

HOUSE FINANCE COMMITTEE
April 6, 2018
1:36 p.m.

1:36:04 PM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:36 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

Diana Rhodes, Staff, Representative Geran Tarr; Fate Putman, Commissioner, Commercial Fisheries Entry Commission, Department of Fish and Game; Sylvan Robb, Deputy Commissioner, Department of Administration; Representative Adam Wool, Sponsor; Mike Navarre, Commissioner, Department of Commerce, Community, and Economic Development; Laura Stidolph, Staff, Representative Adam Wool; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit.

PRESENT VIA TELECONFERENCE

Linda Bruce, Legislative Legal Services, Juneau; Erica McConnell, Director, Alcohol and Marijuana Control Office, Department of Commerce, Community and Economic Development.

SUMMARY

HB 217 RAW MILK SALES; FOOD EXEMPT FROM REGS

CSHB 217(FIN) was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal impact note: FN3 (DNR).

HB 231 CFEC: BD. SALARY;STAFF CLASSIFIED SERVICE

CSHB 231(FIN) was REPORTED out of committee with a no recommendation and with one new fiscal impact note from the Office of the Governor for the Department of Fish and Game.

HB 299 EXTEND: ALCOHOLIC BEVERAGE CONTROL BOARD

HB 299 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the meeting agenda.

#hb217

HOUSE BILL NO. 217

"An Act relating to the Alaska Food, Drug, and Cosmetic Act; relating to the sale of milk, milk products, raw milk, and raw milk products; and providing for an effective date."

[1:37:26 PM](#)

DIANA RHODES, STAFF, REPRESENTATIVE GERAN TARR, highlighted that the raw milk and food exempt from regulations bill no longer included raw milk or food exempt from regulations. She relayed the sponsor supported the [upcoming] amendment.

[1:38:31 PM](#)

AT EASE

[1:40:33 PM](#)

RECONVENED

Co-Chair Foster relayed the amendment sponsor, Vice-Chair Gara, was not present to offer the amendment.

Representative Guttenberg MOVED to ADOPT Amendment 1, 30-LS0593\T.2 (Wayne, 3/3/0/18) sponsored by Vice-Chair Gara (copy on file):

Page 2, line 26, through page 3, line 10:

Delete all material and insert:

11* Sec. 4. AS 29.71.040(a) is repealed and reenacted to read:

(a) If a municipality that receives state money seeks to purchase an agricultural product and an agricultural product harvested in the state is available that is of like quality compared with a similar agricultural product harvested outside the state, the municipality

(1) shall purchase the product harvested in the state if the product is priced not more than seven percent above the similar product harvested outside the state;

(2) may purchase the product harvested in the state only if the product is priced not more than 15 percent above the similar product harvested outside the state.

* Sec. 5. AS 29.71.040(b) is repealed and reenacted to read:

(b) If a municipality that receives state money seeks to purchase a fisheries product and a fisheries product harvested or processed within the jurisdiction of the state is available that is of like quality compared with a similar fisheries product harvested or processed outside the jurisdiction of the state, the municipality

(1) shall purchase the product harvested or processed within the jurisdiction of the state if the product is priced not more than seven percent above the similar product harvested or processed outside the jurisdiction of the state;

(2) may purchase the product harvested or processed in the jurisdiction of the state only if the product is priced not more than 15 percent above the product harvested or processed outside the jurisdiction of the state.

* Sec. 6. AS 29.71.040(c) is amended to read:

(c) A solicitation by a municipality for the purchase of agricultural or fisheries products must include written notice of the purchase requirements and limitations under (a) and (b) of this section and [SHALL] specify [THE REQUIREMENT] that agricultural products harvested in the state and fisheries products

harvested or processed within the jurisdiction of the state will [SHALL] be used where possible. subject to the limitations under (a) and (b) of this section. If a municipality that receives state money purchases agricultural products harvested outside the state or fisheries products harvested or processed outside the jurisdiction of the state, the municipal officer responsible for the purchase shall certify in writing the reasons that agricultural products harvested in the state or fisheries products harvested or processed within the jurisdiction of the state were not purchased."

Renumber the following bill sections accordingly.

Page 3, line 13:

Delete "of'

Insert "not less than seven percent nor more than"

Page 3, line 17:

Delete "of'

Insert "not less than seven percent nor more than"

Page 3, following line 19:

Insert a new bill section to read:

"* Sec. 9. AS 36.15.050(c) is amended to read:

(c) A solicitation for the purchase of agricultural or fisheries products must include written notice of the preferences under (a) and (b) of this section and [SHALL] specify [THE REQUIREMENT] that agricultural products harvested in the state and fisheries products harvested or processed within the jurisdiction of the state will [SHALL] be used where possible. If the state or a school district that receives state money purchases agricultural products harvested outside the state or fisheries products harvested or processed outside the jurisdiction of the state the officer responsible for the purchase shall certify in writing the reasons that agricultural products harvested in the state or fisheries products harvested or processed within the jurisdiction of the state were not purchased."

Renumber the following bill sections accordingly.

Representative Kawasaki OBJECTED for discussion.

Ms. Rhodes detailed the amendment had been briefly addressed by Representative Geran Tarr at a past meeting as it had been included in a previous version of the legislation. There was an existing 7 percent procurement preference. The sponsor wanted to provide flexibility for agencies that wanted to purchase Alaska grown items. The amendment would allow agencies to spend up to 15 percent more on an Alaska grown product.

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

Vice-Chair Gara shared he was open to the bill sponsor's views on the amendment. The amendment maintained the 7 percent local producer's preference for fisheries and agricultural products; local producers could charge up to 7 percent higher and still win in the procurement process. He noted it had been the law for a long time. There had been a discussion about changing the preference to 15 percent, which had caused some concern that the amount may be too expensive for schools and other entities facing limited funds. The amendment reflected an earlier version of the bill that included a 7 percent local preference to help local producers and if a state or community entity (e.g. a school) wanted to go above the 7 percent they could add another 8 percent to the price in order to select the local product. He explained it would save money for schools and other entities strapped for cash as the bill would not force them to pay the extra 8 percent. The negative aspect was the uncertainty that entities would ever opt to pay an additional 8 percent for local dairy or fisheries. He requested to hear the sponsor's view on the amendment.

[1:44:26 PM](#)

Co-Chair Foster replied that Ms. Rhodes had indicated the sponsor's support.

Representative Wilson communicated she was amenable to the 7 percent. She provided a scenario where an entity chose to go up to 12 percent to purchase carrots, but simultaneously opted not to pay 9 percent for another type of product. She remarked the amendment took a subject with strict rules and would leave it up to each district to choose between 7 and 15 percent. She was uncertain how the change would comport with existing procurement rules. She wondered whether the change could result in law suits or complaints because the

percentage would no longer be consistent. Currently entities had to opt for the producer within the 7 percent range. She did not know how allowing an entity to select a producer between the 7 and 15 percent range would work.

Vice-Chair Gara did not see a possibility for a law suit. The law would maintain the existing 7 percent local preference. No one would have the ability to sue a school district or other entity for deciding to pay an additional 8 percent. For example, the law would require paying the additional 7 percent and if a local dairy cost 9 percent more, the school district, prison, or other state entity could choose to pay the extra amount.

Representative Wilson clarified there were two bidders on a procurement. She gave an example of an Alaskan business and a Washington business submitting bids to provide milk. Under existing law, an Alaskan business could bid up to 7 percent more and still win the bid. She believed if the bid from the Alaskan business was 9 percent more the entity would have to select the Washington business because there was only a 7 percent addition. She believed the amendment would allow an entity to pay 9 percent, which she thought was contrary to procurement rules.

Representative Pruitt agreed with the amendment. He stated a municipality or school district would have to put the range in their procurement code because they could not randomly change the percentage. He detailed entities had to have a standard in their procurement codes. He elaborated that a code could either specify 7 percent or up to 15 percent. Entities' procurement decisions would be based on their procurement codes. The entities would not decide how to apply their procurement haphazardly, which would be subject to a lawsuit. He explained that would not be allowable. He detailed a municipality would have to publish its procurement rules at the beginning of a process. An applicant would then apply based on the specified procurement rules. He clarified the rules would be made known beforehand, not in the middle of a procurement process.

[1:49:06 PM](#)

Representative Wilson asked if it was the intent for the state to use the range of 7 and 15 percent. She remarked

the state would still have the requirement for state contracts including corrections and other.

Vice-Chair Gara replied that a bidder would bid a price. If a price was 8 percent more, the municipality, school district, or state entity would be allowed to pay the extra 1 percent. There were already rules to apply to two sets of bids for milk - they were both at 7 percent and there were rules for deciding which bids qualified and which did not; those rules would remain. The amendment merely gave a district or other entity the right to choose a local product as long as it did not exceed an additional 8 percent.

Representative Wilson clarified her understanding of the amendment. She believed Vice-Chair Gara was stating that in the first round of bidding if with the 7 percent added, an Alaskan entity would still be lower than the milk from out-of-state and they would win the bid based on the 7 percent. She asked for verification that the school district or the state could choose to then pay 8 percent instead of the 7 percent that had been bid.

Vice-Chair Gara replied in the negative. He believed that was the source of the confusion. He clarified that if something was bid at 7 percent, the school district [or other entity] would take the product at the 7 percent. The school district would not be allowed to give a producer more than the bid price. He provided an example where local dairy bid at 9 percent more. He explained the school district could choose whether to accept the 9 percent bid or go with another bid because it was only obligated to pay 7 percent.

[1:51:26 PM](#)

Representative Wilson pointed to language in Section 9 of the amendment on pages 2 and 3. She observed that if something was bought from out-of-state, the purchasing entity may be required to submit additional paperwork detailing why the out-of-state bidder had been selected. She asked where the paperwork would go and who would determine what it looked like.

Vice-Chair Gara asked Representative Wilson to repeat the location in the amendment she was referencing.

Representative Wilson read from Section 9 of the amendment:

A solicitation for the purchase of agricultural or fisheries products must include written notice of the preferences under (a) and (b) of this section and [SHALL] specify [THE REQUIREMENT] that agricultural products harvested in the state and fisheries products harvested or processed within the jurisdiction of the state will [SHALL] be used where possible. If the state or a school district that receives state money purchases agricultural products harvested outside the state or fisheries products harvested or processed outside the jurisdiction of the state the officer responsible for the purchase shall certify in writing the reasons that agricultural products harvested in the state or fisheries products harvested or processed within the jurisdiction of the state were not purchased."

Representative Wilson observed the section was a mandate. She asked where the paperwork would be filed and who would determine its accuracy.

Vice-Chair Gara answered that it was a requirement for entities to state the reason why they rejected a local bidder. The reasons would be included in procurement code.

Representative Guttenberg stated the language in the amendment consistently referred to municipality. He noted it did not refer to school districts until page 3 of the bill. He asked if the definition of municipality covered school districts. He noted that not all school districts were connected to a municipality. He provided examples including the Yukon Koyukuk School District in the Interior and some Southeast and possibly Southwest communities. He wanted to ensure the reference to municipalities in one section covered school districts.

[1:54:29 PM](#)

Vice-Chair Gara replied that the amendment governed the same entities that the procurement code covered. The amendment did nothing to change that. He noted the bill sponsor may know exactly which entities were covered, but the amendment did not change that law.

Ms. Rhodes answered that Vice-Chair Gara was correct. She elaborated the amendment changed nothing in the procurement code. The covered entities were school districts and municipalities that received state money.

Representative Wilson MAINTAINED the OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Ortiz, Pruitt, Thompson, Gara, Grenn, Guttenberg, Seaton, Foster

OPPOSED: Kawasaki, Tilton, Wilson

The MOTION PASSED (8/3). There being NO further OBJECTION, Amendment 1 was ADOPTED.

Vice-Chair Gara addressed the fiscal notes from the Department of Commerce, Community and Economic Development. The note reflected a cost of \$5,000 and a change in revenue of \$10,000 for FY 19 through FY 24.

[1:57:21 PM](#)

Co-Chair Seaton MOVED to REPORT CSHB 217(FIN) out of committee with individual recommendations and the accompanying fiscal note.

CSHB 217(FIN) was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal impact note: FN3 (DNR).

[1:58:07 PM](#)

AT EASE

[1:58:44 PM](#)

RECONVENED

#hb231

HOUSE BILL NO. 231

"An Act relating to the Alaska Commercial Fisheries Entry Commission; and providing for an effective date."

[1:59:09 PM](#)

SYLVAN ROBB, DEPUTY COMMISSIONER, DEPARTMENT OF ADMINISTRATION, introduced herself.

FATE PUTMAN, COMMISSIONER, COMMERCIAL FISHERIES ENTRY COMMISSION, DEPARTMENT OF FISH AND GAME, introduced himself.

Representative Wilson MOVED to ADOPT Amendment 1, 30-GH1053\0.1 (Bullard, 4/2/18) (copy on file):

Page 1, lines 4 - 5:
Delete "assigning employees of the commission to the classified service;"

Page 2, lines 14 - 17:
Delete all material.

Renumber the following bill sections accordingly.

Page 2, line 30:
Delete all material. 11
Renumber the following bill sections accordingly.

Page 3, lines 5 - 19:
Delete all material.

Renumber the following bill section accordingly.

Representative Kawasaki OBJECTED for discussion.

Representative Wilson explained the amendment would not unionize existing employees and would leave them in their existing classification. She reported that based on a survey it appeared to be the will of the employees.

Representative Kawasaki WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment 1 was ADOPTED.

[2:00:35 PM](#)

Co-Chair Foster MOVED to ADOPT Amendment 2, 30-OH1053\0.5 (Bullard, 4/4/18) (copy on file):

Page 2, following line 8:
Insert a new bill section to read:
"* Sec. 4. AS 16.43.050 is amended to read:

Sec. 16.43.050. Qualifications. The commission shall consist of two [THREE] members with a broad range of professional experience, neither [NONE] of whom has a vested economic interest in an interim-use permit, entry permit, commercial fishing vessel or gear, or in any fishery resource processing or marketing business."

Renumber the following bill sections accordingly.

Page 3, line 2:
Delete "sec. 4"
Insert "sec. S"

Page 3, line 11:
Delete "sec. S"
Insert "sec. 6"

Representative Wilson OBJECTED for discussion.

Co-Chair Foster asked one of the departments to explain the amendment that had been brought forward by the administration.

Ms. Robb explained one of the primary functions of the bill was to decrease the number of Commercial Fisheries Entry Commission (CFEC) commissioners from three to two. She noted that the change had inadvertently been missed in one location in the bill. The amendment corrected an error to align with the rest of the document.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 2 was ADOPTED.

[2:01:56 PM](#)

Co-Chair Foster MOVED to ADOPT Amendment 3, 30-GH1053\0.4 (Bullard, 4/4/18) (copy on file):

Page 2, lines 24 - 29:
Delete all material and insert:
"(d) Except when there is a vacancy as provided in AS 16.43.030(c), the [THE] show cause hearing shall be conducted before a quorum of commissioners and shall be presided over by a hearing officer appointed by the commission who shall rule on the presentation of evidence and other procedural matters. Hearings shall

be conducted in accordance with regulations adopted under AS 16.43.110(b)."

Representative Wilson OBJECTED for discussion.

Co-Chair Foster asked the departments to explain the amendment.

Ms. Robb explained the amendment clarified when one of the two commissioner seats was vacant, the commissioner may act alone; however, when both commissioner seats were occupied, one commissioner could not act alone.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 3 was ADOPTED.

Co-Chair Seaton MOVED conceptual Amendment 1, page 2, lines 12 and 13, which would change the salary range for both CFEC commissioners to 25.

Co-Chair Foster asked for verification that the amendment applied to future CFEC commissioners only.

Co-Chair Seaton answered in the affirmative. He thought discriminating between salary for commissioners with the same duties was not necessary. He noted there were some legislative staff at a range 24 and he believed the commissioner should be somewhat higher, but a range 27 was \$40,000 more than a range 24. He thought the two commissioners should be equal in pay.

Representative Wilson OBJECTED for discussion.

[2:04:28 PM](#)

Co-Chair Foster asked to hear from the departments.

Representative Pruitt asked for verification that the amendment would replace "Range 27" with "Range 25" on line 12 and would replace "Range 24" with "Range 25" on line 13.

Co-Chair Seaton agreed.

Ms. Robb did not have an objection to the conceptual amendment.

Representative Wilson WITHDREW her OBJECTION. There being NO OBJECTION, conceptual Amendment 1 was ADOPTED.

Representative Guttenberg remarked he had not objected to Amendment 1, which maintained the status of current classified [CFEC] employees. He referenced a letter and a survey [from CFEC employees] received by the committee. He stated it was difficult to see documents of that nature that may not be valid or were done in a way to give the committee the wrong impression. He noted the survey contained 15 or 20 signatures (copy on file). He was concerned about receiving something without a notary or other indication legitimizing the document. He stated that theoretically one person could have created and submitted a document. He thought the committee should be cognizant to make certain something was as it was represented in the future.

Vice-Chair Gara reviewed the fiscal note from the Office of the Governor for the Department of Fish and Game (OMB Component Number 471). The reduction in one position resulted in a designated general fund savings of \$187,000 in FY 19 through FY 22 and \$228,800 starting in FY 23. He thought there would be a forthcoming fiscal note to reflect the passed amendment.

Representative Wilson asked whether the bill would move forward with a forthcoming fiscal note to reflect the change of both CFEC commissioner positions to a salary range 25.

[2:08:06 PM](#)

AT EASE

[2:08:29 PM](#)

RECONVENED

Co-Chair Foster acknowledged Representative Wilson's point.

Co-Chair Seaton MOVED to REPORT CSHB 231(FIN) out of committee with individual recommendations and the accompanying forthcoming fiscal note.

CSHB 231(FIN) was REPORTED out of committee with "no recommendation" and with one new fiscal impact note from the Office of the Governor for the Department of Fish and Game.

2:09:14 PM

AT EASE

2:10:59 PM

RECONVENED

#hb299

HOUSE BILL NO. 299

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

2:11:12 PM

REPRESENTATIVE ADAM WOOL, SPONSOR, had no further remarks on the bill. He was prepared for the amendment process.

Co-Chair Foster listed individuals available for questions.

2:12:29 PM

AT EASE

2:13:08 PM

RECONVENED

Co-Chair Foster stated that the amendment would expand Department of Commerce, Community and Economic Development's (DCCED) role as a regulatory and quasi-judicial agency over the Alcoholic Beverage Control (ABC) Board's decisions. He asked if the change would add additional costs to the department.

MIKE NAVARRE, COMMISSIONER, DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT, answered it would depend on the number [of ABC Board cases] that ended up being appealed. He believed it would be limited based on the way the amendment was written to apply to an appeal based on the decision of the board. The intent was to review whether it was consistent with law.

Co-Chair Foster MOVED to ADOPT Amendment 1, 30-LS1281\J.2 (Bruce, 4/3/18) (copy on file):

Page 1, line 2, following the second occurrence of "Board;":

Insert "relating to the application of precedent to decisions of the Alcoholic Beverage Control Board;"

Page 1, following line 10:

Insert a new bill section to read:

"* Sec. 3. AS 04.11.537 is repealed."

Renumber the following bill sections accordingly.

Representative Wilson OBJECTED for discussion.

Representative Wool explained that Amendment 1 would provide an appeal provision to the DCCED commissioner. He detailed that in the past the ABC Board had resided under the Department of Revenue (DOR) and the Department of Public Safety (DPS). The move from DPS to DCCED had been an effort to make the ABC Board more receptive to business and commerce and less like a law enforcement division. The amendment would give DCCED a connection to the board; currently the board was in the department for administrative purposes only. The amendment would enable a person or entity to appeal a board decision. Existing law required a person or entity to take a board decision to the state superior court. The amendment would provide an option that did not involve courts, attorneys, and accompanying complications.

[2:16:24 PM](#)

Representative Guttenberg asked who the board's decision would be appealed to. He asked if the decision was appealed back to the board. He provided a scenario where a decision was appealed and went back to the board and the result was still adversarial for one party. He asked about the steps that would follow.

Representative Wool answered that currently it was possible to appeal to the board, but if a person got to a point they felt another appeal was needed, the amendment would mean DCCED would be the next adjudicating body before state court.

LAURA STIDOLPH, STAFF, REPRESENTATIVE ADAM WOOL, added that the process under discussion was considered a reconsideration process instead of an appeals process. The party the board made the decision against would have 30 days to make a motion for reconsideration to the [DCCED]

commissioner. The commissioner would then make a decision based on his/her review of any evidence that had been presented to the board. Subsequent to the commissioner's decision, a party could choose to appeal the decision to the superior court.

Representative Guttenberg reviewed the process explained by Ms. Stidolph. He asked about the portion of the process under the DCCED commissioner's purview. He asked if it involved an administrative law judge or a review.

[2:18:46 PM](#)

Ms. Stidolph answered that the process would be similar to several other statutes including AS 14.11.016, pertaining to when school districts could request decisions of a department that the department had made. Additionally, AS 19.20.015 allowed a municipality to request reconsideration to the Department of Transportation and Public Facilities (DOT) commissioner regarding local control of state transportation corridors. She clarified the process under Amendment 1 applied after the [ABC] board had made a decision and would allow a party to ask the commissioner for reconsideration. Under the reconsideration process the commissioner would receive all of the information that had been previously used by the board to make its decision. She characterized the reconsideration process as an informal appeals process.

Representative Guttenberg asked Commissioner Navarre about the review criteria the commissioner would use. He wondered if the commissioner would give the information to an administrative law judge and ask for an opinion. He asked if there would be a hearing held.

Commissioner Navarre answered the appeal process was based on the record of decision before the board and whether it was consistent with law. He explained the commissioner would be another set of eyes on the final decision before a party could opt to take the decision to the superior court. The commissioner review would happen more quickly than the superior court process. The commissioner would review the record of decision in consistency with law and would have assistance from the Department of Law (DOL).

Representative Wool referenced a letter from Alaska Airlines in members' packets as an example of entities that

may appeal a decision (copy on file). He noted that many entities that may choose to appeal a decision would be small businesses. He detailed that a small business adversely impacted by an ABC Board decision may not have ample time to drag the issue out in court. He expounded that small businesses needed to keep their doors open, keep their lights on, and keep their employees employed. He intended that DCCED would be cognizant of those things while following the law. He believed providing an opportunity for the commissioner to act as another set of eyes was important.

Commissioner Navarre stated there had been some frustrations because the board was a division within his department that he had no authority to administer. The department had been undergoing discussions with the division director to determine how to include some input into the administration by the department. There was a decision by the board that also had the administrative authority over the division regulating and enforcing the alcohol laws. The amendment would allow the commissioner's office to take a second look at the specifics of a board decision before getting to the more expensive litigation process. He added that he did not believe the amendments would have fiscal impact as currently written. He noted that if there was a significant number of appeals, which would not be known for some time, the issue would be addressed in future budget deliberations before the legislature.

[2:23:53 PM](#)

Representative Guttenberg appreciated the response. He recognized there were boards and commissions in departments that acted independently, which sometimes caused people to wonder where the adult supervision was. He believed it was an appropriate step for the department. He supported the amendment.

Representative Kawasaki asked if Amendments 1, 2, and 3 were connected as a packet.

Representative Wool agreed that the amendments were connected. He noted Amendment 3 was a result of Amendment 1.

Representative Kawasaki had a question pertaining to Amendment 2. He summarized his understanding that after reconsideration was given by the commissioner, the commissioner would have some sort of veto power and could affirm, modify, or reverse the board's decision. He asked if his understanding was accurate.

Representative Wool replied in the affirmative. He believed the reconsideration process would be futile if the commissioner did not have the ability to overturn the board's decision. The point was to obtain another perspective on a case and to have the ability to come to a different decision.

Representative Kawasaki pointed to Amendment 2, lines 19 through 21 laid out the decision point where the commissioner would have some sort of ability to exercise veto over the board's decision. He asked if it was the power the commissioner would have.

[2:27:30 PM](#)

AT EASE

[2:29:29 PM](#)

RECONVENED

Co-Chair Foster returned the topic to Amendment 1 and held the question by Representative Kawasaki.

Co-Chair Seaton stated that Amendment 1 pertained to the application of precedent to decisions of the ABC Board. The amendment would repeal AS 04.11.537. Amendment 1 had a Legislative Legal Services opinion attached (copy on file), which specified that no other board had the same criteria. He asked what the effect would be if AS 04.11.537 was repealed.

Representative Wool answered that the amendment would require the board to apply precedent. He stated that no other board had the removal of precedent clause including the Marijuana Control Board. He stated the clause was unique to the ABC Board. He clarified that precedent could be considered in a decision, but the board was not required to adhere to the precise way it had acted in the past. He referenced the letter from Alaska Airlines (copy on file) explaining that for many years their license had been renewed by submitting the finger prints of its president,

treasurer, secretary, and about four corporate officers. In the current year, the ABC Board had told Alaska Airlines it wanted finger prints from all 22 of the company's vice presidents. The company had told the board that its vice presidents changed frequently, the request was cumbersome, and in the past the process had been done a certain way. The board had countered that according to law the licensing required the additional finger prints. He clarified that he was not taking a position on the board's decision, but he believed precedent had some bearing on decisions. He reasoned that in the case of Alaska Airlines, if the process had been available, perhaps the company could have taken the issue to the commissioner for an additional opinion. He reiterated he was not taking a position on a board decision. He believed precedent should be considered, not eliminated. He believed it was consistent since no other board had the power, including the Marijuana Control Board. The opinion provided by Legislative Legal Services indicated the issue could be a problem in due process as well. He believed it was prudent to repeal the provision.

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Co-Chair Seaton surmised that Legislative Legal Services had specified the current statute could be a due process problem and that repealing AS 04.11.537 would be beneficial in two ways. First, the courts would have the documentation considered by the ABC Board in the past in addition to documents on a case it was reviewing. Second, the repeal would eliminate potential due process problems.

Representative Wool replied in the affirmative. Additionally, repealing the statute would be consistent with all other state boards.

Representative Pruitt remarked that he did not have the letter from Alaska Airlines in his packet. He asked if there were other examples where there had been concern that the board had not considered precedent. He believed Legislative Legal Services was highlighting the statute was opening the state up to potential litigation.

Representative Wool referenced a bill that he believed had been considered by the House Finance Committee. The bill had addressed beverage tourism BDLs [beverage dispensary licenses] that had been renewed consistently for 25 years. The law had been further scrutinized and it had been

determined the law required an establishment to have a certain number of rooms (e.g. 40 to 50). License owners had countered that they had been doing things a certain way for 25 years, which he believed should be taken into consideration. He did not have other examples on hand. He compared the situation to a scenario where two license holders were treated differently in one community - one licensee was allowed to do something, while the other was not. He believed something allowed in one circumstance should be taken into account when considering other licenses. He did not believe something should be automatically waived because precedent was not taken into consideration.

Representative Wilson noted the current discussion to repeal AS 04.11.537. She asked if the following language currently in AS 04.11.537 would be addressed in a different amendment:

In determining whether issuance, renewal, transfer, relocation, suspension, or revocation of a license is in the best interests of the public...

[2:37:13 PM](#)

AT EASE

[2:38:40 PM](#)

RECONVENED

Commissioner Navarre answered that the language referenced by Representative Wilson was specific to the application of precedent. The protection of the public was already included in several sections of Title 4 related to issuing licenses and the action taken by the board and division.

Representative Wilson replied that Amendment 1 would insert the language "relating to the application of precedent..." She wondered if the wording no longer needed to be part of the precedent section.

Representative Wool answered that the amendment would mean the removal of the application of precedent and specified what the application of precedent applied to. The language [referenced by Representative Wilson] was included in other sections of statute.

Representative Wilson asked if precedent would not be set any longer. She wondered if the other amendments would address why the language would be inserted by Amendment 1.

Representative Wool replied that the amendments were related. He read language from AS 04.11.537 that the "board need not conform to or distinguish its decision from any action it has taken in the past." He believed the language was unique to the ABC Board and for numerous reasons he believed it should be removed. He cited the Alaska Airlines letter as an example. He reported Amendment 3 was more of a technicality based on the appeal process.

Representative Wilson agreed on the repeal portion of the amendment because the second half specified the board did not have to consider what it had done in the past when considering new cases. She wanted to ensure the applications were in the public's best interest. She requested follow up on the protection of the public in other areas of statute.

Representative Wool answered that he or Legislative Legal Services would follow up.

[2:42:02 PM](#)

Vice-Chair Gara stated that the statutory chapter on alcohol included a number of rules of enforcement and cost when a license was issued, revoked, suspended. He stressed that all of the rules still applied. The rules were applied based on the facts of a case. Even though the amendment would repeal the part of statute specifying the board did not have to follow precedent, the facts of the case should be followed. He stated the language existed in other statutes - other statutes specifying rules implicitly stated they were based on the facts of the case. He thought the special rule on precedent for the ABC Board was wrong and should be removed. He explained that if a person lost their license under various rules, the facts of the case were considered to make the determination. He was not concerned and reiterated the rules were in other areas of statute.

Representative Guttenberg referred to the last sentence of the Legislative Legal Services opinion attached to Amendment 1:

It is my opinion that this language could present due process and equal protection problems by treating similarly situated licensees differently and potentially giving different punishments for similar violations.

Representative Guttenberg asked if the opinion referred to the existing AS 04.11.537 or the repeal of the statute. He was looking for clarity and the simplest way to avoid conflict.

Representative Wool replied that the legal opinion sentence was addressing what the author believed could occur if the language was not repealed.

Representative Kawasaki noted that licensing in the same section talked about board imposed conditions and restrictions. He noted that AS [04.11].395 specified that "The board may, in the best interests of the public, impose conditions or restrictions on a license..." He believed it was imbedded within the licensing and zoning. He stated the only thing the amendment pertained to was precedent, which he was comfortable with.

Representative Wool responded to Representative Wilson's earlier request and read an excerpt from AS 04.11.330:

Denial of License or Permit Renewal.

(a) An application requesting renewal of a license shall be denied if

(1) the board finds, after review of all relevant information, that renewal of the license would not be in the best interests of the public;

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 1 was ADOPTED.

[2:45:57 PM](#)

Co-Chair Foster MOVED to ADOPT Amendment 2, 30-LS1281\J.1 (Bruce, 3/9/18) (copy on file):

Page 1, line 2, following the first occurrence of "Board;":

Insert "relating to the authority of the commissioner of commerce, community, and economic development to

reconsider decisions of the Alcoholic Beverage Control Board;"

Page 1, following line 7:

Insert new bill sections to read:

"* Sec. 2. AS 04.11.070 is amended to read:

Sec. 04.11.070. Power limited to the board. Except as provided in AS 04.11.560(c), only {ONLY] the board may issue, renew, transfer, relocate, suspend, or revoke a license under this title.

* Sec. 3. AS 04.11.560 is amended by adding new subsections to read:

(c) An aggrieved party may request that the commissioner reconsider a decision by the board relating to the issuance, renewal, transfer, relocation, suspension, or revocation of a license under this title. A request for reconsideration must be filed within 30 days after the date the board issues its decision. The commissioner shall determine, based on the record before the board, whether the board's decision is supported by substantial evidence and whether the decision is contrary to law. The commissioner shall issue a written decision affirming, modifying, or reversing the board's decision within 30 days after receiving the request for reconsideration.

(d) Reconsideration under (c) of this section is not a precondition of an appeal to the superior court under (b) of this section. If reconsideration is requested under (c) of this section. the decision by the commissioner to affirm, modify. or reverse the board's decision is the final agency action for purposes of an appeal to the superior court under AS 44.62.560.

(e) The commissioner may stay all or part of an order pending administrative review or reconsideration or judicial review. The aggrieved party may not appeal a stay separately from an appeal of the substantive decision.

(f) In this section, "commissioner" means the commissioner of commerce, community, and economic development."

Renumber the following bill sections accordingly.

Page 1, line 12:

13 Delete "Section 2"

14 Insert "Section 4"

Representative Wilson OBJECTED for discussion.

Representative Wool explained the amendment addressed the appeal and reconsideration process to DCCED after an ABC Board decision and prior to going to state superior court.

Representative Kawasaki read lines 19 through 21 on page 1 of Amendment 2:

The commissioner shall issue a written decision affirming, modifying, or reversing the board's decision within 30 days after receiving the request for reconsideration.

Representative Kawasaki asked if the provision ultimately gave a commissioner veto power.

Commissioner Navarre saw the provision as a review of the decision. He stated it was not a veto power because it had to be based on the record before the board and whether the board's decision was supported by substantial evidence and whether or not it was contrary to law. He believed it was only in specific purposes and was another set of eyes before going to an appeal before the courts.

Representative Kawasaki spoke to an ABC Board decision on distilleries and what constituted a mixed drink. He noted there had recently been news that there had been an error in the action taken by the board, meaning the issue had to come before the board again in the future. He stated the board had come to the decision in February and there had been information not given to the board members for consideration. He asked if the department would have any capacity to get additional information "in between the time in which that time happened and the board rendered their decision."

Commissioner Navarre would have to get Legislative Legal Services, but he believed it would be based on the record of decision and information that had been considered by the board and not based on any new information.

[2:48:54 PM](#)

LINDA BRUCE, LEGISLATIVE LEGAL SERVICES, JUNEAU (via teleconference), asked Representative Kawasaki to repeat his question.

Representative Kawasaki complied. He referenced a 2-2 decision by the ABC Board (one member recused themselves from the vote) to disallow distilleries to mix drinks in their facilities. He asked whether a commissioner would have the ability to veto the board's decision or get additional information in affirming, modifying, or reversing the board's decision. He asked what kind of information would be available to the commissioner when considering the issue.

Ms. Bruce pointed to lines 14 and 15 of Amendment 2, which only permitted the commissioner to reconsider a decision by the board relating to the issuance, renewal, transfer, relocation, suspension, or revocation of a license. The provision did not give the commissioner the authority to veto regulations adopted by the board. However, when a commissioner was reviewing a decision of the board (e.g. to issue or deny a license) they could only consider the record that had been before the board.

[2:50:44 PM](#)

Representative Kawasaki wanted to understand the power of the commissioner. He surmised that affirming a decision by the board would be rubber stamping that decision. He asked how modifying and reversing a board recommendation would work.

Ms. Bruce explained her understanding that modifying would come into play when there may be multiple facets of the board's decision. The commissioner could decide to affirm, deny, and make changes to parts of a decision.

Representative Kawasaki referenced the language "based on the record before the board," and asked how much latitude a commissioner would have, in the absence of presented information, to make a decision to modify the board's decision.

Ms. Bruce replied that it would depend on the facts before the board and the factual circumstances.

Representative Wilson referenced the board's past decision on distilleries and surmised the amendment would not help businesses impacted by the decision because it had not been attached to anyone renewing [a license]. She reasoned the

decision had been about activity businesses were allowed to conduct under their license.

Representative Wool answered in the affirmative. The amendment was limited and did not cover any decision the board may make about cocktails or other. The amendment specified what could be appealed.

Representative Wilson asked about cases where someone had been fined. She wondered if the amendment would allow them to take the issue to the commissioner. Alternatively, she wondered if the amendment only pertained to the issuance, renewal, transfer, relocation [suspension, or revocation of a license]. She provided an example of someone doing a renewal who claimed they had submitted all of their paperwork, but the board had not received it all and had fined the individual \$1,000. She asked if the issue could be taken to the commissioner.

Representative Wool answered that technically the issue could be [taken to the commissioner] when pertaining to a renewal. He thought Representative Wilson's example may be a question for Legislative Legal Services. He listed items the commissioner could reconsider under the amendment including the issuance, renewal, transfer, relocation, suspension, or revocation of a license. He reasoned that if a fine fell under one of the categories, perhaps it was applicable.

[2:54:03 PM](#)

Representative Wilson understood the amendment pertained to the issuance, renewal, and transfer of a license. She asked the board would have to decide against renewing a license for the issue to go to the commissioner. Alternatively, she wondered if someone could appeal to the commissioner if the board imposed fines or penalties on the license holder. She was trying to determine how broad the amendment was.

Ms. Bruce responded that it may be open to interpretation; however, the term "relating to" in the amendment language "decision by the board relating to the issuance, renewal, transfer, relocation, suspension, or revocation of a license," made the amendment a bit broader than merely the renewal or issuance of a license. The provision applied to something relating to the issuance or renewal of a license.

Representative Wilson asked how many times in the past two years someone had taken a board decision to court. She understood that court was expensive and cost someone more than fines imposed by the board. She wondered about the added burden that would be placed on the commissioner.

Representative Wool replied that he did not know the number of cases that had gone to state superior court. He guessed it was not that many. He deferred the question to the ABC Board director.

[2:56:18 PM](#)

ERICA MCCONNELL, DIRECTOR, ALCOHOL and MARIJUANA CONTROL OFFICE (AMCO), DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), believed one licensee had appealed to court in the past year. She made clarifying remarks about the appeal process. She explained there was a very clear appeal process in statute. She detailed if a licensee was unhappy with a decision by the AMCO director, they were authorized to appeal the decision to the ABC Board. She elaborated that if a licensee was unhappy with a board decision they appealed to the Office of Administrative Hearings and received a hearing before an administrative law judge. The administrative law judge established the record, held a hearing, and made a proposed decision. The proposed decision went back to the ABC Board for a final decision and the board was authorized to agree, disagree, or modify the administrative law judge's decision. At that point the decision was final and could be appealed to superior court.

Representative Guttenberg addressed Ms. Bruce and relayed the committee had adopted Amendment 1. He stated the committee was taking out the precedent process from the decisions of the board. He reviewed his understanding that the board could make a change to the license process after businesses had been renewing licenses the same way for many years. He wondered if there was time given to businesses to adjust business practices inside of the process.

[2:59:22 PM](#)

Ms. Bruce stated her understanding of the question. She believed Representative Guttenberg was asking whether there was an alternative avenue for a licensee if the board found a licensee had been doing something unlawfully.

Representative Guttenberg clarified he was speaking to a scenario where the way a business had operated in the past was no longer allowed [based on changes made by the board].

Ms. Bruce deferred to the Ms. McConnell. She speculated that the board may have the ability to temporarily suspend a license and give the licensee time to conform to the new interpretation.

Ms. McConnell responded it was always the board's goal to consistently apply statute and regulation. When the division encountered a situation where it appeared the statute had not been correctly applied in the past, the division did its best to work with the licensee or applicant to bring them into compliance with the law. She believed there was court ruling that related to the amount of time something that did not comply with statute had been allowed to go on. The less time it had been allowed to go on, the easier it was to correct, while the longer something had gone on improperly, the more difficult it was to correct. She did not believe there was a rigid timeframe, but the board did its best to work within the means it was allowed to bring applicants and licensees in compliance with statute. The division's goal was not to revoke licenses, but to ensure statute was applied as written.

Vice-Chair Gara supported the amendment. He stated it was common for an agency to have a double layer of an appeals. He thought the ABC Board should have the double layer. The amendment did not address regulations like a rule imposed in distilleries requiring consumers to mix their own drinks, which many members had questions about. The same board members were making the decisions on individual cases. He was comfortable having the board's decisions be subject to appeal to the commissioner. He referenced a question from Representative Kawasaki about the basis for the commissioner's decision. He stated the commissioner's decision had to be supported by substantial evidence, which was the common standard. He remarked it was not uncommon within an agency to have a second appeal layer higher up. He had enough questions throughout time about decisions made by the ABC Board that he did not mind the review of a decision based on substantial evidence.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 2 was ADOPTED.

3:03:38 PM

Co-Chair Foster MOVED to ADOPT Amendment 3, 30-LS1281\J.3 (Bruce, 4/5/18) (copy on file):

Page 1, line J, following "Act":
Insert "relating to the Department of Commerce, Community, and Economic Development;"

Page 1, following line 4:
Insert a new bill section to read:
"* Section 1. AS 04.06.0 IO is amended to read:
Sec. 04.06.010. Establishment of board. There is established in the Department of Commerce, Community, and Economic Development the Alcoholic Beverage Control Board as a regulatory and quasi-judicial agency. [THE BOARD IS IN THE DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT, BUT FOR ADMINISTRATIVE PURPOSES ONLY.]"

Page 1, line 5:
Delete "Section 1"
Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 1, line 12:
Delete "Section 2"
Insert "Section 3"

Representative Wilson OBJECTED for discussion.

Representative Wool explained that the amendment removed the language specifying the board was in the department for "for administrative purposes only." He believed it was important to remove the language because a previous amendment had added the appeal process; therefore, the board was no longer within the department for administrative purposes only. Amendment 1 had established more of a connection between the board and department.

Representative Wilson asked whether removing the language "for administrative purposes only" would give the board any

other powers aside from what had been shown in the amendments.

Representative Wool answered in the negative. He elaborated that the ABC Board had resided in DOR, DPS, and was currently under DCCED. He reasoned that if the board was under DCCED for administrative purposes only, it could be under DOT and it would not make a difference. He was trying to create some connection between the board and DCCED, which he believed was the reason for moving the board from DPS because the licensees were businesses. He believed whatever thin filament of connection could be sustained was a positive thing.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 3 was ADOPTED.

3:05:31 PM

Representative Wilson had a question for the Division of Legislative Audit (Legislative Audit). She noted there had been numerous recommendations in the audit report. She did not believe any of the items added by the amendments helped any of the eight issues mentioned in the audit. She asked if any of the amendments would cause additional issues or help resolve any of the audit recommendations.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, replied that the eight recommendations were not related to the amendments. She answered that when the division came back to review the board it would use the eleven criteria identified in the audit appendix. Most of the criteria were geared towards whether the board was serving the interest of the public. She considered how the position of the commissioner related to Legislative Audit's review of the ABC Board. She explained that if the auditors did not agree with a decision made by the commissioner, it would not relate to the board. She did not believe the actions by the commissioner would be subject to the division's sunset review. She stated it was interesting that the board was a quasi-judicial, independent agency. Based on her understanding of the amendments, the commissioner would be given the ability to veto the decision of an independent body. She highlighted that the commissioner was a political appointee. She did not believe the legislative oversight would have any ability to review the decisions by the commissioner.

[3:08:19 PM](#)

Representative Wilson assumed there was no way to add a review [of decisions made by the commissioner] to something Legislative Audit would look at. She reasoned it would be a separate review the legislature would have to consider. She assumed Ms. Curtis was still okay with the four-year extension because the action taken by the committee in the current meeting really did not have to do with boards.

Ms. Curtis answered she was comfortable with the recommended extension that was half of the maximum [allowable extension], which was in regards to the eight audit recommendations. A special audit request would be required in terms of looking at decisions and whether they were supported by evidence. She elaborated the special request would be added to the queue - the division operated on a first-in-first-out basis - and it may take time to get to a review.

Representative Pruitt thought the committee should have asked to hear from Ms. Curtis earlier in the meeting. He asked whether the sunset audit that would take place in four years could include an analysis on whether the [DCCED] commissioner was working alongside the stated goal of the commission or whether there were actions being taken that were contrary to the commission.

Ms. Curtis answered that in the past the legislature had directed, via uncodified law, Legislative Audit to look at something in a certain amount of time. She believed the direction would prompt the division to review the issue as part of the sunset process. She added that intent language may also work. She explained that if she saw the intent language she would most likely have the committee put it on record to direct the division to look at something.

Representative Pruitt thought something should be included in the bill to give Legislative Audit direction to ensure a commissioner did not operate outside of what the legislature believed the commission was tasked to do. He thought perhaps an amendment could be offered on the House floor.

[3:11:53 PM](#)

Representative Wilson stated she had not expected the answers she had been given. She remarked the changes made during the meeting had impacts outside the board and the existing audit process that she had not been aware of. She requested to hold the bill until the following day. She thought the committee should include intent language. She wanted to make sure someone was checking the issue.

Vice-Chair Gara hoped individuals with concerns could speak to the sponsor and address any issue on the floor. He supported moving the bill forward.

Commissioner Navarre relayed that he had not had an opportunity to discuss the items with Ms. McConnell or DOL. He intended to fully engage the parties, but he did not believe that was possible by the following day. He committed to speaking with the parties before the bill went to the House floor.

Representative Wool remarked on Ms. Curtis's comment that the commissioner was a political appointee. He noted that director of the ABC Board was also a political appointee. He stated that the director made numerous decisions that impacted many people. He addressed that the first appeal process went to an administrative law judge and did not know whether it fell under the purview of Legislative Audit. He referenced Ms. Curtis's testimony that audits did not address anything at the commissioner level. He asked if the audits to the board included the appeals to the administrative law judge.

Ms. Curtis answered that when looking at a case, Legislative Audit could and had, looked at administrative law decisions, knowing it was an independent process. Mainly the audit considered how the board reacted to an independent decision. For instance, whether they reversed it and what type of support they had.

[3:15:54 PM](#)

Representative Wool remarked that in the past audit, Legislative Audit did not look into the decisions made by the administrative law judge - whether they supported or did not support the board's decision.

Ms. Curtis answered that Legislative Audit did not look into the administrative law judge decision, but it looked

at the timeliness of investigative process, which was a criterion the division was directed to consider. The division's primary focus was whether the board was serving the public's interest, which would be the main focus in the sunset process.

Representative Guttenberg asked about the audit's second recommendation:

Recommendation 2: The board should issue recreational site licenses in accordance with statutory requirements.

Representative Guttenberg elaborated that the audit recommendations referenced noncompliant licenses including travel tour companies, bowling allies, an art council, a pool hall, a movie theater, and a spa. He referenced a situation where the Fairbank Drama Association used a bar's license to sell alcohol 30 minutes prior to a performance. He stated it was around \$50 for every performance. He believed the Alaska Center for the Performing Arts in Anchorage used the same process. He asked if either of the organizations would be able to have a recreational site license to serve during performances if the audit recommendation was followed.

Ms. Curtis replied that Representative Guttenberg's description was of a bar with a license serving alcohol. She deferred the question to Representative Wool.

Representative Wool answered that there were several things occurring. There was a catering permit allowing a bar to cater its license to the theater, which he believed was the case with the Fairbanks Drama Association (organizations paid per event). Additionally, there was a recreational site license for certain sporting events and other related situations. Recommendation 2 in the audit found that the board had gone outside the definition of the intended use. He believed the Alaska Center for the Performing Arts in Anchorage had a theater license. He noted there were 22 types of licenses, which could be complicated. He explained the many licenses caused confusion when licensees wondered why they could not do something another business was doing. He believed Title 4 was attempting to clean up some of the issue, but there would still be 22 or 24 licenses. The catering permit in Fairbanks was different than a recreational site license, which was different than a

theater license. He reiterated that the performing arts center used a theater license and had to get a catering permit from an established beverage person. He explained the permit was good for an entire season, but it meant the center had to use it for every show.

[3:19:13 PM](#)

Representative Guttenberg noted that the Fairbanks Drama Association had been in touch with AMCO because the association had to get a permit for every individual show. He wondered if he had the information wrong - he was trying to gain resolution on the issue for the association.

Ms. McConnell replied that Representative Wool had been 99 percent correct on his response. She corrected that his last statement about the performing arts center had been incorrect. She detailed that AMCO had encouraged the Fairbanks Drama Association to apply for a theater license, which existed currently in regulation. The association would have to partner with a beverage dispensary licensee that would have consistent permission to serve at the theater. She explained that was the situation with the performing arts center in Anchorage.

Representative Kawasaki did not have a problem moving the bill forward. He referenced Commissioner Navarre's testimony that it would take him longer than one day to provide additional information. He recognized it was a board extension that was needed with eight days of session remaining. He intended to recommend potentially amending the bill at a later time in the legislative process. He stated that members could connect directly with the commissioner and AMCO director if they had further questions.

[3:21:09 PM](#)

Representative Pruitt referenced that Commissioner Navarre had stated that he would not have time to speak to personnel by the following day. He did not know whether that was needed if the issue was more about ensuring that the audit analyzed some of the actions that could be taken by the commissioner's office. He addressed the House floor calendar and supported holding the bill until the following day. He reasoned the committee could request language for a potential amendment to consider the following day. The

committee was aware of the conversation, while colleagues on the floor may not be.

Co-Chair Foster believed Representative Wool may be leaving town.

Representative Wool supported moving the bill during the current meeting. His second preference was to move the bill the following day. He stated the bill was of a timely nature and had to go through the other body as well. He detailed the bill was a board extension and needed to be done. He had wanted to amend the bill due to different situations. He had used the Alaska Airlines situation as an example - he believed the decision was still pending. He clarified he was in no way picking on the board or Ms. McConnell.

Representative Wool referenced the letter from Alaska Airlines and explained the Alaska Airlines renewal form had been sent before the end of the year because it referenced a letter dated December 29. The company had been later informed it needed the finger prints of its 20 or so vice presidents. The company had responded that it did not need to provide the detail because it had not been required to do so in the past. The board had told Alaska Airlines that statute specified the information needed to be provided. Additionally, the board had told the company it would be fined \$10,500 because the application had not been completed by the deadline. The company had been told there was no way to waive the penalty. He explained that the paperwork had been provided on time, but due to the disagreement over what was required, the company was fined for an incomplete application. As a business owner, he had a problem with the process. He reasoned Alaska Airlines could likely afford the fine, but it may be harder for a small business, especially if they had to close because of a suspended license. He stated that if he flew on Alaska Airlines in the coming month and could not purchase a glass of red wine, it would not be the end of the world. The company would stay in business. However, the issue impacted different people differently.

Representative Wool supported an appeal procedure to expedite the process. He did not know how long the aforementioned administrative law route took. He noted that the board met every three months and reasoned if someone had to wait a couple of board cycles for resolution it was

a substantial length of time. He apologized if he was incorrect about the frequency of board meetings. He reiterated that the process could take months, which could mean closure for a small business. His desire was to ensure the board was service the public's interest. He wanted to see another set of eyes when needed that could provide a different perspective than law enforcement or prosecutorial point of view.

[3:26:34 PM](#)

Ms. McConnell reported that the process for an administrative law judge to hold a hearing on a case took several months.

Vice-Chair Gara spoke to a concern mentioned that a commissioner's decision would not be reviewed by Legislative Audit. He added that the division did not review superior or supreme court decisions either. He did not share the concern and did not have the interest in expanding the role of Legislative Audit. He believed it was beyond the purview of the bill. He supported moving the bill forward and having any new questions addressed as the bill moved along in the legislative process.

Representative Wilson remarked that there was no way the committee would have known the amendments were coming until the current day. She was not disagreeing with the changes made by the amendments, but she pointed out that the board had not received an overly positive audit. She reasoned there were already existing issues. She continued the audit had included eight recommendations and a four-year extension. She noted there were numerous boards that received eight-year extensions and had flawless audits. She believed the legislature had punished the Board of Pharmacy by giving a six-year extension and adding numerous duties to its purview. She stated the current bill did the same thing to the ABC Board; it changed how things had been done. She was requesting to hold the bill until the following day to include additional language. She reiterated that the changes were new and at the end of the four-year extension the legislature would learn whether the changes worked. She understood that Alaska Airlines was having an issue [with the board], but she wanted the public to realize the issue was not about one entity. She pointed out that the audit highlighted issues with compliance, ensuring complaints were filled in, and other. She wanted

to get the bill right before it went to the floor. She wanted to see the board extension go forward. She reiterated her request to hold the bill until the following day in order to ensure a good bill was moved forward.

3:30:22 PM

Co-Chair Foster asked who would work on the language.

Representative Wilson replied she was happy to work on the new language.

Representative Pruitt emphasized that due to the amendments, the bill was not merely a board extension. Given policy changes related to the board operation the bill would have more debate than a typical board extension. He thought that waiting to address the issue on the House floor could further delay the bill because the whole body was not versed on its intricacies. He highlighted comment by another member that Legislative Audit did not review superior court cases. He agreed with that point, but under existing law, the committee analyzed the board. He reasoned the changes made by the amendments gave the powers to a commissioner. He spoke to the inability for the auditors to analyze whether the commissioner was acting within "what everyone wants the board to fall under." He wanted the decisions to fall within the realm of the board. He believed the issue necessitated having the conversation about whether the commissioner was also following with the legislature's guidelines set for the board. He believed it was worth holding the bill until the following day and thought waiting would ultimately make the bill move faster.

Co-Chair Foster informed the committee that the bill had to be to Senate Finance Committee by Wednesday. He reasoned the House Finance Committee was constantly telling other committees to do their work prior to sending bills forward. He did not want to advance the bill forward without considering the issue on the table. He supported hashing out the language prior to sending the bill forward.

3:34:00 PM

Co-Chair Seaton stated that generally he thought of intent language in a bill relating to the intent of the bill. Whereas, the discussed intent would direct Legislative Audit on what the legislature wanted to see considered in

the next audit. He asked whether it would be sufficient for the committee to include a letter of intent with the bill specifying what it wanted the auditor to look at versus including direction in statute.

Ms. Curtis replied in the affirmative; she would bring it to the letter of intent to the Legislative Budget and Audit Committee for direction. She explained that if the direction was included in uncodified law, she would not need to take direction from the Legislative Budget and Audit Committee. She believed in the past the Board of Midwives had direction included in uncodified law, which would be a useful example if the committee chose to put the language in uncodified law. She reiterated that if she received a letter she would take it to the Legislative Budget and Audit Committee for direction.

Co-Chair Seaton reasoned that putting uncodified law that did not relate to the law they were passing seemed more likely to be stripped out by the other body. He stated the other body tended to dislike including superfluous intent language. He thought including a letter of intent with the bill may be an appropriate way to handle the issue. He stated putting language in statute had been disagreeable to the other body in the past, particularly when the language did not directly relate to the meaning of the adopted amendments.

[3:36:30 PM](#)

Co-Chair Foster stated that regardless of the action the issue could be considered overnight.

HB 299 was HEARD and HELD in committee for further consideration.

Co-Chair Foster relayed the meeting would be recessed until 1:00 p.m. the following day [see separate minutes dated April 7, 2018 1:00 p.m. for detail].

^RECESSED

[3:37:45 PM](#)