

HOUSE FINANCE COMMITTEE  
May 2, 2022  
1:31 p.m.

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CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 1:31 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair  
Representative Kelly Merrick, Co-Chair  
Representative Dan Ortiz, Vice-Chair  
Representative Ben Carpenter  
Representative Andy Josephson  
Representative Bart LeBon  
Representative Sara Rasmussen  
Representative Steve Thompson  
Representative Adam Wool

MEMBERS ABSENT

Representative Bryce Edgmon  
Representative DeLena Johnson

ALSO PRESENT

Madison Govin, Staff, Senator Peter Micciche; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Tim Lamkin, Staff, Senator Gary Stevens.

PRESENT VIA TELECONFERENCE

Glenn Hoskinson, Division of Corporations, Businesses and Professional Licensing, Department of Commerce, Community and Economic Development; Dana Walukiewicz, Alcohol Beverage Board, Department of Commerce, Community and Economic Development; Carrie Craig, Acting Director, Alcohol and Marijuana Control Office, Department of Commerce, Community and Economic Development; Dr. Damien Delzer, OD, Chairman Board of Examiners in Optometry; Dr. Steven Dobson, OD, Dimond Vision Clinic, Past President of Alaska Optometric Association.

SUMMARY

SB 151 EXTEND ALCOHOLIC BEVERAGE CONTROL BOARD

SB 151 was HEARD and HELD in committee for further consideration.

SB 186 EXTEND BOARD OF EXAMINERS IN OPTOMETRY

SB 186 was HEARD and HELD in committee for further consideration.

CSSB 193 (FIN)

EXTEND BOARD OF CHIROPRACTIC EXAMINERS

CSSB 193 (FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the meeting agenda.

#sb193

CS FOR SENATE BILL NO. 193 (FIN)

"An Act extending the termination date of the Board of Chiropractic Examiners; requiring a report on audit compliance by the Board of Chiropractic Examiners; and providing for an effective date."

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MADISON GOVIN, STAFF, SENATOR PETER MICCICHE, introduced the bill with prepared remarks. She relayed that the legislation extended the Board of Chiropractic Examiners' (BCE) termination date five years to June 30, 2027. The audit concluded that the board served the public's interest by conducting meetings in accordance with State laws, amending certain regulations to improve the chiropractic profession, and effectively licensing and regulating chiropractic physicians. The bill required the Legislative Audit Division to submit a report to the Legislative Budget and Audit Committee (LBA) concerning the compliance of the board within one year after the effective date. She urged the committee's support in extending the board.

Co-Chair Merrick asked to hear from the Division of Legislative Audit.

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KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, reviewed the legislative audit. She read the conclusions from page 1 of the Audit:

Overall, the audit concluded that the board served the public's interest by conducting meetings in accordance with State laws, amending certain regulations to improve the chiropractic profession, and effectively licensing and regulating chiropractic physicians. Additionally, the audit found one board member did not meet statutory requirements for appointment and additional resources were needed to investigate cases in a timely manner.

In accordance with AS 08.03.010(c)(5), the board is scheduled to terminate on June 30, 2022. We recommend that the legislature extend the board's termination date five years to June 30, 2027, which is less than the eight-year maximum allowed in statute. The reduced extension is due to an issue identified during the audit that may impact the board's ability to protect the public. The details of the issue are not included in this report to preserve the confidentiality of an ongoing investigation. The reduced extension reflects the need for continued oversight.

Ms. Curtis drew attention to Page 5 of the audit that included a chart titled "Exhibit 2" that listed the BCE's licensing activity. She indicated that as of January 31, 2021, there were 306 licensed chiropractors. She turned to the chart titled "Exhibit 3" on Page 6 that depicted the board's revenues and expenditures. She indicated that the board alternated between a deficit and a surplus. According to the Division of Corporate, Business, and Professional Licensing (DCBPL) management, the deficit was within a reasonable range and no fee changes were recommended. She noted that the license fees were listed on the chart titled "Exhibit 4" on page 7. She furthered that the audit made two recommendations found on page 9 of the audit report. She stated the first recommendation as follows:

The governor should make Board of Chiropractic Examiners (board) appointments in compliance with statutory requirements.

Ms. Curtis delineated that the governor appointed a licensed Emergency Medical Technician (EMT) as the public member on the board. Statutes prohibited the public member to not have a financial interest in the health care industry. She moved to the second recommendation as follows:

DCBPL's director should allocate sufficient resources to ensure cases are addressed in a timely manner.

All 11 cases open over 180 days from July 2017 through January 2021 were evaluated by auditors. It was identified that seven of the cases involved the same chiropractor and were combined into one case. Auditors found the case had four periods of unjustified inactivity ranging from 55 to 208 days. According to DCBPL investigative staff, the inactivity was the result of competing priorities and insufficient resources.

Ms. Curtis highlighted that management's response to the audit began on Page 21. She reported that the commissioner of the Department of Commerce, Community and Economic Development (DCCED) hired two new investigators, which she believed would improve the quality and timeliness of investigations. The governor's response was on page 23 of the audit. She related that the governor agreed with the first recommendation and notified the auditor that the board member had been removed. The board's chair's response began on Page 25. She communicated that the chair did not agree with the 5-year extension. He believed that the board was being unfairly penalized for actions on behalf of the governor's office and DCBPL. He requested that the board be granted an 8-year extension.

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GLENN HOSKINSON, DIVISION OF CORPORATIONS, BUSINESSES AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), reviewed the department's published fiscal impact fiscal note (FN3 (CED) for DCCED, DCBPL. She explained that the fiscal note showed the cost of operating the board and not the cost of the program. The expenses incurred were as follows: Travel costs were \$20.3 thousand for 5 board members and 1 staff member to attend four board meetings per year and associated costs and services for advertising of public

notice of board meetings, training and conference fees, and stipends for board members attending board meetings in its community of residence.

SB 193 was HEARD and HELD in committee for further consideration.

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AT EASE

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RECONVENED

#sb151

SENATE BILL NO. 151

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

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Co-Chair Merrick indicated that Representative Josephson and Representative Wool had joined the meeting.

MADISON GOVIN, STAFF, SENATOR PETER MICCICHE, introduced the bill with prepared remarks. She relayed that SB 151 extended the board's termination date to June 30, 2027. She furthered that the Legislative Audit Division reviewed the activities of the ABC Board and determined the board was effectively serving the public interest by controlling the manufacture, barter, possession, and sale of alcoholic beverages in the state. Findings also included that board meetings were conducted effectively, regulations were adopted to implement statutory changes, and investigations were conducted in a timely manner.

Co-Chair Merrick asked to hear from the Division of Legislative Audit.

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KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, indicated that the audit was unique because the Alcoholic Beverage Control Board (ABC) audit report contained findings from both a Sunset Review Audit and a Special Review Audit of the boards licensing process

requested by the Legislative Budget and Audit Committee (LBA). She read from the report's conclusions as follows:

Overall, the audit found that board meetings were conducted effectively, regulations were adopted to implement statutory changes, and investigations were conducted in a timely manner. The audit also concluded that the Alcohol and Marijuana Control Office (AMCO) operations were impeded by the lack of an automated application process and significant vacancies. Further, deficiencies in controls over processing licensee fee refunds were identified.

We recommend the legislature extend the board's termination date to June 30, 2026, which is four years less than the maximum allowed in statute. The reduced extension reflects the need for more timely oversight to evaluate the board's progress in addressing licensing inefficiencies and filling vacancies.

Ms. Curtis pointed to Page 14 of the audit report that contained a chart titled "Exhibit 2" that displayed ABC's license count by type as of February 28, 2021. She reported that 1,867 licenses were active. A backlog of applications due December 2020, caused by extensive vacancies resulted in the issuance of approximately 300 temporary licenses. She elaborated that Auditors reviewed AMCO's staffing during the audit period and found extensive vacancies. Exhibit 3 on page 15 displayed the staff vacancies from FY 2018 through February 28, 2021 and showed staffing vacancies that exceeded two months during the audit period. In total, 7 staff positions were vacant over 92 months. The department offered that the hiring of the two positions was not approved due to "the substantial uncertainty surrounding an earlier proposal to merge AMCO into DCCED's Division of Corporations, Business and Professional Licensing. The impact of the COVID-19 pandemic to the alcoholic beverage and marijuana industries was also unknown, and these two positions were not materially involved in licensing functions. In addition, one position was not filled due to difficulty with finding workspace for the special investigator position, which was moved from Fairbanks to the Matanuska-Susitna Borough. The extended vacancies negatively impacted AMCO's ability to support the ABC board as well as the Marijuana Control Board (MCB). She referred to Pages 10 through 18 that summarized the auditors' detailed review of the board's licensing process.

The auditors' found that 76 percent of new licenses and 85 percent of transfer applications were issued or finalized within six months of receipt. She added that on average it took 153 days to issue a new license and 131 days to issue a transfer license. The audit reported that license requirements were complex, making the application process complicated and inherently subject to error. Further, the applications must be submitted manually. As such, the applications were not subject to online edits designed to help limit errors. The audit identified the following three opportunities for gaining licensing efficiencies:

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Analysis of the 505 applications received during the audit period found applications were incomplete and/or inaccurate at a rate of 96 percent for new applications and 97 percent for transfer applications. Once determined deficient, the applications are sent back to the applicants for correction. Returning applications added, on average, 20 days to AMCO's review process.

Ms. Curtis relayed that the second opportunity confirming an applicant's compliance with the regulations and statutory requirements caused significant delays. Delays due to protest by a local governing body or due to waiting for receipt of compliance information added an average of 88 days for new licenses and 35 days for transfer licenses. Thirdly, the audit found that AMCO staff issued new and transfer licenses an average of 23 days and 28 days, respectively, after all outstanding requirements were met. She added that automation of the process would significantly shorten the timeline. She highlighted the five recommendations contained in the report found on Pages 27 through 31:

Recommendation No. 1: The Department of Commerce, Community, and Economic Development (DCCED) commissioner should ensure AMCO staff vacancies are filled in a timely manner and the AMCO director should implement written licensing procedures.

Recommendation No. 2: The board should significantly enhance or replace its licensing database and automate the application process where possible.

Recommendation No. 3: The board and AMCO director should strengthen procedures for entering restricted purchasers in the statewide database of written orders.

Ms. Curtis elaborated that the board failed to address the finding in its prior audit. Twenty-seven individuals convicted of relevant violations during the audit period were either not entered in the statewide database or entered, but not marked as restricted purchasers due to insufficient procedures. She continued to the fourth recommendation:

Recommendation No. 4: The board and AMCO director should implement procedures to ensure municipalities receiving refunds of biennial license fees are actively enforcing alcoholic beverage laws.

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Alaska Statute 04.11.610 requires biennial licensing fees to be refunded to municipalities, and states that if the officers of a municipality fail to actively enforce laws related to the manufacture and sale of alcoholic beverages in the state, the DCCED commissioner may deny the refund. The audit found the reports were not reviewed by the board or AMCO staff.

Ms. Curtis disclosed that the refunds were being automatically issued. She moved to the fifth recommendation:

Recommendation No. 5: The AMCO director should improve procedures and fill vacancies in a timely manner to ensure refunds to municipalities are appropriately reviewed.

The audit found one AMCO employee was responsible for calculating the amounts to be refunded to municipalities and the calculation was not reviewed prior to processing the refund.

Ms. Curtis recommended that the duties should be segregated for better internal control and the extended vacancies contributed to the deficiency. She addressed the response by the Department of Commerce, Community and Economic Development (DCCED) commissioner found on Page 47. She

related that the commissioner agreed with all the recommendations. The commissioner stated that all the vacancies had been filled. In addition, DCCED was developing a needs assessment for an automated database and license renewal system. The violators had been entered into the statewide database of written orders and procedures had been adopted to ensure the data was entered going forward. Finally, the commissioner ensured that procedures for recommendation 4 would be implemented in the future. She turned to Page 49 and reviewed the ABC board chair's response. She indicated that the chair disagreed strongly with the four-year early extension recommendation and believed that the finding would jeopardize the public's trust and undermine confidence in the public process. The chair agreed with all the recommendations but did not agree that the issues warranted a reduced extension recommendation. She added that the board had routinely received a 4 to 5 year extension over the last 20 years.

Representative Josephson referenced the chair's comments about undermining integrity and "it struck him as hyperbolic."

Co-Chair Merrick indicated that Representative Carpenter had joined the meeting.

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DANA WALUKIEWICZ, ALCOHOL BEVERAGE BOARD, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), testified in support of the bill with the current five-year extension. He relayed that AMCO agreed with the audit's findings but disagreed with the recommendation for a four-year extension. The board was thankful for the five-year extension in the current version of the bill. He elaborated that if the Title 4 rewrite (SB 9 - Alcoholic Beverage Control; Alcohol Reg) were to pass, the board would take on a lengthy and large project to update the regulations consistent with the bill. He addressed the audit findings. He shared that many of the recommendations made were corrected. The only outstanding issue was the lack of an IT system to support the licensing process. He reported that the board was in support of revamping and updating the system to create a fully automated system. It was outside the board's authority to independently develop the system as it would take capital funds. He informed the committee that funds were included

in SB 9 to support the automation effort. The system would be similar to the myAlaska state log-in system. He concluded that he was "happy" the board was extended to 5-years instead of four years in the current version of SB 151.

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Representative Josephson thought it sounded like the board was relatively satisfied. He asked if the statement was fair. Mr. Walukiewicz replied that the extra year extension was warranted to implement SB 9 and obtain the funds necessary and deploy a new IT system to address licensing delays and inefficiencies. He restated the board was pretty happy overall. Representative Josephson perceived that the board would always receive criticism and deal with "competing tensions." He apologized if his prior comment "seemed out of hand." He referenced the chair's comments, "jeopardizing the public's trust and undermining their confidence." He asked if the chair still held the same view.

Mr. Walukiewicz responded in the negative. He explained that his concern was over the four year period being insufficient to accomplish the board's work and shared the industry's and the public's concern over an early sunset. He offered that issues brought before the board could be very political in nature. The public and the industry wanted certainty that the board would be in existence to address issues when needed. He had been with the board for just over two years, and he was pleased to see the amount of public process during board meetings. He believed that the board's commitment to hear the public's and industry's concerns and take the opportunity to address them was important. He deduced that shortening the board's term would potentially jeopardize the public's trust. He assured the committee that he would work to improve ABC's process over 5 years hopefully, resulting in a consensus to extend the board for an even longer period of time.

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Representative Carpenter referenced Ms. Curtis's comment that one of the recommendations was also a previous recommendation. He asked which recommendation she had been referring to.

Ms. Curtis answered that there were two recommendations that were repeated dealing with the statewide database of written orders and the refund process for biannual license fees. The two were continuing recommendations from the prior audit. She maintained that her reduced extension recommendation was not associated with the five recommendations. She felt that there was a need to monitor the board's progress in addressing its licensing deficiencies and was what drove the four-year recommendation.

Representative Carpenter cited the report on page 5 and read the following:

Alaska Statute 04.11.370(a) requires a license to be suspended or revoked if the board finds a licensee violated an alcoholic beverage statute or regulation, a condition or restriction imposed by the board, or a municipal ordinance. Statutes also state that a license should be suspended or revoked if the board finds the licensee failed to correct a defect that constitutes a violation after receipt of notice issued by the board or its enforcement agents.

Representative Carpenter noted that there were two audits in a row with the same recommendation, yet the board received an extension from four to five years. He was concerned that even an audit every four years had not resulted in fixing recommendations. He did not understand why the sunset was extended to five years.

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Ms. Curtis responded that on page 21, the report acknowledged that the board's enforcement activity had increased during the audit period. She added that when the audit had been conducted, SB 9 had not passed and whether or not the bill passed she still would recommend a 4-year extension to allow auditors time to determine the board's progress in implementing SB 9. She believed that legislative oversight was important when a board was tasked with extensive changes.

Co-Chair Merrick asked the department to review the fiscal note.

GLENN HOSKINSON, DIVISION OF CORPORATIONS, BUSINESSES AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), deferred to AMCO to review the fiscal note.

CARRIE CRAIG, ACTING DIRECTOR, ALCOHOL AND MARIJUANA CONTROL OFFICE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), did not have the fiscal note on hand.

SB 151 was HEARD and HELD in committee for further consideration.

#sb186

SENATE BILL NO. 186

"An Act extending the termination date of the Board of Examiners in Optometry; and providing for an effective date."

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TIM LAMKIN, STAFF, SENATOR GARY STEVENS, thanked the committee for hearing the bill promptly and deferred to the auditor for comment.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, spoke to the audit findings. She pointed to the Audit Report for the Board of Examiners of Optometry dated June 9, 2021 (copy on file). She read from the report's conclusions as follows:

The board conducted its meetings in compliance with state laws effectively licensed optometrists, and actively amended regulations to address statutory changes and improve the licensing process. The Division of Corporations, Business and Professional Licensing (DCBPL) staff failed to operate in the public's interest by not consistently recording licensees with federal Drug Enforcement Administration (DEA) registration numbers in the licensing database, not ensuring continuing education audits were conducted timely, and not monitoring licensees' compliance with requirements for continuing education in pain management and opioid use and addiction.

In accordance with AS 08.03.010(c)(15), the board is scheduled to terminate on June 30, 2022. We recommend the legislature extend the board's termination date to June 30, 2028, which is two years less than the maximum allowed in statute. The reduced extension reflects the need for more routine oversight in recognition of audit findings.

Ms. Curtis pointed to "Exhibit 2" on Page 9, that included a chart showing the board's licensing activity from FY 2018 through January 31, 2021, that totaled 218 licensees. The amount reflected an 18 percent increase since its prior sunset audit. She turned to Page 10, "Exhibit 3" listing the board's revenues and expenditures over the same period. She reported that the board had a deficit of \$52 thousand. A fee increase was proposed by DCBPL management to the board in April 2020. Fees were not increased based on a directive from the governor to help relieve the financial impact of the COVID-19 pandemic. She noted that the schedule of fees was found on Page 11 in "Exhibit 4." She indicated that the report contained 3 recommendations beginning on Page 13, as follows:

Recommendation No. 1: DCBPL's director should dedicate resources to ensure licensees holding a DEA number are consistently recorded in the licensing database.

DCBPL management provided written instructions and training to board licensing staff regarding how to record the existence of a DEA number in the licensing database; however, DCBPL licensing staff did not consistently follow the guidance. According to DCBPL management, regular turnover in the board's licensing examiner and licensing supervisor positions led to inadequate training and oversight which contributed to the finding.

Ms. Curtis interjected that it was important the licensing database had accurate information to cross match with the Controlled Substances Prescription database in order to register. She moved to the second recommendation:

Recommendation No. 2: The board chair and DCBPL's director should change the license renewal form to allow the board to monitor compliance with continuing education requirements.

Alaska Statute 08.72.181(d), effective July 1, 2018, requires licensees holding a DEA number to complete at least two hours of education in pain management and opioid use and addiction during the two years preceding the application for renewal. Auditors found the board and DCBPL staff did not update the December 2020 renewal form to require licensees report compliance with the new continuing education requirement.

Recommendation No. 3: DCBPL's director should ensure adequate resources are available to perform continuing education audits.

Ms. Curtis elucidated that the audits were the division's method of internal control to ensure the licensees were complying with continuing education requirements. Licensing staff forwarded noncompliant licensees to the investigative unit approximately two and a half years after the compliance audit. According to DCBPL management, turnover and multiple licensing staff vacancies contributed to the finding. She highlighted management's response on Page 25. She relayed that the commissioner concurred with the conclusions and recommendations. The commissioner stated that the licensing examiner position turned over 5 times during the 3.5 year audit period and the licensing supervisor turned over 4 times, which led to all three findings. She reviewed the chair's response on Page 27. She pointed to the second recommendation and reported that the chair stated the deficiencies would be addressed before the next licensing renewal cycle.

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Representative Josephson asked whether it came under the auditor's purview to review the expansion of surgical authority granted to optometrists in HB 103 [Optometry & Optometrists - Chapter 17 SLA 17, 07/26/2017] in the 30th legislature. Ms. Curtis answered that the issue was not determined to be a risk area and therefore, they did not "spend any resources" on the issue. Representative Josephson asked if the auditors would have examined the issue if it had been identified as a subject of concern. Ms. Curtis replied that in the survey phase of the audit that looked for complaints regarding the board it developed fieldwork procedures to follow up on complaints and the issue was not identified in the process.

Co-Chair Merrick indicated that Representative Rasmussen joined the meeting.

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DR. DAMIEN DELZER, OD, CHAIRMAN BOARD OF EXAMINERS IN OPTOMETRY (via teleconference), provided remarks. He shared that he had served on the board for 8 years and the last 3 years served as chair. He reiterated the duties of the board. He relayed that the board had implemented over 20 statutory changes over the last three years in areas such as continuing education requirements including opioid requirements, scope of practice, military exemptions, modernizations of prescription requirements, and modernization of emergency regulations during the pandemic. He reported that there had been no reported Prescription Drug Monitoring Program (PDMP) violations since his tenure on the board. The board was self-funded and had minimized travel expenses through the use of Zoom meetings over the last 3 years. He noted that the board chair participated in bi-weekly board chair meetings and PDMP meetings.

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DR. STEVEN DOBSON, OD, DIMOND VISION CLINIC, PAST PRESIDENT OF ALASKA OPTOMETRIC ASSOCIATION (via teleconference), supported the bill. He shared that he practiced optometry in the state for 40 years and had served on the board in the late 1980's and served as chair in the early 1990's. He appreciated the importance of the board in protecting the visual welfare of Alaskans. He indicated that the board ensured practitioners met the high professional standards set forward by the board. The board ensured that optometrists in the state were trained in the most current advances in the profession.

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Co-Chair Merrick asked the department to review the fiscal note.

GLENN HOSKINSON, DIVISION OF CORPORATIONS, BUSINESSES AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), reviewed the published fiscal impact fiscal note for DCCED, DCBPL (FN 1 (CED)). She relayed that the fiscal note represented the cost of operating the board but not the operations of the

program. She reported that the fiscal noted showed the appropriation of \$15.2 thousand for travel for 7 board members and 1 staff member, to attend four board meetings per year and for additional expenses for services for advertising of public notice of board meetings, training and conference fees, and stipends for board members attending board meeting in community of residence.

SB 186 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick noted the amendment deadline of May 5. She reviewed the schedule for the following morning.

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ADJOURNMENT

2:12:39 PM

The meeting was adjourned at 2:12 p.m.