

HOUSE FINANCE COMMITTEE

April 19, 2017

1:38 p.m.

1:38:10 PM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:38 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

Senator Anna MacKinnon, Sponsor; Laura Cramer, Staff, Senator Anna MacKinnon; Deven Mitchell, Executive Director, Alaska Municipal Bond Bank Authority, Department of Revenue; Kendra Kloster, Staff, Representative Chris Tuck; Courtney Enright, Staff, Representative Gabrielle LeDoux; Crystal Koeneman, staff to Representative Sam Kito; Sara Chambers, Acting Director, Alcohol and Marijuana Control Office, Department of Commerce, Community and Economic Development; Representative Sam Kito.

PRESENT VIA TELECONFERENCE

Bob Doehl, Deputy Commissioner, Department of Military and Veterans Affairs; John James, Colonel, Department of Military and Veterans Affairs; Mark Richards, Executive Director, Resident Hunters of Alaska, Fairbanks; Al Brett,

Self, Fairbanks; Angela Birt, Chief Investigator, Corporations, Businesses and Professional Licensing, Department of Commerce, Anchorage.

SUMMARY

HB 90 OCC. LICENSING FEES; INVESTIGATION COSTS

CSHB 90 (FIN) was REPORTED OUT of Committee with a "do pass" recommendation and with a previously published fiscal impact note: FN1 (CED).

HB 150 PAY, ALLOWANCES, BENEFITS FOR MILITIA MEM

HB 150 was HEARD and HELD in committee for further consideration.

HB 167 STATE AGENCY PERFORMANCE AUDITS

HB 167 was REPORTED OUT of Committee with an "amend" recommendation and with one new zero fiscal note by the Legislature.

SB 97 PENSION OBLIGATION BONDS

SB 97 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the day.

#sb97

SENATE BILL NO. 97

"An Act relating to pension obligation bonds."

1:39:24 PM

SENATOR ANNA MACKINNON, SPONSOR, explained that the bill took the current statutory \$5 billion pension bonding authority and reduced the amount to \$2.5 billion. In addition, the legislation required the administration to submit a proposal to the Legislative Budget and Audit Committee (LBA) within 45 days of issuing any pension obligation bonds (POBs). She noted that the procedure was the same as any RPL (request per legislature). She pointed out that the process included the legislature in the process and allowed for time to respond if necessary. She believed the administration supported the legislation. She

recounted that in the prior year when the administration proposed the POB plan, her constituents requested the bill and questioned whether any amount of the authorization should be spent on POBs due to the inherent risks. She thought that the administration had proposed a very conservative approach to POB's. She detailed that unlike other cities or states, the administration's plan "did not take all of the benefits upfront." Other states that had defaults with POB's "took all of the benefits when they were most at risk." The state's approach deferred the smaller payments until the end of the loan proposition. She reiterated that the administration's approach was conservative. She informed the committee that if the state had issued POB's in 2007 the results would have been positive. Had the Walker administration issued POB's last year positive gains were also anticipated. She qualified that the "positive influences" needed 20 to 30 years to come to fruition which prompted her to introduce SB 97. She believed that the legislation did not tie the hands of the administration, invited engagement with the legislature, and added a layer of transparency to the process. She offered to review the sectional analysis.

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LAURA CRAMER, STAFF, SENATOR ANNA MACKINNON, read the sectional analysis:

\*Section 1: Requires a subsidiary created under the Alaska Housing Finance Corporation to submit a proposal to the Legislative Budget and Audit (LB&A) Committee prior to borrowing money and issuing bonds for the purpose of financing or facilitating financing of a governmental employer's share of unfunded accrued actuarial liability of retirement systems

\*Section 2: Creates a new subsection outlining the process for submitting a proposal to the LB&A Committee

\*Section 3: Requires the State Bond Committee to submit a proposal to the LB&A Committee prior to issuance and sales of bonds for the purpose of financing or facilitating financing of a governmental employer's share of unfunded accrued actuarial liability of retirement systems, including the costs of issuance and administration

\*Section 4: Creates a new subsection outlining the process for submitting a proposal to the LB&A Committee

\*Section 5: Amends the pension obligation bond limit from \$5,000,000,000 to \$2,500,000,000

\*Section 6: Requires the Pension Obligation Bond Corporation to submit a proposal to the LB&A Committee prior to issuance and sales of bonds for the purpose of financing or facilitating financing of a governmental employer's share of unfunded accrued actuarial liability of retirement systems, including the costs of issuance and administration

\*Section 7: Creates a new subsection outlining the process for submitting a proposal to the LB&A Committee

\*Section 8: Requires the Alaska Municipal Bond Bank Authority to submit a proposal to the LB&A Committee prior to issuance of bonds, notes, commercial paper, or other obligations for the purpose of assisting employers to prepay all or a portion of their share of unfunded accrued actuarial liabilities of retirement systems in an effort to reduce their costs

\*Section 9: Requires a subsidiary created under the Alaska Municipal Bond Bank Authority to submit a proposal to the LB&A Committee prior to borrowing money and issuing bonds for the purpose of financing or facilitating financing of a governmental employer's share of unfunded accrued actuarial liability of retirement systems

\*Section 10: Creates a new subsection outlining the process for submitting a proposal to the LB&A Committee

\*Section 11: Conforming language for the powers of a subsidiary corporation created under the Alaska Municipal Bond Bank Authority

\*Section 13: Conforming language for the issuance of bonds and notes by the Alaska Municipal Bond Bank Authority

1:45:06 PM

Vice-Chair Gara recalled that in 2007 he was supportive of investing in POB's. He noted the unpredictable nature of the stock market. He wondered why the current investment climate with rising interest rates was a good time to invest in POB's. Senator MacKinnon explained that in 2007 the state was facing a \$10 billion to \$12 billion pension liability of which, the \$5 billion figure was roughly 50 percent of the liability but did not factor in the unfunded liability for healthcare costs. When the legislature issued a cap of \$5 billion it was less than 50 percent yet still considered a significant amount. Currently, the state's unfunded liability was \$6.1 billion. The \$2.5 billion number was less of a ratio but still reduced the liability and was close to the amount the administration deemed reasonable to sell in the market at one time. The unfunded liability was only as accurate as the performance of the assumptions of the rate of the return. She clarified that the \$6.1 billion figure was as reliable as the credit rating agencies reports that contained the numbers and were based on assumptions that the state's actuaries calculated. She reminded the committee that the legislature contributed \$3 billion in FY 15 in order to reduce the debt load.

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

Vice-Chair Gara commented that he understood the risk and ascertained that in hind sight, he wished the state issued the POB's in 2007. He asked why POB's were authorized in the past but never issued. Senator MacKinnon confirmed that POB's were issued in 2007 but no proposal was ever issued until the current governor believed that the market was "timed right." She related that the public opposed the bond issue because of the risk and the proposal was "met with resistance."

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Representative Grenn cited the sponsor statement and read the following:

Credit rating agencies continue to monitor our activities and the policy measures we pass to improve our financial foundation.

Representative Greinn inquired whether lowering the bonding authority contributed to improving the state's fiscal foundation or was a "prudent" change to protect our credit rating. Senator MacKinnon believed that lowering the authority would be positively viewed by the market and the agencies.

Representative Ortiz asked about any potential downsides of the action. Senator MacKinnon responded that she did not see any. She indicated that she always attempted to balance both sides of the issue with any legislation. She acknowledged that many thought POB's were too risky and should be avoided. She agreed that the bonds required 30 years of returns to work and were risky. She thought the legislation was a compromise and was a "nod" to the credit rating agencies that sent the message that the state was not relying on debt to solve the problem. She added that utilizing debt might be a component but not the entire approach. Representative Ortiz asked what the negatives were of taking the liability down to zero. Senator MacKinnon pondered whether the legislature could "sustain a legislative override" for a governor's veto. She had confidence that both legislative bodies endorsed a reasonable approach to alert credit agencies that they took the state's financial situation seriously by not totally relying on debt to solve the problem. She mentioned the \$3 billion pension liability payment as proof.

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Co-Chair Seaton mentioned the idea of taking the unfunded liability to zero. He wondered at what point the state was required to pay post-retirement pension adjustments the state was required to pay to the retired employees. Senator MacKinnon reported that when the state hit 100 percent [no liability] the retirees could ask for additional benefits. When the \$3 billion payment was made in FY 15 the legislature's goal was to achieve 80 percent funding of the state's liability and was the point debt could be repaid with "positive investment returns." She had voted with many of her colleagues in favor of much of the money paying for the Teaching Retirement System (TRS) instead of Public Employees' Retirement System (PERS). She delineated that the TRS debt was entirely the state's debt but PERS was shared with the municipalities at a 60 percent to 40 percent split. The House and Senate came together to pay the state's 100 percent debt and attempted to achieve an

overall 80 percent ratio. She cautioned against achieving a 90 percent ratio because if the state over-contributed than retirees could ask for more. She believed in being cognizant of how much the state could fund the liability. She thought that the state's estimated unfunded liability was understated due to the current rate of return. Co-Chair Seaton recapped that Senator MacKinnon discussed that the state owned 100 percent of the TRS liability and only 60 percent of the PERS. He queried whether the state would be better off funding its 100 percent liability versus the PERS system. He indicated that if the state funded PERS at 100 percent liability, the state would pay the municipalities' retirement reimbursement and end up paying for their debt. He asked whether she objected directing POB's to the TRS system.

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Senator MacKinnon responded that the bill was in the committee's possession and she would trust the judgement of the committee. She detailed that when the state established the 22 and 12 percent ceilings on municipal contributions the numbers were a compromise. The municipalities asked the state of Alaska to help fund the liabilities. The state chose to help by extending the years on the debt and thereby lowering the payments. She did not think the state should turn away from the municipalities struggle with meeting the payment obligations and avoid burdening the local communities further by not providing more than 60 percent. She advocated working together in the best financial interest of all and not exclude helping the municipalities. She hoped that the administration would talk with the legislature regarding the municipalities when considering POB's. She remembered that the legislature directed the administration to deposit much of the \$3 billion to TRS but still wanted to make a deposit into the PERS system to help local communities and the state. She remarked that the cap set at 22 percent meant that the state was paying the portion above 22 percent.

Representative Pruitt questioned the role of LBA in the bill. He noted that ultimately the administration could make its own decisions regarding RPL's. He asked whether the sponsor considered granting LBA the ability to ultimately veto an issuance of POB's. Senator MacKinnon responded that last year the administration had responded to concerns raised by the House and Senate Finance

Committees regarding the proposed POB plan. She revealed that any issues raised against POB's could cause "the buyers to increase the cost of debt through risk." "The minute the legislature starts talking in a negative way the administration had to include the documentation in the bond packets." She concluded that LBA was the appropriate place to decide on the issuance because if the administration decided to proceed regardless, all that was needed to stop the process was for the legislature to write a letter and the credit rating would increase. She relayed that the Senate Finance Committee had written a letter without prior knowledge of the consequences. She felt that the administration was sensitive to the issue and the reaction of the legislature. In addition, the state's debt manager was required to relay any issues to the purchaser of the bonds. Representative Pruitt acknowledged that the administration had consulted with the legislature over whether to proceed with the POB's. He surmised that Senator MacKinnon was comfortable with LBA's role due to the increased costs of bonding signaled by any resistance from the legislature. Senator MacKinnon replied in the affirmative. She discerned that even a dialog raising concerns about POB's in the LBA committee process could trigger a rate increase based on borrower's discomfort. She felt comfortable with the language but deferred to the committee.

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Representative Guttenberg reminded members to refer to Mayor Navarre's comments on the debt liability and its origins in previous testimony. [Mayor Mike Navarre, Kenai Peninsula Borough, Presentation to the House Finance Committee on March 28, 2017] He surmised that last year when the governor announced the POB issuance and received strong opposition resulting in his decision not to proceed indicated that the "process did work." He thought that the LBA provision in the bill in favor or against held "significant" sway over whether to proceed or not. He felt that the state already had a system that appeared to work. He wondered why the process needed to change. Senator MacKinnon relayed that the debt to bonding authority ratio was presently a significantly larger portion of potential indebtedness that carried great risk. The bill offered a similar ratio as the situation in 2007. She qualified that the state was underestimating the liability but did not think the ratio should be above 50 percent especially

without approval of the legislature. She revealed that the administration was supportive of the lower authority. She maintained that SB 97 was a positive move for the states bond rating and offered a positive ratio. She believed that the LBA provisions created a formal process to include the legislature in the decision. Representative Guttenberg was wondering what the state was trying to fix. He reiterated his belief that the system worked last fall. He suggested that merely not using the \$5 billion authority was an asset and had a value. He felt that the authority and its best use was "a tool in the state's coffer." He believed that the administration's acceptance of the lower bonding authority was its "standard answer" for "making do" with less.

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Representative Thompson was sensitive to the issues regarding the local contribution. He spoke to his experience as the previous mayor of Fairbanks. He recapped that when he was mayor the city had requested its PERS balance from the state actuarial. He reported that the city was told it had an excess of \$35 million and three years later the state claimed the city owed \$130 million. He noted that the 22 percent cap was imposed in response to the situation. Senator MacKinnon replied that the bill did not alter the contribution rate. She countered that credit rating agencies were aware that Alaska could utilize its unissued debt and further indebt the state. The situation jeopardized the state's bond rating. She commented that the by reducing the bonding authority the legislation put the state in the right direction. She advocated taking the state's pension obligation "very seriously." She spoke to the current fiscal crisis and funding the \$2.8 billion budget deficit as a priority and considered the \$6.1 billion pension obligation and future indebtedness as a "background issue" that needed to be addressed.

Representative Pruitt referenced the discussion regarding the credit rating. He wondered whether lowering the bonding authority thereby lowered "the potential opportunity for debt" and the ratio.

DEVEN MITCHELL, EXECUTIVE DIRECTOR, ALASKA MUNICIPAL BOND BANK AUTHORITY, DEPARTMENT OF REVENUE, replied that he agreed with Senator MacKinnon that an outstanding authorization impacted credit. He relayed that in the

current situation, the authority was for a liability the state already had "and was a little different." He recounted that last fall the \$2.3 billion to \$3.3 billion POB's issuance proposal received ratings in line with current ratings except for Standard and Poor's decrease of a "notch" from AA+ to AA flat. He likened predicting the credit rating agencies was similar "to reading tea leaves." He understood the legislature's point of view. He offered that as an "issuer of debt" he perceived that "greater flexibility resulted in better execution" of debt but recognized the need for a balanced approach. He concluded that "at the end of the day he could not think of any objection to reducing the current authorization."

Representative Guttenberg clarified that bonds were prohibited from any other type of use besides pension obligations. Mr. Mitchell responded in the affirmative. He qualified that when the initial authorization was established the legislation included a "couple" of different types of authorization based on the financial situation at the time that would not be utilized in the "current construct of the retirement system." He noted that one provision granted the municipalities use of the bond bank to cover the unfunded liability. He revealed that the option was not viable because the bonding would only benefit the state and not the municipality. He informed the committee that the current PERS actuarially assumed contribution rate was over 26 percent, the municipalities paid 22 percent and the state paid the remainder. He added that funding the debt service was based on a commitment by the legislature and the administration; no collateral or taxing pledge was committed to the debt service. The state's commitment to the debt service was a "lesser pledge" than what was typical in "other instances." Representative Guttenberg asked whether the POB credit rating "stood alone or was built into the state's credit rating as a whole." Mr. Mitchell answered that the POB credit rating relied on the state's credit rating and was one notch under the state's overall credit rating. He elucidated that the legislation required a credit rating of at least AA minus. Representative Guttenberg clarified that the \$3 billion payment was a cash infusion and not a bond issue. Mr. Mitchell responded that he was correct.

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Vice-Chair Gara mentioned the provision that a bond issuance was predicated on consent by LBA within 45 days. He wondered whether the time lag would have "a potential or material imperial" on the issuance. Mr. Mitchell answered in the negative. He related that last year the state engaged in 79 meetings with institutional investors in order to sell the bonds and the day before the pricing and commitment the state reneged on the sale. He revealed that as a result the banking community would only purchase future POB's from the state with some type of formal approval from the legislature. He indicated that the LBA provisions formalized the current "ad hoc process." He determined that there was "a lack of clarity" on how to obtain the appropriate approval from the legislature that the bill provided.

Co-Chair Seaton asked Mr. Mitchell to explain the difference between soft and hard obligations for unfunded liability payments. Mr. Mitchell explained that the state could choose not to fund the annual actuarially determined funding requirements without "negative ramification." When debt was issued making it a hard liability, missing payments resulted in consequences such as rating downgrades and lost access to the capital markets. He ascertained that recently "an evolution of pension liability was underway" and was elevated in the considerations of the credit rating agencies. He detailed that a failure to pay POB liability resulted in a similar rating downgrade as a debt service payment. Co-Chair Seaton had expressed concerns about the pension adjustments when the liability was paid at 105 percent. He wondered whether the state was statutorily or contractually obligated to pay the post-retirement pension obligations in addition to cost-of-living increases. Mr. Mitchell deferred the question to the Division of Retirement and Benefits. He thought that the payments only applied to Tier 1 retirees.

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Co-Chair Seaton referenced the state's split obligations between PRS and TRS. He questioned whether the state could issue POB's to the percentage of liability where the municipality would not need to pay its contribution at 22 percent. He wondered whether the 18 percent obligation would apply or could POB's be structured in a way to maintain the 22 percent split. Mr. Mitchell answered that the 22 percent was statutorily set in SB 125 (Pers/Trs

Contribut'ns;Unfunded Liability) [CHAPTER 13 SLA 08 - 04/08/2008] and did not fluctuate. He learned last fall that the way the actuarial math worked, any significant cash payment into PERS over \$500 million diminished the percentage of payroll requirement in the short term. He discovered that the 22 percent was a "hard payment requirement" set in statute. Last year's \$3.3 billion POB transaction proposal would have funded TRS at 90 percent and the portion that the state paid would have been refinanced if the bonds were issued. Co-Chair Seaton asked whether there was any downside to limiting the pension liability to 85 percent through use of POB's. He wanted to avoid any situation where the state was overfunded. Mr. Mitchell responded that the administration was looking at funding the liability at 90 percent. He observed that "if the state was borrowing at one rate and expected to reinvest at a higher rate than the larger the issue the greater the potential benefit." He deduced that for TRS the 85 percent limit "could restrict the potential of an issuance" but seemed satisfactory for PERS.

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Representative Guttenberg asked if the state reached 105 percent what the state's liability to increase benefits was. Mr. Mitchell deferred the question to the Division of Retirement and Benefits. Representative Guttenberg referenced other state's lower credit rating and reported that the states were still able to borrow money. He wondered whether a credit rating could be disregarded and money could be borrowed at a reasonable rate. Mr. Mitchell answered that California had experienced a volatile and tumultuous period with its credit rating. He commented that borrowing depended on the type of credit and market conditions that determined how expensive the credit rating differential was. He observed that there was a lot of anxiety with the market and rating agencies regarding Alaska due to the budget situation.

Co-Chair Foster OPEND Public Testimony.

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Co-Chair Foster CLOSED Public Testimony.

SB 97 was HEARD and HELD in committee for further consideration.

#hb150

HOUSE BILL NO. 150

"An Act relating to pay, allowances, and benefits for members of the organized militia."

[2:41:06 PM](#)

KENDRA KLOSTER, STAFF, REPRESENTATIVE CHRIS TUCK, introduced the legislation. She explained that HB 150 was an ongoing effort to modernize the state's Alaska Military Code from 1955. She reminded the committee that the process began last year with the Alaska Code of Military Justice. She delineated that HB 150 would authorize the same pay, allowance and benefits for the organized militia whether they are called into state active duty by the Governor or Adjutant General or called to service by the President. Presently, the Alaska State Defense Force soldiers serving during emergencies or disasters were paid as state employees according to tasks performed under assigned duties. She furthered that the type of accounting was cumbersome and labor intensive. Soldiers were uncertain of the amount of pay they would receive. The bill aligned with the current armed forces pay schedule which paid by grade and rank of the soldier instead of duties performed. She indicated that the change was cost neutral.

Representative Kawasaki asked about whether the soldiers were entitled to retirement benefits. Ms. Kloster answered that the Alaska State Defense Force was a volunteer organization and would only receive pay when in active state duty. She elaborated that the force was different than the National Guard members and she deferred further answers to the Department of Military and Veterans Affairs (DMVA). Representative Kawasaki clarified that he was asking whether there was an impact on Public Employees' Retirement System (PERS) from the bill. Ms. Kloster replied in the negative. She reiterated that as volunteers the force members only received pay when activated and were not entitled to PERS.

Representative Grenn asked for examples of recent emergencies. Ms. Kloster referred to pay tables in member's packets [prepared by the Department of Military and Veterans Affairs (copy on file).] She noted the table listed the example of the Sockeye fire on page 2. She elaborated that the table listed the pay scale comparisons

under the old system and the new system. The new system was cost neutral due to the efficiencies in the accounting required. Representative Grenn asked whether the Sockeye fire was the most recent example.

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Ms. Kloster replied in the affirmative. She deferred the question to the Department of Military and Veterans Affairs (DMVA) for further detail.

Representative Pruitt referred to the 2015 Sockeye fire example on the pay table document. He was trying to determine why some members of the force were paid more and others were paid less when compared to their previous service. Ms. Kloster deferred the question to DMVA. She added that a force member would be paid based on the person's current position in grade and rank rather than duty.

BOB DOEHL, DEPUTY COMMISSIONER, DEPARTMENT OF MILITARY AND VETERANS AFFAIRS (via teleconference), answered that the tables were looking at two different pay scales of two different systems. He elucidated that the military system used a straight system of rank. Currently, a National Guardsman and a defense force volunteer working together would be paid differently from different pay scales depending on rank and duty. The challenge was when the Alaska State Defense Force was activated the department evaluated the duties on a given day or hour consistent with the official position description system, hourly rates, and the pay range. The difference was how the two systems calculated doing the same job. Every disaster had different requirements in terms of the type of individuals activated. He concluded that he could not find a consistent pattern to identify the system that paid higher.

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Representative Pruitt asked whether the force members were in favor of the new pay system.

JOHN JAMES, COLONEL, DEPARTMENT OF MILITARY AND VETERANS AFFAIRS (via teleconference), replied in the affirmative.

Co-Chair Foster OPENED and CLOSED public testimony.

Co-Chair Foster CLOSED public testimony.

HB 150 was HEARD and HELD in committee for further consideration.

#hb167

HOUSE BILL NO. 167

"An Act relating to performance reviews, audits, and termination of executive and legislative branch agencies, the University of Alaska, and the Alaska Court System."

2:53:15 PM

Representative Wilson noted that 31 House members and 14 Senators had cosponsored the original legislation. She requested further discussion before the bill reported out of committee and thought the performance reviews had some merit. She wanted clarification that the Department of Health and Social Services (DHSS) performance reviews identified \$2 million savings.

COURTNEY ENRIGHT, STAFF, REPRESENTATIVE GABRIELLE LEDOUX, deferred to Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit to respond to the question and noted that she was not available to testify. Representative Wilson requested a subcommittee to examine the issue further. She suggested that Ms. Curtis had suggested ways to fix the problem, decrease the cost of the reviews, and still result in the desired outcome. She reminded the committee that the original legislation passed with bipartisan support.

Co-Chair Foster asked for more input from other members whether to report the bill out of committee or place it in a subcommittee for further discussions.

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Co-Chair Seaton noted that the sponsor of the original legislation, HB 30 (State Agency Performance Audits) [CHAPTER 19 SLA 13 - 05/28/2013] Representative Mike Chenault was on a subcommittee that recommended repealing the legislation. At present, he felt that proceeding with the program that was unfunded for the previous two sessions and that the legislature had already decided was not worth

continuing was the correct course of action. He recounted that the previous legislature left the program unfunded predicated on the results that were not worth the half a million dollar cost each year. He preferred to vote on the bill. He suggested addressing a particular agency's performance in question via specific legislation.

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Representative Tilton remembered that Kris Curtis identified one challenge with the legislature implementing the recommendations from the reviews. She recalled that Ms. Curtis reported on one recommendation that would save approximately \$1 million in the DHSS budget. She relayed her previous experience as a House Finance Committee staffer handling the DHSS budget when she undertook an internal review. She emphasized how helpful the performance audit review would had been if available at the time in enhanced understanding resulting in better outcomes and better decisions. She mentioned the overwhelming support for the original bill. She suggested examining the completed reviews further over the interim to discover further savings.

Representative Kawasaki reported having been a co-sponsor of the original legislation. He commented that the way the bill was presented and "envisioned" was different than the actual outcome of the reviews that were completed. He noted the necessity for the 3 full-time positions and \$1 million dollar cost to move forward with program. He supported moving HB 167 out of committee.

Vice-Chair Gara reported that a provision in the original bill tasked the audit with finding 10 percent or more of efficiencies in an agencies budget. Next year, the bill listed the University Of Alaska as the recipient of a performance audit. He communicated that the University had \$50 million to \$72 million in proposed cuts in the current fiscal year alone. The legislature had already cut roughly \$600 million from agencies. He acknowledged that the DHSS audit identified a \$1 million cut to the DHSS budget but was not scheduled to receive another review for ten years and the DHSS budget was cut \$200 million since passage of the bill. The goal of the original bill was to begin finding cuts. The legislature had already identified cuts that totaled \$3.4 billion in all departments. He did not see the logic in continuing the reviews on the drawn out

schedule by each individual agency to identify 10 percent in cuts. He concluded that the legislature was cutting all department's budgets and the bill was unnecessary.

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Representative Pruitt voiced that Representative Wilson's request was appropriate. He had found some very interesting information in some of the audits from the past. He agreed that in the current year it was appropriate to abstain from an audit due to costs and with the exercise of removing programs "from the books" if warranted. He believed that the performance review program should be reformed. He advocated for further consideration of the performance audit program over the interim and felt that the program was a useful tool that could bring value in the future. He promoted modernizing the program instead of eliminating it.

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Representative Thompson believed that "it was always good to review performance." However, the legislature had reduced budgets and identified efficiencies. He wondered about the workload and burden the program created for legislative audit and the departments under review. He favored the concept of a performance review but had mixed feelings about whether or not to support the bill. He suggested reviewing the program over the interim to determine how to proceed.

Representative Guttenberg liked the performance audit as a tool but surmised that the reviews worked only if the department was "static." He did not see the value currently because there had already been cuts resulting in a significant amount of transition and reorganization in each agency. He mentioned that missions and measures was an established tool that offered agency analysis. He suggested that additional audits could be funded in the future. Due to the state's current fiscal condition, he wanted to cancel the program. He mentioned that keeping the program in statute but not funding it caused instability and uncertainty for legislative audit. He supported moving the bill out of committee.

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Representative Wilson wanted to understand the difference in rescinding the program today versus waiting until next year. She noted that Ms. Curtis provided a review with 12 suggestions. She thought that requiring board audits held boards at higher standards than the agencies. She was asking whether it was worth "taking the program off of the books at present or waiting until next January and further examine the issue. She thought the audits provided an opportunity for agencies to determine whether its mission was met. She reiterated her request to reexamine whether the program, in total or in part, was beneficial.

Co-Chair Seaton reminded the committee that Ms. Curtis testified her need to hire 3 manager positions to manage contracts to continue with the reviews. The disruptions to the department the audits caused were "significant" especially due to budget cutting measures. He deduced that altering the program required additional legislation. He remarked that the legislature could require an agency audit if a problem was identified and noted that audits and performance reviews were different. He stressed that a better way to proceed was to address a targeted problem and not reform an unproductive system. He reiterated his desire to report the bill out of committee.

Co-Chair Foster indicated that members had "good arguments" on both sides of the issue. He believed that a vote was the best course of action.

Vice-Chair Gara reported on the fiscal note FN 1(LEG) with zero fiscal impact.

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Co-Chair Seaton MOVED to report HB 167 out of Committee with individual recommendations and the accompanying fiscal note.

Representative Wilson OBJECTED.  
A roll call vote was taken on the motion.

IN FAVOR: Gara, Grenn, Guttenberg, Kawasaki, Ortiz, Foster, Seaton  
OPPOSED: Thompson, Tilton, Wilson, Pruitt

The MOTION PASSED (7/4).

HB 167 was REPORTED OUT of Committee with an "amend" recommendation and with one new zero fiscal note by the Legislature.

#hb90

HOUSE BILL NO. 90

"An Act relating to occupational licensing fees; relating to an occupational investigation surcharge; and providing for an effective date."

[3:19:27 PM](#)

CRYSTAL KOENEMAN, STAFF TO REPRESENTATIVE SAM KITO, recapped that the bill intended to spread the investigative charges to all licensees and work similar to a surcharge, reducing the high fee fluctuations that some board experienced due to investigative costs and low number of licensees.

Representative Wilson asked whether there were individuals who were members of more than one board. Ms. Koeneman answered in the affirmative. Representative Wilson asked whether an individual on two boards paid each individual licensing fee. Ms. Koeneman answered in the affirmative. Representative Wilson wanted to ensure that the legislation did not impact business licensing fees. Ms. Koeneman responded in the affirmative and added that the bill only impacted professional licensing fees.

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Co-Chair Foster OPENED Public Testimony.

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MARK RICHARDS, EXECUTIVE DIRECTOR, RESIDENT HUNTERS OR ALASKA, FAIRBANKS (via teleconference), spoke in opposition of HB 90. He spoke to the Big Game Commercial Services Board regarding how guiding affected resident hunting opportunities and the wildlife resources. He pointed out that the board was in debt due to investigative costs that were the second or third highest out of all boards. He reported that the Board of Nursing had the highest investigative costs. He pointed to the discrepancy in the costs of investigations per member due to differences in the number of licensees. Nurses had 20 thousand members and its portion of fees related to investigations was \$47

versus two thousand guide licensees each paying \$316 of their fee towards investigations. He stated that due to the nature of the guiding service that involved "taking of a public resource" the activity required a certain level of enforcement presence. Ninety five percent of all guides operated within the law, however the bad actors lead to high investigatory costs. He elucidated that under the bill the nurses would pay \$300 thousand more in increased licensing fees to help cover the investigative costs of the Big Game Commercial Services Board. The guide board fees would significantly decrease. He relayed that the guide board's concern that the high cost of guide licensing fees deterred illegal behavior. He emphasized that by removing the burden of the high fee some guide's standards would relax and lead to "bad behavior." He urged members to vote in opposition of the bill or exempt the board from the provisions in the bill.

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AL BRETT, SELF, FAIRBANKS (via teleconference), spoke in opposition of HB 90. He communicated his unease with allowing the division to adjust fees through regulation versus statute. He shared that he was a registered Class A guide and reported that the previous two times the fees were raised was during the hunting season and was inconvenient. He believed there was a problem with the government controlling businesses and resources. He suggested that investigations were a "civil process" where grievances were best addressed in civil court. He opined that it was unfair for the state to "intervene" in civil issues "on boards related to occupations."

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Co-Chair Foster CLOSED Public Testimony.

Representative Ortiz asked how Ms. Koeneman would respond to the first testifier. Ms. Koeneman deferred to the Department of Commerce, Community and Economic Development (DCCED) to answer the question.

SARA CHAMBERS, ACTING DIRECTOR, ALCOHOL AND MARIJUANA CONTROL OFFICE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, responded that the fee setting process was codified in statute and the bill did not alter the fundamental principle that the division set fees "in

concert with the boards and the programs pay for their expenses." The investigative process was transparent with the exception of items that were necessary to remain confidential. She expounded that the bill served as an insurance policy for investigative costs. The state had historically struggled with setting licensing fees in a timely manner so licensees could budget to cover an increased license fee expense. She deemed that the volatility came from investigator's statutory responsibility, in concert with a board to pursue violations. The division lacked the resources to actively seek out violations but had a responsibility to investigate complaints. She related that the amount and level of investigations were impossible to anticipate. Some of the state's licensing programs had investigative fees of over \$100 thousand for a single investigation either for violations or from challenges to a denied license.

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Representative Ortiz understood the concept of an insurance pool and understood the volatility in costs. He was specifically concerned with the testifier's scenario that his board would be charged less and nurses more under the bill. Ms. Chambers relayed that the division had done some modeling and determined that nurses would pay \$9 in additional fees each licensing period. She detailed that very few boards would have increased license fees of over \$50 every two years and boards with extremely high fees and deficits such as the midwifery and guide boards would save several hundred dollars. The state was looking "at a greater savings" with nominal fee increases to larger licensing programs that had investigative costs but had the "economy of scale to spread the expense across its membership."

Representative Kawasaki appreciated the bill. He asked how the different boards would change their future fees with the addition of the surcharge. Ms. Chambers indicated that the division analyzed board's expenses and revenue and set their fees accordingly. The investigative costs would be deducted from the equation and allocated through the surcharge. The remainder of the fees would be set based on the current fee analysis model. The investigative fees would be allocated separately.

Representative Thompson reported receiving feedback from licensees that the investigators were not familiar with the profession they were investigating. He commented that the situation made the investigations longer. He wondered how many investigators were on staff and if they were trained in regards to what they investigated. Ms. Chambers stated that the investigative process included board members, which assured appropriate expertise. She indicated that many licensing programs lacked boards. When investigating a licensure program with a board, the division relied on board member review by an advising board member before proceeding with an investigation. Rarely, an area was so specialized an investigation required expert witnesses to speak to the specialty. The division requested the board's consent before an expert witness was retained. Representative Thompson was satisfied with her answer.

Representative Wilson was concerned with the person who engaged in an activity without a license yet the board's licensees had to pay for the investigation. She asked why the state did not pass the investigatory costs on to the offender instead of the board. Ms. Koeneman responded that she had a good point. She explained that when the guiding statutes were established the licensees wanted to protect their industry through regulation of unlicensed activity under their purview. She asserted that addressing unlicensed activity was a larger policy call and board members should engage in the discussion over relinquishing their duty.

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Representative Wilson clarified that she did not want boards to relinquish anything. She was suggesting that an unlicensed individual caught engaging in the licensed activity should be held responsible for the investigatory costs and not the board.

REPRESENTATIVE SAM KITO, thought that the issue was "broad and complicated." In attempting to address the unlicensed practice issue he discovered that even if the activity was covered under criminal statutes, the Department of Law (DOL) investigations would still need to rely on the DCCED investigators for their expertise. He voiced that Representative Wilson's inquiry was a broader question that he contemplated would need to be addressed as a second step after the changes in HB 90 were implemented. He commented

that if costs were recovered from unlicensed violators he wanted the revenue deposited into the general fund (GF). He worried that an "adverse motivation" might arise within the division to pursue unlicensed practice if the department knew the money was dedicated to its licensing fund.

Representative Wilson referred to a chart in members packet titled, "FY 2016 Professional Licensing Statistics" by the Division of Corporations, Business and Professional Licensing [copy on file]. She asked how much the bill would save or increase the guide board licensing fees. Ms. Koeneman responded that the big game guides currently paid \$316 per licensing period and would save \$261 in their licensing costs under the bill. Representative Wilson stated that when boards were formed the costs to run them were assessed and paid by the board. She declared that the bill was a "big policy change." She understood what the sponsor intended to accomplish but she felt that the approach was penalizing the licensees who were not breaking the law. Ms. Koeneman added that she had reviewed the FY 2016 investigative actions and discovered that 22 percent was due to unlicensed activity and 88 percent of the investigations were from licensees doing their job and having some missteps. Representative Wilson replied that the licensees should pay as well.

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Representative Kito added that spreading out all of the investigatory costs including for unlicensed activity, benefitted all boards and the public service. He offered that the lower costs decreased the "barrier to entry" for certain professions that had a small number of licensees.

Representative Thompson remembered that previously the legislature passed laws requiring fees recovered from an offender would cover the cost of the licensees' fees. Ms. Chambers answered that if the legislation was passed it did not pertain to Title 8, which contained licensing statutes.

Vice-Chair Gara was aware that a number of people with business licenses were not tied to a board. He asked for confirmation that the costs would not be spread to individuals that were not regulated by a board. Ms. Chambers indicated the state had 43 licensing programs but only 22 operated under boards. However, all professional licensees were required to pay into the proposed system.

She exemplified that construction contractors had professional licensure but did not have a board and were required to pay into the new system. Vice-Chair Gara asked whether there was an error in the bill. He referred to section 7 of the bill [page 4, line 8] that addressed an investigation surcharge added to AS 08.01.065 and cited (a) (2). He did not see (a) (2) in existing statute but deduced that it was a reference to the new provision in the bill. Ms. Koeneman responded in the affirmative.

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Representative Kito clarified that the bill included all of the professions regulated under Title 8 that included those with a board or exclusively a license. He used the example of acupuncturists in the scenario of a professional license without a board.

Representative Ortiz had some of the same concerns as Representative Wilson. He clarified that unlicensed activity comprised of 22 percent of investigations. Ms. Koeneman responded in the affirmative. Representative Ortiz asked if the position was that the passage of the bill brought greater good for the law abiding licensees but did not impact whether the "bad actors had a greater stake or lesser stake in the issue." Ms. Koeneman agreed with his statement.

Representative Wilson was concerned that under existing law a mechanism did not exist to collect investigatory fees unless a case was a criminal one. She reiterated her previous concerns and still had a problem with the legislation. She added that if no one was found guilty the board still had to pay the investigative costs. Ms. Koeneman relayed that currently there was a \$5000 fine for licensed activity in AS 08.01.102. However, the fine would not cover the entire costs and was deposited into the general fund.

Ms. Chambers interjected that even though a board and the division was able to charge fines for unlicensed and licensed violations, the finds did not cover any of the investigatory expenses because the fees went into GF. She addressed Representative Kito's remarks regarding incentivizing the division to enforce unlicensed activity. She did not think that increased fees for unlicensed

activity deterred negative behavior. She shared that all of the boards were in favor of the legislation.

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Representative Guttenberg suggested that if the issue was an easy one to fix it would have been dealt with years ago. He wondered whether DOL assumed the cost of a criminal licensing investigation. Ms. Koeneman deferred the question to the division.

ANGELA BIRT, CHIEF INVESTIGATOR - CORPORATIONS, BUSINESSES AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, ANCHORAGE (via teleconference), answered that a small portion of the caseloads became criminal and were prosecuted through the Office of Special Prosecutions and Appeals without charges to the division. She furthered that civil prosecutions through DOL and any Administrative Hearings costs were part of the board's investigative costs. Representative Guttenberg clarified his question by restating it. Ms. Birt responded that typically a criminal case began with DOL and the board was not charged for the criminal component. She explained that at the conclusion of the criminal case statute allowed board punishments. She exemplified that the Big Game Commercial Services Board could fine up to two times the criminal conviction. She stated that she was less familiar of the route Representative Guttenberg had described.

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Co-Chair Foster MOVED to ADOPT Amendment 1:

Page 1, line 11, following "chapter"  
Insert "; the regulations may provide for a reduction in the amount of the surcharge imposed under this paragraph for a licensee who is required by law to hold and maintain one license in order to qualify for and maintain another license"

Representative Wilson OBJECTED for discussion.

Ms. Koeneman explained the amendment. She stated that Amendment 1 allowed for the department to reduce a surcharge imposed under the bill if a licensee was required to hold and maintain another license in order to qualify for a license. She exemplified that in order for a nurse to

hold an Advanced Practice Registered Nurse License it was necessary to maintain a Registered Nurse license. She reported that the situation affected 960 licensees out of 11 thousand registered nurses.

Representative Wilson WITHDREW her OBJECTION.

There being NO OBJECTION, it was so ordered.

[4:00:21 PM](#)

Vice-Chair Gara relayed that there was one fiscal impact note in the amount of \$3.4 thousand from DCCED FN 1 (CED) for the implementation of regulations, postage, and printing.

Co-Chair Seaton MOVED to report CSHB 90 (FIN) out of Committee with individual recommendations and the accompanying fiscal note.

Representative Wilson OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Gara, Guttenberg, Kawasaki, Ortiz, Thompson, Seaton, Foster  
OPPOSED: Tilton, Wilson, Grenn, Pruitt

The MOTION PASSED (7/4).

CSHB 90 (FIN) was REPORTED OUT of Committee with a "do pass" recommendation and with a previously published fiscal impact note: FN1 (CED).

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AT EASE

[4:06:47 PM](#)

RECONVENED

Co-Chair Foster reviewed the agenda for the following day. He recessed the meeting to a call of the chair [Note: the meeting never reconvened].

#

ADJOURNMENT

4:07:27 PM

The meeting was adjourned at 4:07 p.m.