

SENATE FINANCE COMMITTEE

April 14, 2018

10:09 a.m.

[10:09:52 AM](#)

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 10:09 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Anna MacKinnon, Co-Chair
Senator Click Bishop, Vice-Chair
Senator Peter Micciche
Senator Donny Olson
Senator Gary Stevens
Senator Natasha von Imhof

MEMBERS ABSENT

None

ALSO PRESENT

Representative Geran Tarr, Sponsor; Representative Sam Kito, Sponsor; Elizabeth Diament, Staff, Representative Paul Seaton; Jill Lewis, Deputy Director, Division of Public Health, Department of Health and Social Services; Representative Adam Wool, Sponsor; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Juli Lucky, Staff, Senator Anna MacKinnon; Crystal Koeneman, Staff, Representative Sam Kito; Laura Stidolph, Staff, Representative Adman Wool.

PRESENT VIA TELECONFERENCE

Erika McConnell, Director, Alcohol and Marijuana Control Office, Anchorage.

SUMMARY

CSHB 31 (FIN)

SEX ASSAULT TRAINING & EXAM KITS;DOM VIOL

SCS CSHB 31(STA) was REPORTED out of committee with a "do pass" recommendation and with a new zero fiscal note from the Department of Public Safety, and a previously published zero fiscal note: FN 3(DPS).

HB 121 OCC. HEALTH AND SAFETY CIVIL PENALTIES

HB 121 was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal impact note: FN 2(LWF).

CSHB 215(FIN)

DHSS: PUBLIC HEALTH FEES

CSHB 215(FIN) was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal impact note: FN 2(DHS).

CSHB 275(FIN)

EXTEND: BOARD OF MASSAGE THERAPISTS

SCS CSHB 275(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the Department of Commerce, Community and Economic Development.

CSHB 299(FIN)

ABC BOARD: EXTEND; DIRECTOR; DECISIONS

CSHB 299(FIN) was HEARD and HELD in committee for further consideration.

#hb31

CS FOR HOUSE BILL NO. 31(FIN)

"An Act relating to law enforcement training in domestic violence and sexual assault; relating to sexual assault investigation protocols; requiring an inventory and reports on untested sexual assault examination kits; and providing for an effective date."

[10:11:09 AM](#)

Co-Chair MacKinnon reported the bill had been heard on April 4, 2018 where public testimony had been heard. The fiscal notes had been reviewed as well.

REPRESENTATIVE GERAN TARR, SPONSOR, introduced herself.

Co-Chair MacKinnon shared that there were two outstanding issues for the committee to address. The first was related to the process of how anonymous reports worked. The committee had engaged in discussions with the department that had met her satisfaction. The second topic was the cost of training resulting from an increase from 2 hours from some departments to 12 hours. She had provided a series of emails with the Anchorage Police Department (APD), where APD had indicated it did not believe the change would be an undue burden on its facilities. The bill did not cover Village Public Safety Officers (VPSO), who accessed a different form of training and were not police officers.

Representative Tarr agreed.

[10:13:00 AM](#)

Co-Chair MacKinnon asked for a brief overview of the bill.

Representative Tarr explained that the bill accomplished three things. First, it put in statute a victim centered approach to reporting sexual assault crimes. She had brought a sexual assault examination kit box to the meeting in case someone had not seen one previously. She elaborated the box was an evidence collection kit. Much work had been done on the issue, and a victim centered approach had been developed that included anonymous reporting and law enforcement reporting. Anonymous reporting allowed the victim to have the evidence collected, which needed to be done in a timely fashion (within 72-hours), but did not require the victim to decide whether they wanted to move forward with a criminal prosecution. If a person wanted to move forward with a prosecution at the time evidence was collected they would select the law enforcement report. The bill would put the victim centered approach into statute.

Representative Tarr explained the bill also required individuals to receive 72 hours of sexual assault response training during their law enforcement training in Alaska in addition to 12 hours of domestic violence training, which

was currently in statute. Although the sexual assault training was already in statute, the bill underscored its importance. The bill also included an ongoing audit. The first audit had concluded and was presented in November 2017, which provided an understanding of the issue in Alaska. She noted the issue was also happening nationwide, but there were over 3,000 untested rape kits in Alaska. It would be somewhat expensive to get all of the kits tested and go through the process with the victims to ensure they wanted to participate. The audit would provide the legislature with an annual status update. At some point it would no longer be necessary when the backlog was eliminated, and cases were prosecuted. She complimented Co-Chair MacKinnon for discussions that had taken place in the committee. She understood the discussions had been so informative, some of Co-Chair MacKinnon's suggestions would be incorporated into the process. She explained the bill was one step towards ensuring there was reform in the way rape kits were tested, victims received the justice they deserved, and to keep dangerous criminals off the street.

[10:15:47 AM](#)

Co-Chair MacKinnon shared that under the current bill victims went to healthcare providers when reporting anonymously. She was concerned there could be a closure or problem with keeping track of the location in Anchorage, where storage for the rape kits was centralized. She had asked if the department could work with state law enforcement so that victims would go to law enforcement instead of independent hospitals or medical facilities across Alaska. There was more likely in the next 50 years to be a state trooper position that could locate the numbers for anonymous reporting than individual medical facilities that may change over administrations and lose track of important data. She elaborated that some people did not remember that things happened after awhile when an experience was traumatizing. She explained they may be triggered by something in the future that may cause them to seek out the information. She appreciated the troopers and others who had taken time to speak to her on the important issue.

Vice-Chair Bishop reviewed a new zero fiscal note from the Department of Public Safety for statewide support of the training academy (OMB Component Number 524) He read from the second paragraph of the fiscal note's analysis:

The Alaska Law Enforcement Training (ALET) is a sixteen week course providing instruction in criminal investigation, police procedure, laws, and physical skills. Instruction comes primarily from commissioned Alaska State Troopers stationed in Sitka. The ALET program fulfills the requirements to be certified as a municipal police officer or an Alaska State Trooper.

The ALET program currently exceeds the number of hours of instruction and training in sexual assault laws, response, and investigation as proposed by this legislation so there would be no fiscal impact to the DPS Training Academy should it pass. Therefore, a zero fiscal note is being submitted.

10:18:43 AM

Senator von Imhof noted that Representative Tarr had indicated there were currently about 3,000 untested rape kits in the backlog. She remarked that the fiscal note was zero and she believed it specified the department would absorb the cost to address the backlog. She asked for the accuracy of her statements.

Representative Tarr responded that currently the funding used to address the backlog had been provided through two federal Department of Justice grants. The kits were being tested in batches - once those funds were gone, if an additional grant was not awarded, the state would have to figure out how to pay for the cost through appropriations in the capital budget or other. There was no appropriation with the current legislation or linked to testing the backlog. She stated, "this is other policy changes, so, the actual testing is a separate issue."

Co-Chair MacKinnon relayed she had met with a group of individuals including John Skidmore with the Attorney General's Office, Diane Casto, Executive Director, Council on Domestic Violence and Sexual Assault, Department of Public Safety, Orin Dym with the state DPS Crime Lab, and others. There were about 3,400 untested kits, 114 of which had been reported anonymously. She noted the numbers had been rounded. There was a possibility for a bare-bone DNA analysis at \$1,000 per kit. She wanted to understand what the bare essential analysis provided - she considered whether it was sufficient information compared to the

\$2,300 cost for prosecuting a kit under some of the current grants. She noted there was a range in cost. She added that it was possible to identify gender DNA differently. The majority of sexual assaults in Alaska were perpetrated by men on women. Tests had been developed that could go back for almost one week instead of 72 hours, which had been best practice when she had been the director of Standing Together Against Rape. She continued that science was taking leaps and bounds forward, but the tests were expensive as they tried to recoup the research and development to get the tests on the market. She expounded they could highlight the male's DNA when searching for matches.

[10:21:32 AM](#)

Senator von Imhof asked how far the current grant funding would stretch to cover the 3,400 untested kits.

Representative Tarr answered that the first grant was \$100,000 for testing and additional training. She relayed that Mr. Dym was online and may be able to provide further detail related to the training component. The second grant was largely to develop new systems; it was more about the reform aspects and less about dollars going towards testing. She relayed she would need to double check the figures she had provided. A handful of kit batches were being sent out under the first grant. Additionally, a new grant was available that she had encouraged APD to apply for because some of [the kits] were in its possession. She speculated that several thousand kits would remain once the grant funds had been used. She used 1,500 as a rough average and reported the cost was in the millions of dollars. She explained that every kit would not be tested because in some cases an individual would not want to move forward (there was an anonymous reporting option). She believed it would be a multiyear process to determine how to address the issue. As people were identified and linked to other crimes, there would be prosecution as well.

Senator Micciche appreciated the sponsor's work have the kits processed and evaluated. He noted there was information in member's packets that was informative on understanding the funding options.

Senator Stevens referenced the anonymous reporting option. He asked if the anonymous kits went to the bottom of the queue.

Representative Tarr replied there were two groups of kits. There were cases that were far more recent, which totaled about 70 at the lab currently. The queue was not based on whether a kit was anonymous but was mostly about the timing of the prosecution and when the information was requested. She elaborated when a case came up for consideration the lab was contacted to process the kit. She explained that a victim could chose to move forward at any time with an anonymous report and it would put the kit in the queue. She explained the kit was not ranked at the bottom because it was anonymous, but if a person had done the kit anonymously it meant they specified they were not presently interested in moving forward with testing. Until that changed, it remained in the anonymous pile.

[10:25:27 AM](#)

Senator Stevens asked for verification that if a kit remained anonymous it would not be tested.

Representative Tarr answered in the affirmative. She remarked it could be hard to accept because if it had the potential to get a dangerous person off the streets it would be desirable to move forward; however, the white paper referenced by Senator Micciche from the Department of Justice outlined the victim centered approach, which recommended not moving forward unless the victim was comfortable with that.

[10:25:59 AM](#)

Co-Chair MacKinnon listed individuals available online for questions.

Vice-Chair Bishop MOVED to REPORT SCS CSHB 31(STA) from committee with individual recommendations and accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

SCS CSHB 31(STA) was REPORTED out of committee with a "do pass" recommendation and with a new zero fiscal note from the Department of Public Safety, and a previously published zero fiscal note: FN3 (DPS).

10:26:54 AM

AT EASE

10:28:11 AM

RECONVENED

#hb121

HOUSE BILL NO. 121

"An Act relating to occupational safety and health enforcement penalties; and providing for an effective date."

10:28:29 AM

Co-Chair MacKinnon reported that the bill had been heard on April 11, 2018. She asked Vice-Chair Bishop to review the fiscal note.

Vice-Chair Bishop discussed the fiscal note from the Department of Labor and Workforce Development (DLWD), OMB Component Number 970. The note reflected a change in revenue of \$230,200 in FY 19 and \$460,400 in FY 20 through FY 24. He read from the second and third paragraphs in the analysis on page 2:

The regulations resulting from this legislation will initially adjust maximum and minimum civil penalties for inflation going back to 1990, and then adjust penalties yearly according to changes in the U.S. Consumer Price Index for All Urban Consumers (CPI-U).

It is anticipated that these changes will result in an additional \$460.4 in revenue to the general fund each year. Given the length of time it takes to implement regulations changes, it is anticipated that the revenue increase will occur about halfway into FY 2019. Therefore, the FY 2019 revenue increase will only be half of this amount.

10:30:29 AM

Co-Chair MacKinnon asked the bill sponsor and staff to provide a brief bill overview.

REPRESENTATIVE SAM KITO, SPONSOR, shared that the bill had been requested by DLWD, which would bring Alaska up to

federal standards for the Alaska Office of Safety and Health. The bill would allow the department to change fees with regulation to keep up with a consumer price index (CPI) increase expected from the federal government on an annual basis and would avoid the need to return to the legislature annually to adjust the fees. The bill would theoretically increase some revenue, but there was also significant flexibility, so it was not as though penalties would just increase. He elaborated that if employers were complying there was a negotiated process by which the fees could be waived or decreased in order to focus on the goal of improving worker safety in Alaska. It was not a matter of being punitive, but of trying to keep up with the federal requirements; if the state did not keep up with federal requirements it stood to lose some federal funding and potentially the ability to implement its own occupational safety and health office.

[10:32:08 AM](#)

Vice-Chair Bishop MOVED to REPORT HB 121 from committee with individual recommendations and accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HB 121 was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal impact note: FN2 (LWF).

[10:32:46 AM](#)

AT EASE

[10:35:11 AM](#)

RECONVENED

Co-Chair MacKinnon handed the gavel to Vice-Chair Bishop.

#hb215

CS FOR HOUSE BILL NO. 215(FIN)

"An Act relating to program receipts; and relating to fees for services provided by the Department of Health and Social Services."

[10:35:29 AM](#)

Vice-Chair Bishop detailed that the bill had been heard on April 11, 2018. He asked the sponsor's staff to provide a recap of the bill.

ELIZABETH DIAMENT, STAFF, REPRESENTATIVE PAUL SEATON, detailed the bill would give fee authority to the Division of Public Health to charge program receipts and fees to recoup some of its costs for public health related programs. The bill would expand the department's fee authority to charge fees by regulation to recoup costs.

Senator Olson asked if there had been any opposition to the bill from user groups that may be affected by the charges.

Ms. Diament replied that the only reservations had been from Alaska State Hospital and Nursing Home Association (ASHNHA) in the House Health and Social Services Committee. The association's concern had been about public input and process at the beginning of the regulatory process. She noted that Section 3 had been added to the bill to address the concern. The section would require a public scoping meeting for each regulation in order for the public and stakeholders to have a chance to comment before something moved to the regulatory process. She reported the association was supportive of the legislation after Section 3 had been added.

[10:37:40 AM](#)

Senator Olson asked if the sponsor had heard from Native health corporations in rural areas.

Ms. Diament deferred the question to the Department of Health and Social Services.

JILL LEWIS, DEPUTY DIRECTOR, DIVISION OF PUBLIC HEALTH, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, replied that the division had not heard any opposition from tribal health corporations.

Senator Olson asked specifically about 638 contractors.

Ms. Lewis replied that the division had not heard any concerns or opposition except the previous concern by ASHNHA, which had later provided a letter of support for the legislation.

10:38:58 AM

Senator von Imhof asked if other state agencies charged fees for data collection.

Ms. Lewis responded that she could not say definitively. She believed other agencies charged for data and analysis. A lengthy fee report was produced annually by the Office of Management and Budget listing all of the individual fees.

Senator Olson asked if the department had concern it would miss things like STDs, TB checks and other related items if a fee to have the checks done was implemented. He wondered if the department was concerned an epidemic may occur.

Ms. Lewis responded that the types of fees addressed by the bill were mostly administrative charges and professional services fees that would be charged to the industry and not to individuals. There were exceptions in statute, so fees would not be charged when not in the public interest, when it did not support public health, and when in response to communicable disease investigations. The division did not and would not charge in those situations.

10:40:58 AM

Senator Micciche noted in the last meeting on the bill, the committee had been left with the impression that MRI and CT imaging equipment was not inspected. He clarified that the machines were all currently required to be inspected; all imaging equipment in the state was inspected.

Vice-Chair Bishop added he had also asked to verify that the equipment was all operating according to the manufacturers' recommended standards.

Senator Micciche MOVED to REPORT CSHB 215(FIN) out of committee with individual recommendations and accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 215(FIN) was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal impact note: FN2 (DHS).

10:42:17 AM

AT EASE

[10:44:37 AM](#)

RECONVENED

#hb299

CS FOR HOUSE BILL NO. 299 (FIN)

"An Act relating to the authority of the director of the Alcoholic Beverage Control Board; extending the termination date of the Alcoholic Beverage Control Board; relating to the application of precedent to decisions of the Alcoholic Beverage Control Board; and providing for an effective date."

[10:45:37 AM](#)

Vice-Chair Bishop asked the sponsor to provide a brief overview of the bill.

REPRESENTATIVE ADAM WOOL, SPONSOR, explained that the bill would extend the Alcoholic Beverage Control (ABC) Board. The bill had been amended twice in its process through the House. The ABC Board was a quasi-judicial board made up of five members including two from industry, one from public safety, one rural member, and one public member. The bill included a four-year extension based on the audit recommendation by the Division of Legislative Audit. The board regulated almost 2,000 licenses in the alcohol industry. The division had previously been housed under the Department of Revenue and had moved to the Department of Public Safety (DPS) - where individuals had more closely resembled public safety officers with badges and weapons) - and then it had moved to the Department of Commerce, Community and Economic Development (DCCED).

Representative Wool disclosed that he owned a business with a beverage dispensary license, which was governed by the board. He added that he had been a license holder when the division had been under the Department of Public Safety. Eventually, the legislature had decided to move the division to DCCED to make it more business friendly and receptive to the idea of commerce instead of law enforcement. He noted the division was under DCCED for administrative purposes only and he acknowledged his uncertainty about what that meant. He communicated the audit made five recommendations.

[10:48:08 AM](#)

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, reviewed the findings in the legislative audit dated November 2017 (copy on file). The audit found that the board was operating in the public's interest in all areas except licensing. The audit found the board's meetings had been conducted in accordance with law, its investigations were processed timely, and the board actively developed and adopted regulations necessary to implement statutes. The audit concluded the board should improve its procedures for issuing renewals, recreational site licenses and beverage dispensary licenses that encouraged tourism. Testing found that the licenses were not consistently issued in accordance with statutes. Additionally, operational improvements were needed in enforcing laws, monitoring board related local law enforcement activity, and processing refunds to municipalities. The division recommended an extension of four years.

Ms. Curtis highlighted report conclusions. She turned to page 8 of the audit where the division concluded that the board's enforcement efforts had declined, and operational improvements were needed. Alcohol and Marijuana Control Office (AMCO) investigators had stopped conducting compliance checks as of April 2015. Through AMCO investigators, the board had historically conducted compliance checks where investigators employed underage individuals who attempt to purchase alcohol. When a license failed a compliance check they were issued a criminal summons or citation. Federal grant funding for the program had run out in 2012. Supplemental funding to continue conducting compliance checks had been received through June 2014. At that point investigators had continued conducting the checks using program receipts through April 2015.

Ms. Curtis stated that although there was no statutory or regulatory requirement to conduct compliance checks, AMCO management had stated it was an integral part of its enforcement of alcoholic beverage laws and it was evaluating alternative means of providing enforcement through shared services with other state agencies. The audit noted that the board and AMCO management had not established a written enforcement plan to direct the limited enforcement resources. Additionally, the control office did not monitor or track all complaints to ensure complaints were followed up and investigated timely.

Ms. Curtis turned to page 2, paragraph 2 where the division concluded the board and control office staff had not maintained a list of restricted purchasers within the statewide database of written orders in accordance with regulation, potentially allowing persons convicted of illegally selling or manufacturing alcohol to continue purchasing alcohol via written order. The division made eight recommendations for improvements. Two of the eight were repeat recommendations from the prior sunset audit, beginning on page 12. First, the authority to renew licenses should be limited to the board. Statutes were very specific that only the board may issue or renew a license. There was a statutory provision to temporarily delegate the authority to the executive director, but the division had found that the board had permanently delegated the authority to the executive director, who had in turn delegated the authority to licensing staff.

Ms. Curtis addressed the second audit recommendation that the board issue recreational site licenses in accordance with statutory requirements. The division had tested 10 out of 29 active recreational site licenses during the audit period. She elaborated that all 10 licenses had not met the definition of a recreational site. The statutory definition was included at the bottom of page 12 of the audit, which specifically identified what activities qualified including baseball games, car races, hockey games, dogsled racing events, or curling matches held during a season. The 10 non-compliant licenses included travel tour companies, bowling alley, art council, pool hall, movie theater, and a spa. The same issue had been found in the previous audit and the same recommendation had been made. Board members had been aware they were issuing the licenses in violation with statute but believed it was in the public's best interest to do so. The board also believed the licenses would be addressed in a future rewrite of the law.

Ms. Curtis detailed the issuance of the licenses expanded the number of establishments licensed to sell alcohol over the number allowed for in statute. The audit's third recommendation was for the board to issue beverage dispensary licenses in accordance with statutory requirements. The division had sampled 16 out of 126 beverage dispensary licenses issued to encourage tourism and it found 5 were transferred and 6 were renewed despite not meeting statutory requirements. Page 13 explained that

the statutes gave the board authority to issue a beverage dispensary license without regard for statutory population limits if it could be shown a license would encourage tourism and the statutes provided for a minimum number of rental rooms that must be met in order to qualify as a business that encourages tourism. The errors found by the division were in entities that did not meet the room requirements. The board believed it was appropriate to continue to issue the licenses because the original licenses had been issued prior to 1985 (the year the statute had been implemented). However, the statute did not provide for grandfathering of a license as it existed at the time.

Ms. Curtis moved to the fourth audit recommendation. She detailed the board, AMCO director, and enforcement supervisor should work together to establish an enforcement plan to direct their limited resources. She noted she had reviewed the same recommendation as part of the Marijuana Control Board audit. The fifth recommendation was directed to the Marijuana Control Board to implement a process to monitor and track all complaints to ensure complaints were followed up timely.

Ms. Curtis reviewed the sixth audit recommendation on page 15. The division recommended the board and AMCO director develop written procedures for updating the statewide database with restricted purchasers. The background information section of the audit described the database of written orders. The database was used to control and monitor the sale of alcohol to restricted areas of the state. It was also used to provided package store licensees with a list of individuals who had been convicted of selling or manufacturing alcohol; the stores were then prohibited from selling alcohol to the restricted purchasers. The audit had determined restricted purchasers had not been entered into the database due to a lack of procedures. Further, the reports of convictions had not been consistently provided to the control office by the Court System.

Ms. Curtis addressed the seventh recommendation on page 16 specifying that the board and AMCO staff should improve procedures to ensure municipalities reported violations of alcohol laws. Statute required municipalities to report the information as a condition of receiving half of the biennial licensing fees. The audit had found only 4 of the

40 locations had been reporting the information; however, the fees had been routinely refunded.

Ms. Curtis moved to the eighth recommendation on page 17 specifying the AMCO director should develop and implement procedures to ensure refunds to municipalities were appropriately reviewed. Auditors reviewed the process for calculating the refunds and found there was only one staff person responsible for calculating and approving the payments, with no independent review. The lack of review increased the risk for incorrect payments. The Office of the Governor agreed the board should be extended and its response to the audit began on page 27. The department's response on page 29 concurred with all recommendations except the first, which was the recommendation to limit renewal to the board. The department believed the statutes could be interpreted in a different manner; however, it agreed that going forward, all renewals would be brought to the board.

Ms. Curtis detailed that the board's response was on page 33. The board chair agreed with all recommendations except the third regarding dispensary licenses to encourage tourism. The board chair felt the grandfathering of licenses was appropriate. She explained that auditing standards required the division to address circumstances when an auditee disagreed with a recommendation. Her comments were on page 35 where she discussed the board's disagreements with the third recommendation. She stated that no additional information had been provided for her review. She reaffirmed the report conclusions and recommendations.

Senator Micciche remarked there were issues with the ABC Board but allowing the board to sunset would not solve the issues. He supported the bill. He mentioned other legislation that he believed would simplify management of the board dramatically and could help with struggles shown in various audit findings.

[10:57:11 AM](#)

Senator Stevens appreciated the comments in the committee substitute specifying the director was not a member of the board, could not vote, and could not cast a tie breaking vote. He thought the board structure was different than other boards given the term limit members could serve on

the board or as chair. He asked for detail about the structure in other boards and how the ABC Board differed.

Ms. Curtis answered that page 1 of the audit noted that statutes did not limit the number of consecutive terms a member may serve. She continued it was the one difference the division had noted that there were individuals on the board that had been there for quite some time. The Marijuana Control Board was different in its requirement that a member was required to leave the board for a given number of years before returning. The ABC Board did not have the requirement.

Senator Olson asked Representative Wool for his response to the audit recommendations. He remarked on his respect for Ms. Curtis and her work.

Representative Wool agreed with the audit recommendations. He provided a brief overview of some of the issues he saw with the board decisions. He noted he was not familiar with all of the board's decisions. He referenced the recommendation to issue licenses according to statute, which he believed the board was trying to do. He elaborated that Alaska Airlines was experiencing a situation with the board where it was not currently renewing the airline's licenses. The issue had to do with the fingerprints of all the airline's vice presidents. Historically, the airline had provided the information in one way in the past, but had been told by the board was following statute and the airline could not longer provide the information in the same way. He explained that the board was following statute, but he questioned whether it was in the best interest of the business, the state, or commerce. He was not concerned about Alaska Airlines and knew they would come up with a solution because they had money and attorneys. He reasoned that did not mean it was a good solution because many people did not have that option.

Representative Wool continued that the audit did not address how the board was making business easier or unencumbered. He referenced grandfathering in of businesses that could not renew their licenses suddenly after 25 years. He referenced another bill currently going through the legislature that would fix the issue. He stated the board was following statute, but he wondered if there was another interpretation or another set of eyes. He was amenable to the audit recommendations.

[11:01:00 AM](#)

AT EASE

[11:01:39 AM](#)

RECONVENED

Senator Stevens continued his earlier questioning about the ABC Board compared to other boards. He stated that the Marijuana Control Board had a limit of three terms for members. He asked Ms. Curtis if she believed term limits should be explored.

Ms. Curtis replied that the division used the criteria found in the back of the audit to conduct an audit. She explained if there were no criteria to use for a recommendation, the division did not make a recommendation. She stated it was a policy call. She did not know what the legislative intent had been when creating the ABC Board structure. The division would have to dive into the issue prior to providing any type of response.

CSHB 299(FIN) was HEARD and HELD in committee for further consideration.

[Note: CSHB 299(FIN) was heard again at 3:20 p.m. See below.]

[11:02:54 AM](#)

RECESSED

[3:14:28 PM](#)

RECONVENED

#hb275

CS FOR HOUSE BILL NO. 275(FIN)

"An Act extending the termination date of the Board of Massage Therapists; relating to license renewal and criminal history record checks for massage therapists; and providing for an effective date."

[3:14:53 PM](#)

Vice-Chair Bishop MOVED to ADOPT proposed committee substitute for CSHB 275(FIN), Work Draft 30-LS1185\O (Radford, 4/14/18).

Co-Chair MacKinnon OBJECTED for discussion. She noted the bill had been heard on April 3, 2018 when public testimony had been heard and the fiscal note had been reviewed. She asked her staff to review the changes in the bill.

JULI LUCKY, STAFF, SENATOR ANNA MACKINNON, reviewed the committee substitute (CS). She referenced a conversation earlier in the day about a massage therapist bill and finger printing. The previous version of HB 25 had a very similar provision that limited the finger printing to once every three renewals. The bill moved out of the committee earlier in the day had similar language, which limited finger printing to once every six years. The committee did not want to run into a technical problem with passing two bills that revised the same section of law with different language; therefore, the CS was a simple, clean board extension to June 30, 2024 with all of the language regarding finger printing removed.

Co-Chair MacKinnon asked if the extension was the same year as the previous bill.

Ms. Lucky affirmed that the bill had the same extension year as the previous bill that had been presented to the committee.

Co-Chair MacKinnon WITHDREW her OBJECTION. There being NO further OBJECTION, it was so ordered.

[3:17:19 PM](#)

Co-Chair MacKinnon invited the sponsor's staff to the table and asked if the sponsor was amenable to the changes in the CS.

CRYSTAL KOENEMAN, STAFF, REPRESENTATIVE SAM KITO, replied that the sponsor [Representative Sam Kito] was in full support of the changes in the CS.

Vice-Chair Bishop MOVED to REPORT SCS CSHB 275(FIN) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SCS CSHB 275(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note

from the Department of Commerce, Community and Economic Development.

[3:18:13 PM](#)

AT EASE

[3:20:05 PM](#)

RECONVENED

#hb299

CS FOR HOUSE BILL NO. 299(FIN)

"An Act relating to the authority of the director of the Alcoholic Beverage Control Board; extending the termination date of the Alcoholic Beverage Control Board; relating to the application of precedent to decisions of the Alcoholic Beverage Control Board; and providing for an effective date."

[3:20:05 PM](#)

Co-Chair MacKinnon provided a brief history on the bill, which had been heard earlier in the meeting. She listed individuals available to testify.

REPRESENTATIVE ADAM WOOL, SPONSOR, reported that HB 299 would extend the Alcohol Beverage Control Board for four years as recommended by the audit [by the Division of Legislative Audit]. The committee had reviewed the audit recommendations previously. He noted there had been an amendment in the House Labor and Commerce Committee and another in the House Finance Committee.

Co-Chair MacKinnon asked for a review of the Sectional Analysis.

LAURA STIDOLPH, STAFF, REPRESENTATIVE ADMAN WOOL, read from the Sectional Analysis for CSHB 299(FIN), version U (copy on file):

Section 1. AS 04.06.075 is amended by adding a new subsection, "(b) The director is not a member of the board and may not vote on a matter before the board."

Section 2. AS 44.66.010(a)(1) is amended to extend the Alcoholic Beverage Control Board to June 30, 2022.

Section 3. AS 04.11.437 Application of Precedent "In determining whether issuance, renewal, transfer, relocation, suspension, or revocation of a license is in the best interests of the public, the board need not conform to or distinguish its decision from any action it has taken in the past on applications presenting similar facts, but may instead base its decision only on the particular facts before it." is repealed.

Section 4. 3 AAC 304.025(c) is annulled.

Section 5. Section 2 of this Act takes effect immediately under AS 01.10.070(c).

Ms. Stidolph elaborated that Section 4 annulled AAC 304.025(c), which was a regulation that allowed the director to be a voting member of the board.

[3:23:47 PM](#)

Senator Stevens assumed the executive director was hired by the board. He asked if the five-member board selected its own chair.

Representative Wool replied that the board chair was selected by the governor.

Senator Stevens asked whether the board director was appointed by the board.

Representative Wool stated that the director of the Alcohol and Marijuana Control Board (AMCO) was appointed by the governor and technically worked for the board.

Co-Chair MacKinnon looked at [page 1] line 7 of the bill and wondered if there had been an issue regarding the director voting. She asked for history on the matter.

Ms. Stidolph reported that in 2012 the statute that allowed the director to be a voting member was repealed, but it had been left in regulation. The regulation had been noted in a January board meeting that in the case of a tie the director would cast the tie breaking vote. She noted that the director's vote had not ultimately been needed. She had been told the situation was the first time in a decade that the director may have been asked to cast the tie breaking

vote. The bill only repealed the regulations (the provision had already been repealed in statute).

[3:25:59 PM](#)

Co-Chair MacKinnon asked about the composition of the current board.

Ms. Stidolph replied that the ABC Board made up of five members including two from industry, one from public safety, one rural member, and one public member.

Senator von Imhof considered the numerous letters (copy on file) pertaining to the bill, which alleged the regulations were not clear. She highlighted that local establishments were in danger of being shut down. She noted a grandfather clause dovetailed on the issue. She stated the bill was merely a board extension, but there seemed to be concern about existing regulations. She asked how the pieces all fit together.

Ms. Stidolph responded that the auditors had found that there were 34 businesses in noncompliance that had tourism beverage dispensary licenses. The businesses had all been operating since 1985 with the belief they had been grandfathered in since the last rewrite. There had been a couple of board meetings that had determined a legislative fix was needed. She noted Representative Wool was sponsoring separate legislation that would provide the legislative fix. She summarized the issue had arisen in an audit finding that was currently being resolved by the legislature.

[3:28:19 PM](#)

Senator von Imhof asked about the bill being referenced.

Ms. Stidolph specified that HB 301 was currently in the Senate Labor and Commerce Committee.

Senator Stevens asked for detail on the current board in terms of the number of appointments members had and when the appointments had occurred. He was interested in the information broken out by the four board appointee categories.

Co-Chair MacKinnon replied that the requested information could be provided. She understood there were not term limits on the board. She had seen the chair of the board multiple times during her service in the legislature. She considered whether the audit included the information.

[3:30:01 PM](#)

AT EASE

[3:30:31 PM](#)

RECONVENED

Co-Chair MacKinnon referenced page 1 [of the audit], which included a list of the board member representation including one rural member, one public member, one public safety member, and two industry members. She asked Senator Stevens for verification he was interested in the longevity of each board member.

Senator Stevens replied in the affirmative. He requested the dates of each appointment and whether multiple appointments had occurred.

Co-Chair MacKinnon agreed and noted there may be someone available online to provide the information.

Senator von Imhof thought the bill was important. She wanted to read through the audit and provide questions to Co-Chair MacKinnon.

Co-Chair MacKinnon agreed. She planned to set the bill aside to address some questions and intended to hear it again as quickly as possible.

[3:32:04 PM](#)

Co-Chair MacKinnon OPENED and CLOSED public testimony.

Vice-Chair Bishop discussed FN 2 from the Department of Commerce, Community and Economic Development, OMB Component Number 3119. The annual cost was \$1,660,000 in designated general funds. He read from the page 2, paragraph 3 of the fiscal note:

If the bill passes the following expenses will be incurred: Personal Services: \$765.5 (eight full time agency staff: 3 Special Investigator I, Records and

Licensing Supervisor, 2 Occupational Licensing Examiner, Administrative Assistant I, Criminal Justice Technician I)

3:33:45 PM

AT EASE

3:33:54 PM

RECONVENED

Vice-Chair Bishop continued to read from the fiscal note analysis:

Travel: \$73.5 (board members attend at least five board meetings per year; board is required to meet in each judicial district at least once per year; agency director and occasionally board chair or other agency management staff travel for conferences and/or training; enforcement staff travel throughout state for inspections and investigations)

Services: \$750.0 (includes information technology and department support for deleted positions; support from the Department of Law; hearing services; building leases; meeting advertising; meeting space rental; and other reimbursable services agreements with other agencies)

Commodities: \$71.6 (supplies including printing statute/regulation books; required signs for licensees; ammunition and other enforcement training supplies; office supplies)

The ABC Board's work is funded by program receipts. Fees for applicants and licensees for new licenses, renewal of licenses, or transfer of licenses include an application fee set in regulation, a license fee mostly set in statute (a few license types are established in regulation along with their license fee), and a background check fee set by the Department of Public Safety. Permit fees are set in statute for permits established in statute, and set in regulation for permits established in regulation. The total amount of revenue collected approximately equals the actual regulatory costs.

Co-Chair MacKinnon asked to hear from the ABC Office director. She referenced an earlier question [from Senator Stevens] regarding the longevity of the members currently serving on the board.

ERIKA MCCONNELL, DIRECTOR, ALCOHOL AND MARIJUANA CONTROL OFFICE, ANCHORAGE (via teleconference), stated that not all the five members listed in the audit were current board members; two of the members had been replaced. She did not have precise numbers but reported that the chair (Mr. Bob Klein) had been serving for a long period of time - she estimated his service at 20 years. She believed Mr. Evans had been serving for around 5 years; Mr. Rex Leath was a new public safety member and had been serving for about 1 year (the public safety seat had been established by the legislature in the past year), the remaining public and industry members had recently been replaced.

Co-Chair MacKinnon asked Senator Stevens if limiting the information request regarding the length of service to Mr. Klein and Mr. Evans was acceptable.

Senator Stevens replied in the affirmative.

Co-Chair MacKinnon would contact the administration to receive the information. She appreciated the longevity and the perspective of industry and rural representation on the board.

[3:38:08 PM](#)

Vice-Chair Bishop how many of the eight full-time agency staff carried firearms. Ms. McConnell answered all eight investigators throughout the state carried firearms.

Vice-Chair Bishop asked whether all the staff were trained in Sitka. Ms. McConnell responded that all the staff had previously been police officers. She assumed they had all been through the appropriate police academies.

Co-Chair MacKinnon asked Representative Wool to repeat a disclosure he had provided earlier in the meeting.

Representative Wool declared a conflict of interest because he was the owner of a beverage dispensary license governed by the board.

Ms. McConnell asked to provide testimony on the bill.

Co-Chair MacKinnon asked Ms. McConnell to proceed.

Ms. McConnell provided testimony with prepared remarks:

This testimony relates to Section 3 of HB 229, which repeals AS 04.11.537 application of precedent. This is a very short section and it says, "in determining whether issuance, renewal, transfer, relocation, suspension, or revocation of a license is in the best interest of the public, the board need not conform to or distinguish its decision from any action it has taken in the past on applications presenting similar fact, but may instead base its decision only on the particular facts before it."

On April 10th the ABC Board voted to recommend to the legislature that this section be retained within Title IV. This section of statute allows the board to make decisions based on the facts and the particular circumstances of each case that comes before it without being bound by how the board treated a similar case in the past. This section does not allow the board to make random decisions based on whims. The board works hard to be consistent so that it can properly discharge its authority under statute and maintain credibility and predictability for the public including licensees. However, the flexibility allowed by this section of statute is vital to the board's requirement to act in the public's interest.

The board is required by AS 04.06.050 to travel to the four judicial districts in the state at least once per year to modify the existing board regulations in light of statewide and local problems. This acknowledgement of the particular challenges that face the varied communities in the state, along with the local option provisions and the broad opportunity for local government protests on licenses recognizes that different situations exist in different communities within the state with respect to the manufacture, barter, possession, and sale of alcoholic beverages. Consequently, the board may be faced with applications presenting similar facts in different communities and need to take different actions based on the public input from those communities. The board must be free

to conclude that what is in the public interest may differ in different parts of the state and be different over time.

My speculation on why this amendment was offered is that Representative Wool is attempting to address very real frustrations with situations where licensees or board staff has followed certain practices or taken certain actions, sometimes over a period of months or years, some of which were unknown to the board or to the director and which did not necessarily have statutory support.

[3:42:37 PM](#)

Ms. McConnell continued with her prepared testimony:

Representative Wool this morning mentioned the situation with Alaska Airlines. While there are very valid frustrations with this type of situation, removing the board's flexibility to address individual circumstances as described above will not guarantee against human error either on part of the board staff or licensees and errors where they are consistent with statute should be corrected. In summary, the Alcoholic Beverage Control Board recommends retaining AS 04.11.537 in Title IV. Thank you.

[3:43:14 PM](#)

Senator Stevens understood Ms. McConnell's comments on flexibility and versus consistency and following rules. He asked for provide an example of why the board would not be consistent with following the rules.

Ms. McConnell stated that the section did not allow the board to be inconsistent in following the rules set forth in statute and regulations. The section specified that when the board had acted in a certain manner for a license application in Juneau for example, the board could face a similar license application in Bethel where there was not public or local government support. In that case the board may act differently on a similar license application in Bethel and in Juneau because of the different situations in the two communities, the different public input, and the different interests of the local governments.

Co-Chair MacKinnon asked for verification that Ms. McConnell was referencing regulation and not statute.

Ms. McConnell replied that she was referencing the statutory section the bill proposed to delete. The board worked to implement statute and regulation.

Co-Chair MacKinnon asked if Ms. McConnell was speaking to Section 4. Ms. McConnell clarified that she was speaking to Section 3 of the bill.

[3:45:25 PM](#)

Senator Micciche thought the issue might be related to a problem occurring in Alaska where individuals who had invested their savings in a business that was license premised were subject to the decision by the board and staff to evaluate renewal differently than they had in the past. He asked how Ms. McConnell would feel if the bill only allowed the decision to change in a different geographic location as opposed to particular licensed premise.

Ms. McConnell asked if Senator Micciche was suggesting that the application of precedent section be more specific with regard to location and time.

Senator Micciche stated he had assumed Ms. McConnell was concerned the board could be locked into a decision made in Juneau, which may be a very different situation than an issue the board may be dealing with in another community. He posed a scenario where the board was protected against having the same decision throughout the state. He asked if there was a way to protect the board from a decision based on geographic location versus a different reading as a license regarded as grandfathered in one location.

Ms. McConnell expected there were many ways to phrase the bill to try to accommodate the board's concerns with regard to acting in the public interest and the types of concerns raised by the committee. She did not have a specific suggestion at present.

Co-Chair MacKinnon CLOSED public testimony.

[3:48:21 PM](#)
AT EASE

3:49:34 PM

RECONVENED

Co-Chair MacKinnon referenced a document entitled "Alcoholic Beverage Control Board," which listed current board members and detailed board information (copy on file). She stated that the committee would persevere to obtain additional information.

Senator Micciche requested to from the sponsor pertaining to Section 3.

Representative Wool referenced a memorandum authored by legislative counsel Linda Bruce with Legislative Legal Services dated April 3, 2018 on the subject of application of precedent (copy on file). The memo noted that no other board had the provision, including the Marijuana Control Board. The memo stated that the language could present due process and equal protection problems by treating similarly situated licenses differently and potentially giving different punishments for similar violations. He understood the regional differences and applauded the board for considering the situations differently. He explained the removal of the section did not mean the board had to adhere to precedent. The section specified that the board could ignore precedent, which he found troubling. He continued that Ms. McConnell was correct that he felt some frustration from hearing from different parties, including licensees with licenses that were not being renewed after 35 years due to a law change. He referenced frustration expressed by Alaska Airlines and other anecdotal stories from licensees he had spoken with.

Representative Wool explained that Section 3 had come from Legislative Legal Services. He believed it would help in looking at situations he had been made aware of regarding board decisions in the past. He mentioned that Alaska Airlines had been treated one way for a decade or more and had suddenly been asked to provide 22 sets of finger prints. He and the industry found the situation cumbersome. He wondered whether the board could come to a solution without going through its normal process involving an administrative law judge and state superior court. He reiterated his earlier testimony that the situation was a little more doable for a big corporation but may be impossible for a small business (especially if they were

facing closure). He was trying to remove road blocks to making good decisions.

[3:53:20 PM](#)

Senator von Imhof recalled that Alaska Airlines had gone from a requirement of 5 sets of finger prints to 22 sets. She gleaned that the board was adhering to statutes more literally than in the past, which was the reason for the requirement for the additional finger prints. She asked whether Alaska Airlines could go back to providing 5 sets of finger prints if Section 3 was repealed.

Representative Wool stated that he was not suggesting the action mentioned by Senator von Imhof. He explained it was a legal question. The ABC Board had a lawyer who had communicated the requirement for the 22 sets of finger prints, even though it had not been the requirement in the past. The audit requested that the board adhere to statute. He reiterated that he was trying to remove potential obstacles to using evidence that could make the board more amenable to removing road blocks in situations like the one facing Alaska Airlines. He explained Alaska Airlines had been presented with providing 22 sets of finger prints or creating a corporation within Alaska for the sole purpose of holding liquor licenses it used in Alaska. He surmised that the issue was manageable for large companies like Alaska Airlines, but not all companies could handle the burdensome needs required to adhere to the statute. He reiterated that no other board had the provision and it could be a due process problem.

[3:55:14 PM](#)

Co-Chair MacKinnon reported that amendments were due the following day by noon. She discussed the schedule for the following meeting.

CSHB 299(FIN) was HEARD and HELD in committee for further consideration.

Co-Chair MacKinnon asked if members wanted to hear from anyone else in the future regarding CSHB 299(FIN).

Senator von Imhof thought it could be helpful to hear from the Department of Law.

Co-Chair MacKinnon provided additional closing remarks regarding the schedule.

#

ADJOURNMENT

3:57:59 PM

The meeting was adjourned at 3:58 p.m.