

HOUSE FINANCE COMMITTEE
February 12, 2018
1:33 p.m.

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CALL TO ORDER

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

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Jason Grenn

ALSO PRESENT

Ashley Strauch, Staff, Representative Adam Wool; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Sara Chambers, Deputy Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community and Economic Development; Representative Ivy Sponholz, Sponsor; Ted Madsen, Staff, Representative Ivy Sponholz; Representative Colleen Sullivan-Leonard, Sponsor.

PRESENT VIA TELECONFERENCE

Laura Theisen, Board of Social Work Examiners, Glenallen; Leif Holm, Chair, Board of Pharmacy, North Pole.

SUMMARY

HB 302 EXTEND: BOARD OF PROFESSIONAL COUNSELORS

HB 302 was REPORTED out of committee with a "do pass" recommendation and with a previously published fiscal impact note: FN1(CED).

HB 318 EXTEND: BOARD OF SOCIAL WORK EXAMINERS

CSHB 318(FIN) was REPORTED out of committee with a "do pass" recommendation and with a previously published fiscal impact note: FN1(CED).

HB 323 EXTEND: BOARD OF PHARMACY

HB 323 was REPORTED out of committee with a "do pass" recommendation and with a previously published fiscal impact note: FN1(CED).

Co-Chair Foster reviewed the agenda for the day. He intended to hold public testimony for the three bills being heard and to move them out of committee if it was the will of members to do so.

#hb302

HOUSE BILL NO. 302

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

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ASHLEY STRAUCH, STAFF, REPRESENTATIVE ADAM WOOL, relayed that HB 302 was an extension to the Board of Professional Counselors. The bill extended the board for 8 years to 2026. The board's primary function was to license professional counselors and to issue supervisor certificates. The board was composed of 5 members, all of which were appointed by the governor. She continued that 4 of the board members were licensed professional counselors and 1 public member. The board currently oversaw 657 professional counselors and 73 supervisor certificates. Between FY 14 and FY 16 they issued 190 new licenses, which represented a 46 percent increase in their licenses. There were no new recommendations as a part of the audit. The board was recommended for the full 8-year extension. She

conveyed that Debra Hamilton, a board member, was available online. A person from Legislative Audit was in the room.

Co-Chair Foster invited Kris Curtis from Legislative Audit to the table. He asked her to walk the committee through the sunset audit for the Board of Professional Counselors.

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KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, reported that members should have a copy of the audit in their packets dated April 2017. Report conclusions began on page 3. Overall, Legislative Audit concluded that the board was serving the public's interest by effectively licensing and regulating professional counselors and certified counselor supervisors. The division found they monitored licensees and worked to ensure that qualified individuals practiced. Legislative audit found that the board actively developed and adopted regulations to improve their profession and was recommending the maximum extension of 8 years. She skipped over the license activity information since Ashley covered it.

Ms. Curtis continued by noting that page 6 was a schedule of revenues and expenditures. The board had a surplus of just over \$70,000 as of March 31, 2017. The board and management expected to decrease fees in FY 18. License fees were listed on page 7.

Ms. Curtis relayed that the responses to the audit began on page 19. The Office of the Governor, the department, and the board all concurred that the board was serving the public's interest and should be extended. There were no other recommendations.

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Representative Kawasaki asked that when the board had a surplus, like the \$70,000 surplus, at what time would the fees be ratcheted down.

Ms. Curtis deferred to the department.

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SARA CHAMBERS, DEPUTY DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS, AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, responded that the division performed an annual fee analysis in accordance with statute. The division considered trends, the board's history, the risk assessment of potential risk, and fluctuation of expenditures - particularly the risk to large investigation or appeal of the board's decision, which could necessitate higher fees to recover costs. There were several intangibles that accompanied the tangibles. They were discussed with the board and raised and lowered fees as necessary.

Co-Chair Foster recognized that the committee was joined earlier by Representative Guttenberg.

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

Ms. Chambers explained that the fiscal note was for \$21,400 which covered the additional expenses that having a board brought to licensure. If the board were to sunset, the department would continue to license professional counselors, but without the addition of the board. It was an expense of \$19,900 for board members to attend 4 board meetings per year. She elaborated that boards were working very hard to reduce costs. The division was working to reduce costs through video conferencing and teleconferencing. The balance was public noticing of board meetings, any training and conferences the board might need to attend, and per diem to help pay for meals while members were on state business.

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Co-Chair Foster OPENED and CLOSED Public Testimony.

Co-Chair Seaton MOVED to report HB 302 out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HB 302 was REPORTED out of committee with a "do pass" recommendation and with a previously published fiscal impact note: FN1(CED).

[1:42:05 PM](#)

AT EASE

1:42:35 PM

RECONVENED

#hb318

HOUSE BILL NO. 318

"An Act extending the termination date of the Board of Social Work Examiners; and providing for an effective date."

Co-Chair Foster indicated that there was 1 amendment before to committee. He invited the bill sponsor, Representative Sponholz, and her aide to the table.

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REPRESENTATIVE IVY SPONHOLZ, SPONSOR, introduced herself and indicated that her aide would introduce the bill.

TED MADSEN, STAFF, REPRESENTATIVE IVY SPONHOLZ, explained that the bill was a sunset extension for the Board of Social Work Examiners. It was currently scheduled to sunset on June 30, 2018. However, HB 318 would extend the sunset to June 30, 2026. The Board of Social Work examiners licenses about 783 social workers throughout the state as of March 2017. The board issued licenses to qualified applicants, established continuing education requirements and a code of professional ethics and standards, and adopted regulations as necessary. The Division of Legislative Audit reviewed the operations of the board and concluded that the board was serving the public's interest by running effectively. The legislative auditor was available in the room and Lara Theisen with the Board of Social Work Examiners to offer testimony.

Co-Chair Foster invited Kris Curtis to the table to walk the committee through the sunset audit for the Board of Social Work Examiners.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, suggested that members should have a copy of the audit dated October 2017. She reported that the division found that board was serving the public's interesting by effectively licensing and regulating social work examiners. The division found that board meetings were conducted in compliance with law, investigations were

generally processed timely, and the board issued or changed regulations to improve the profession. The division was recommending the maximum 8-year extension.

Ms. Curtis continued that scheduled licensing activities on page 6 was 783 licenses as of March 2017, which was a 41 percent increase compared to the prior 2009 sunset audit. It was a growing profession. A schedule of revenues and expenditure was on page 7. There was a surplus of about \$95,000 at the end of FY 17. The schedule of license fees was on page 8.

Ms. Curtis relayed that the division had 2 recommendations for improvements. The division recommended that the Division of Corporations, Business, and Professional Licensing (DCBPL) director improved procedures to ensure board-required documentation was obtained prior to licensure. Legislative Audit tested 25 licenses that were issued the audit period and found one error. The board had appropriately approved a license pending receipt of key documentation but found that DCBPL staff failed to obtain the documentation prior to issuing the license.

Ms. Curtis reviewed Recommendation 2. Legislative Audit recommended that the Office of the Governor Boards and Commissions Director work with the board to help identify interested applicants to fill a vacant board position. There was a board position that was vacant March 2017 which was still vacant in October. It was one of the clinical social work positions. Statute required that 1 of 5 board member position could not be an employee of the federal government, the state government, the local government, or a non-profit agency. The Office of the Governor staff stated that these were stringent requirements that made it difficult to identify interested applicants. Responses to the audit began on page 19. The first response was from the Office of the Governor. In the response they reiterated the stringent requirements that made it difficult to find interested applicants. They agreed to work with the board to help fill the vacancy.

Ms. Continued that the department's response was on page 21. The department agreed with both recommendations. In regard to the first recommendation concerning licensure documentation, they agreed that additional quality checks were needed to help insure that their administrative record was complete. They stated that additional supervisory

resources were needed to help ensure that the standards were met. The board's response was on page 23. The board agreed with both recommendations.

SARA CHAMBERS, DEPUTY DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS, AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, indicated that the fiscal note was structured similarly to the previous extension just heard by the committee. She explained that the \$21,400 would provide authority for the board to do its business including attending 4 board meetings per year, providing public notices for the board meetings, and providing stipends pertaining to the board. If the board were to sunset, the department would take over licensure.

Representative Wilson asked about the difference between a private, non-profit organization that was exempt and a non-exempt non-profit organization. It sounded like some non-profit organizations would be allowed on the board currently. By allowing those that were exempt, she wondered what kind of organizations would be included to be on the board.

Ms. Chambers thought Representative Wilson's question would be better addressed by the bill sponsor. She thought that making a wider pool available would be helpful.

Representative Spohnholz responded that the vast majority of social workers either work for a government organization or a non-profit organization. There were very few social worker that practiced in private practice. Hence, there had been difficulty recruiting someone for the fifth position that was required to be licensed in social work but who did not serve in either a governmental capacity or a non-profit capacity. The amendment would allow for 1 member of the board to either be a private practice social worker or work for a non-profit organization. An example of the kinds of non-profits that hired social workers would be some of the tribal health organizations or Denali Family Services, a non-profit organization in Anchorage that hired social workers.

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Representative Wilson was trying to understand the difference between exempt versus non-exempt.

Representative Spohnholz replied that all non-profit organizations were exempt from federal taxes.

1:51:00 PM

Co-Chair Foster OPENED and CLOSED Public Testimony.

Co-Chair Foster MOVED to ADOPT Amendment 1 (copy on file):

Page 1, line 1, following "Examiners;":

Insert "relating to the composition of the Board of Social Work Examiners;"

Page 1, following line 6:

Insert a new bill section to read:

"*Sec. 2. AS 08.95.010(a) is amended to read:

(a)There is created the Board of Social Work Examiners composed of five members, as follows: one member licensed under this chapter as a baccalaureate social worker; one member licensed under this chapter as a master social worker; two members licensed under this chapter as clinical social workers; and one public member who has never been licensed under this chapter. At least one of the licensed members must be a person who is not an employee of a federal, state, or local government [OR OF A PRIVATE NONPROFIT ORGANIZATION THAT IS EXEMPT FROM FEDERAL INCOME TAX]."

Renumber the following bill section accordingly.

Co-Chair Seaton OBJECTED for discussion. He wanted the auditor to come forward.

Co-Chair Seaton asked if she thought the amendment would aid in filling the vacancies.

Ms. Curtis replied that Legislative Audit did not conduct any work to learn what types of employers employed social workers. She could not comment on whether most of the social workers worked for non-profits. She could confirm

that the specific stringent requirements and it not being one of the 4 groups was causing trouble in making sure they had full representation.

Representative Kawasaki noted that there were 590 clinical social workers, 117 master social workers, and 47 baccalaureate social workers that looked active. He relayed that there were 1 out of 47 potential candidates and only 47 potential candidates. Under the master social workers there were 117 and under the clinical social were close to 600 between the 2. The amendment would delete the private non-profit organization. He understood it would open up the administration's ability to find someone to fill the vacancy. He challenged whether it was really that difficult to find a person to fill it. He knew it would be made easier by making the change. He did not know why the requirement was initially included. Typically, the legislature had clean board extensions.

Mr. Madsen responded that in discussions with the Legislative Research they reviewed the law from 1988 which established the Board of Social Work Examiners. The discussion at the time was that the board was going to be regulating social workers who were in governmental practice, non-profit practice, and private practice. The idea was to have someone in private practice be able to regulate those who were also in private practice. However, over time it was found that the board vacancy had come up and was very difficult to fill because of the stringent requirement. He thought Ms. Theisen from the board would be able to testify as to whether the board was in support of the amendment.

Representative Kawasaki relayed that the statute state that at least 1 of the 4 licensed members could not be an employee of the federal, state, or local government, or a private non-profit organization. It meant that the other 3 could be. He questions the difficulty in finding 1 person to qualify for the vacancy. If it was that difficult to find someone he was fine with it. He would like to hear from someone on the board.

Mr. Madsen had discussions with the chair of the Board of Social Worker Examiners. From her discussions it seemed that Division of Boards and Commissions received a number of qualified applicants who would be otherwise qualified

for the position. However, they were not able to fill the position because they worked for non-profits.

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LAURA THEISEN, BOARD OF SOCIAL WORK EXAMINERS, GLENALLEN (via teleconference), reported that the board had looked for a significant amount of time to find an appropriate person to fill the position. It had been very difficult. She believed it would be positive for the board to be able to broaden the number of possible applicants.

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Representative Guttenberg asked that with a change if the private sector would be properly represented.

Ms. Theirsen asked Representative Guttenberg to repeat his question.

Representative Guttenberg asked if it would be a problem not having someone in private practice on the board. He was concerned with social workers in private practice not being properly represented. He asked if it was more important to have a full board or everyone represented.

Ms. Theirsen replied that it would be more important to have a full board. The goal of the board was public protection. She believed that the board had representation from the licensed social workers with 2 of them on the board. She did not believe there would be an issue.

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Representative Wilson asked for the number of private social workers in the state.

Mr. Madsen was looking for the information. However, on the website for the Board of Social Work Examiners did not have the number broken down. It was difficult to find somebody who was qualified through the private practice position to serve on the board.

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Representative Wilson asked if the amendment would prevent anyone from applying from the private sector.

Mr. Madsen responded, "That is correct."

Co-Chair Seaton WITHDREW his OBJECTION.

There being NO further OBJECTION, Amendment 1 was ADOPTED.

Co-Chair Seaton MOVED to report CSHB 318(FIN) out of Committee as amended with individual recommendations and the accompanying fiscal note.

CSHB 318(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

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RECONVENED

#hb323

HOUSE BILL NO. 323

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

Co-Chair Foster invited Representative Sullivan-Leonard to proceed with her presentation.

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REPRESENTATIVE COLLEEN SULLIVAN-LEONARD, SPONSOR, explained that HB 323 extended the Pharmacy Board from June 2018 to June 2022. The adoption of the bill would continue existing activities by the board and the administration by the division. She highlighted that Legislative Audit did a review of the board's operations and determined that it would be in the best interest to extend the board for 4 years through June 30, 2022. The board was comprised of 7 members. She elaborated that 5 of the members were pharmacists and the other 2 were public members. In March 2018 the board would have a full composition for the board. The board met 4 times yearly.

Representative Sullivan-Leonard continued that the board regulated admission into the practice of pharmacy. They established and enforced compliance with professional standards and adopted regulations. The board also established and maintained a controlled substance prescription database as well as the administration of vaccines, emergency medications, and opioid overdose drugs. It oversaw licensing of pharmacists, pharmacy interns, pharmacy technicians, and pharmacies. It oversaw wholesale drug distributors located inside and outside the state if a pharmacy shipped, mailed, or delivered prescription drugs within Alaska. She conveyed the available testifiers.

Representative Wilson asked the board chair if he saw any reason why the legislature should not provide an 8-year extension to the board.

LEIF HOLM, CHAIR, BOARD OF PHARMACY, NORTH POLE (via teleconference), offered that he would agree more with an 8-year extension. The board had accepted a 4-year extension based on some conversations back and forth. Some wanted to see how the new prescription drug monitoring program (PDMP) legislation went through. how it was managed, and the effect it had on opioids and the general running of the PDMP. It appeared that the auditors would prefer to look at the issue in 4 years again as opposed to waiting for 8 years. He suggested that all of the changes that had been made legislatively with the PDMP, there was nothing but a positive direction it would go in. He did not foresee any issues going forward. He thought 8 years would be a fair number of year but would accept 4.

Representative Wilson asked if the board had any issues implementing new statutes or regulations in the past.

Mr. Holm responded that the pharmacy world was ever evolving. It was difficult to keep up with the changes. He hoped to get the help needed to keep up with industry trends, standards, and legislative changes. Any changes required of the industry through Alaska's State Legislature had not been difficult to get through besides the standard hang-ups of legal and law. In answer to Representative Wilson's question he would say no. However, as an industry as a whole, it was consistently struggling to keep up with industry standards and changes.

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Representative Guttenberg asked if, with the state's prescription drug manager dispensing drugs, the business bifurcated. In other words, was one side a licensed pharmacy and the other side a PBM that was not regulated at all.

Mr. Holm responded affirmatively. It was not necessarily a board issue, but it was the current situation. Nationwide PBM were not under any kind of regulation or rules. It was an issue he was dealing with in pharmacy.

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Representative Kawasaki asked about the Legislative Audit review. Mr. Holm had relayed the pharmacy regulations were changing rapidly. One of the big changes that came under SB 74 [Legislation passed in 2016, Short Title: Medicaid Reform; Telemedicine; Drug Database] was that pharmacists had to register with the prescription drug database. Failure to do so was against the law and required disciplinary action. He asked if the board had had to discipline any pharmacists that were not registered with the database.

Mr. Holm responded in the negative. The requirement for everyone to register was still fairly new. They were still monitoring who had not registered and sending out notifications about registering. He considered it a grace period trying to get everyone onboard. The board was having a good response. However, there were people who were not aware of the requirement presently.

Representative Kawasaki noted that the division had found it was difficult to find out which specific dispensers were not submitting the required information. It was difficult to determine who needed to be sanctioned and brought to the board's attention. He asked if it had been Mr. Holm's observation as a board member.

Mr. Holm responded in the negative. He reported that the board was making several changes through the vendor with the PDMP based on the new requirements. He indicated it had not been that long that the requirement had been in place. However, everyone had been required to upload for some time. As a board member, he had not received any reports showing who was not uploading data. He had not heard a

report from the vendor or the state that anyone was having trouble determining who was not uploading. He had not seen such a report.

Co-Chair Foster asked Ms. Curtis to present the audit findings.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, referred to the legislative audit dated August 2017. She reported that Legislative Audit concluded that the board was serving the public's interest by effectively licensing and regulating pharmacists, pharmacy interns, pharmacy technicians, in-state pharmacies, drug rooms, and wholesale distributors. Board meetings were conducted in accordance with state law. The board was also active in amending regulations to improve the industry. She noted that page 9 was the schedule of licensing activity. She reported that by the end of March 2017 there were 3,447 licensees, a 33 percent increase since the 2009 sunset audit. She indicated that a schedule of revenues and expenditures was in page 10. There was a surplus of just over \$275,000 at the end of FY 17. The schedule of license fees was on page 11. According to DCBPL management a fee analysis was scheduled for the end of 2017.

Ms. Curtis continued that although her division found that the board was serving the public's interest, it was only recommending a 4-year extension. It was in recognition of a very significant statutory changes that had recently occurred that expanded the board's duties in relation to the controlled substance prescription database. She highlighted that page 3 contained the background information section, which was where Legislative audit went through the database. She indicated that the Board of Pharmacy was required to establish a database in 2008. Statutes required that dispensers of controlled substances electronically submit information on each prescription that they dispensed. The database collected the information and was supposed to allow pharmacists and practitioners to review prescription history prior to prescribing or administering medication or controlled substances.

Ms. Curtis relayed that statute also stated that the database might be used to monitor prescribing practices and patterns to identify practitioners who prescribed controlled substances in an unlawful or unprofessional manner, identify individuals who might be abusing

controlled substances, and identify individuals who might be presenting forgeries or otherwise false prescriptions to a pharmacy.

Ms. Curtis reported that there were several structural problems with the 2008 law and were very slow to be addressed. Legislative Audit grouped the problems in to 2 different areas beginning on page 4. The first area was the completeness of information. As Representative Kawasaki had discussed, there was no way to identify the universe of individuals that were supposed to be reporting to the database. As such, the board stated that they were unable to identify the completeness of the information. They had to report annually to the legislature. There were some statistics being reported. It was clear the board was having some problems getting people to submit information. Regulations that they put in at that point required monthly reporting. It was in no way timely enough to be useful.

Ms. Curtis moved to the second area Legislative Audit grouped was the use of information. The law did not require practitioners or pharmacists to consult the database prior to prescribing or dispensing. It was totally voluntary. The board was advised by the Department of Law that they could not forward information to a pharmacist or a practitioner because it would be considered an unsolicited report and therefore, illegal. Consequently, the board did not analyze the information and it was not used to identify unlawful practices or patterns.

Ms. Curtis spoke about there being some recent changes to address the problems. Currently, prescribers and dispensers had to register with the database, and the Board of Pharmacy was required to notify other occupational boards that they were licensee registered. It allowed for the identification of non-compliance in a check for completeness. In 2018, dispensers would be required to submit information to the database daily. Dispensers and practitioners were now required to check the database prior to dispensing and prescribing with some exclusions. The board could now provide unsolicited reports. She commented that there were quite a few significant changes.

Ms. Curtis continued to page 12 of the report. Legislative Audit stated that with the changes the board was now empowered to help combat the abuse of controlled

substances. Given that the changes were recent, the division was unable, as part of the audit, to evaluate the degree to which the board was going to use its new authority to help serve the public's interest. However, the division could say that the DCBPL management did not believe the board should be proactively analyzing data to serve public health objectives. She relayed that Department of Commerce, Community and Economic Development management stated that additional resources would be needed if the legislature intended for the board to analyze data and to become proactive in enforcing prescription drug laws.

Ms. Curtis detailed that the report included 2 recommendations for operational improvements beginning on page 14. The division recommended that DCBPL chief investigator work with the director to improve the timeliness of investigations. There were 20 cases that were open for over 180 days during the audit period. The division tested 13 of them, 6 of them had unjustified periods of inactivity. Those periods ranged from 51 to 184 days. She reported that the cause of the delay, at least partially, was the competing priorities of the main investigator assigned to the board because that individual was also assigned to help manage the controlled substance prescription database.

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Ms. Curtis moved to the second recommendation. Legislative Audit recommended that DCBPL director improve procedures to ensure required licensure documentation was obtained prior to licensing. The division tested 20 facility licenses and found 3 errors. First, in one case, the self-inspection report was not submitted. In one case, a background check was not submitted. In another case, an applicant had marked "Yes" to a professional fitness question indicating that their out-of-state license had received a citation against it and the DCBPL staff had not follow-up on the issue. The board had approved the licenses appropriately pending receipt of certain documentation. It was the staff that had not followed through and obtain it. She furthered that the division tested 25 individual licenses and found one instance regarding a pharmacy intern where there was no support that their education had been met.

Ms. Curtis conveyed that responses to the audit began on page 45. The governor's office agreed that the board was serving the public's interest and should be extended. They did not comment on the controlled substance prescription database. The department's response was on page 47. They agreed with both recommendations. Regarding recommendation 1, the department reported having implemented new procedure regarding documentation for investigations and to help ensure timeliness. Regarding recommendation 2, they agreed that additional quality checks were needed to help ensure that administrative records were complete. However, they stated that additional supervisory resources were needed in order to ensure that their standards were met. The board chair's response was on page 49 and the chair agreed with both recommendations.

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Representative Wilson commented that both recommendations had nothing to do with what the board was supposed to do. It sounded like it all came back to the law passed in 2008 that was not written correctly. She opined that the board was being penalized for a law that was made in 2008 that did not give them all of the needed pieces. She asked if her assessment was fair.

Ms. Curtis replied that the Legislative Audit Division viewed itself as a legislative oversight agency. The sunset process was designed to ensure that the board was serving the public's interest. She was recommending a 4-year extension because the powers being given to the board were very important powers. In the audit process it was not able to evaluate the degree to which the board had been effective at serving the public's interest. It was an oversight mechanism noting that Legislative Audit believed it would be important to go in earlier than 8 year. In this particular case, given the importance of the opioid abuse in the public, the division thought it was prudent to go in earlier.

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Representative Wilson wanted to return to the issue that if the law had been written correctly in 2008, Legislative Audit would have had enough time to make and evaluation.

Ms. Curtis was uncertain what to say what Legislative Audit would have done if things had been done differently. She pointed to page 6 which had a timeline from 2008. The board, legislature, and the department were not responsive. All 3 entities that worked together to ensure that the law was carried out did not do the best job that they could have. She continued that given where society was at, the division felt it was really important to provide as much information to policy makers as possible as part of the audit. She referred to appendices A and B. There was a significant amount of where things were at and to what degree the original law had been implemented. She indicated that board was responsible for procuring the database and encountered long delays. There were problems with the effectiveness of the database. Legislative Audit believed that a better job could have been done during those years but recognized that part of the issue was the law itself. However, the division focused going forward. There were currently in place with additional legislation proposed to further assist the board in carrying out these responsibilities.

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Representative Kawasaki thought that when the board extension came up in 2009 and has had an 8-year extension, the legislature probably should not have extended it as long as it did because of the current issues. He furthered that it was not just the bill that passed in 2008, it was all the bills subsequent to that time that had changed the system significantly, including SB 74 which radically changed who got access to the database. He added that SB 74 also had the pharmacy registration that required a pharmacist had to become involved with the database. There were many changes that had occurred recently. He concurred that a 4-year board extension made sense. He preferred a shorter extension due all that had been done subsequent to the prescription drug database.

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Representative Guttenberg asked about Ms. Curtis' comments about the board not being proactive and did not believe it should be proactive. He asked Ms. Curtis to further comment.

Ms. Curtis indicated that essentially the database did not operate as it was intended. The board was not able to analyze the data until the legislative fixes happened. What she had said was that the department did not believe it was the board's responsibility to be proactive in analyzing data to help further public health objectives. She reported that the staff of Legislative Audit had an internal debate about whether the board was the right for the responsibility. Many other states had the controlled substance database under the board. She opined that it was a policy question. She did not believe the board had been effective.

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Representative Guttenberg asked if it would really make it effective.

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Co-Chair Seaton mentioned the prescription drug database and the procedures to analyze them. The legislature had not mandated those things at the time. He asked if there was anything that had prevented the board from passing regulations to implement more strict adherences to the intent of the database.

Ms. Curtis responded that only regulations could be passed to implement the statutes. The statutes, themselves, were flawed by not providing them certain authority or certain capabilities.

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SARA CHAMBERS, ACTING DIRECTOR, ALCOHOL AND MARIJUANA CONTROL OFFICE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, relayed that the fiscal note was similar to the previous 2 board extensions heard in the current day's committee. The amount was \$27,900, slightly more than the previous 2 bills, because the board had 7 members rather than 5. The authority, since it was all funded by license fees, would provide the opportunity for the board to meet 4 times a year as required in statute. The money also paid for public notices, board member training at conferences, and per diem.

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Representative Wilson asked why the board did not come back to the legislature to inform members with an update. She asked if the department had the ability to do so.

Ms. Chambers replied that until SB 74 and HB 159 [Legislation passed in 2017 - Short Title: Opioids; Prescriptions; Database; Licenses] came forward, the administrative support for the board had not dug deeply into the intent. The department was working with the tools it had. The legislature's movement to expand the prescription drug monitoring program, in light of the public crisis, helped reframe the tools and the abilities to accomplish those things. The question that had been posed was whether the Board of Pharmacies to proactively solve the opioid crisis was the right place. The board was a licensing board made of pharmacists. The 2 very powerful bills that were passed brought other boards of practitioners into the conversation. However, at the end of the day, it was a question of whether the Board of Pharmacy proactively trying to solve the opioid crisis. The board and the department were working in tandem to work with Department of Health and Social Services to provide them epidemiological experts and the data they needed to assist in moving the objective forward. She reported that a handful of pharmacists and a few public members found the task to be daunting. The department was looking at ways to collaborate and accomplish the goals within the new, reframed mandate.

[2:30:18 PM](#)

Representative Wilson commented that a shorter sunset period was not needed to be proactive in make a policy call. It was a policy call by the legislature and not the board. She asked if she was correct.

Ms. Chambers responded affirmatively.

Representative Wilson suggested that whether the sunset was in 4 years or 8 years, the department could always suggest legislation or suggest to the legislature to look at it if it was not the right policy. She thought it was separate from looking at whether it was in the public's interest. She was certain that in 4 years it would still be in the public's interest to have the board. She wondered if a

longer sunset would prevent the department or the governor from coming back and suggesting needed changes.

Ms. Chambers responded that those decisions would ultimately be made at the level of the governor's office. Until those decisions and priorities were articulated through the governor's office, the department would continue with the mandate before the department.

[2:31:46 PM](#)

Co-Chair Seaton noted the policy question Representative Wilson was discussing was where the board should be located. He asked how things were normally handled.

Ms. Chambers replied that the department very much appreciated the work of the legislative auditors. Feedback was a gift of awareness. She informed the committee that there were several federal grants through DHSS which set forward performance measures to test against whether policies, procedures, data collection, and the analysis were working well. She noted that with the enhanced responsibilities, the division had retched up analyzing the job being done by the depart and board together. There were internal mechanisms to determine how things were going. It was an early stage with the new expanded responsibilities that it would likely take another year or so before having comprehensive data to see how things were working. If there was a fundamental breakdown or an inability to meet the requirements of statute the department would likely bring forward to address the public health needs of the state.

[2:34:23 PM](#)

Co-Chair Foster OPENED and CLOSED Public Testimony.

Representative Wilson MOVED to ADOPT Conceptual Amendment 1:

Page 1, Line 5:

Delete: 2022

Insert: 2026

Co-Chair Seaton OBJECTED for discussion.

Representative Wilson spoke to her amendment. She thought the board would do what was necessary.

[2:36:51 PM](#)

Representative Kawasaki commented that regarding the amendment, the legislature was not penalizing the board. He thought it was a recognition that the legislature passed a sunset bill in 2009 before the regulation came out that completely changed the responsibilities of the board. He did not believe the legislature would not have given an 8-year sunset had it known there were significant changes coming through the prescription drug database. The committee had heard from the chair of the board that there were several changes going on within the current administration. The board spanned 3 administrations. He reemphasized that the committee was not penalizing the board but looking closely of the details of the present audit. He anticipated implementing some rules around them. He thought the prescription drug management database were very important and should be looked at within 2 years. He thought waiting 8 years would be abrogating the legislature's responsibilities. Although the legislature could look at the board at any time, often times the only time legislators reviewed them was when they saw the recommendations from the chief auditor. He would stand with the 4-year sunset as proposed by the legislative auditor.

[2:39:08 PM](#)

Representative Wilson thought the board was being penalized for legislation passed in 2008 that the board did not ask for. She surmised that had the legislation been written correctly, the right things would have been in place. She had faith in the department that it would be monitoring the board. It was a question whether the legislature believed that the department would come forward if there was a problem. She would put her confidence in the board.

[2:40:30 PM](#)

Co-Chair Seaton did not believe it was a penalty for the legislature to get an audit. The legislative auditors went through what was happening in very fine detail. He thought if the legislature had had a 4-year sunset, the issues would not have waited until SB 74 was passed. They would have been brought to the attention of the legislature much

earlier. Each one of the departments came forward with recommendations that the legislature had not seen. An audit was the way in which the legislature determined issues. He would be opposing the amendment.

Representative Guttenberg would be opposing the amendment as well. He relayed that the boards and commissions worked for the legislature. They happened to function under the executive department. The audits were critical to informing the legislature about what they were doing. He thought the legislature, the governor, and the executive office had created a difficult situation. He spoke of audits showing difficulties. He thought the audit revealed a convoluted series of legislation requirements that had been difficult to deal with. He did not want to wait any longer than necessary to see the results of their success. He thought it was important through the audit process to see if something was working. It was not a penalization. He would be opposing the amendment.

[2:43:42 PM](#)

Representative Wilson thought the discussion was enlightening. She argued that waiting for an audit to have a discussion about a serious issue did not work. She suggested perhaps only a 1-year extension should be granted. She was concerned that the board had an 8-year extension. She relayed that the 2 recommendations had nothing to do with the board. She believed in the board and the department and that they would do what was needed. If something could not be done, she thought they would come back to the legislature, even before the 4-year sunset. The bill was a sunset bill. She would be voting yes on the 8-year amendment because of her faith in the board and the department.

Co-Chair Seaton MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Thompson, Tilton, Wilson

OPPOSED: Guttenberg, Kawasaki, Ortiz, Pruitt, Gara, Seaton, Foster

Representative Grenn was absent from the vote.

The MOTION to ADOPT Conceptual Amendment 1 FAILED (3/7).

2:46:39 PM

Co-Chair Seaton MOVED to report HB 323 out of Committee with individual recommendations and the accompanying fiscal note.

There being NO OBJECTION, it was so ordered.

HB 323 was REPORTED out of committee with a "do pass" recommendation and with a previously published fiscal impact note: FN1(CED).

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

#

ADJOURNMENT

2:47:51 PM

The meeting was adjourned at 2:47 p.m.