue a civil licensing action, which at a minimum, should have been pursued concurrently with criminal action to ensure the public safety is protected. Auditors characterized this as a fairly serious deficiency which is why the audit only recommend a two-year extension. She said it is unusual for the auditors to give such a short extension, but auditors felt it was important for the division to follow up on this matter to ensure that corrective action has been taken.

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REPRESENTATIVE COLVER assumed these cases were not simple licensing actions, but were due to cases driven by mothers or families who experienced problems with the midwives. He asked for further clarification on the cases without breaching anything that is confidential.

MS. CURTIS answered that one or two of the consent agreements asked for voluntary license revocation, which would indicate severe problems were encountered. She recalled that another consent agreement asked for continuing education, which is a common outcome for an investigation. She declined to provide any details about the cases.

[4:21:38 PM](#)

REPRESENTATIVE COLVER related his understanding that some direct-entry midwives practice at a birthing center and others assist with home births. He said that he and his wife used

midwives with the birth of both of his children, and the births went very well. In their experience, the midwives were very professional. He asked whether the mother or child endangered by the procedures or care since, at some point, he has found that midwives are very clear to determine when the mother needs to go to a hospital. He thought it would be helpful for the committee to have a better understanding of what happened.

MS. CURTIS responded that the audit does not comment on the profession as a whole, but does comment on investigative practices, which are in place to protect the public and to ensure quality of care. She said that the allegations were pretty serious and the auditors found the lack of timely disciplinary sanctions as fairly significant. In response to a question, she reiterated that there were four cases that involved two people.

[4:23:30 PM](#)

REPRESENTATIVE KITO referred to page 10 of the audit and read, "A year after the cases were forwarded to OSPA, no action had been taken." He asked whether it was the board's responsibility or of OSPA.

MS. CURTIS stated that board members were asking for and receiving updates on the investigations. Thus, there isn't anything in the auditor recommendations on the board not taking appropriate action. She stated that the board must recuse themselves since the board must weigh in later as an adjudicative entity. Therefore the board typically is not furnished details. The board was advised that the cases had been referred to the Department of Law. She described the typical process is that cases are referred to the Department of Law for review of sufficiency of evidence prior to an accusation being filed for civil licensing action. However, the cases were at OSPA, in an effort to pursue a criminal case.

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REPRESENTATIVE TILTON referred to page 10, to recommendation 2 in the audit. She related her understanding that this board has a small number of people who pay a large licensing fee, but face a deficit. She acknowledged that she personally used midwives when she gave birth to her children, so her questions are not about care, but relate to the fiscal impact. Recommendation 2, which read, "DCBPL, in consultation with the board, should

increase licensing fees to eliminate the board's operating deficit." She asked whether there is a plan for that action.

MS. CURTIS answered that the license fees for certified direct-entry midwives have been a continual problem. In 2006, during the sunset review, the licensing fees were over \$2,000 and they paid the highest fees of any occupation. Thus this issue is not new to the occupation. She directed attention to the table on page 15 that lists license fees. She stated that in fiscal year [FY] 10, the initial certification fee was \$500. Fees were increased in FY 11 and again in FY 13, at which time fees were \$1,450. However, the fees were not sufficient enough to cover increased costs, which were associated with regulation changes and investigative costs. As of March 2014, the number of licensees was 35, plus 13 apprentices. Thus to shoulder the cost for such a small group of licensees results in higher license fees. In terms of the future plan, the department would need to address how it plans to reduce the deficit.

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CHAIR OLSON stated that the Legislative Budget and Audit Committee (LB&A) started a year ago to grapple with the issue. He recalled one board had \$150,000 in legal costs and other boards have large numbers of licensees to spread out the costs. He explained the difficulty in establishing standards that can be applied to all of the boards. He said the LB&A committee and the division spent the interim working on these issues.

[4:28:24 PM](#)

REPRESENTATIVE TILTON expressed thanks for the work the Legislative Budget & Audit (LB&A) and the division have done on this matter.

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REPRESENTATIVE HUGHES asked for the typical extension time for boards.

MS. CURTIS answered that the statutes provide a maximum extension of eight years.

[4:28:57 PM](#)

REPRESENTATIVE HUGHES related her understanding that the auditors questioned why the board didn't pursue civil action

simultaneously with the referral of cases to OSPA and that the board wasn't criticized because OSPA didn't take action.

MS. CURTIS said she expected to see civil licensing action to be taken to be sure a negligent or incompetent practitioner isn't allowed to practice.

REPRESENTATIVE HUGHES asked for further clarification on who would initiate the civil action.

MS. CURTIS answered that it would be filed by the commissioner in conjunction with the board. The respondents are allowed to file a response to the accusation, and the Office of Administrative Hearings (OAH) has 120 days to conduct their hearings after which the board has time to make a decision.

4:30:17 PM

CHAIR OLSON remarked that two years is short extension time. He recalled that the Alaska Bar Association was extended for three years in a row.

MS. CURTIS replied that she did not specifically recall.

4:31:06 PM

REPRESENTATIVE JOSEPHSON referred to the repeal of AS 08.65.140 since he was unsure of what fills that gap. He asked for further clarification on part of the statutes that at a minimum the regulations must require that the certified direct-entry midwife not knowingly deliver a woman with certain types of health conditions, prior history or complications as specified by the board. He suggested that the language was ambiguous. He asked for clarification that safeguards are in place before he could vote to extend the board. He said he was curious about the status of the regulations. He asked for an explanation since the legislature deferred to the board to make the rules.

SARA CHAMBERS, Acting Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, & Economic Development (DCCED), answered that the board has been conscientious in working to adopt its new regulations. The department has been working with the board to minimize the window between the statutory repeal and the effective date of new regulations. The Board of Certified Direct-Entry Midwives (CDM) met over the past two days. She related her understanding that the board planned to continue to

work on regulations and if they adopted the regulations, the division would expedite the public comment within the next month. She said Ms. Corrick could provide more details but the board and division are very aware of the concern.

[4:34:12 PM](#)

CHAIR OLSON pointed out that Representative Josephson participated this summer during the Legislative Budget and Audit Committee hearings on the board issues.

[4:34:51 PM](#)

REPRESENTATIVE JOSEPHSON asked about the status of the regulations. He further asked what part of the prohibited statutes that was particularly unfair that the board wanted the authority over regulations for prohibited actions.

CHERYL CORRICK, Chair, Board of Certified Direct-Entry Midwives (CDM), Department of Commerce, Community & Economic Development (DCCED), replied she serves as one of two midwives on the board that also includes a certified nurse midwife and a physician who practices in obstetrics/gynecology. She said the board felt the prohibitions were somewhat out of date, particularly since they had not been addressed in over 20 years. She reported that the board just finished its regulations project today that will further guide midwives. Up until that point, the board has made it clear to practitioners through board actions that the old regulations still apply until the new ones were promulgated.

[4:36:28 PM](#)

MS. CORRICK recalled one in terms of prohibitions for treating with women with gestational diabetes. The new regulation will allow midwives, in consultation with a physician, to manage a woman as long as she can be managed without medication, basically through diet and exercise, and can deliver the baby. Midwives can now co-manage the patients with the physician, but the physician will deliver the baby.

REPRESENTATIVE JOSEPHSON related that she has provided enough information that gives him comfort and he appreciated her time.

[4:38:35 PM](#)

CHAIR OLSON, after first determining no one wished to testify, closed public testimony on HB 26.

4:38:49 PM

REPRESENTATIVE COLVER deferred to the Chair, but he wondered whether it might be possible to extend the board for three years. He expressed a concern that the legislature will have to revisit this again.

CHAIR OLSON deferred to the legislative auditor on the extension time and said he completely trusts her judgment. He could not think of any time that he disagree with the auditor's judgment on extension times.

4:40:42 PM

REPRESENTATIVE HUGHES commented that she personally has had wonderful experiences with midwives and was grateful that the state has very competent midwives who provide wonderful services to families. She viewed the two-year extension for the board was more a reflection on the division and not the midwives as a profession. She commended the midwives who provide a very wholesome and wonderful experience delivering babies.

CHAIR OLSON commented that most of the boards the committee will review request a four to eight year extension, but this represents an exception. He acknowledged the importance of protecting Alaskans.

4:42:11 PM

REPRESENTATIVE COLVER echoed earlier comments that midwifery provides a valuable service that allow families to make choices. He emphasized the importance of allowing families to make choices, especially since this is their baby and their family. He offered his belief that it is important in medical care that government does not mandate women must to go to a hospital to have her baby. He stressed that it is up to the family to decide what works for them. He imagined that using a midwife also has an economic role since women can have their babies at home, which is especially important for the uninsured. He said that it is important to help families. He hoped that there won't be any complications that will cause an expensive birth, but again, it offers a means to deliver health care without an expensive trip to the hospital. He offered that this bill will accomplish a number of goals and objectives in our society. He said he is very supportive of the profession and he hoped the punitive issues would soon be resolved.

4:43:55 PM

CHAIR OLSON remarked that boards are comprised of volunteers and most of the time things go well. The only time the legislature hears about it is when something goes wrong and in those instances often the whole profession is blamed. He commended the volunteers who serve on boards, stating his "hat goes off" to them.

4:44:44 PM

REPRESENTATIVE HUGHES moved to report HB 26 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 26 was reported from the House Labor and Commerce Standing Committee.

4:45:14 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:45 p.m.