

HOUSE FINANCE COMMITTEE  
February 6, 2018  
1:32 p.m.

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CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:32 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 Sam Kito, Sponsor; Crystal Koeneman, Staff, Representative Sam Kito; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Sara Chambers, Operations Manager, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community and Economic Development; Representative Louise Stutes.

PRESENT VIA TELECONFERENCE

Erika McConnell, Director, Alcohol and Marijuana Control Office; Christine Lumba, Auditor, Legislative Audit Division; Bruce Schulte, Campaign to Legalize Marijuana, Anchorage; Mark Springer, Chairman, Marijuana Board, Bethel; Jason Brandeis, Self, Anchorage; Kim Kole, Self, Anchorage; Leah Levinton, Self, Anchorage; Edward Martin, Self, Cooper Landing; Allen Levy, Chair of the Board,

Psychologists and Psychological Associate Examiners; Robert Lane, Alaska Psychological Association, Anchorage; David Edwards-Smith, Chair, Board Of Massage Therapists; Linda Day, Audit Manager, Legislative Audit Division.

SUMMARY

HB 273 EXTEND: MARIJUANA CONTROL BOARD

HB 273 was HEARD and HELD in committee for further consideration.

HB 274 EXTEND: BD OF PSYCHOLOGISTS/PSYCH ASSOC.

HB 274 was HEARD and HELD in committee for further consideration.

HB 275 EXTEND: BOARD OF MASSAGE THERAPISTS

HB 275 was HEARD and HELD in committee for further consideration.

Co-Chair Seaton relayed the agenda for the day.

#hb273

HOUSE BILL NO. 273

"An Act extending the termination date of the Marijuana Control Board; and providing for an effective date."

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REPRESENTATIVE SAM KITO, SPONSOR, introduced the bill. He relayed that the purpose of the bill was to extend the termination date for the Marijuana Control Board for six years. He communicated that the extension was for six years instead of the full 8 years, which indicated that the board was functioning in the public's interest but acknowledged that the board was still in a "formative" stage. The current sunset period lasted 3 years, which provided the opportunity for the board to become operational and time for the legislature to assess how the board was functioning.

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CRYSTAL KOENEMAN, STAFF, REPRESENTATIVE SAM KITO, noted that Erika McConnell, Director of the Alcohol and Marijuana Control Office (AMCO) was online for questions.

Representative Wilson asked why the board was not self-supporting. She ascertained that the two boards funds were "mingling." She wanted the marijuana board to take care of its own needs. Representative Kito deferred to the Department of Commerce, Community and Economic Development (DCCED) and the legislative auditor. He mentioned that the two boards shared the same staff and costs. The situation was unique, and he was uncertain how the costs were distributed. He explained that general funds (GF) were appropriated to establish the board and \$500 thousand was appropriated in the current fiscal year. The marijuana board was expected to be self-sustaining the next fiscal year based on its fee structure.

Representative Wilson thought that the GF was supposed to be reimbursed. Representative Kito was unable to answer the question.

Representative Pruitt heard that currently the board was 70 percent sufficient. He recently read that "there was a request to reduce the tax" on marijuana. He asked whether the board would be self-sustaining by FY 2020 and how that would happen if the board wanted to reduce its revenues. Representative Kito responded that there were 2 distinct issues to his question. He elaborated that the board's responsibility was to control the application process and ensure that the process was fully sustainable. The license fees became designated general funds (GDF) allowing the board access to the funds for its budget. The marijuana tax set at \$50 per ounce was deposited into the GF and was not governed or accessible by the board.

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Representative Pruitt asked if the board was confident they would be able to be self-supporting by FY 2020. Representative Kito deferred to Ms. McConnell.

ERIKA MCCONNELL, DIRECTOR, ALCOHOL AND MARIJUANA CONTROL OFFICE (via teleconference), indicated that the marijuana board was expected to be financially self-supporting through license and application fees by FY 2020.

Representative Pruitt wondered whether the licensing fees would be lowered in the future or if the fees would remain the same for a period to potentially build up an excess of funds. He asked what the board would do with an excess funds. Ms. McConnell responded that it was difficult to guess whether the fees would need to be raised or lowered in the future. The board would evaluate the fee structure on a yearly basis to ensure self-sufficiency. Representative Pruitt thought that intent language was added to the budget at the time the initial \$1.5 million GF was appropriated for start-up expenses, which specified that the GF was expected to be reimbursed. He asked whether the expectation remained and if he was correct about the expectation of repayment. Ms. McConnell was unable to answer the question. She would provide follow-up.

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Representative Guttenberg acknowledged the unique situation of having one administrative entity for two industries. He addressed the audit recommendations and surmised that some recommendations were related to "conflicting priorities" between the boards. He asked whether Ms. McConnell engaged in discussions about or saw a future where both boards would "stand alone." Ms. McConnell replied that currently 2 separate boards existed. She wondered if he was asking whether both boards would be combined. Representative Guttenberg clarified that he was referring to AMCO. He wondered whether there were any conflicts of priorities because of the shared staff. Ms. McConnell replied that the answer was a policy call for the legislature. She related that the staff worked very hard to meet the priorities for both boards and that things were operating well. She reiterated that if the legislature wanted to split up the support staff, the action would be a policy call. Representative Guttenberg referred to recommendations regarding timing and following up on investigations in a timely manner. He wondered if she needed additional staff to support the marijuana board. Ms. McConnell explained that the recommendation regarding creating a prioritization plan for enforcement applied to both boards. The office had 8 enforcement staff for a "very large state." The support staff recognized the level of resources available and was working diligently to address the recommendation concerning health and safety. She related that AMCO agreed with the auditor's recommendation for a written prioritization plan.

Co-Chair Seaton acknowledged that Representative Grenn joined the meeting.

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Representative Wilson referred to page 8 of the Legislative Audit [A Sunset Review of the Department of Commerce, Community, and Economic Development, Marijuana Control Board October 6, 2017 Audit Control Number: 08-20100-17] (copy on file). She read the following:

Additionally, as included in AMCO's FY 17 operating budget,<sup>3</sup> it is the intent of the legislature that application and licensing fees cover the cost of regulation and recover unrestricted general fund appropriations made while the program was being established.

Ms. McConnell replied that the board was not currently reviewing fees and she would follow-up with a plan to reimburse the initial operating costs.

Representative Kito interjected that the legislature authorized the board's expenditures. He suggested that additional legislative authorization might be required if a board was spending money to reimburse the GF. He was uncertain whether a board could statutorily reimburse the GF.

Representative Wilson commented that the repayment was a cost and doubted additional authorization was required.

Representative Thompson understood that other boards did not have their own investigative staff. Ms. McConnell responded that AMCO had 8 investigators on staff. Representative Thompson deduced that other boards had to reimburse for investigative time but AMCO would not be assessed additional investigative fees since the investigators were on AMCO's staff and already paid for their work.

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Vice-Chair Gara suggested that when the initiative was passed it was estimated that marijuana tax revenue would generate \$4 million or \$7 million in tax revenue. He asked for the amount of tax revenue generated to date. Ms.

McConnell reported that through the end of December taxes collected to date were \$6.314 million. She clarified that the amount was collected from October 2016 through December 2017. Vice-Chair Gara voiced that the initiative should be honored as written. He asked whether she was concerned that the board had been too strict when issuing licenses. Ms. McConnell did not think the board had been too strict. They had approved 95 percent to 97 percent of the applications received.

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Representative Guttenberg knew that the industry had a plan to change the tax structure that did not lower taxes. He inquired whether the industry had approached the board regarding taxes. Ms. McConnell responded in the affirmative. She delineated that about two weeks prior the board decided to draft a resolution that suggested changing the tax from an excise tax to a percentage-based sales tax. The resolution would be reviewed and voted on at the next meeting in April 2018. Representative Guttenberg asked what the expected impact would be on revenue. Ms. McConnell was unaware of what the percentage would be. She informed committee members that the concern over a flat tax was that it kept the wholesale price artificially high. The current wholesale price was \$800 per pound. She noted that in other legalized states the marijuana wholesale price was \$100 per pound. The issue for the board was to allow the price of marijuana to naturally fluctuate with supply and demand.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, reminded members that the purpose of the audit was to determine whether the board was meeting its mission of serving the public's interest. She referred to the Background Information section on page 3 and noted that the section summarized the boards implementation process. Ms. Curtis read from the Legislative Audit Report Conclusions on page 5:

Overall, the audit concludes the board is serving the public's interest by effectively licensing marijuana establishments and developing and adopting regulations necessary to implement statutes that allow for the cultivation, manufacture, and sale of marijuana in Alaska.

Ms. Curtis reported that the audit recommended a six-year extension. She characterized the findings of the audit as "positive." She continued to read from the audit's conclusions:

Board operations were conducted in an effective manner. The audit found that from July 2015 through April 2017, the board held 21 meetings and met in each judicial district of the state during calendar year 2016 as required by statute. Board meetings were public noticed and each meeting allowed time for public comment. The audit also found that board membership and composition complied with statutes and a quorum was consistently met. The board met its statutory mandate to adopt regulations necessary for implementing statutes.<sup>1</sup> Significant regulations (3 AAC 306) specify requirements for the issuance, renewal, suspension, and revocation of registrations to operate marijuana establishments; qualifications for registration; and a schedule of application, registration, and renewal fees. The board also amended regulations to clarify submissions to the board and conduct of board meetings. Regulatory additions and changes during the audit period were public noticed according to the Administrative Procedures Act. To help evaluate board effectiveness, surveys were conducted as part of the audit. A survey was sent to 101 licensees and 71 (70 percent) responded. A second survey was sent to 16 local governments that had a license issued in their jurisdiction and 14 (88 percent) responded. Licensee and local government survey questions and responses are presented as Appendices B and C of this report. One hundred percent of local government survey respondents and 75 percent of licensee survey respondents rated the board's overall effectiveness in serving the public interest as effective or very effective.

...Additionally, 93 percent of local government survey respondents rated the board's effectiveness in enforcing marijuana laws in their area as good or excellent...

Ms. Curtis cited a table on page 8, titled "Exhibit 2" that reported the board's licensing activity from July 2016 through April 2017. She noted that 122 licenses had been issued during the time and 80 percent of licensee survey respondents rated their overall licensing experience as

good or excellent. She addressed the application and licensing fees and read the following:

Additionally, as included in AMCO's FY 17 operating budget,<sup>3</sup> it is the intent of the legislature that application and licensing fees cover the cost of regulation and recover unrestricted general fund appropriations made while the program was being established. AMCO staff has implemented a process for tracking both revenues and expenditures, but reported it is too early in the development of the board to determine whether the current fees are set at sufficient levels to cover the cost of regulating the marijuana industry. AMCO management expects to be fully funded by application and licensing fees by FY 20.

Ms. Curtis pointed to "Exhibit 3" on page 9 and mentioned that the table presented a schedule of application and license fees established by the board. She elaborated that the audit contained 4 recommendations beginning on page 11. She moved to Recommendation 1, "The board members, the Alcohol and Marijuana Control Office (AMCO or control office) director, and enforcement supervisor should work together to formally establish an enforcement plan to direct limited enforcement resources." She read the following:

The audit identified the enforcement section is operating without a formally established enforcement plan. Neither the Marijuana Control Board (board) nor AMCO director had considered the need for or importance of establishing enforcement goals or plans to ensure the effective allocation of enforcement resources.

Per AS 17.38.121, the board is vested with the powers necessary to enforce laws related to marijuana and may employ enforcement agents and staff it considers necessary to carry out its duties. The board has tasked the enforcement section with the responsibility of detecting violations and enforcing marijuana laws.

By not formally establishing an enforcement plan, the enforcement section has no guidance for prioritizing its limited resources and runs the risk of not adequately protecting the public.

Ms. Curtis moved to Recommendation 2, "The board and AMCO management have not maintained a process to monitor and track all actions taken on complaints to ensure they are resolved in a timely manner." She noted that the first two recommendations also applied to the Alcohol Control Board audit. She read the following from the audit"

The board does have a process to receive complaints from licensees, law enforcement agencies, and the general public through their website, telephone, or emails; however, complaints are only tracked if they result in an inspection or investigation. Furthermore, the basis for a decision not to investigate is not documented and maintained.

According to AMCO staff, a process to log all complaints received previously existed for the Alcoholic Beverage Control Board; however, when the Marijuana Control Board was created, staff responsibilities were realigned, and the maintenance of the complaint log took a lower priority compared to new responsibilities associated with marijuana regulation.

By not tracking complaints, there is an increased risk that board staff may not investigate complaints and/or not investigate complaints in a timely manner. Such instances could reduce the board's ability to effectively enforce marijuana laws. Additionally, complaints received directly by board staff via telephone or email may never be resolved in the event of staff turnover.

Ms. Curtis reviewed Recommendation 3, "The AMCO director should develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training." She conveyed that 47 of 53 marijuana handler permits tested were issued by AMCO with incorrect expiration dates. The auditors discovered that the errors resulted from the lack of written procedures and insufficient training contributed to AMCO staff's varying interpretations for calculating permit

expiration dates and felt that the issue was easy to remedy. She turned to Recommendation 4, "The AMCO director should develop and implement procedures to segregate the duties for calculating and remitting fees to local governments." She read the following:

AMCO management does not adequately segregate duties over remittances of application fees to local governments. The audit found one AMCO employee is responsible for calculating and approving the amounts to be remitted to local governments, and no separate review is performed.

Upon receipt of a new or renewal application, AS 17.38.200(c) requires the board to immediately forward a copy of each application and half of the registration application fee to the local regulatory authority for the local government in which the applicant desires to operate. Management is responsible for establishing internal controls to ensure fees remitted are accurate and complete. Segregation of duties is a key internal control for appropriately receiving and distributing funds.

Ms. Curtis delineated that \$113 thousand in fees were remitted to local governments. She believed the issue would be easily solved. She indicated that the department's response was located on page 33 and the board's response was on page 35 and both DCCED and the board agreed with all the recommendations.

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Co-Chair Seaton announced that Co-Chair Foster joined the meeting and handed the gavel over to Co-Chair Foster.

Representative Kawasaki referred to the Recommendations 1 and 2. He asked whether the alcohol board was supporting the marijuana board's enforcement duties under AMCO. Ms. Curtis replied that the board was partially covered by GF but was able to track the activity for the board separately. Representative Kawasaki wondered whether statute dictated that both boards "must have receipts that support the services they provide." Ms. Curtis deferred the question to the auditor who lead the audit.

Representative Kawasaki repeated his question and asked whether both the alcohol and marijuana boards "had to seek the same receipts... to make the board work."

CHRISTINE LUMBA, AUDITOR, LEGISLATIVE AUDIT DIVISION (via teleconference), answered that no "explicit statutory requirement" existed but noted the existence of the legislative intent language. Representative Kawasaki asked if the same requirement applied to a business license. Ms. Lumba replied that the marijuana statutes included authority for the board to employ enforcement agents that were considered necessary to carry out their purposes.

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Representative Kawasaki questioned whether a statute prohibited collecting revenues more than what was necessary to address the board's recommendations. Ms. Lumba was not unaware of any statutory requirements relating to excess fees. Representative Kawasaki thought that occupational licensing seemed different from the marijuana license because fees were expected to cover enforcement. Ms. Lumba agreed that the marijuana board was a bit different and was not under the Division of Corporations, Business, and Professional Licenses. She explained that both boards had its own supporting office, AMCO that employed its own staff to support the board's activities.

Vice-Chair Gara asked if the auditors reviewed board actions for their legality. Ms. Curtis answered in the negative and specified that was the case for all sunset audits. Vice-Chair Gara remembered that the marijuana initiative authorized the use of concentrates, but the board prohibited its use. He supported the use of concentrates for medical marijuana. He inquired whether the issue was something an audit would address. Ms. Curtis responded that during the survey phase of the audit, if auditors discovered that it was an issue, Legislative Audit would evaluate the concern. She noted that auditors did not find any issue relating to concentrates.

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Representative Guttenberg referred to the audits recommendations regarding procedures and timeliness. He asked whether addressing the recommendations would create the efficiencies that allowed the board to carry out the

duties specified in the audit. He wondered whether AMCO had requested authority for additional staff from Office of Management and Budget (OMB). Ms. Curtis reported that it was not something auditors had looked at in the audit. She was aware the board had limited resources, but the audits results were positive consequently, the audit focused on how the board was using its limited resources and if improvements could be made within the resources available. Representative Guttenberg asked if the recommendations could be mitigated with the board's current resources. Ms. Curtis reported that the survey results were positive, and the audit found that the board was operating effectively.

Co-Chair Foster asked Ms. McConnell to address the fiscal note.

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Ms. McConnell reviewed the fiscal note. She explained that the previously published fiscal impact note for DCCED FN1 (CED) appropriated to AMCO requested a total of \$1.815 for \$920 thousand in Personal Services, and \$73 thousand in travel expenses. She reminded committee members that the board was mandated to meet in each judicial district at least once per year and the board had a minimum of 5 board meetings per year. She added that \$750 thousand was allocated to services that included Information Technology, support from DCCED and the Department of Law (DOL), administrative hearing services from the Department of Administration, leases, and meeting space rental. Finally, \$71 thousand was the total for Commodities like printing regulation books, cleaning and office supplies, etc. The FY 2019 request included \$523.8 thousand in Unrestricted General Funds (UGF). She relayed that UGF was expected to be zero in outlying years and anticipated the program would be fully supported by program receipts by FY 2020.

Representative Pruitt asked whether she foresaw any increase in costs for personal or other services over the timeframe on the fiscal note. Ms. McConnell did not have a sense of what would be needed in the future. Representative Pruitt wanted to ensure they were currently setting the right fees to recover costs. He expected that costs would increase, and wanted the scenario considered when setting licenses and application fees.

Co-Chair Foster OPENED Public Testimony.

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BRUCE SCHULTE, CAMPAIGN TO LEGALIZE MARIJUANA, ANCHORAGE (via teleconference), supported HB 273 in its current form. He commented on the auditor's recommendation to have a concise policy on enforcement. He hoped that the recommendation became a "priority" for the board. There had been occasions where a "somewhat objective interpretation" of regulation or statute had been enforced, which "created some angst" amongst the industry. He indicated that the board granted "fairly broad authority" to enforcement staff, which created some problems. He thought that addressing enforcement would reestablish "trust and credibility" with industry. He commented about testing. He informed the committee that presently, there were only 2 labs in the state. He reported that a committee was established to address the issue. He hoped that the committee would develop positive recommendations. He suggested that one remedy would employ existing state laboratory resources as third-party validations for these labs. He wished that the legislature would consider the option and provide funding. However, he agreed that "the effort needed to be self-sustaining." Finally, he commented on taxes. He mentioned that the ballot initiative specified a \$50 per ounce excise tax that equated to \$800 per pound cost. He indicated that a change in the tax was only possible via legislative action. The initiative also authorized the Department of Revenue (DOR) to establish a different tax on other parts of the plant. He detailed that the board recommended a \$10 per ounce tax on the lower quality parts of the plant in 2015 and DOR implemented the tax at \$15. He was not suggesting that the state should not receive revenue from the industry but recommended that the state adopt a more creative approach to taxation. He thought it would translate to more consistent revenue for the state. He voiced that by the following year the industry would have two solid years of market data to examine and make more informed decisions regarding any changes to the tax structure.

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Representative Wilson asked whether he thought that the fees were adequate to support board activities without extra support from the alcohol fees. Mr. Schulte was not aware of the exact finances of the board. He surmised that her question related to whether to separate or combine the

boards. He supported the structure of separate boards with a shared staff. Representative Wilson commented that she was not concerned with the structure. She was concerned that the fees were not adequate to cover the board's functions. She asked whether he had determined if the fees were adequate to cover the needs of industry. Mr. Schulte originally thought the state was setting the fees high, but he discovered that the fees were necessary to fund the board's efforts. He did not think any licensees would "balk" at the fee structure if they were treated fairly.

Representative Pruitt acknowledged that Mr. Schulte had mentioned that he had encouraged the board to request more state support related to laboratory use and additional funding to help maintain the industry. He asked whether he understood him correctly.

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Mr. Schulte replied that he could not speak for the board and was alluding to discussions he had with industry representatives. He elaborated that the industry was challenged by the limited lab testing facilities; only 2 testing sites operated in the state and their results varied, raising the question about which test results were valid. Testing could be done in labs outside of the state. In terms of validating actual results, "it might be more economical" to validate the results by turning to a laboratory that was not affiliated with the industry. He supported the marijuana industry paying for the testing validation. However, if using a state laboratory facility was a viable option "to achieve surety in the public's mind he hoped the legislature would be open for a discussion on the matter.

MARK SPRINGER, CHAIRMAN, MARIJUANA BOARD, BETHEL (via teleconference), relayed that he was the chairman and rural member of the board since its inception in 2015. He responded to Vice-Chair Gara's concerns about concentrates. He reported that the board did license concentrate manufacturers and had never ruled against concentrates. He reported that the Marijuana Control Board had 5 members, met every 2 months, and had a "significant workload". He noted his appreciation of the AMCO staff and the DOL counsel of William Milks, Attorney V, Civil Division. He believed that the board was successful in protecting the public's health and safety and keeping the industry

"Alaskan" via regulation. He stated that "as citizen regulators they took their responsibilities very seriously" through their enforcement and regulatory actions. He noted that the board did not regulate medical marijuana. He reported the board refused to license some products out of concern and caution that they were attractive to children. The board followed the guidelines set out in the U.S. Department of Justice's "Cole Memorandum". He spoke to fees and pointed out that the fees were a function of the number of applications received. He did not want to put the board in a position of maintaining a quota of licenses to approve if the fees were calculated by the number of applications.

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Representative Guttenberg thanked Mr. Springer for serving on the board. He referred to the bill on hemp farming [SB 6 (Industrial Hemp Product.; Cannabidiol Oil - CHAPTER 5 SLA 18 - 04/12/2018)]. He noted that a significant issue was the distance between a hemp farm and a marijuana facility. He asked whether the board had examined the issue in terms of the "safety" of marijuana licenses. Mr. Springer answered that he had not looked at that bill. He had received comments via email related to hemp farming. He shared that marijuana licensees had a restricted area around their establishments. He imagined there were some licensed individuals who would also like to cultivate hemp. He noted that hemp did not appear in the board's statute, but as the hemp farming bill progressed the board would learn about the provisions in the bill and make recommendations on the distance issue. Representative Guttenberg related that in Colorado a marijuana facility could not be located within 5 miles of a hemp farm and in Canada the distance was 10 miles due to pollen traveling in the air. He indicated that the hemp bill included a provision that both departments would come up with a reasonable restriction relating to distance.

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JASON BRANDEIS, SELF, ANCHORAGE (via teleconference), shared information about his professional background as a Professor of Justice and Legal Studies and attorney representing clients on a variety of marijuana related issues. He was testifying on behalf of his clients and the marijuana industry. He had monitored the board's and AMCO's work in developing a strong regulatory framework for the

marijuana industry in Alaska. He believed the board had functioned in a fair and professional manner and that maintaining the board was necessary to the future success of the industry and ensuring the public's safety. He strongly supported the bill.

KIM KOLE, SELF, ANCHORAGE (via teleconference), owned Raspberry Roots, a cultivation and retail business. She spoke in support of the board. She thought it was critical for the board to remain in place as the industry grew and matured.

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LEAH LEVINTON, SELF, ANCHORAGE (via teleconference), spoke in support of HB 273. She owned the business Enlighten Alaska. She firmly believed that the board was critical to the development of the industry. She thought the board would help keep the industry consistent. Her relationship with the board had been very positive. She reiterated her support for the bill.

EDWARD MARTIN, SELF, COOPER LANDING (via teleconference), commented about the initial chairman of the board recently resigning.

Co-Chair Foster asked the testifier to refrain from making negative comments about individuals.

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Mr. Martin continued to discuss his disgruntlement over the board and the conflicts the state had with federal law. He mentioned Mr. Schulte's testimony regarding out-of-state testing facilities. He stated that the legislature did not approve the board members replacements and thought the approval process should happen before considering the bill. He favored the immediate authorization of the use of hemp in the state. He made comments about his loss of the Permanent Fund Dividend and licensing. He continued to make comments unrelated to the topic of HB 273. He requested that the legislature "get its act together."

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Co-Chair Foster CLOSED Public Testimony on HB 273.

Representative Wilson asked for a breakdown of revenues and expenditures for the Alaska Marijuana Control Board prior to bringing up the bill in committee again.

Representative Kito responded that the statute indicated that the board had authority to set and collect fees and specific expenditures were not restricted. He had learned that the board had the statutory authority to repay the GF start-up money. The board was still operating with the \$1.5 million initial funding and was uncertain when the board could adequately "quantity their costs."

Ms. Koeneman interjected that in AS.08.01.065, the central licensing statutes that governed professional licenses stated that the regulatory costs must be maintained by the board and there was no such restriction for the Marijuana Control Board. She suggested that the statute that governed the marijuana board AS.17.38.121 did not explicitly mandate that the fees cover the regulatory costs. She deduced that that was the reason a breakdown of board costs was not included.

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Representative Wilson replied that the state was in a financial crisis. She was mistaken that the board was not required to be self-sufficient but thought that the voters wanted the industry to become self-sustaining. She understood that UGF monies were being used for the board. She wanted assurances that the board would not be in arrears in six years and need GF. Ms. Koeneman would work with the board to get the information.

Representative Kito noted that the fiscal note included information regarding an estimate of revenues and expenses through 2024. He related that a more accurate set of expenses was not yet achievable since a full year had not been completed.

Co-Chair Foster relayed that amendments for the bill would be due on Friday, February 9 at 5:00pm.

HB 273 was HEARD and HELD in committee for further consideration.

#hb274

HOUSE BILL NO. 274

"An Act extending the termination date of the Board of Psychologist and Psychological Associate Examiners; and providing for an effective date."

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REPRESENTATIVE SAM KITO, SPONSOR, explained that the bill extended the Board of Psychologist and Psychological Associate Examiners to June 30, 2026 in accordance with the 8-year recommendation of the Legislative Audit Division. He summarized that the long-standing board provided services and licensing for psychologists in the state and was "doing a fine job."

Co-Chair Foster indicated that the committee had been joined by Representative Stutes.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, read a portion of the Legislative Audit Report, "A Sunset Review of the Department of Commerce, Community and Economic Development Board of Psychologist and Psychological Associate Examiners (board) (copy on file):

Overall, the audit concludes the board served the public's interest by effectively licensing and regulating psychologists and psychological associates. The board monitored licensees and worked to ensure only qualified individuals practice in Alaska.

In accordance with AS 08.03.010(c)(18), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination to June 30, 2026

Ms. Curtis continued with page 5 of the audit that contained " Exhibit 2" a table that included a schedule of licensing activities. She noted that the board had 285 active licenses, which represented a 174 percent increase since the prior sunset audit in 2009.

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Ms. Curtis turned to page 7, "Exhibit 4" that contained a table reflecting revenue and expenditures. She offered the following from the audit:

...fees were increased in FY 17 for the initial application and the associate license. At the end of FY 17, as shown in Exhibit 4, the board had a surplus of \$399,525. Per the board, associate fees were increased to equal the fees for psychologist licenses. The application fee was increased to fully account for the costs of processing incoming applications. DCBPL management did not adequately consider the surplus when setting the fees, which resulted in licensees paying higher than justified fees in FY 17.

Ms. Curtis communicated that the audit contained two recommendations: Recommendation 1, "DCBPL's director, in consultation with the board, should reduce fees." and Recommendation 2: "DCBPL's director should develop and implement procedures to ensure courtesy licensees comply with monthly reporting requirements." She detailed that courtesy licenses were limited to 30 days per year. Courtesy licensees must submit a monthly report to the board during the period of licensure indicating the number of days they practiced during the month. The audit found that the monthly reports were not being required. She continued that the agency's response was on page 21 and the board's response was on page 23 and both entities concurred with the conclusions and recommendations of the audit.

Co-Chair Foster invited Ms. Chambers to review the fiscal note associated with the bill.

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SARA CHAMBERS, OPERATIONS MANAGER, DIVISION OF CORPORATIONS, BUSINESS, and PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, explained that when the division's boards sunset without renewal the operations would return to the division to manage. The fiscal notes did not reflect the operational costs of the board. She pointed out that the previously published fiscal impact note from DCCED FN1 (CED) appropriated \$21.4 thousand for the board's expenses. She reported that \$19.9 thousand was allocated for travel costs and the remaining \$1.5 thousand was allocated for services like member stipends, advertising public notices, and

training. She offered that the boards were effectively reducing travel expenses using video conferencing and the actual costs could be lower.

Co-Chair Foster OPENED Public Testimony for HB 274.

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ALLEN LEVY, CHAIR, BOARD of PSYCHOLOGISTS AND PSYCHOLOGICAL ASSOCIATE EXAMINERS (via teleconference), concurred with the legislative audit report. He favored the bill. He reported that the board had already taken steps to implement the recommendations and looked forward to serving the citizens of the state.

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ROBERT LANE, ALASKA PSYCHOLOGICAL ASSOCIATION, ANCHORAGE (via teleconference), supported HB 274. He indicated that the board had protected the citizens of Alaska and had served them well. He believed that board regulations provided great guidance for the practitioners. He reiterated his support for the legislation.

Co-Chair Foster CLOSED Public Testimony on HB 274.

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Co-Chair Foster relayed that amendments were due by Friday, February 9, 2018 by 5:00 pm.

HB 274 was HEARD and HELD in committee for further consideration.

#hb275

HOUSE BILL NO. 275

"An Act extending the termination date of the Board of Massage Therapists; and providing for an effective date."

REPRESENTATIVE SAM KITO, SPONSOR, reported that the board was recently created and was operating effectively. He believed extending the Board of Massage Therapy was warranted.

Co-Chair Foster invited Ms. Curtis to the table.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, reported that the board was new, and the audit was the board's first sunset. She read directly from the audit:

In all areas except licensing, the audit found the board was operating in the public's interest. In general, meetings were conducted effectively, investigations were appropriately processed, and the board actively issued or changed regulations to improve the industry and better protect the public. The audit concluded the board and DCBPL staff should improve its licensing procedures. Testing found that applicants were not consistently issued licenses in accordance with statutes, regulations, and/or procedures. Additionally, improvements are needed to comply with the federal standards over criminal history record information obtained as part of the licensing process.

Ms. Curtis offered that the Federal Bureau of Investigation (FBI) audit discovered the deficiency in federal standards over criminal history records. She highlighted that page 11 contained the scheduled licensing activity in the table "Exhibit 2" and reported that from July 2016 through August 2017, the board issued 1,186 new licenses. The number was almost double the 600 licenses that DCBPL management expected. She moved to the Schedule of Revenues and Expenditures in "Exhibit 3" on page 14. The board had a surplus of \$265,128 thousand at the end of FY 2017 and license fees were lowered in FY 2018. She turned to the audit's three recommendations beginning on page 17. Recommendation 1, "Division of Corporations, Business, and Professional Licensing's (DCBPL) director, in consultation with the Board of Massage Therapists (board), should take action to improve procedures to ensure licensure requirements are met." She elaborated that 3 of 31 license applications tested as part of the audit were licensed without adequate supporting documentation. She reviewed the findings on page 17 and read the following excerpts:

A background check report for one initial applicant was not completed. The licensee operated without a background check report from licensure date of September 2015 through receipt of the background check report July 2017 during the license renewal process. Regulation 6 requires applicants submit their

fingerprints for a background check report in order to obtain a license to practice massage therapy. Per regulation, 7 licenses can be issued to applicants even though a background check report has not been received. However, DCBPL staff must ensure the background check is completed timely. The applicant's fingerprint card was sent back multiple times due to incomplete information. DCBPL staff did not perform additional follow-up to obtain a completed fingerprint card because staff failed to list the applicant on the DCBPL spreadsheet used for tracking background reports.

One applicant answered "yes" to a professional fitness question, however no evidence could be located to demonstrate that the applicant provided an explanation. Furthermore, it is unclear whether the board considered an explanation prior to licensing.

One applicant answered "yes" to a professional fitness question and provided an explanation which included evidence of a permanent revocation of a national board certification for violating the respective code of ethics and standards of practice. DCBPL staff and the board did not forward the application to the investigative section for review. A license was granted with the requirement that the individual take a two-credit ethics course. The background check did not show any convictions, and according to the board chair, the board believed that a license could not be denied based on the revocation of a national certificate. However, DCBPL procedures called for the application to be forwarded to investigations for further review.

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Ms. Curtis addressed Recommendation 2, "DCBPL's director should address the Federal Bureau of Investigations (FBI) audit findings and concerns." She reviewed the findings and read the following:

DCBPL did not comply with federal standards over criminal history record information. The FBI audit conducted in April 2017 found DCBPL did not have secure channels of communication. Additionally, applicants were not notified in writing that their

fingerprints were to be used for an FBI background check and were not advised of the procedures for obtaining, changing, correcting, or updating an FBI identification record. Additionally, the federal audit found inadequate chain of custody for fingerprint cards. A chain of custody ensures the integrity of the applicant/fingerprint process. DCBPL addressed one of the findings by including verbiage in the application that submitted fingerprints will be sent to the FBI for a federal background check. However, as of October 2017, the other issues remain outstanding.

Ms. Curtis pointed to Recommendation 3, "The director of the Office of the Governor, Boards and Commissions should work to fill the public member position." She read the following finding:

The public member position on the board became vacant March 2017 and remained vacant as of October 2017. Per AS 08.61.010, the board is statutorily required to consist of five members appointed by the governor, one of which is a public member who is not a licensed health care provider, employee of the State, or a current or former member of another occupation licensing board. According to Boards and Commissions staff, stringent requirements make it difficult to find interested applicants.

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Ms. Curtis noted that the response relating to Recommendation 3 from the Office of the Governor was found on page 29. The office concurred with the audit and recommended a legislative solution. She offered that the agency response was on page 31 and agreed with Recommendation 1 but felt that additional supervisory resources were necessary to ensure the license files met the standards. The department stated that the division had been unaware of the issue until recently and was responding quickly to address the finding. The board's response was on page 33 and concurred with the audit conclusions.

Representative Guttenberg asked what other boards had the same licensing requirement on fingerprinting and whether the FBI audited the other boards and what the results were. Ms. Curtis deferred the question to the department.

3:06:39 PM

Representative Pruitt asked if Ms. Curtis thought the faults of the department were systemic and enabled unqualified applicants to become licensed or was unique to a few applications. Ms. Curtis responded that for the first recommendation the audit discovered 3 out of 31 licensing errors. The division felt it was a "significant problem." The audit discovered an issue with staff that was corrected. She characterized the issue as the "growing pains" of a new inexperienced board.

Co-Chair Foster OPENED Public Testimony.

Co-Chair Foster CLOSED Public Testimony.

3:08:55 PM

Co-Chair Seaton asked if the chair of the massage board was available. He understood there was a concern with background checks. He asked for the boards position on background checks.

DAVID EDWARDS-SMITH, CHAIR, BOARD OF MASSAGE THERAPISTS, answered that the board felt that the initial licensure should require a background check. However, the board's official position was to reduce the burden on applicants and lessen the requirement to every third renewal cycle rather than every cycle. Co-Chair Seaton asked what the cost of the background checks were and who paid for the checks. Mr. Smith answered that the background check was approximately \$80. The burden was placed on the licensee.

Co-Chair Foster asked Ms. Chambers to walk through the fiscal note.

3:10:09 PM

Ms. Chambers spoke to the previously published fiscal impact note from DCCED FN1 (CED) and noted that the total cost of the board was \$21.4 thousand. She explained that \$19.9 thousand was allocated for travel costs and that the board was trying to keep its travel costs down by using teleconferencing capabilities when possible. She added that the remaining \$1.5 thousand was allocated for \$400 for public notice of board meetings, \$1 thousand for training and conference fees, and \$100 for meeting per diem.

Representative Pruitt referred to the commissioner's response to recommendation 1 and read "with over 13,000 new licenses issued in FY 17, additional supervisory resources are needed to ensure that all license files are reviewed to meet this standard." He asked if additional staff was necessary. He wondered how the fees would be spread across all the various boards. Ms. Chambers commented that at present the board was not requesting additional personnel. The division was assessing the information provided in the audit to determine whether some of the challenges were due to the startup of a new board and the unexpected significant increase in estimated applications. She thought that the process would stabilize. She stated that the boards were "constantly" growing, and the division wanted to ensure the resources were available to meet the public's expectations. Representative Pruitt asked if enough notice would be provided to the boards of the need for additional staff, so fees could be increased to avoid any impact on UGF. Ms. Chambers reported that the division was not authorized to accept UGF and was entirely supported by licensing fees. The staff maintained positive time keeping. The license programs were only being charged the amount the staff worked on their program. She commented that managers and certain administrative staff dealing with all licensures charged their time to a general indirect category that involved a specific methodology. However, the lion's share of the staff and costs were being accurately assessed to each board for the amount it cost to manage them. If the division expected a dramatic increase in staff time for a board, it would discuss the matter with the board and put the licensees on notice of a potential fee increase.

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Co-Chair Seaton referred to the first page of the audit relating to improving licensing procedures. He read the following: "...comply with the federal standards over criminal history record information obtained as part of the licensing process." He asked whether the conclusion was a department issue or a board matter. Ms. Chambers reported that the FBI findings "were specifically administrative" and lied with the division. She explained that the issue was "new information" that was received immediately before the audit started. The division resolved two out of the three issues. The unaddressed issue dealt with the chain of custody and the division worked with the Department of

Public Safety (DPS) to help find a resolution. The department confirmed that no legal mechanism in the division's statutes addressed chain of custody. The division was looking into "alternative plans" to ensure a proper chain of custody was in place. Co-Chair Seaton asked if there was any fallout from not maintaining the required chain of custody. Ms. Chambers informed committee members that the division was audited by the FBI every three years for the five licensing programs that required fingerprinting. She was unaware of any negative repercussions to the licensees and acknowledged that it was the divisions responsibility to resolve the issue.

Representative Guttenberg wondered whether the FBI's audit findings were the same for the 5 boards that required fingerprinting and if the division was addressing the problem for all 5 boards. Ms. Chambers responded in the affirmative.

Representative Wilson asked whether four years was the proper amount of time for an extension or if a longer period worked. Ms. Chambers had not questioned the audit recommendations and was unable to offer an opinion about the sunset. She was working with the board to address its growing pains and felt confident that within four years all the findings would be addressed. Representative Wilson asked what the cost of the audit for each board was. Ms. Chambers deferred to Ms. Curtis for the answer. She noted that the cost was not born by the division. Representative Wilson ascertained that the boards also did not pay audit costs and the costs were assumed by the legislature. Ms. Chambers responded that she was correct. Representative Wilson asked for the information.

Co-Chair Foster requested that Ms. Curtis provide the information.

Ms. Curtis had anticipated the question. She did not currently have the information. She had asked Ms. Day to compile the number of hours an audit took to complete. She informed committee members that the rate was \$77. per hour. She deferred to Ms. Day.

[3:20:57 PM](#)

LINDA DAY, AUDIT MANAGER, LEGISLATIVE AUDIT DIVISION (via teleconference), did not have the number of hours in front of her and offered to provide the information quickly.

[3:21:15 PM](#)

Representative Pruitt asked about the concern over filling the vacant board seat. He concurred that the criteria were challenging and noted the requirement that the board member was not a former member of another occupational licensing board. He wondered whether removing the requirement would facilitate finding the public board member more easily. Ms. Chambers responded that the appointment of board members was managed through the governor's office. She reported that she worked closely with the Board and Commissions director, Shirley Marquardt. She knew that the varying board requirements made it prohibitive and she wanted more people to apply for board seats. Her general response was in favor of removing restrictions for people to serve on boards. She deferred to Ms. Marquardt to provide the specific answer. Representative Pruitt clarified that he was only asking for the specific board. He asked Director Marquardt to contact the committee if his suggestion would be helpful without creating additional issues.

Co-Chair Seaton was trying to determine the licensing fees. Ms. Curtis reminded the committee that the fee schedule was on page 15 of the audit. She relayed that the renewal fee was \$290 plus \$60 totaling \$350. Co-Chair Seaton asked if the \$60 was for a background check.

Ms. Chambers interjected that there were costs incurred by the licensees for fingerprinting. She concurred that the fees were \$290 every two years to renew the license and an additional \$60 for DPS to process the fingerprints. Co-Chair Seaton asked whether it was typical to require fingerprinting and background checks with every renewal cycle. Ms. Chambers replied that it was the only board where subsequent fingerprinting was required. She related that the board had recently tried to strike a balance between too frequently and not enough. Co-Chair Seaton asked if she knew the approximate cost of fingerprinting. Ms. Chambers answered in the negative.

[3:27:15 PM](#)

Representative Guttenberg asked why repeated fingerprinting was necessary. Ms. Chambers responded that the chief investigator and DPS was looking into the possibility of renewing the requirement without additional fingerprinting.

Co-Chair Foster indicated amendments were due on Friday, February 9, 2018 by 5:00 pm.

HB 275 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the following day.

#

ADJOURNMENT

[3:31:22 PM](#)

The meeting was adjourned at 3:31 p.m.