

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 1, 2017

3:16 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Louise Stutes
Representative Chris Birch
Representative Gary Knopp
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 49

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 49

SHORT TITLE: EXTEND BOARD OF DIRECT-ENTRY MIDWIVES

SPONSOR(S): REPRESENTATIVE(S) KITO

01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	L&C, FIN
02/01/17	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

CRYSTAL KOENEMAN, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 49 on behalf of Representative Kito, prime sponsor.

KRIS CURTIS, Legislative Auditor

Legislative Audit Division
Legislative Agencies and Offices
Juneau, Alaska
POSITION STATEMENT: Testified on HB 49.

DEBORAH SCHNEIDER, Chair
Board of Certified Direct-Entry Midwives
Wasilla, Alaska
POSITION STATEMENT: Testified in support of HB 49

SUSAN TERWILLIGER, President
Midwives Association of Alaska
Eagle River, Alaska
POSITION STATEMENT: Testified in support of HB 49.

JANEY HOVENDEN, Director
Division of Corporations, Business, and Professional Licensing
(DCBPL)
Department of Commerce, Community & Economic Development (DCCED)
Juneau, Alaska
POSITION STATEMENT: Testified on HB 49.

MADISON NOLAN GRIMES, Director
Juneau Family Health and Birth Center
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 49.

JOHANNA CROSSETT, Direct-Entry Midwife
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 49.

DEBORAH GILLESPIE, Direct-Entry Midwife
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 49.

ACTION NARRATIVE

[3:16:54 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:16 p.m. Representatives Wool, Stutes, Birch, Knopp, Sullivan-Leonard, and Kito were present at the call to order. Representative Josephson arrived as the meeting was in progress.

HB 49-EXTEND BOARD OF DIRECT-ENTRY MIDWIVES

[3:17:31 PM](#)

CHAIR KITO announced that the only order of business would be HOUSE BILL NO. 49, "An Act extending the termination date of the Board of Certified Direct-Entry Midwives; and providing for an effective date."

[3:18:12 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Sam Kito, Alaska State Legislature, on behalf of Representative Kito, prime sponsor, presented HB 49, which extends the Board of Direct-Entry Midwives for four years. She mentioned that the Division of Legislative Audit determined that extending the board is in the best interest of the state and is important to the safety of Alaska's women and children. The board currently licenses 52 licensees and consists of two certified direct-entry midwives, one physician, one certified nurse, and one public member. She explained that midwives assist in about 500 births outside of a hospital setting each year in Alaska and many more births in a hospital setting. She asked for the committee's support of the proposed legislation.

[3:19:40 PM](#)

REPRESENTATIVE KNOPP asked why the board is not permanent.

[3:20:08 PM](#)

CHAIR KITO stated that Kris Curtis could better address board term limits.

[3:20:23 PM](#)

REPRESENTATIVE STUTES asked why the board has such a large deficit and whether there have been approaches to bring it out of the hole.

MS. KOENEMAN stated that the board and the Department of Commerce, Community & Economic Development (DCCED) have been working diligently to reduce the deficit. She stated that the investigative costs associated with the board have been a large contributor to the deficit.

REPRESENTATIVE STUTES asked whether the board has increased its fees.

CHAIR KITO responded that either the department or legislative audit would be better suited to answer that question.

[3:21:45 PM](#)

REPRESENTATIVE BIRCH stated that three of his four grandchildren were delivered by a midwife. He stated his concern for the sunset date and asked for clarification on what the distinction "direct-entry midwife" means.

MS. KOENEMAN answered that direct-entry midwife is a classification by the state, but other testifiers could better clarify that.

[3:23:37 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, testified on HB 49 and presented the sunset audit conducted on the Board of Direct-Entry Midwives. She mentioned that a sunset audit determines whether a board is serving the public's interest and should be extended. She informed the committee that the sunset process started in the 1970s, and the concept of sunset is used in many states. The idea behind sunsetting is that when a government entity is created, there should be an analysis of whether it should continue in perpetuity. Occupational boards, other boards, and commissions all have sunset dates. She stated that last year three audits were conducted for entities terminating this year, and this year 11 sunset audits will happen for entities set to terminate in 2018.

[3:25:16 PM](#)

REPRESENTATIVE WOOL asked about boards that were not extended.

MS. CURTIS stated that the sunset process has been in place for a long time, and it is unusual for an audit to recommend termination. Audits have determined that there is no need for continuing some entities such as the Alaska Health Care Commission and the Board of Barbers and Hairdressers. She said that recommendations for sunset are unusual; more often a term is set for the next review. She related that boards cannot be extended for more than 8 years.

[3:26:26 PM](#)

REPRESENTATIVE JOSEPHSON recalled that prior legislation eliminated statutory oversight of midwives and instead left regulation to the board. He asked "what was so onerous or improper, and why did we make that change?"

MS. CURTIS stated that the reason for the change was that it is easier for the board to change practice through regulation without legislation and to take practice requirements out of statute and into regulation. She offered her understanding that the board finalized the regulations in February 2016.

[3:27:59 PM](#)

REPRESENTATIVE BIRCH restated his interest in knowing what "direct-entry midwives" means.

MS. CURTIS offered her opinion that it is a term based on requirements to become a direct-entry midwife, but there are also nurse midwives who are certified nurses.

REPRESENTATIVE BIRCH asked whether there is a potential for using the Legislative Information Office (LIO) for board meetings to mitigate travel expenses.

MS. CURTIS stated that the audit looks at meetings and operations and determines if the costs are reasonable. The personal services reflect regulatory and investigative costs, which are the biggest cost fluctuations for the board.

[3:30:09 PM](#)

MS. CURTIS began her presentation of the audit [included in the committee packet]. In the 2014 audit, there were concerns that investigations that posed a public safety risk were not being actively processed. Therefore, the board was only extended two years. She expressed that this year's audit found that the board is serving the public's interest by monitoring licensees, licensing appropriately, and issuing regulations that benefit the industry.

MS. CURTIS noted that the audit recommended three changes. The first is a recommendation to the director of the Division of Corporations Business and Professional Licensing (DCBPL), in consultation with the board, to increase fees to reduce the deficit. Between the 2014 and 2016 audits, fees were increased, but not enough to cover operations of the board. The second recommendation is to the director to take steps in ensure

accurate record keeping of licenses, which reflects that the audit found simple errors by the DCBPL staff. The final recommendation is to the state legislature to consider alternate forms of regulating the midwifery profession in light of the large deficit and the small number of licensees who bear the cost of the deficit. She noted that in order to address the deficit, DCBPL was planning on raising fees by 50 percent every two years. By 2020, the licensing fee would be around \$4,000, which would pose a barrier to entry into the profession, limiting the number of practicing midwives.

[3:33:19 PM](#)

REPRESENTATIVE BIRCH asked how frequently a critical review of a licensee occurs, and whether licenses have been rescinded.

MS. CURTIS stated that an investigative section within DCBPL fields complaints to determine basis and purview before conducting an investigation. She noted that the 2014 audit found that some investigations had stalled, but the 2016 audit found that they had been addressed. Licenses are rescinded periodically on this board, like with other boards.

[3:35:18 PM](#)

REPRESENTATIVE JOSEPHSON said that "these boards" are generally supposed to pay for themselves and questioned if that is always good policy. He referred to the recommendation on page 11 of the audit and asked whether it is reasonable to offer the licensees independence if they pay the \$4,000 fee or find another mechanism if they decline.

MS. CURTIS asked for clarification whether Representative Josephson proposes that some midwives would be regulated by a board and some would not. She mentioned that even without the board, licensing and oversight would be handled by DCCED.

REPRESENTATIVE JOSEPHSON stated that at some point the institution may refuse to pay such high fees. He asked what [a licensee] gets out of being in the commission.

MS. CURTIS stated that benefits include being close enough to the industry to self-regulate through peer review, having rules set in place for quality control, and having education requirements to ensure competency. She urged the committee to ask the testifiers why they see a benefit in being regulated.

[3:39:01 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD asked whether there has been discussion with the nursing or medical boards to assist the Board of Certified Direct-Entry Midwives to stay active. She asked if the board would merge with another board if disbanded and if that has been discussed with the other boards.

MS. CURTIS stated that the other individual boards have not been spoken to. They were mentioned due to the similarity of occupations.

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REPRESENTATIVE WOOL stated his understanding that if the board was not extended, then it would fall under the Division of Corporations, Business, and Professional Licensing (DCBPL), which doesn't have midwifery expertise. He noted that a main point of the audit recommendations is the financial loss the board has incurred, largely due to investigations. He asked if the deficit would exist under a different department without the board. He asked if the investigations are common in other occupations, and if boards are always responsible to cover the cost of investigations.

MS. CURTIS answered yes; there is a statute stating that all boards must set fees to cover the cost of regulation. The decision goes back to the 1990s. She noted that many boards have deficits stemming from the fee setting process; deficits are not unique to this board or the medical area. She expressed that a deficit is often a reflection of the number of licensees who bear the cost of investigations. Boards with a smaller number of licensees tend to have larger deficits. She reported that many investigations and big regulation projects drive high costs for boards.

[3:43:13 PM](#)

REPRESENTATIVE STUTES told of her personal experience with the Big Game Commercial Services Board, which had a huge debt, even though its 2014 statement showed it was in the black. The next year the budget showed the board back in the red. She pointed out that this was clearly the result of inadequacies in bookkeeping. She stated her concern that a deficit could be skewed as a result of bookkeeping.

[3:45:12 PM](#)

CHAIR KITO stated that the board investigation fee issue would be discussed by the House Labor and Commerce Standing Committee later this session.

REPRESENTATIVE STUTES commented that increasing fees may not be the appropriate action to address the deficit. The money is still owed whether or not the board sunsets.

[3:46:07 PM](#)

MS. CURTIS noted that there have been problems at the department with improper accounting of indirect individual cost allocation. The department received a supplemental appropriation to make the boards whole and not to hold them accountable for the improper accounting. She noted that a more recent review of the new accounting procedures showed that the problems with financial reporting to the boards were corrected, and improvements have been made in the department.

[3:47:18 PM](#)

REPRESENTATIVE KNOPP asked whether investigative costs are associated with licensing someone or are more of a follow up cost. He suggested that if the high costs are associated with qualifying a candidate for licensing, then the regulations might be excessive.

MS. CURTIS responded that some investigative costs could be associated with licensing, but most of the more material cost of investigations comes from complaints. The audit tests licenses to ensure they comply with statutes and regulations, but the department does not determine if the regulations are excessive - regulations are passed by the legislature. She noted that if the Legislative Audit Division heard problems and concerns about the quality of licensing regulations, then it would pursue them, but that has not been the case with this board.

MS. CURTIS stated, in response to a follow-up question, that the costs largely come from the investigative section not having to do with licensing and from working with the department of law to get support through reimbursable service agreements.

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REPRESENTATIVE STUTES asked who determines who does the investigation - the board or the department - as investigations

create a huge expense. She referenced her previous experience when a board didn't want to investigate because investigating would cost much more than the fine.

MS. CURTIS stated that the board itself must stay out of the investigative process, because the board's opinion is rendered on the results. The investigators can consult a board member for expertise. She continued as follows:

They come into the division. The division is ... the entity by statute that has the authority to do the investigation. They come to the board, provide them status updates. Ultimately when they have a result from their investigation, they will provide their suggestion or consent agreements, and the board itself has to approve them.

[3:51:27 PM](#)

REPRESENTATIVE WOOL asked for an example of an investigation and what would be investigated.

MS. CURTIS stated that one area investigated is unlicensed activity. She questioned whether it is fair for the board to bear the cost of investigating people that aren't licensed or if it is more of a criminal offense. Another area often investigated is malpractice, which is a public safety issue.

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CHAIR KITO stated that testifiers from other organizations are present. He stated that the cost issue will be covered in a later meeting, and he urged the committee to focus on "the midwives side of things."

[3:53:29 PM](#)

REPRESENTATIVE JOSEPHSON added that the legislature has looked at the issue, at length many times, and the committee might benefit from some of that experience.

[3:54:06 PM](#)

DEBORAH SCHNEIDER, Chair, Board of Certified Direct-Entry Midwives, asked for support to extend the board through HB 49. She stated that she has been part of the profession since its establishment in the 1990s. Midwives are hoping to see the

industry grow in Alaska, and the safest way for that to happen is under the direction of a board that understands the industry's specific difficulties. She offered that healthcare dollars in Alaska are being stretched to cover Alaskan mothers and babies, and midwives provide valuable service with an incredible cost savings.

MS. SCHNEIDER noted that the board has been working hard to reduce its deficit. The investigation costs are partially due to prolonged investigations of five or six years or more. She stated that the board could not do anything to reduce the money spent on those prolonged investigations until changes were made in the investigative division that brought those investigations to a conclusion.

MS. SCHNEIDER summarized that other measures will eventually bring the deficit under control. She remarked that by providing midwifery with a board, Alaskans will have the best midwifery practice in the United States. Since first becoming a board, other states have looked to Alaska's board and regulation process for help. She urged the committee's support of HB 49.

[3:56:43 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD referred to Ms. Schneider's letter, on page 24 of the audit, and asked for confirmation that Ms. Schneider was in favor of an increase in fees in order to help pay off the deficit for the board.

MS. SCHNEIDER answered yes. She noted that the board raised the fees last year to \$3,800 and she expects midwives will be paying that for the foreseeable future. She stated that the board is working to reduce the other areas of the deficit and work with the investigative groups to make sure there are not extended and protracted cases.

REPRESENTATIVE SULLIVAN-LEONARD referred to her experience in healthcare. She stated that when the board is "ahead of the game ... financially," she hopes fees would be adjusted accordingly.

[3:58:12 PM](#)

REPRESENTATIVE BIRCH reiterated his question about the meaning of "direct-entry."

MS. SCHNEIDER responded that direct-entry midwives are non-nurse midwives. There are two categories: those who have received a nursing degree and those with a different route of entry [to the industry]. She noted that direct-entry midwives do not practice in the hospital, they practice in a home or birth center and specialize in helping low-risk mothers.

[3:58:54 PM](#)

REPRESENTATIVE BIRCH asked if there is another group of midwives out there who went through a different path and are also delivering children.

MS. SCHNEIDER responded that in Alaska, midwifery is practiced by certified nurse midwives or certified direct-entry midwives.

[3:59:46 PM](#)

SUSAN TERWILLIGER, President, Midwives Association of Alaska, expressed her support of HB 49 for herself and on behalf of the membership of the association. She stated that she has been a licensed midwife in Alaska since 2005 and has 29 total years of practice. She offered that the profession is best governed by a board that understands the industry's place in the health care system. The profession provides comprehensive care during pregnancy, birth, and postpartum to healthy, low-risk mothers and babies and serves all socio-economic walks of life. The board protects public safety by developing and updating clear regulations, keeping with national standards, and using a detailed system of accountability. She stated that midwives have a close professional working relationship with the board; there is a mutual desire to have the best laws in the nation governing direct-entry midwives. Alaska needs midwives to be governed by their own board. She added that some direct-entry midwives are also nurses, but have chosen not to be certified nurse midwives but to be direct-entry midwives. She mentioned that there are basically two parallel routes to midwifery: nurse midwifery or going directly into midwifery without necessarily going through nursing school first.

[4:03:08 PM](#)

JANEY HOVENDEN, Director, Division of Corporations, Business, and Professional Licensing (DCBPL), Department of Commerce, Community & Economic Development (DCCED), stated that the costs associated with licensing the profession would continue without the board - with the exception of board-specific costs like

travel and meeting costs - but would fall under the department or an alternative form of regulation such as another board.

[4:04:02 PM](#)

REPRESENTATIVE WOOL noted that a lot of the costs are due to investigations of non-licensed persons, but the board is responsible for paying for the investigations. He asked if paying for the investigation of someone not licensed or affiliated with the board is common to other boards.

MS. HOVENDEN stated that is correct; it is statutorily required for boards and programs that oversee [professions].

[4:05:27 PM](#)

REPRESENTATIVE STUTES asked how many department staff members attend the board's meetings.

MS. HOVENDEN answered typically one. She noted that the department has undergone strict travel policy changes, which have restricted meetings to the least costs associated. Typically one person from the department would fly or attend the meetings, and the department has tried to have the examiner attend telephonically.

REPRESENTATIVE STUTES asked if this is a recent policy change.

MS. HOVENDEN answered that it has been about a year.

[4:06:42 PM](#)

CHAIR KITO opened public testimony on HB 49.

[4:07:05 PM](#)

MADISON NOLAN GRIMES, Director, Juneau Family Health and Birth Center, testified in support of HB 49. She stated that she has been a licensed direct-entry midwife for three years. She said HB 49 would support midwives to maintain safe practice guidelines and to provide safe, up-to-date care. The board provides regulatory support to ensure that midwives are meeting standards of care and doing the best they can for Alaskan women and families. Maintaining the board is the best way to make sure licensees are practicing in the safest way possible and maintaining national standards.

4:08:06 PM

REPRESENTATIVE SULLIVAN-LEONARD asked Ms. Nolan Grimes how many births happen per year in her practice and if physicians or nurses assist or oversee the midwives in her practice.

MS. NOLAN GRIMES stated that her practice has three direct-entry midwives licensed on staff, and the practice does between 55-60 births a year. She noted that there are complications in the course of care that require consultation due to regulations or common sense. In such cases, there are collaborating physicians, but they are not required to have a signed collaboration agreement. She stated that her practice works with physicians and advanced nurse practitioners as necessary.

4:09:15 PM

REPRESENTATIVE JOSEPHSON asked if there is a code to bill an insurance company.

MS. NOLAN GRIMES answered yes.

4:09:36 PM

REPRESENTATIVE KNOPP asked whether there is a continuing education component to the profession.

MS. NOLAN GRIMES answered yes. She added that within every licensing cycle each midwife is required to meet a certain number of continuing education units and annually have a peer review to ensure regulations are being followed.

REPRESENTATIVE KNOPP asked who put in the requirements - the board or the state.

MS. NOLAN GRIMES offered her understanding that there was licensure before a board existed, so the requirements were initially in statute. A few years ago requirements were pulled from statute into regulation for better adaptation, which the board now handles. She stated that the continuing education requirements and peer reviews have not changed since they were put in place by the legislature.

REPRESENTATIVE KNOPP asked if the potential for midwives to practice "under the radar" was discussed with the recent fee raise.

MS. NOLAN GRIMES stated that there were extensive conversations within the midwifery association about that potential situation. She mentioned that she is lucky because her practice pays the licensing fees. She stated that there is a lot of concern that apprentices may not join the field due to the expense - the licensing fees might equate to a midwife's income in a month.

[4:12:57 PM](#)

JOHANNA CROSSETT, Direct-Entry Midwife, testified in support of HB 49. She stated that she loves helping babies and mothers. She noted that midwives save the state money in Medicaid dollars. The unique profession requires having a direct-entry midwifery board for proper regulation. She stated that the board understands its unique niche in the medical community and within the state's healthcare system. The board expertise allows the profession to continue to adopt and uphold standards of safe practice in Alaska.

[4:14:26 PM](#)

DEBORAH GILLESPIE, Direct-Entry Midwife, testified in support of HB 49. She stated that she is a licensed naturopath and a direct-entry midwife.

[4:14:56 PM](#)

REPRESENTATIVE JOSEPHSON asked whether it is legal to deliver a baby without being licensed. He stated that it seems unfair the licensed midwives should be "watching the rest of the Alaskans" to see who is practicing midwifery.

MS. GILLESPIE responded that she agrees with Representative Josephson's statements. She offered her understanding that is not legal to practice without a license. She stated that people helping to deliver babies in the Interior represents a portion of investigative fees, but she is not sure how many of the investigations involved unlicensed individuals.

[4:16:54 PM](#)

CHAIR KITO speculated that if an individual helps deliver a baby without expectation of trade or payment, then it might not be under a licensing investigation. If someone solicits payment or trade for such services, then it is commerce and would engage the licensing board.

[4:17:16 PM](#)

REPRESENTATIVE BIRCH asked who would oppose the extension of the board, as it seems like a reasonable and necessary extension.

[4:18:00 PM](#)

MS. GILLESPIE stated that she cannot think of a reason someone would oppose the extension. She stated that as a naturopath, she has experience in a profession without a specific board, and her fees tripled this year; she had \$3,800 in fees as a midwife and nearly \$2,000 as a naturopath.

[4:18:56 PM](#)

REPRESENTATIVE WOOL asked if midwifery is an exclusively female profession and what a male midwife is called.

MS. GILLESPIE stated that there are male midwives who are called midwives.

[4:19:37 PM](#)

REPRESENTATIVE KNOPP asked if an individual would continue practicing if it got to the point where a person couldn't afford licensing. He stated his belief that a person would operate underneath the radar if he/she had been priced out of the market but knows himself/herself to be qualified.

MS. GILLESPIE offered that she thinks the state stands to lose more midwives than to have midwives practice illegally.

[4:20:43 PM](#)

CHAIR KITO announced that HB 49 was held over.

[4:20:55 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:21 p.m.