ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE
January 21, 2016
1:30 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Cathy Giessel, Vice Chair
Senator Kevin Meyer
Senator Gary Stevens

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

DIVISION OF CORPORATIONS BUSINESS AND PROFESSIONAL LICENSING PRESENTATION ON PROGRAM DEFICITS

HEARD

MARIJUANA CONTROL BOARD UPDATE

HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

JANEY HOVENDEN, Director
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community and Economic Development
Juneau, Alaska
POSITION STATEMENT: Delivered a presentation outlining the efforts to reduce the operating deficits of the division's professional licensing boards.

CYNTHIA FRANKLIN, Director
Alcoholic Beverage Control (ABC) Board and
Marijuana Control Board
Department of Commerce, Community and Economic Development
Anchorage, Alaska

POSITION STATEMENT: Delivered an update on the Marijuana Control Board regulations.

ACTION NARRATIVE

1:30:06 PM
CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Giessel Stevens, and Chair Costello.

Presentation by the Division of Corporations, Business and Professional Licensing: Efforts to Reduce the Operating Deficits of Professional Licensing Boards

CHAIR COSTELLO announced that the first order of business would be a presentation by Janey Hovenden, the director of the Division of Corporations Business and Professional Licensing.

1:32:15 PM
SENATOR MEYER joined the committee.

1:32:34 PM
JANEY HOVENDEN, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), said her presentation outlines the efforts and progress made to reduce the operating deficits of the professional licensing boards.

1:33:08 PM
At Ease

1:33:50 PM
CHAIR COSTELLO reconvened the meeting.

MS. HOVENDEN reported that the division administers about 69,000 active business licenses, 60,000 registered corporations, and 72,000 professional licenses. There are a total of 43 occupational licensing programs, 21 of which are managed by a board or commission and 22 managed by the division.

She stated that the division worked with Legislative Budget and Audit to design and implement a new fee analysis tool. As a result, programs are monitored or reviewed more frequently, communication has been strengthened with boards and commissions, and professional licensing ended FY15 in a surplus position for the second year in a row.

Ongoing challenges continue to be fee spikes created by unanticipated investigations or appeals of board decisions. Also, the majority of revenue is collected every other year, which forces programs to operate in deficit unless large fees increases are implemented

MS. HOVENDEN displayed the interactive fee analysis tool for the Big Game Commercial Services Board to illustrate how it works. She explained the tool as follows:

> The first pink column depicts what is the bottom line if fees stay the same. The green column shows what happens if the board makes recommended adjustments to the fees and then the blue column reflects the fees as proposed by the division. Those estimated revenues are carried below into a separate section to compare the bottom lines to any proposed changes.

1:36:55 PM
CHAIR COSTELLO asked what the process is to implement a proposed fee change.

SENATOR STEVENS commented that the chart is very difficult to read.

CHAIR COSTELLO agreed and promised that improvements would be forthcoming. She restated her question and also asked how often proposed fee changes are actually adopted.

MS. HOVENDEN explained that the boards are able to use the interactive tool to see how adjustments affect their bottom line, but the division sets the fees. The division presents the proposed fees to the boards and asks for comment. The division takes the comments into consideration, makes adjustments as it sees fit and then sends the regulations to the licensees for review and a 30-day public comment period. After that, the division reviews the comments and sets the fees.

CHAIR COSTELLO asked how long it takes and what it costs to implement a new regulation.

MS. HOVENDEN replied the average cost for a regulation project is $2,500 and it takes up to 90 days to complete.

SENATOR STEVENS asked if license applicants are required to take a test.

MS. HOVENDEN answered yes.

SENATOR STEVENS asked if all the tests are administered in a central location. "Does somebody from Kodiak who wants to be an assistant bear guide have to fly to Anchorage to take the test?"

MS. HOVENDEN said she didn’t know.

SENATOR STEVENS commented on the expense to fly from Kodiak to Anchorage to take a test for a professional license, the inconvenience of delayed test results, and the potential added expense of another trip if the applicant doesn't pass the test the first time. He questioned why applicants couldn't take the test online from their home community since the test in Anchorage is administered online.

MS. HOVENDEN agreed it was a good suggestion and potential cost-saving measure. She acknowledged that most cities do have testing centers.

SENATOR STEVENS asked for a report back on whether it would be feasible for tests to be administered and monitored in testing centers in more communities than just Anchorage.

SENATOR GIESSEL agreed it would be a cost savings for citizens, but suggested it was an issue the board itself should decide.

1:43:25 PM
MS. HOVENDEN directed attention to the bottom of the fee analysis tool and pointed out that is where the calculating takes place. It also adds a 2 percent CPI increase to the estimated expenditures for future bienniums. She continued to explain that because these are receipt supported services, any deficit or surplus is carried over from year-to-year.

She reiterated that because the tool is interactive, board members can look at how fee adjustments impact the bottom line for the immediate renewal cycle and up to three future biennium cycles.

CHAIR COSTELLO asked how it happened that the Board of Massage Therapists was created last year and is already operating at a $70,000 deficit.

MS. HOVENDEN explained that fees could not be receipted until the program started on July 1, 2015 even though there were startup expenses. She expressed hope that the revenue this year

would cover not only the deficit but also the expenses in the next licensing year.

CHAIR COSTELLO asked if the division oversees all licensing programs or just the ones that are managed by the division.

MS. HOVENDEN clarified that the division oversees the licensing programs for both those that are managed by their boards and commissions as well as those that are managed by the division.

SENATOR STEVENS asked what the rationale is for charging nonresidents more for a license than residents.

MS. HOVENDEN replied she didn't know the rationale, but the fees are regulated by the board and it says out-of-state licensees are charged double the instate fee.

SENATOR STEVENS asked Senator Giessel if it made sense to her and she indicated it did.

MS. HOVENDEN advised that increasing the fees must strike a balance between getting the program out of deficit and a level that does not price people out of the occupation or profession.

1:47:22 PM
MS. HOVENDEN assured the members that the division has worked with licensees and boards to adjust fees to comply with the statutory requirement. She displayed a bar graph showing that from FY14 to the first quarter of 2016 the number of programs operating in deficit has decreased from 16 to 13 and the programs that are operating in surplus has increased from 21 to 27. The final graph depicts all programs operating out of deficit by 2020 if projected fees and the revenue and cost estimates stay the same.

CHAIR COSTELLO asked if there is a common theme among the boards and commissions that are running at a deficit.

MS. HOVENDEN replied the reasons are varied but a driving factor is the number of licensees in the program because the costs are spread among them. A small program that has one costly investigation could put the program in a deficit very quickly. Another reason is that fees aren't adjusted soon enough.

1:49:30 PM
MS. HOVENDEN offered the following concluding comments.

> The bottom line is with the help of the new fee analysis tool and a better partnership with the boards, we are making great progress on program deficits and we have a much better handle on each program's current and projected long-term health.

CHAIR COSTELLO asked if the boards have access to expertise within the state to analyze their fees or if the new interactive tool is the only analysis. She observed that costs of future investigations could be estimated from past data.

MS. HOVENDEN discussed the positive reception of the new interactive fee analysis tool. She reiterated that the calculations at the end of the form are the estimated expenses based on the past, including investigations and appeals.

CHAIR COSTELLO asked how much the new tool costs, who manages it, and if the boards are paying for it.

MS. HOVENDEN explained that the division developed and manages the tool so there is no cost.

SENATOR GIESSEL commented that this tool will probably be very helpful. She pointed out that the Big Game Commercial Services Board is a small program that had high adjudication costs and is carrying a large deficit. She also pointed out the deficits of the State Medical Board for the past three bienniums.

1:54:07 PM
At Ease

1:55:56 PM
CHAIR COSTELLO reconvened the meeting.

SENATOR GIESSEL directed attention to the biennium totals on page 8 of the October 2015 Professional Licensing Report to the Legislature.

MS. HOVENDEN pointed out that at the end of FY2015 the AKSAS Carryforward Balance Program Share for the Big Game Commercial Services Board shows a deficit of $1.1 million

SENATOR GIESSEL asked if it's still the case that boards accrue the costs of investigations and appeals, but settlement costs go into the general fund.

MS. HOVENDEN confirmed that is correct.

SENATOR GIESSEL recalled a bill that was introduced 8-10 years ago to allow a board to keep any settlement money, but it didn't pass. She asked if that has been discussed.

MS. HOVENDEN confirmed it's been an ongoing discussion and consternation that fines do not help defray the cost of the investigations.

SENATOR COSTELLO thanked Ms. Hovenden and asked her to provide the requested follow up information.

1:59:52 PM
At Ease

Marijuana Control Board Update

2:02:17 PM
CHAIR COSTELLO reconvened the meeting and welcomed Ms. Franklin to give an update on the new regulations for marijuana.

CYNTHIA FRANKLIN, Director, Alcoholic Beverage Control (ABC) Board, and Marijuana Control Board (MCB), Department of Commerce, Community and Economic Development (DCCED), Anchorage, Alaska, informed the committee that the director and staff of the Alcohol and Marijuana Control Office (AMCO) serve both the Alcohol and Marijuana Boards. The five-member Marijuana Control Board consists of seats from public safety, public health, rural resident, industry, and industry or general public. The transition statute in House Bill 123 that created the board provided that the first appointments would have two members of industry on the board.

The director oversees three divisions in the AMCO office: administrative, records and licensing, and enforcement. The Administrative Division has an administrative officer, an administrative assistant, and an office assistant. The Records and Licensing Division has four regulation business examiners and a supervisor in Anchorage. The Enforcement Division consists of a supervisor, one investigator each in Juneau and Fairbanks, and four investigators in Anchorage. The Fairbanks position is under recruitment and is not subject to the hiring freeze because it is designated as public safety.

2:05:01 PM
She displayed the staff functions and duties for both substances and highlighted the need to fill an education position. She

related that when the ABC Board was moved into DCCED, the idea was to add an education component, but it has been challenging to find someone from the three divisions to do that work. The questions have always been steady but with the addition of marijuana the office is flooded. With the extra substance to regulate, the need to have a specific person who knows enough to answer a broad spectrum of questions and can travel to communities when requested is pressing. To date she has done the traveling but there are issues with having the director be the only educator for the entire agency. She relayed that the education position that is in the budget is funded by DGS funds received from the alcohol component.

SENATOR STEVENS asked if the board helps cities develop regulations.

2:07:21 PM
MS. FRANKLIN confirmed that the office tries to accommodate those requests. AMCO has also been working with the Division of Community and Regional Affairs (DCRA) to involve government specialists to help local governments.

She explained that from February 24, 2015 to November 24, 2015, three sets of marijuana regulations were released for public comment. For each release, the board met three times to review the comments. The regulations were merged into nine articles and again released for written public comment in October. The board also heard two days of verbal public comment in October. She displayed a visual to illustrate how many times the board met from July 2 in Fairbanks to December 1 in Anchorage.

The 9 articles of regulation are: Article 1 - Licensing & Fees; Article 2 - Local Option Rules; Article 3 - Retail Marijuana Stores; Article 4 - Marijuana Cultivation Facilities; Article 5 - Marijuana Product Manufacturing Facilities; Article 6 - Marijuana Testing Facilities; Article 7 - General Operating Requirement; Article 8 - Enforcement; and Article 9 - General Provisions.

Articles 3, 4, 5, and 6 represent the marijuana establishment license types that were created in the ballot measure. Articles 1, 7, and 9 apply to all license types. Article 2 is local option, and Article 8 is enforcement. There are no criminal penalties in Article 8, but the enforcement officers are authorized to enforce criminal laws from marijuana. Those charges would be filed under Title 11.

She said the procedures in Articles 1 and 7 are very similar to the process for alcohol licensing. Basically, the application passes back and forth between the state board and the local government to weigh in. There's some notification and advertising just like in alcohol where the applicant is notifying the public that they want to start a marijuana business. Once the agency deems the application to be complete, the local government is formally notified that they have an applicant. That local government then has 60 days to protest the application if they don't want the board to issue the license.

She explained that the marijuana inventory tracking system is the software system that ascertains that the marijuana and marijuana products sold in retail stores were grown and produced in licensed facilities. This system runs throughout all 9 articles.

2:13:50 PM
SENATOR STEVENS asked if this is only about Alaskan grown and produced products.

MS. FRANKLIN confirmed it is an instate industry.

She continued to explain that the licensing provisions also include detailed requirements for food safety, testing, security, and transportation. Following a lot of public comment, and the board decided that the licenses should be open only to Alaska residents. Also, the legislature added a requirement prohibiting licensure of anyone with a felony conviction within five years preceding application. "But we missed a spot," she said. That is enabling legislation to allow to board to ask the FBI to run the out-of-state criminal history checks. She emphasized that the enabling legislation is needed prior to February 24 when applications are received. "If someone just moved here and they qualify for a PFD and they qualify to apply for a license, but they had a felony conviction in another state, we won't know it."

CHAIR COSTELLO asked if the administration has prepared a bill.

MS. FRANKLIN replied it is her understanding that a bill is in the works. Responding to a question about timing, she explained the legislation is needed before licenses are issued, hopefully before the end of the session.

2:16:49 PM
At Ease

2:17:58 PM
CHAIR COSTELLO reconvened the meeting.

MS. FRANKLIN reviewed the standard and limited cultivation facility licenses, noting that the idea of a broker license fell away in the process. The standard cultivation facility has no canopy limit, which means the licensee can grow as much marijuana as they can afford. This license type has no sales to consumers, no consumption on premises, and the annual license fee is $5,000. The limited cultivation facility has a 500 feet canopy limit, a $1,000 annual license fee, and it has all the rest of the rules of standard licensing.

2:20:35 PM
She displayed a picture of a retail store in Colorado and explained that the consumer presents their license to security at the door and is given a hand scanner. It is used to indicate the products the consumer wants to purchase. The marijuana is kept in a restricted access area and an employee gets the products for the customer. Information about the products are available on the scanner. She noted that Colorado has different purchase limits for instate and nonresident but Alaska doesn't need those restrictions. "We're not going to have anybody driving into the state to buy marijuana and then driving out."

Alaska has a one ounce transaction limit, because the ballot measure says a person can possess up to one ounce in public.

SENATOR STEVENS asked if there are any concerns related to the Canada Alaska boundary.

MS. FRANKLIN said it is still illegal to take marijuana across state lines and Canada has Mounties at the border.

2:24:24 PM
Retail store highlights from the regulations include that a marijuana handler’s permit is required; inventory must be kept in a restricted area; marijuana must be packaged and labeled to reflect testing and security requirements; and the packaging must be childproof. On the question of consumption on the premises, the board decided that if there was going to be public consumption it would be better to have it in a regulated and licensed premises where the board could build rules around the consumption. A placeholder was put in the regulations and a new regulation project was started for a marijuana retail store consumption endorsement. Someone who has met all the

requirements for a retail store could apply for a consumption endorsement as long as their local government allows consumption on premises. "That is a project that is just getting going. We have yet to have draft language approved by the board or put it out for public comment so it will rock along behind all the rest of the regulations," she said.

2:28:42 PM
SENATOR MEYER asked if the same rules apply to serving or selling to minors as they do for alcohol.

MS. FRANKLIN answered yes, those rules are in the regulations.

She reviewed the Article 5 rules about product manufacturing and edibles. The serving size is 5 mg with a maximum of 10 servings per package. The board must approve all edible products prior to production. Adulterated products, products that look like non-marijuana products, and products that are especially appealing to kids are prohibited. She noted that Dr. Jay Butler, the state's chief medical officer, has said that "there is some research to indicate that in some people who are not used to eating marijuana in an edible form, 10-30 milligrams might be an intoxicating dose."

The board set Alaska's serving and package limit lower than other states with the novice user and tourists in mind.

The board looked at novice use and tourists when it set lower serving and package limits than other states. She noted the public education campaign in Colorado called Start Low, Go Slow that suggests that 5 mg is an appropriate starting point for the novice.

2:33:00 PM
Turning to extracts, she said it's important to realize that marijuana extract can be added to any edible and people can be quite creative adding it to things like soda, ice cream or smoked salmon.

MS. FRANKLIN informed the committee that concentrates are also being made that can be smoked. Wax and Shatter products have a very high concentration of THC, ranging from 72-95 percent. They are smoked and therefore are not subject to edible serving size rules. Smoking these products is sometimes called dabbing and is also referred to as butane hash oil or BHO. She clarified that if a manufacturer in Alaska does make their products with solvents, part of the testing requirements are to assure that

the solvent is no longer in the product when it is sold to the consumer. She described the dabbing process and pointed out that it will have a bigger effect than smoking a joint. She noted that one young man described it as the triple black diamond of marijuana. She emphasized that the education component needs to help people understand what they're buying when they purchase a concentrate.

2:38:32 PM
Article 6 addresses the testing requirements and facilities. All marijuana and marijuana products must be tested for THC potency and microbial testing for contaminants. Additional testing is required for products that are produced by solvent extraction to ensure that there is no residual solvent in the product that is sold. The test results are required to be on the label. If a testing facility is asked to perform additional tests, those results must be reported. Alaska rules require the grower to report if they use pesticides and any testing must be revealed on the label.

2:40:01 PM
SENATOR STEVENS asked who pays for the test.

MS. FRANKLIN replied the testing facilities are licensed and the licensee pays for the tests.

Articles 1 and 2 address the local control and local option regulations. Article 1 contains local control provisions including a protest tool and deferral of the board to local governments on zoning. Local governments also have the ability to limit time, place, manner and number of marijuana establishments.

Article 2 provides the local option rules for communities to opt out. This is a similar menu to the rules for alcohol found in Title 4. However, a community may opt out either through ordinance or election, which is different than alcohol. Importantly, nothing in the opting out allows a local government to prohibit personal possession of marijuana.

MS. FRANKLIN said there is no limit on the number of licenses allowed at the state level. This is intended to avoid speculation in licenses and the secondary market value of those licenses. Conforming to the ballot measure, a local government has the authority to limit the time, place, manner, and number of marijuana establishments.

2:45:00 PM
MS. FRANKLIN stated that nothing in these rules is intended to affect medical marijuana cardholders (AS 17.37). She reminded the members that there is no difference between medical marijuana and non-medical marijuana.

She explained that new strains of marijuana are being grown that are cultivated to maximize the effects of cannabidiol (CBD) versus tetrahydrocannabinol (THC). CBD is the aspect of the plant that has most of the positive medicinal effects, whereas THC is the psychoactive ingredient. This makes regulation more complicated, she said.

SENATOR STEVENS questioned the reason for medical marijuana cards.

MS. FRANKLIN explained that they are necessary because the criminal statutes haven't been changed. Also, the ballot measure said nothing in the Act is intended to change AS 17.37.

2:52:25 PM
MS. FRANKLIN reviewed the Marijuana Control Board (MCB) 2016 Timeline. She noted that the board has not approved the timeline so it may change. In January and February she said she expected the adopted regulations to be approved by the Lt. Governor and in effect 30 days from his signature. On February 11 the board will meet to approve application forms and begin the process of drafting regulations for consumption endorsement. February 24 is the statutory deadline to begin accepting applications.

She said AMCO has been doing a lot of work in preparation for the applications, including an outstanding job of building a database for electronic applications. This is designed for an applicant to demonstrate that they have the tools to enter the market. The first completed applications are expected in March.

In April AMCO will review applications for completion and send them to local governments, and the board will meet in Anchorage. On May 23 the RFP for seed-to-seed software implementation will be finalized. The board will have a meeting in June to approve the first licenses.

July through December AMCO will continue to process license applications and meet three times in July, October, and December.

2:55:23 PM

MS. FRANKLIN reviewed the following pressing need: support for the educator position due to the number of requests for information. Currently, other positions are filling the role of educator. The cost of the position could be covered by the licensing fees. The educator would work on activities related to both alcohol and marijuana and would develop video training.

SENATOR MEYER asked whether the legalization of marijuana would help with the Spice problem in Anchorage.

MS. FRANKLIN said she didn't know. She believed that those who use Spice already have access to marijuana. She pointed out that Spice is a very different drug and provides a very different experience than marijuana, so those users are perhaps looking for a different type of high. She opined that having access to retail stores that sell marijuana will improve access to those who want marijuana and may have a small effect on decreasing Spice use.

SENATOR STEVENS asked if people are incarcerated that wouldn't be there under the new rules.

MS. FRANKLIN related that the correction facilities rosters were checked in November and there were only four individuals imprisoned at the time due to marijuana charges. These were for large marijuana grows. It's reasonable to feel confident that not a lot of resources are being spent on marijuana. That being said, there must be serious consequences for those who choose to break the law, she said.

CHAIR COSTELLO thanked Ms. Franklin and the board for their hard work.

3:00:37 PM
There being no further business to come before the committee, Chair Costello adjourned the meeting at 3:00 p.m.