

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 13, 2017

3:19 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

MEMBERS ABSENT

Representative Colleen Sullivan-Leonard
Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 90

"An Act relating to occupational licensing fees; relating to an occupational investigation surcharge; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 90

SHORT TITLE: OCC. LICENSING FEES; INVESTIGATION COSTS

SPONSOR(S): REPRESENTATIVE(S) KITO

01/30/17	(H)	READ THE FIRST TIME - REFERRALS
01/30/17	(H)	L&C, FIN
02/13/17	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

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

POSITION STATEMENT: Answered questions regarding HB 90 on behalf of Representative Kito, prime sponsor.

ALVIN KENNEDY, Investigator
Division of Corporations, Business, and Professional Licensing
(DCBPL)
Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska
POSITION STATEMENT: Answered questions regarding HB 90.

JANEY HOVENDEN, Director
Division of Corporations, Business, and Professional Licensing
(DCBPL)
Department of Commerce, Community & Economic Development (DCCED)
Juneau, Alaska
POSITION STATEMENT: Answered questions regarding HB 90.

AL BARRETTE
Fairbanks, Alaska
POSITION STATEMENT: Testified in opposition to HB 90.

JOHANNA CROSSETT, Direct-Entry Midwife
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 90.

ERROL CHAMPION, Chair
Industry Issues Group
Alaska Association of Realtors
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 90.

ACTION NARRATIVE

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VICE CHAIR ADAM WOOL called the House Labor and Commerce Standing Committee meeting to order at 3:19 p.m. Representatives Josephson, Stutes, Birch, Knopp, Kito, and Wool were present at the call to order.

HB 90-OCC. LICENSING FEES; INVESTIGATION COSTS

[3:20:30 PM](#)

VICE CHAIR WOOL announced that the only order of business would be HOUSE BILL NO. 90, "An Act relating to occupational licensing fees; relating to an occupational investigation surcharge; and providing for an effective date."

3:20:50 PM

CHAIR SAM KITO, as prime sponsor of HB 90, stated that boards with a limited number of registrants - such as the Board of Certified Direct-Entry Midwives, the Big Game Commercial Services Board, and The Real Estate Commission - share large investigative costs over a small number of people. Statute requires that each board is financially self-sufficient. This leads to large spikes in licensing fees from one biennium to another. These large fees can become an impediment for a licensee to enter a profession.

CHAIR KITO explained that the issue has previously been brought before the legislature in different forms. He noted that years ago, efforts were made by the department to internalize investigation costs. However, the effort was unsuccessful because the bill relied on the general fund. He mentioned deliberating about labor and commerce issues that could help larger groups of people perform their functions much more safely, easily, and financially reasonably: This issue is a top priority of the labor and commerce issues he hopes to address.

CHAIR KITO informed that HB 90 would take the board investigation costs and would assess a fee among all licensees and registrants of occupational licenses. That amount of money would pay for the investigations for all the licensing boards. He explained that individual board investigative costs vary from thousands of dollars to less than \$100. The total amount spread over all of the licensees equates to about \$60 per biennium [per licensee]. This is \$7 to \$20 more than some licensees pay now and thousands of dollars less than some pay now. He expressed that the change of the cost structure in HB 90 would make the professions more approachable for people starting new careers.

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CHAIR KITO said this effort is similar to health insurance or other realms. He acknowledged the contrary position is that some boards feel they don't use investigations at the same level as other boards and are not interested in paying the cost. He offered his opinion that the shared cost among all licensees is relatively minor in light of the overall licensing costs and helps the entire division. He remarked:

I think it provides the ability for the division to have a better way of spreading costs out instead of trying to spend so much work managing how much ...

money a board might be able to accommodate. So one of the challenges in the system right now is because the costs have to be adjusted per biennium, if you have a licensing fee that could ... result in a very significant increase in fees, there's nothing, even in our current statute, that allows those costs to be spread out over ... [multiple biennia] although that is being done. Because it's the only way to avoid a significant barrier of entry to some of those professions. So, in a sense, the department is violating the law in a way, even directed to [do so] by our Legislative Audit Division to make sure that we are not creating a situation where we ... are turning people away from a profession.

CHAIR KITO offered his opinion that helping professions with fewer licensees is also beneficial to professions with a larger number of licensees. He informed that he is a registrant with the Alaska State Board of Registration for Architects, Engineers, and Land Surveyors (AELS). Under HB 90, his annual board fee would increase by \$20, an amount he stated he could afford. He relayed that the increase would be not too much of an impact on his budget. He expressed that a family member of his might want to receive services from a midwife and everyone benefits from ensuring that professions have the resources they need. He stated that he is willing to discuss other solutions to this problem, although he said the proposed legislation seemed to him to be the most fair to the most people.

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REPRESENTATIVE STUTES shared that she knew of a board that was charged very significant investigative charges, which put the board a half a million dollars in the hole unbeknownst to its members. She explained that the problem was that the department determined if the investigations should proceed with either no input or objections from the board. She remarked that the board said, "We can handle this and we can find these individuals, and it will be much more cost-effective than launching this big investigation, when we know what's ... happened." She stated that the bill doesn't address that problem. She acknowledged it might be a separate issue, but the issues coincide. She suggested having enforceable parameters on how investigations are launched. Investigations are expensive and lead to boards incurring huge fees.

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CHAIR KITO stated that there are different aspects to the problems with investigations and licensing, and he remarked, "We looked at it in terms of this being one piece." He noted that he has been thinking about the related issues. He stated his concern that investigating claims of individuals who are not licensed or governed by the board might not be a valid use of registrants' fees. He expressed that the discussion is necessary but should happen in the next phase: first look at the costs, then look at the responsibilities of the investigators. He remarked, "Are the investigators there to make sure that each one of us engineers is doing the job that we're supposed to be doing, or is that job also to include looking for people that are practicing without that license?"

CHAIR KITO acknowledged that there are some questions and concerns that remain about whether the investigative costs have been identified properly. He stated that the information from the Division of Legislative Audit did not find errors or concerns with how investigations were taking place. However, the division did find some issues with how costs were distributed among licensees over a couple of years. He referenced previous testimony from Kris Curtis, Legislative Auditor, who had informed that most of the past issues with investigative costs not being incorporated into the licensing fees had been resolved. He added that under HB 90, current debts from previous investigations would be borne by the affiliated boards and would "start a new day"; new investigations would be paid for through a combined fund as they occur.

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REPRESENTATIVE BIRCH asked who manages the costs of investigations. He offered his hope that the affiliated board would have some control of or engagement with the investigative costs incurred. He asked how a half-million-dollar investigative charge could be incurred.

CHAIR KITO stated that the department currently fields the requests for investigations. The requests come from individuals - either board registrants or public members - who are concerned about behaviors or practices of a licensed professional. The complaints go to the investigator assigned to the board, who then generally determines or verifies with a board member if an investigation is warranted. He stated that the board is often engaged in the decision of whether or not an investigation takes

place; investigators don't proceed with an investigation without some consultation with the board. He informed that costs are well known by the department and are reported to the individual boards. Some investigations involving the Big Game Commercial Services Board had very high costs due to significant amounts of travel in remote areas.

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CRYSTAL KOENEMAN, Staff, Representative Sam Kito, Alaska State Legislature, answered questions on HB 90 on behalf of Representative Kito, prime sponsor. She referred to a breakdown of the investigative process included in the committee packet. She noted that boards with higher investigative costs have been working with investigators to determine what should be investigated. The department has been working with those boards so that it doesn't appear that investigators act independently, but work in tandem with the boards for the protection of licensees and all of Alaska.

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REPRESENTATIVE JOSEPHSON remarked:

You could have criminal misconduct, for which there is either a conviction or an acquittal. It can be ... [a] very close call in either case, a different standard ... and a belief that ... for example, if a criminal charge were defeated, surely a civil charge could be defeated, even though the standard is lower. And there could be public safety issues; there could be somebody who's just dead-set on keeping their license ... and ... "to hell with anything else" kind of thing. I suspect that happens.

REPRESENTATIVE JOSEPHSON stated that [defendants] are entitled to due process of trials and hearings, though this process could run up a big tab.

CHAIR KITO stated that he is not aware of any investigations that have crossed into the criminal realm. He remarked, "If you cross into the criminal realm, then I don't know that ... any kind of a process within the board review has any bearing, but any investigative materials that the investigator came up with, I'm sure get transferred over into that criminal case." He stated that he is not sure what a board's financial responsibility would be.

MS. KOENEMAN stated that she knows of some cases that "have both gone criminal and civil."

REPRESENTATIVE JOSEPHSON commented that the instances involving the Big Game Commercial Services Board would likely involve criminal charges.

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REPRESENTATIVE KNOPP stated his interest in finding a solution to high investigative costs, although he offered his opinion that HB 90 might not be the right mechanism. He drew attention to AELS's budget from 2012 and 2013, and noted that the investigative costs are minimal in comparison to the administrative costs. He expressed that the fees mostly support the administration.

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CHAIR KITO stated that the proposed legislation just addresses the investigative costs. Both now and under HB 90, all other costs are attributed to each individual board, which is responsible for managing all other components. He remarked, "All we're talking about is pulling those investigative costs out for all the boards and then normalizing them among all the boards. All those other costs would remain attributable to one of the boards."

REPRESENTATIVE KNOPP asked for clarification that the bill only addresses professional licensing and not business licensing.

CHAIR KITO answered yes; the bill pertains only to the individuals that for life, health, or safety reasons are required to have a license or registration.

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REPRESENTATIVE BIRCH asked whether a board has an option to contract independently for background research. He also asked if the investigative assets available to the board all come from within the Department of Commerce, Community & Economic Development (DCCED) or the Department of Law.

CHAIR KITO stated that years ago, AELS asked for changes in statute to designate one investigator for AELS investigations, and HB 90 would not affect that. He offered his understanding

that the department can authorize an investigator to hire someone to collect additional information for things that the investigator does not have the capacity to do.

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VICE CHAIR WOOL asked if there are any groups that use a disproportional amount of investigative resources - not per individual but per group.

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MS. KOENEMAN responded that there are. She indicated that on their websites, boards include annual reports for investigations. In terms of investigations, intakes, complaints, and probations, acupuncturists had a total of 10, architects, engineers, and land surveyors a total of 70, big game guides 148, barbers and hairdressers 162. She noted that these numbers represent the total investigations, intakes, complaints, and probations for each of the specific boards.

VICE CHAIR WOOL asked if some investigations, depending on what field they're in, are inherently more expensive and require more expertise.

MS. KOENEMAN answered absolutely. She added that the costs can vary by profession.

VICE CHAIR WOOL noted that the Board of Certified Direct-Entry Midwives has only 64 or 65 members to spread out the potential cost of any large investigations. This circumstance has led to midwives' fees going up to approximately \$4,000. He asked for confirmation that if the costs were spread over 74,000 licensees, then license fees would average about \$30 per year. This would not include any board's past debts.

MS. KOENEMAN responded that is correct. She added that the aforementioned \$30 fee comes from rough estimates; the department is working to get more accurate cost data to her.

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REPRESENTATIVE BIRCH asked if when a \$100,000 investigation is deemed necessary, the board is made aware of the fact that it could have an adverse impact on annual licensing fees.

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ALVIN KENNEDY, Investigator, Division of Corporations, Business, and Professional Licensing (DCBPL), Department of Commerce, Community & Economic Development (DCCED), responded to Representative Birch's question, saying that when a complaint is filed, an investigator is assigned. Once the matter is found to be within the investigator's jurisdiction, the investigator meets with someone on the board to review the case and ensures that the investigation should proceed. He remarked:

The investigator does not determine whether or not statute ... or regulation has been violated, it's actually the board member who makes that determination as to whether or not what type of discipline will be doled out from what we find out if it is, in fact, a violation of statute or regulation. So boards are involved very early on in the process when we start our investigations. Again, we're the fact finders, we find the facts, and then we present them to ... one or two members depending upon the board who's reviewing the case so that they can make a determination as to which direction we're going to go.

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REPRESENTATIVE BIRCH asked how many investigators there are.

MR. KENNEDY responded that there are currently 16 assigned to regulate for 43 different professions.

REPRESENTATIVE BIRCH asked if there is a budget generated before an investigation in order for the board to have some expectation of costs and make a balanced decision.

MR. KENNEDY stated that normally the board determines if a trip is needed. He expressed that very seldom do investigators fly to remote places; investigators usually drive if a trip is deemed necessary. In most occurrences, investigators partner with someone in the area, such as state troopers, who house and transport the investigator to reduce costs.

REPRESENTATIVE BIRCH asked if overseeing the 43 professions keeps the 16 investigators busy.

MR. KENNEDY answered it does. He stated that they review complaints as they come in. If a person checks certain boxes when filing an application for licensing, then the application

goes to the investigative division for review. The division ensures that Alaska does not license someone with barrier crimes in his/her background that might be a threat to public safety.

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REPRESENTATIVE STUTES asked if any board member can make the determination of whether or not there will be an investigation. She asked if this determination is unilateral or if it requires a majority of the board.

MR. KENNEDY answered it's unilateral. He relayed that there are two public members normally assigned to each board, and public members do not review investigations. Those board members who are licensed within the profession are the members who review the cases and determine what direction the division will go, depending on the jurisdiction.

REPRESENTATIVE STUTES asked if an investigation would be launched if a board has seven members and six say they don't want an investigation, but one believes an investigation is needed.

MR. KENNEDY stated that by the time the investigation is in front of the entire board, the investigation has already been conducted. When the entire board is looking at a case, it is determining - by majority - whether or not to accept discipline.

REPRESENTATIVE STUTES asked if there is currently a back log of cases.

MR. KENNEDY answered no. He added that right now, when a complaint comes in, there is a 72-hour window to respond. Paperwork is sent out either to a board member to review and determine whether or not there was a violation or to the complainant. Cases are immediately assigned to an investigator once received by the division. The division aims to close cases within 180 days.

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REPRESENTATIVE STUTES asked how many investigations are currently going on.

MR. KENNEDY stated he does not know. He informed that in the last fiscal year, the division looked into 1,600 investigations, complaints, probation matters, and intake matters.

REPRESENTATIVE STUTES asked Mr. Kennedy to provide the number of current open investigations and the number of investigations that were concluded in 2016.

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REPRESENTATIVE BIRCH asked how much activity is seen with the board managing euthanasia permits.

MR. KENNEDY answered not a lot.

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VICE CHAIR WOOL asked if Ms. Hovenden foresees it being easier to manage the boards as a whole with spreading out the investigative costs as opposed to looking at each individual board.

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JANEY HOVENDEN, Director, Division of Corporations, Business, and Professional Licensing (DCBPL), Department of Commerce, Community & Economic Development (DCCED), stated that spreading out the costs would make fee analysis easier. She noted that the midwives and big game guides are in very difficult positions needing to raise fees to a level that creates a barrier to the profession.

VICE CHAIR WOOL asked if an individual doing massages without a license is reported, then should the other massage therapists be responsible for covering the cost of an investigation.

MS. HOVENDEN said that is how the statute is written. She offered her understanding that the issue has been considered in previous legislation. She proposed that it could be deemed public safety and be paid for by the general fund, but as statute is written, it is to be paid for by licensees of the profession.

VICE CHAIR WOOL asked whether the investigative costs are mostly travel or if investigators bill for time like a private investigator would.

MS. HOVENDEN answered that investigators keep track of time worked to 15 minutes increments for billing. This ensures that the programs or boards are billed for the corresponding time.

She noted that this is where the volatility of costs comes in. Administrative and indirect costs are quite predictable and would keep fees constant. The investigative costs are variable.

VICE CHAIR WOOL referred to Mr. Kennedy's testimony regarding investigators staying with troopers. He noted that investigations of pharmacists would be very different from big game guides. He asked for confirmation that different people investigate big game hunting and pharmacist violations.

MS. HOVENDEN stated that each investigator is assigned one or more program; some are assigned to a particular program because it requires experience. All the investigators are capable of cross training, but investigators are usually specialized in their assigned programs.

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VICE CHAIR WOOL opened public testimony on HB 90.

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AL BARRETTE testified in opposition to HB 90. He compared the discussion to a discussion on income tax where the collective pays for everybody. He stated that the proposed legislation lacks incentive to reduce investigations. The bill would fund investigations by charging individuals with occupational licenses. He drew attention to his letter to the committee [included in the committee packet], which asked if these occupations are overrated. He stated his familiarity with big game commercial services, and offered that an individual could be trapping, make a game violation unrelated to guiding, and then pay a fee for the criminal violation. After, the Big Game Commercial Services Board would conduct its own investigation about whether a standard was violated within the guiding industry. He said that although the trapping violation had nothing to do with guiding, the investigation is required based on how the regulations are written. He proposed that each occupation needs to look at the reasons behind the high costs and reoccurrences of investigations.

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REPRESENTATIVE JOSEPHSON recalled that previous testimony taught that the board members - the licensees - ask for the investigation. He characterized that Mr. Barrette's complaint is not with the DCCED, but with his co-professionals.

MR. BARRETTE responded that the characterization is partially true. He stated that HB 90 aims to recoup the costs by requiring all licensees to pay a surcharge to even out the ebb and flow of the investigations of all licensed persons. He remarked, "It should be ... maybe you, the legislature, telling ... you need to review what's going on within your occupation, your industry. Why is nursing or why is big game commercial services having such a high bill or reoccurrence of investigations? Is it because the standards are overregulated?"

REPRESENTATIVE JOSEPHSON asked if Mr. Barrette's theory is to lessen the standard so people comply.

MR. BARRETTE answered no. He again offered the example of someone committing a violation that had nothing to do with his/her occupational license, yet the occupational board would investigate it again.

REPRESENTATIVE JOSEPHSON asked if an individual is found to have violated his/her hunting license, then is it reasonable to infer that he/she might not be as trustworthy when guiding?

MR. BARRETTE answered that would be reasonable. He remarked, "Would it be reasonable to say if you got a drunk driving ticket that you're not complying with the nursing board or ... the board of architecture?"

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JOHANNA CROSSETT, Direct-Entry Midwife, testified in support of HB 90. She stated her appreciation for the interest and discussion of a way to provide some predictability of licensing fees.

[4:08:32 PM](#)

VICE CHAIR WOOL asked whether the Board of Certified Direct-Entry Midwives' increase of licensing fees to approximately \$4,000 would reduce the number of participants in the profession or increase the occurrence of individuals practicing without a license.

MS. CROSSETT she offered her opinion that the high fees could potentially reduce the amount of direct-entry midwives practicing or apprenticing. She stated that she does not foresee midwives practicing unlicensed.

4:09:29 PM

ERROL CHAMPION, Chair, Industry Issues Group, Alaska Association of Realtors, testified in opposition to HB 90. He stated that the bill goes over the mark. In previous years, [the Real Estate Commission] did not pay its own way but has run a surplus in the last five years. He stated that it's important for boards to take ownership of investigative costs. He stated that if a colleague "doesn't pass muster," then maybe other factors like education need to be addressed. Amalgamating the charges and handing them out won't work. He explained that complaints about a realtor don't go to the full Real Estate Commission; a complaint goes to one realtor member, then the investigator and the commission member decide whether the investigation should go forward. The rest of the commission doesn't hear the complaint until the investigation is completed to determine if action is needed. He relayed that he is not sure the 2,643 realtors need to take ownership of 70,000 licenses. He said he understands the issue and need to smooth things out, and stated his desire to let the Real Estate Commission and the division levee out the cost of investigations. If the costs are blended, he remarked, "I think we lose something." He compared it to blending all the grades for all students in school.

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REPRESENTATIVE JOSEPHSON stated that HB 90 is a good idea. He informed that the Real Estate Commission could become insolvent, and HB 90 works as insurance for the members offered for \$20 per person. He offered his understanding that realtors didn't ask for a relationship to hair dressers. He stated that the current system is unfair because members absorb the cost of a bad actor.

MR. CHAMPION responded that the current system is not broken, and there is no need to fix it. He noted there is a great director at DCBPL and good accounting practices. He stated that not many boards are interested in the blending of charges. He remarked, "I don't see what we're gaining by this legislation."

4:14:16 PM

REPRESENTATIVE BIRCH asked if the [Real Estate Commission] has always been under a state licensing umbrella. He noted that some professions, such as physicians and attorneys, are independently managed.

MR. CHAMPION answered that that is his impression with his 18 years of experience. He added that often the investigator doesn't understand real estate, and this bill further removes ownership of errors and omissions.

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CHAIR KITO stated that HB 90 would change the financing mechanism for investigative costs, but would not to change the structure of how investigations are completed. The investigator currently assigned to the Real Estate Commission would still be assigned the same duties under HB 90. He stated that sometimes new investigators are trained on issues pertaining to an investigation, although that would happen regardless of HB 90. He offered an example that he can pay for someone to plow the street in front of his house but not pay to plow the street in front of his neighbor's house. He asked how anyone would account for paying for just one portion of the street. Some boards are adversely impacted by overly high and sporadic investigation costs. He remarked:

It is in the public's interest to have those costs spread out over all the professions, and all the professions do have the opportunity to receive support services from the investigative group, whether [or not] they need those support services ... Every board would have a different need for those services, but every board ... in investigations has the ability to draw from that. Because of the fact that a profession is licensed with fewer representatives or because of the fact that they have specific investigations that may cost a significant amount of money, they are being penalized with their licensing.

CHAIR KITO expressed that it's becoming cost prohibitive to become part of some professions. The bill aims to enhance and support commerce.

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REPRESENTATIVE STUTES asked if HB 90 would make it less likely for a board or board members to be responsible for their own actions. She asked what the deterrent would be for a board to not continually violate the parameters if the board is not being held responsible for its own investigations.

[4:19:02 PM](#)

VICE CHAIR WOOL offered that one incentive not to continually violate parameters is that individuals could lose their licenses or be fined. There is punishment other than incurring debt to the board.

REPRESENTATIVE STUTES asked whether an investigated violation goes to someone at DCBPL other than the investigation division; she asked, "So there can be punitive damages other than the investigations?"

[4:20:29 PM](#)

MS. HOVENDEN asked for the question to be clarified.

REPRESENTATIVE STUTES clarified her question and asked, "If a board is chronically incurring investigative costs by way of violations, is there something that the department does to follow up on this chronic investigative charges by this particular board? Are there other avenues of penalizing this board: If it's ... one board, but several different members that are constantly having this issue?"

MS. HOVENDEN stated that it is not the boards themselves incurring the costs - the costs are incurred by licensees. Neither the board nor the division can control number of the complaints received. She stated that the board is responsible for contacting licensees about a particular problem such as continuing education.

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REPRESENTATIVE STUTES asked if there is an avenue for the department to get involved in punitive responses. She asked if the engineering board had 1,000 members and in one year had 500 violations that had been investigated, would the department get involved or would it be kept between the board and the investigator?

MS. HOVENDEN answered that the investigator works with the board or licensees with any problem. The licensees are fined and have penalties.

REPRESENTATIVE STUTES asked whether the board has the capability to recommend revoking a license.

MS. HOVENDEN stated that the board makes the final decision on a situation with a licensee after an investigation.

REPRESENTATIVE STUTES asked for clarification on whether the board has the option to revoke a license.

MS. HOVENDEN stated that the board must follow regulations, but can revoke licenses under set circumstances.

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VICE CHAIR WOOL announced that HB 90 was held over.

[4:25:22 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:25 p.m.