

HOUSE FINANCE COMMITTEE
March 6, 2017
1:33 p.m.

1:33:10 PM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:33 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Les Gara, Vice-Chair
Representative Jason Grenn
Representative David Guttenberg
Representative Scott Kawasaki
Representative Dan Ortiz
Representative Lance Pruitt
Representative Steve Thompson
Representative Cathy Tilton
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Representative Zach Fansler, Sponsor; Nikole Nelson, Executive Director, Alaska Legal Services; Mary Schlosser, Staff, Representative Zach Fansler; Representative Dan Ortiz, Sponsor; Britteny Cioni-Haywood, Director, Division of Economic Development, Department of Commerce, Community and Economic Development; Jerry McCunf, United Fishermen of Alaska, Juneau; Representative Jonathan Kreiss-Tomkins, Sponsor; Berett Wilber, Staff, Representative Jonathan Kreiss-Tomkins; Representative Sam Kito, Sponsor; Crystal Koeneman, Staff, Representative Sam Kito; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Janey Hovenden, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development; Johanna Crosset, Certified Direct-Entry Midwife, Juneau.

PRESENT VIA TELECONFERENCE

Stacey Schubert, Director, Governmental Affairs and Public Relations, Alaska Housing Finance Corporation, Anchorage; Michael Strand, CFO, Alaska Housing Finance Corporation, Anchorage; Susan Terwilliger, President, Midwives Association, Anchorage; Deborah Schneider, Chair, Board of Certified Direct Entry Midwives, Anchorage.

SUMMARY

HB 49 EXTEND BOARD OF DIRECT-ENTRY MIDWIVES

HB 49 was HEARD and HELD in committee for further consideration.

HB 56 COMMERCIAL FISHING LOANS

HB 56 was HEARD and HELD in committee for further consideration.

HB 81 AK ENERGY EFFICIENCY LOANS: ELIGIBILITY

HB 81 was HEARD and HELD in committee for further consideration.

HB 106 CIVIL LEGAL SERVICES FUND

HB 106 was HEARD and HELD in committee for further consideration.

Co-Chair Foster discussed housekeeping.

#hb106

HOUSE BILL NO. 106

"An Act allowing appropriations to the civil legal services fund from court filing fees."

[1:34:20 PM](#)

REPRESENTATIVE ZACH FANSLER, SPONSOR, introduced himself and provided a description of the bill from the sponsor statement (copy on file).:

This bill will safeguard Alaskans' access to the civil justice system by creating a stable and sustainable

mechanism for funding the Alaska Legal Services Corporation, protecting those who cannot afford to hire an attorney of their own. It allows the Legislature to appropriate up to 25 percent of filing fees paid to the Alaska Court System during the previous fiscal year into the already existing Civil Legal Services Fund.

The Alaska Legal Services Corporation—established in 1967—is a nonprofit charitable 501(c)(3), whose funding comes from a variety of state, federal, and private sources.

Alaska Legal Services Corporation endeavors to serve a growing number of eligible applicants. Since 1984, the number of Alaskans who qualified for legal services has more than doubled, from 41,000 to over 100,000.

Yet currently, the state's contribution to The Alaska Legal Services Corporation is only a fraction of what it was 30 years ago. House Bill 106 aims to stabilize The Alaska Legal Services Corporation funding and help ensure that civil legal aid is available to all Alaskans, not just the few who can afford it.

The Need

In the past 30 years, the number of Alaskans eligible for legal services—including Alaska Veterans—has more than doubled, from 41,000 to more than 100,000. However, state funding for Legal Services is a small fraction of what it was decades ago.

Legal Services does significant work on behalf of Alaska Veterans, protects Alaskans from domestic violence, and also contributes to efforts to lower recidivism rates through helping people bring stability to their lives.

Access to civil justice should not be just for people who can afford an attorney.

[1:37:11 PM](#)

Co-Chair Foster noted that Representative Wilson and Representative Guttenberg had joined the meeting. He listed individuals who were on hand to answer questions.

Co-Chair Seaton referred to military members served by the agency. He asked whether the military members had civil attorneys.

Representative Fansler could not speak to the legal services provided by the military, but understood that many of the cases handled by civil legal services involved veterans.

Co-Chair Seaton requested differentiation between active military and veterans, when discussing the program.

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NIKOLE NELSON, EXECUTIVE DIRECTOR, ALASKA LEGAL SERVICES, shared that the agency represented veterans, as opposed to active military members. She said that civil legal assistance were provided military families. She expounded that a military family could have a civil legal issue that did not qualify for representation through the military, but that the agency was not duplicating services.

Representative Wilson asked for a breakdown of federal and private donations for services in the past year.

Representative Fansler deferred the question to the agency.

Ms. Nelson relayed that the agency had a wide range of funding sources. She elaborated that the overall budget was approximately \$5 million, of which \$450,000 was from a state appropriation. She stated that \$1.2 million was received from the Federal Legal Services Corporation, and the funding balance after that was received from a variety of sources: private foundation grants, individual donations, and competitive grants and contracts.

Representative Wilson asked whether there were legal service benefits available for veterans.

Ms. Nelson answered in the affirmative. She furthered that although the VA did provide services, legal representation was not among them. She asserted that if a veteran had been denied benefits, it was helpful to have legal representation.

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Representative Grenn asked whether current funding levels had resulted in applicants being denied services.

Ms. Nelson answered in the affirmative; they had turned away over 850 cases in the past year because the agency did not have the resources to serve them. She elaborated that the cases that were turned away involved victims of domestic violence, and exploited elderly and veterans, and that all the cases were merited.

Representative Grenn asked about a normal course of action for an individual who was denied service.

Ms. Nelson replied that other services available were referred, but for most people the service was the last resort, and without assistance the client would have to self-represent.

Co-Chair Foster noted Representative Pruitt had joined the meeting.

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Representative Kawasaki asked how the agency prioritized the applicants.

Ms. Nelson responded that the cases were prioritized based on the vulnerability of clients, the need (legally), and staff availability. She said that cases were triaged in order for the assessment to be made of the most vulnerable would receive services first.

Representative Kawasaki asked what the poverty level was as associated with the term "indigent" as defined in the bill.

Ms. Nelson replied that the services were generally limited to those at 125 percent of the federal poverty guidelines, as adjusted for Alaska. She added that there were several specific funding sources that allowed for services for those who did not meet the criteria.

[1:45:41 PM](#)

Representative Guttenberg assumed that the clientele that the Alaska Legal Services Corporation (ALSC) catered to had a higher percentage of being denied services from private sector and government agencies.

Ms. Nelson agreed. She said that the agency had an 86 percent success rate in the cases it took on, and 80 percent of its cases settled out of court. She said that simply letting the other side know that the validity of their legal action was being contested was a huge help to the more vulnerable clientele that had not had successful service elsewhere.

Representative Guttenberg asked whether ALSC took a cut from the money awarded to the client by the court.

Ms. Nelson clarified the agency did not take cases where there was a large fee award or settlement - those cases would be taken on by a private attorney.

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Representative Pruitt noted that filing fees went straight to the General Fund.

Representative Fansler answered in the affirmative.

Representative Pruitt asked whether the court should be decremented the difference if the original appropriation and the \$634,000, because they were bringing in fees with the intent of applying them toward the services they provide.

MARY SCHLOSSER, STAFF, REPRESENTATIVE ZACH FANSLER, answered that the fund had originally been established in 2007 using fees from punitive damages, which were not as stable as court fees. She detailed the legislation changed it to more stable funding. She added that zero to 25 percent of the court fees could be appropriated to the court, at the legislature's discretion. She said that the bill would offer secondary funding when the financial climate was more stable.

Representative Pruitt understood that the punitive damages funds would be replaced by the filing fees, he asked where the punitive damages funds would go.

Ms. Schlosser replied that due to the instability of punitive awards in the past ten years, the court fees would be used in addition punitive awards. She detailed that \$90,000 had brought forward in the past ten years, \$20,000 in the past 4 years.

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Representative Wilson understood that the \$450,000 that was appropriated to the program, had not been based on the punitive awards or court filing fees. She wondered what percentage of the program's funding had to be authorized by the legislature.

Representative Fansler replied that punitive damages were currently in place, and the majority of the \$450,000 came from a direct legislative appropriation. He clarified that the legislation would provide a mechanism that would allow for a more stable funding source once the state's economy recovered.

Representative Wilson assumed if the bill were to pass the court would consider their fees when planning their overall yearly budget.

Representative Fansler agreed. He said that it would yearly be up to the legislature to determine what percentage of the fees would be used. He believed that the bill would allow for a multi-faceted approach that gave numerous options for a secure and steady funding stream.

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Co-Chair Foster OPENED and CLOSED public testimony. He informed committee members that amendments to the bill were due by 5pm on Wednesday, March 8, 2017.

Co-Chair Seaton pointed out to the committee that the fees that were collected by ALSC went into the general fund and were subject to appropriation by the legislature.

HB 106 was HEARD and HELD in committee for further consideration.

#hb56

HOUSE BILL NO. 56

"An Act relating to limitations on certain commercial fishing loans made by the Department of Commerce, Community, and Economic Development."

[1:57:21 PM](#)

REPRESENTATIVE DAN ORTIZ, SPONSOR, introduced himself and the bill. He spoke of comments made by Alaska U.S. Senator Dan Sullivan during a joint floor session about the importance and value of the fishing industry to the state. He said that the \$6 billion per year industry was critical to the Alaska economy, and the fishing industry was the largest private employer of the state's labor force. He noted that the "greying of the fleet" was becoming an issue for the industry; the age of the fleet was gradually getting older. He believed that the legislation was a step in helping with the issue by raising the loan limit amount for fishermen to purchase gear, permits, and boats, from \$300,000 to \$400,000. He stated that the funds would come from the Department of Commerce, Community, and Economic Development (DCCED) through a revolving loan program. He offered additional sponsor statement language:

This bill increases the aggregate amount a borrower may, in aggregate, hold unpaid from \$300,000 to \$400,000. The amount of 300,000 was assigned in 1982. Due to inflation and technological advances, this \$300,000 amount has become outdated. According to the calculation method of the Consumer Price Index, \$300,000 in 1982 is equivalent to approximately \$746,136 today. This is why a \$100,000 increase to the aggregate limit of \$300,000 to \$400,000, is reasonable and pertinent today. An aggregate limit of \$400,000 is a reasonable aggregate unpaid limit for Alaska's commercial fishing businesses.

Representative Ortiz noted that member's packets contained several letter of support for the legislation.

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Representative Kawasaki queried the solvency of the current fund.

Co-Chair Foster noted individuals from the department were also available for questions.

Representative Ortiz encouraged the department to address the specific question. He added that there was initial seed money established to start the fund; the fund had never needed additional appropriation from the legislature. He noted that the fund had an outstanding record of repayment.

Representative Kawasaki pointed to a sheet provided by the department (copy on file) that addressed a statutory interest rate provided by the fund. He asked whether the statutory interest rate being higher than the industry interest rate was a problem for the fund.

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BRITTENY CIONI-HAYWOOD, DIRECTOR, DIVISION OF ECONOMIC DEVELOPMENT, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, explained that the department currently had approximately \$19 million in available lending funds. She asserted that the fund was robust, and reiterated that the fund had not used general fund dollars since 1985, but lived off of interest and fees charges through the program.

Representative Kawasaki referred to industry and statutory interest rates. He noted that in some cases it looked like the industry rate was higher. He wondered why people would lend at such high rates.

Ms. Cioni-Haywood answered that often the program lent to people who could not secure financing elsewhere. She relayed that the current interest rate was 5.5 percent. She added that most recent borrowers were younger borrowers and borrowers that did not have a credit history, who were willing to take the higher interest rate.

Representative Wilson asked for the current default rate.

Ms. Cioni-Haywood responded that the current rate was 2.2 percent, which was below the industry standard of 5 percent.

Representative Wilson queried how much the fund currently had on-loan.

Ms. Cioni-Haywood replied that there was approximately \$90 million in outstanding loans.

Representative Wilson wondered whether the interest rate could be lowered without a statute change. She thought that the program could be taking advantage of those that could not afford to take out a lower interest loan.

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Ms. Cioni-Haywood shared that the interest rate was deemed in statute and that the program had a pay-on-time program, in which people who paid on-time received a discounted interest rate.

Representative Tilton referred to legislation from 2012, regarding the loan fund. She noted the state's financial crisis and wondered whether the timing of the legislation was appropriate.

Representative Ortiz replied that he could not comment on what was occurring in the legislature in 2012 when the legislature had been considering the issue. He shared the reason he had brought the legislation forward was that he wanted to help young people have a better chance to get involved in the industry. He said that the legislation would be a no-cost item to the state that would allow the state to assist young fishermen to enter into the industry.

Representative Tilton asserted that there was already a disparity in loan amounts for the commercial and charter loan funds.

Representative Ortiz replied that he was not looking to increase the difference between the commercial and charter industry loans. He suggested that someone could bring forth a piece of legislation that would address that particular problem.

[2:10:57 PM](#)

Representative Tilton understood that there was \$19 million currently available in the fund.

Ms. Cioni-Haywood answered in the affirmative.

Representative Tilton referred to a 2015 figure that showed a \$2 million balance.

Ms. Cioni-Haywood was surprised at the figure, she did not think that the fund had been that low for approximately two years.

Representative Tilton hoped to talk more in depth with Ms. Cioni-Haywood about the issue.

[2:12:10 PM](#)

Representative Grenn spoke to the last paragraph of a letter of support from the United Fishermen of Alaska:

The revolving loan program is one of very few tools that the state has to give an advantage to Alaska residents with a desire to become fishing skippers. And, because a traditional bank lender must first reject a borrower in order to qualify for the Loan Program, we do not anticipate major negative effects on private sector lenders.

Representative Grenn wondered what a person had to show regarding being previously rejected by a bank. He asked whether there had been opposition or support for the issue.

Representative Ortiz answered he had received some critical feedback from the commercial lending community. He elaborated that one of the reasons for the higher interest rates could be a sensitivity to not wanting to see the state directly compete with the commercial/private industry. He furthered that there were people in the private sector who viewed the program as competition, he believed that the qualification of first being rejected by a traditional bank showed good faith by the department.

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Co-Chair Seaton referred to a letter in the packet about commercial hardship [handout titled "Division of Economic Development Department of Commerce, Community and Economic Development 2016 Annual Report of Fisheries Enhancement Term Extensions per AS 16.10.510(11)" (copy on file)], which discussed term extensions that could be granted in times of financial hardship. He wondered whether the document was informational as he had not seen it in the bill.

Representative Ortiz replied that it was not a part of the bill. He deferred further discussion to the department.

Ms. Cioni-Haywood answered that the program currently provided extensions for economic hardships; it required a separate application process.

[2:16:03 PM](#)

Representative Pruitt felt that the information provided on the bill was lacking for him to determine the stability of the fund. He thought that the program was a good program. He agreed with the higher rate. He expressed concern that doubling the loan amount would take away funding for other applicants in other loan programs.

Representative Ortiz clarified that the maximum loan amount would increase from \$300,000 to \$400,000, which was not a doubling of the loan amount. He asserted that there had been prior testimony concerning the solvency of the fund and the excellent repayment rate.

[2:18:50 PM](#)

Representative Pruitt said that he was referring to the \$100,000 to \$200,000 by vessel. He stressed that he wanted to see the information in writing. He did not want to jeopardize the fund.

Ms. Cioni-Haywood replied that she would submit the information in writing. She shared that projections had been done using the assumption of 21 new loans, with an increased average loan amount over the next ten years, and using a conservative repayment schedule, and had estimated that the fund would still maintain over \$12 million in the fund balance.

Representative Thompson expressed appreciation for the loan program. He queried whether any of the loans were awarded out of state.

Ms. Cioni-Haywood confirmed that it was a resident-only program; a person had to be a resident for two years to be eligible for the loan.

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Co-Chair Foster OPENED public testimony.

JERRY MCCUNF, UNITED FISHERMEN OF ALASKA, JUNEAU, testified in support of the legislation. He spoke of the complexity of loan programs. He spoke of the doubling of vessel loans from \$100,000 to \$200,000, and he noted that the number had not increased since 1982. He felt that a \$200,000 boat would be safer than a \$100,000, and that a proper fishing vessel could cost several of hundreds of thousands of

dollars. He felt that the program was beneficial to younger fishermen just starting out in the industry.

Co-Chair Foster CLOSED public testimony.

HB 56 was HEARD and HELD in committee for further consideration.

#hb81

HOUSE BILL NO. 81

"An Act making an entity that is exempt from federal taxation under 26 U.S.C. 501(c)(3), (4), (6), (12), or (19) (Internal Revenue Code) and a federally recognized tribe eligible for a loan from the Alaska energy efficiency revolving loan fund; relating to loans from the Alaska energy efficiency revolving loan fund; and relating to the annual report published by the Alaska Housing Finance Corporation."

[2:24:21 PM](#)

REPRESENTATIVE JONATHAN KREISS-TOMKINS, SPONSOR, introduced himself and provided information about the legislation. He believed that most members of the committee had seen previous iterations of the legislation over the years. He offered a history of the topic of the bill:

This bill gives nonprofit organizations and federally-recognized tribes the power to apply for loans from the Alaska Energy Efficiency Revolving Loan Fund. Because AEERLF is such a god awful acronym, we call this bill the More Energy Efficient Buildings Act ("MEEBA").

The AEERLF was created by the Alaska Sustainable Energy Act in 2010. It authorized the Alaska Housing Finance Corporation to make \$250 million in low interest loans for energy efficiency improvements to public entities, namely municipalities and school districts. One loan has been closed since the program's creation in 2010.

Especially given our new and more austere fiscal climate in which legislative grants are going to be rare to nonexistent, many nonprofits are interested in becoming more self-sufficient and accessing loans from

the revolving loan fund to invest in energy efficiency. Right now, nonprofits such as soup kitchens, arts organizations, American Legion posts, and churches are not eligible to apply to the revolving loan fund.

The More Energy Efficient Buildings Act authorizes Alaska Housing to accept applications from non-profits and federally recognized tribes for energy efficiency improvements to their buildings. The More Energy Efficient Buildings Act improves energy efficiency in Alaska. It helps Alaska nonprofits, churches, and veteran's organizations become more self-sufficient. And it helps create a public benefit for a State program that's presently under-used.

Representative Kreiss-Tompkins lamented that his previous attempts to pass similar legislation had been met with apathy and disinterest. He felt that the apathy had been nurtured by the legislature, which had offered school districts and municipalities' legislative grants to finance their energy expenses.

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Representative Kreiss-Tompkins continued to address the reasoning for the development of the legislation. He felt that the bonding authority had been underused, and suggested that expanding the eligibility to the revolving loan fund to non-profits and organizations that needed access to capital in order to deliver services to Alaskans.

Co-Chair Foster relayed there were individuals available for questions.

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Representative Grenn queried they type of non-profit entities that would be eligible under the bill.

Representative Kreiss-Tompkins replied that the eligibility would be expanded to the suite of Internal Revenue Service (IRS) designated non-profit organizations. He thought that the bottom line was that energy efficiency was good no matter who was benefiting from it; the more people who were able to make energy efficiency improvements, the better.

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Representative Kawasaki requested further description of the IRS designated non-profit entities.

Representative Kreiss-Tompkins answered that 501c 4 related to civic leagues, social welfare or local employee associations, and 501c 6 related to business leagues, chambers of commerce, and industry umbrella organizations. He furthered that 501c 12 related to mutual and cooperative associations, and 501c 19 related to post-organizations of past and present members of the armed forces. He deferred to staff for any further clarification.

Representative Kawasaki asked whether a political organization such as the Alaska Democratic or Republican Party Headquarters would qualify.

Representative Kreiss-Tompkins replied that he did not know and relayed that he would follow up with an answer.

Representative Kawasaki expressed concern for fairness in the decision making process of who would qualify for the loans. He asked about the constitutionality of the inclusion of churches and religious organizations.

BERETT WILBER, STAFF, REPRESENTATIVE JONATHAN KREISS-TOMKINS, directed committee attention to the memo from the Division Legislative Legal provided in member's packets and dated January 23, 2017(copy on file). She explained that legislative legal had determined that allowing churches to apply for loan funding under the energy efficiency program was constitutional.

Representative Kawasaki asked if it was because everyone that applied had an equal chance of receiving the loan.

[2:37:37 PM](#)

Ms. Wilber replied she would need to reread the memo, but she believed he was correct.

Representative Wilson asked about prioritizing schools first as recipients.

Ms. Wilber cited Section 7 of the legislation:

* **Sec. 7.** AS 18.56.855 is amended by adding new subsections to read:

(k) In considering applications and making loans from the Alaska energy efficiency revolving loan fund, the corporation shall give priority to energy efficiency improvements to buildings owned by a regional educational attendance area, the University of Alaska, a municipality, or the state over other applications and loans.

(l) Notwithstanding any provision of this section, the recipient of a loan under 28 this section may not be a for-profit business enterprise.

Representative Wilson thought some loans required audits first.

Ms. Wilber answered that the loan required a federal-grade audit that would specify the areas a building would save money with energy efficiency improvements.

Representative Wilson asked whether a non-profits monetary holding would be taken into account when determining interest and eligibility of the loans.

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Ms. Wilber answered that there would be no limit to which non-profits could apply for the loans. She said that AHFC would set the interest rate. She deferred further explanation to AHFC.

STACEY SCHUBERT, DIRECTOR, GOVERNMENTAL AFFAIRS AND PUBLIC RELATIONS, ALASKA HOUSING FINANCE CORPORATION, ANCHORAGE (via teleconference), explained that the current interest rate for a 15 year loan was 4.25 percent.

Representative Wilson asked whether the interest rate would be the same for a bank loan to the same applicant.

Ms. Schubert replied that she did not know the current interest rate for other institutions.

Representative Wilson asserted that she did not want to compete with banks or to loan money at a lower interest rate than financial institutions. She asked who paid the bill if an organization defaulted on the loan.

Ms. Schubert deferred the question to a colleague.

MICHAEL STRAND, CFO, ALASKA HOUSING FINANCE CORPORATION, ANCHORAGE (via teleconference), informed the committee that the money would come from the AHFC internal resources. He said that if the total loan amounts reached over \$50 million then AHFC would have to go to bond, the costs of which would be absorbed by the program cost. He relayed that AHFC would be responsible for any defaults; there would be no risk to the state in the event of a default on the loan.

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Representative Guttenberg referred to the previously mentioned legal memo. He believed that the memo succinctly explained the entities that were eligible for the loan. He believed that the memo addressed the issues raised Representative Wilson. He believed that non-profits would take advantage of bank loans if they could qualify for one, regardless of interest rates.

Representative Kreiss-Tompkins responded to Representative Wilson's questions. He understood that because of the way the program was structured, savings had to be demonstrated through an audit before an entity could qualify. He added that the energy savings essentially financed the debt, which was a unique approach that was not used by banks and traditional lending institutions.

[2:47:15 PM](#)

Co-Chair Foster OPENED and CLOSED public testimony.

HB 81 was HEARD and HELD in committee for further consideration.

#hb49

HOUSE BILL NO. 49

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

[2:48:05 PM](#)

REPRESENTATIVE SAM KITO, SPONSOR, introduced himself and the bill.

CRYSTAL KOENEMAN, STAFF, REPRESENTATIVE SAM KITO, shared the sponsor's statement (copy on file):

House Bill 49 extends the termination date for the Board of Certified Direct-Entry Midwives until June 30, 2021.

Legislative Audit conducted their review of this board and determined that "The board is serving the public's interest by effectively licensing and regulating certified direct-entry midwives and apprentice midwives. The board monitors licensees and works to ensure only qualified individuals practice. Furthermore, the board adopts regulations to improve the practice of midwifery. In accordance with AS 08.03.010(c)(8), the board is scheduled to terminate on June 30, 2017. We recommend that the legislature extend the board's termination date to June 30, 2021."

The board currently oversees 52 active licensees and is composed of five members: two certified direct-entry midwives, one physician licensed by the State Medical Board, one certified nurse midwife licensed by the Board of Nursing, and one public member.

The continuation of the Board of Certified Direct-Entry Midwives is important to the health and safety of Alaska's women and children, as it 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. Thank you for your support of House Bill 49.

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Co-Chair Foster noted there were individuals available for questions.

Representative Wilson queried the cost of the audit, relative to the size of the group the board oversaw. She wondered whether the board paid for the audit.

Representative Kito deferred the question to the division. He answered that the four-year extension had been recommended by the division.

Co-Chair Foster recognized that Vice-Chair Gara had joined the meeting.

Co-Chair Seaton noted the fee increase of 169 percent and the one-time surcharge of \$2000.

Representative Kito explained that the audit recommended that licensing fees should be increased to cover the cost of board operations.

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KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, testified that the previous sunset audit conducted on the board had been in 2014, and at that point the division found that the Division of Corporations, Businesses and Professional Licensing (DCBPL) investigative staff had not been actively processing investigations that posed a public safety risk. She said that at that point the board was extended only 2 years; the division had conducted a 2016 follow-up sunset review. The latest review found that the board is serving in the public's interest by effectively licensing and regulating certified direct-entry midwives (CDM) and apprentice midwives. She stated that the division recommended that the legislature extend the board's termination date to June 30, 2021, provided the board execute the following recommendations [from the Performance Audit of the Department of Commerce, Community and Economic Development, State Board of Certified Direct-Entry Midwives (board) April 30, 2016(copy on file)]:

Recommendation 1: DCBPL management, in consultation with the board, should increase licensing fees to eliminate the board's operating deficit.

High regulatory costs relative to the low number of licensees has led to high license fees. The board primarily receives its revenue from license and renewal fees. Renewals are conducted on a biennial basis, creating a two-year cycle in board revenues. Fee levels were increased in FY 15, but fees were not high enough to cover operating costs. As shown in Exhibit 3, the board's deficit grew to \$183,081 as of February 29, 2016, the second year of its biennial licensing period (see Recommendation 1.)

Recommendation 2: The DCBPL director should take steps to ensure license records are accurately recorded.

Audit test work identified two instances where DCBPL staff provided insufficient support to the board. In one instance, division staff noted the wrong license as on probation in the online licensing database. In another instance, a consent agreement approved by the board had the wrong year. Both instances were due to administrative error by DCBPL staff.

Recommendation 3: The legislature should consider alternate forms of regulating the midwifery profession.

In order to address the deficit, licensing fees would need to be significantly increased. Fees are expected to be upwards of \$4,000 for CDMs and \$2,000 for apprentice permits by the year 2020. The high licensing fees could limit entry into the profession.

Ms. Curtis noted the department's response on Page 21 of the audit. She shared that the department concurred with recommendation's 1 and 2, but did not respond to recommendation 3, as it was not directed to the department. However, the department acknowledged that merging the board could result in economies of scale. She spoke to the board's response on Page 23 of the audit. The board concurred with recommendations 1 and 2, but strongly disagreed with recommendation 3:

Midwifery is a unique profession that any other board would have difficulty regulation. The suggestion of the Board of Nursing and the Physician's Board would be problematic on several different levels. These two boards have historically been competitive to the CDM profession and often oppose legislation that we have introduced to improve the standard of care and safety of our clients. I am concerned that we would be regulated out of practice or to a very minimal practice, which is what the majority of the Alaskan population clearly does not want. Also, I believe that the doctor's and nurse's board would not want CDMs sitting on their Board (which we would need to do if we were to have proper representation) and having a voice in decisions regarding their regulations and practices.

2:57:27 PM

Representative Wilson asked who decided which cases warranted investigation.

Ms. Curtis responded that the division had an investigative section that had the statutory responsibility to conduct investigations. The board was removed from, but eventually weighed in on, the decision.

Representative Wilson asked whether unlicensed midwives were charged with reimbursing the board for any fines.

Ms. Curtis deferred to DCCED. She offered that there were no dedication of fines to any particular board; any levied fines went to the General Fund.

Representative Wilson thought that there should be a mechanism that could protect midwives from having their licensing fees increased because of acts of unlicensed midwives.

Ms. Curtis asked whether Representative Wilson was asking if the board's deficit was the result of investigations.

Representative Wilson replied in the affirmative.

Ms. Curtis stated that the schedule on Page 6 of the audit highlighted the board's expenditures. She said that historically the problem with deficit had stemmed from investigations; however, not only unlicensed activity generated investigations.

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Representative Wilson surmised that the board would have to pay the fee even though the fee was already in the general fund.

Ms. Curtis explained that the cost of regulating was borne by licensees, and any fees that were collected went into the general fund.

Representative Wilson asserted that any money collected, based on an investigation, had to be paid by the board, even if it went into the general fund.

Ms. Curtis answered that the revenues from the fines did not offset the costs of investigations.

Representative Wilson felt that the fees should offset the costs of investigations.

[3:02:04 PM](#)

Representative Kawasaki asked why there had been an extension of 2 years had been recommended, rather than a 4 year, 6 year, or 8 year.

Ms. Curtis replied she had never seen a one-year extension. They had received recommendations for termination. She spoke to boards with significant deficit such as the Board of Game with a \$1 million deficit, which resulted in a short recommendation for extension. She explained that problems that posed a public safety risk could prompt a short recommendation. She said that it was very unusual to have 2 year recommendation for extension. She added that the number and nature of the findings would be weighed when considering the length of extension; housekeeping issues would not impact the extension recommendation, but deficits would reduce the number of years recommended.

Representative Kawasaki wondered whether the extension were always even numbered years.

Ms. Curtis answered that extensions seemed to be made in even numbers. She said that workload was a factor in determining sunset timelines.

[3:04:11 PM](#)

Representative Kawasaki preferred longer sunset timelines because it meant less work for auditors. He asked about the long sheet (copy on file) in the packet, created by the division and the board, related to ways in which the deficit could be erased.

Ms. Curtis replied that she had not seen the document.

Representative Pruitt thought that the deficit was the crux of the problem. He spoke of the differing views of all of the involved parties. He wondered whether the board had offered a proposal of how to eliminate the debt. He asked

when the legislature should expect action to be taken on the third recommendation.

Ms. Curtis clarified that the intent of recommendation 3 had been to acknowledge that direct entry midwives had a board that was serving the public's interest, and should exist. She said that the division's concern was that the number of midwives would decline because of barrier to entry due to increased licensing fees. She stressed that the recommendation had not been made to address the deficit, but to ensure that the public's interest was being served by the board. She felt that it was a management decision as to how the deficit would be addressed, but the increase in licensing fees had seemed extreme.

[3:09:50 PM](#)

Representative Pruitt requested to hear from the department.

Vice-Chair Gara asked whether Ms. Curtis could speak to the investigation costs for violations that had proved unfounded.

Ms. Curtis answered in the negative.

Vice-Chair Gara worried about people being put out of business for minor violations. He noted that often traditional medical professionals and midwives disagreed about each other's practices, and wondered if having them share a board would be practical.

[3:11:46 PM](#)

Representative Wilson asked about the cost of the most recent audit and how it was paid for.

Ms. Curtis thought the audit had taken about 450 hours which was approximately \$38,000. She said that a follow up review had been conducted by the request of Legislative Budget and Audit to look into the public safety risk of not following up on the investigations.

Representative Wilson asked who paid for the audit.

Ms. Curtis answered the audit was part of the Division of Audit's operating budget that was approved annually, and was not paid for by the boards that were audited.

Representative Wilson thought the boards had to pay the costs.

Ms. Curtis answered that the statute that dictated that the boards would pay the operational costs was the operational cost of regulation the board and not the legislative oversight process of sunsets.

3:14:00 PM

Representative Thompson spoke to the investigation costs. He lamented that investigators assigned to certain boards may not understand certain aspects to the work the boards oversee, adding to the investigating costs.

Ms. Curtis said that she did not know. She stated that there were some boards that had dedicated investigators, such as the medical board.

3:15:30 PM

JANEY HOVENDEN, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, introduced herself.

Representative Pruitt asked about the denial of the board to carry a surplus budget forward.

Ms. Hovenden answered that there had been concerns by the Department of Law about incorporating the \$2000 surcharge, instead the \$2000 had been incorporated into the licensing fee, raising the fee to the current level of \$3,800. She said that she would not be able to speak to changes that were made to the fees before she took her position.

Representative Pruitt asked how long it would take the board to get to a place where the fees would cover the debt.

Ms. Hovenden referred to a handout with an Excel spreadsheet chart titled "Board of Direct-Entry Midwives" dated September 7, 2016 (copy on file), which offered a fee

analysis. She noted where the board had recommended a one-time surcharge of \$2000, over to biennium. Due to the concerns of the Department of Law, the fee of \$3,800 was recommended. She said that the fee increase would be stretched out to 2021.

Representative Pruitt spoke to the challenge of the continued cost of investigating unlicensed individuals. He asked about the department's suggestion to make sure it did not penalize individuals working within the proper confines of the law. He felt that individuals who were properly licensed should not be penalized.

[3:20:57 PM](#)

Ms. Hovenden answered that the department did not breakout the information in investigations between licensed and unlicensed individuals.

Representative Pruitt asked if a breakdown could be done.

Ms. Hovenden answered that it would not be that difficult, but the department did not currently look at the information down to that level.

Representative Pruitt recalled that the issue had been brought up a couple of years earlier. He believed the issue had been brought up by midwives a couple of years earlier.

[3:22:58 PM](#)

Ms. Koeneman relayed that civil penalties for licensed midwives were set under Alaska Statute 08.08.075. She said that there was another statute for unlicensed activity, AS 08.01.082, and did not delineate any civil penalty or any monetary amount. She said that it would be a policy call by the committee to open the unlicensed activity statutes to modify the language. She noted there was another bill in the finance committee that would address investigative costs.

Representative Pruitt understood that currently there was no penalty for being unlicensed.

Ms. Koeneman answered that under Title 8 there were no fines other than the \$5,000 civil penalty. She added that criminal charges could be applied under Title 11.

Representative Pruitt asked how to discourage people from practicing without a license.

Ms. Koeneman thought that the answer could be found by reading the statute.

Representative Kawasaki referred to the fee proposals intended to erase the deficit by 2021. He wondered whether the timeline had been spurred by the audit.

[3:25:38 PM](#)

Ms. Hovenden answered in the affirmative. She stated that the board had been active and engaged in increasing fees for that particular reason.

Representative Kawasaki spoke to the conflicting nature of recommendations one and three. He was supportive of extending the board for a longer time period and did not believe that the deficit had to be completely erased by 2021. He agreed with recommendation 3.

Ms. Koeneman answered that the statutory authority to collect fees did not give the legislature or the board any additional authority to collect outside of the annual review. She said that stretching the payment out over 3 or 4 biennium would go against the statutory intent.

Representative Kawasaki referred to the Division of Audit's recommendation to extend the board four years, and he wondered whether the existing deficit, plus the high fees would be problematic.

Ms. Koeneman understood that if the board did not have the fees paid up within 4 years, legislative audit would have no choice but to make another recommendation stating the board and the department needed to modify the fees in order to eliminate the deficit.

[3:28:35 PM](#)

Co-Chair Seaton thought payment of the deficit was tied to the four-year sunset.

Ms. Curtis responded there was no term recommended by the Division of Audit for fixing the issue. She stated that the law specified the cost of regulation must be covered every

time rates were set. She said that the four year extension was made in order to understand whether the number of midwives in the state were serving the public's interest and had nothing to do with the fee setting process.

Representative Kawasaki noted that the step-down calculations that the division proposed would have the board outside of the deficit by 2021, but a drop in the deficit over the next four year could result in a cleaner audit.

[3:30:45 PM](#)

Ms. Curtis replied that she would revisit the issue in four years to provide an answer.

Representative Wilson requested the cost of investigations in the past several years. She wondered whether the legislature could be equally at fault for the deficit.

Ms. Koeneman answered that investigative costs for FY 16 was \$31,000; FY 14 and FY 15, \$41,522 total; FY 12 and FY 13, \$45,457; FY 10 and FY 11, \$8,034. She said that the figures did not include some of the indirect costs associated with the department's cost allocation plan. She agreed the department was getting in the way of the board. She said that in FY 09, licensing costs dropped from \$2088, down to \$500, and rose as the investigative costs increased.

Representative Wilson requested why the increase in investigative costs had jumped significantly.

[3:33:59 PM](#)

Co-Chair Foster OPENED public testimony.

JOHANNA CROSSET, CERTIFIED DIRECT-ENTRY MIDWIFE, JUNEAU, she expressed gratitude for the current conversation. She hoped for a solution to prevent deficit in the future. She explained it had been a surprise to hear of the proposal for the fee increase. She asked the committee to continue conversing. She directed a comment to Representative Wilson about looking into the investigative costs, penalties, and fees going to the general fund as opposed to the board.

SUSAN TERWILLIGER, PRESIDENT, MIDWIVES ASSOCIATION, ANCHORAGE (via teleconference), spoke in support of the legislation. She shared that each member of the association had endured the large hit related to the increase in licensing. The board wanted to pay down the deficit. She said that HB 90 would deal with investigation costs to correct the issue over time. She shared that midwives provided high quality care to low-risk women for less cost and were regulated by a board that was familiar with the nature of their work. She referred to a handout in members' packets that detailed the cost savings that resulted from midwife assisted births. Many women and babies were thankful for the extension of the board.

[3:38:08 PM](#)

DEBORAH SCHNEIDER, CHAIR, BOARD OF CERTIFIED DIRECT ENTRY MIDWIVES, ANCHORAGE (via teleconference), urged the passage of the bill. She had been involved crafting regulations to protect mothers and babies. She was very appreciative of the conversation supporting the continuation of the board's cost-effectiveness. She referred to the issue related to investigations, and the high cost of investigations covered in the audit, and shared that there had been several cases that had been under investigation for 4 to 6 years, generating enormous cost. She stressed that the midwives were committed to paying down the debt. She believed midwifery could be expanded in Alaska if the issues were addressed. She expressed appreciation for the work done by the committee.

Co-Chair Foster CLOSED public testimony.

HB 49 was HEARD and HELD in committee for further consideration.

Co-Chair Foster discussed housekeeping.

ADJOURNMENT

[3:42:10 PM](#)

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

