

**ALASKA STATE LEGISLATURE**  
**SENATE LABOR AND COMMERCE STANDING COMMITTEE**

March 8, 2024

1:36 p.m.

**MEMBERS PRESENT**

Senator Jesse Bjorkman, Chair  
Senator Elvi Gray-Jackson (via TEAMS)  
Senator Kelly Merrick

**MEMBERS ABSENT**

Senator Click Bishop, Vice Chair  
Senator Forrest Dunbar

**COMMITTEE CALENDAR**

SENATE BILL NO. 196

"An Act relating to drug and alcohol testing by employers."

- HEARD & HELD

SENATE BILL NO. 234

"An Act relating to the Marijuana Control Board; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 196

SHORT TITLE: EMPLOYER DRUG AND ALCOHOL TESTING

SPONSOR(s): LABOR & COMMERCE

01/18/24	(S)	READ THE FIRST TIME - REFERRALS
01/18/24	(S)	L&C
03/08/24	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 234

SHORT TITLE: EXTEND MARIJUANA CONTROL BOARD

SPONSOR(s): LABOR & COMMERCE

02/15/24	(S)	READ THE FIRST TIME - REFERRALS
02/15/24	(S)	L&C, FIN
03/08/24	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

LAURA ACHEE, Staff  
Senator Jesse Bjorkman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented SB 196 on behalf of the Senate Labor and Commerce Standing Committee.

TAIHYA THOMAS, Human Resources Manager  
Barrow Utilities and Electric Cooperative, Inc.  
Barrow, Alaska

**POSITION STATEMENT:** Testified by invitation on SB 196.

ANDY LEMAN, General Counsel  
Alaska Power Association  
Anchorage, Alaska

**POSITION STATEMENT:** Testified by invitation on SB 196.

KONRAD JACKSON, Staff  
Senator Jesse Bjorkman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented SB 234 on behalf of the Senate Labor and Commerce Standing Committee.

KRIS CURTIS, Legislative Auditor  
Legislative Audit Division  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified by invitation on SB 234.

JOAN WILSON, Director  
Alcohol and Marijuana Control Office (AMCO)  
Department of Commerce, Community  
and Economic Development (DCCED)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified by invitation on SB 234.

BRUCE SCHULTE, Chair  
Marijuana Control Board  
Anchorage, Alaska

**POSITION STATEMENT:** Testified by invitation on SB 234.

**ACTION NARRATIVE**

1:36:05 PM

**CHAIR JESSE BJORKMAN** called the Senate Labor and Commerce Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Gray-Jackson (via TEAMS), Merrick, and Chair Bjorkman.

**SB 196-EMPLOYER DRUG AND ALCOHOL TESTING**

1:36:59 PM

CHAIR BJORKMAN announced the consideration of SENATE BILL NO. 196, "An Act relating to drug and alcohol testing by employers."

1:37:10 PM

LAURA ACHEE, Staff, Senator Jesse Bjorkman, Alaska State Legislature, Juneau, Alaska, presented SB 196 on behalf of the Senate Labor and Commerce Standing Committee. She explained that Alaskan employers are protected from litigation when testing employees for drug and alcohol use, provided that there is a written policy in place that meets state requirements. The policy must be posted and followed. She said that currently, employers are able to test an employee's urine or breath for the presence of drugs or alcohol. SB 196 would add "oral fluids" (saliva) to the statute, thus allowing employers to test employees saliva for drugs or alcohol and be protected from litigation. She stated that this change was recommended because saliva testing is preferable over breath or urine testing in certain situations. She explained that it does not require the use of a restroom, as urine collection does. Additionally, there is greater confidence as to the authenticity of the sample, because sample collection can be observed. She stated that saliva samples can show the presence of a drug more quickly after its use compared to urine samples. She noted that various organizations in a variety of industries have written letters in support of SB 196.

1:40:09 PM

TAIHYA THOMAS, Human Resources Manager, Barrow Utilities and Electric Cooperative, Inc., Barrow, Alaska, testified by invitation on SB 196. She expressed support for this legislation. She explained that Barrow Utilities and Electric Cooperative, Inc. (BUECI) provides electric, natural gas, water, and sewer service in a place where service interruptions can quickly become life or death situations. She emphasized the challenging jobs faced by employees and stated that employee safety is of highest priority. In order to keep the public safe, BUECI relies on pre-hire, random, and for-cause testing for drugs and alcohol. She said that some of this testing is

required by federal commercial vehicle operator and natural gas pipeline operator laws. She said that, in addition to this, BEUCI requires certain safety-sensitive positions to submit to testing. She pointed out that Barrow, Alaska is a remote location and it can be difficult to access testing providers. She said that recently, BEUCI's testing provider closed down unexpectedly, and they were left scrambling to find a new testing provider. She said noted that during the Covid-19 pandemic, BEUCI struggled to find testing providers who were willing and able to travel to their community. This left BEUCI supervisors with the task of collecting, labeling, and shipping urine samples for testing - an uncomfortable job that they did not sign up for. She stated that oral fluid testing would provide a better option for rural employers, because it does not require the privacy that urine collection requires - it is a flexible option that can be done in the field or in an office. In addition, because oral fluids are collected by the tester, it is much more difficult to cheat (unlike with a urine test).

[1:43:38 PM](#)

MS. THOMAS reiterated that BEUCI is in favor of oral fluid testing. She said that once oral fluid testing becomes fully approved for commercial driver's license (CDL) holders, BEUCI plans to meet with employees and representatives of the International Brotherhood of Electrical Workers (IBEW) to fully switch to oral fluid testing. In addition to being a more comfortable method of testing, it will potentially be a cost-saving switch. She said that BEUCI's legal council has indicated that BEUCI has significant legal protection under Alaska's "safe harbor" drug and alcohol testing law. She explained the ways BEUCI ensures compliance with the safe harbor law requirements. She stated that oral fluid testing did not exist when the safe harbor law was passed; therefore, the law does not include this form of testing. SB 196 would expand the safe harbor law to include oral fluid testing.

[1:45:51 PM](#)

ANDY LEMAN, General Counsel, Alaska Power Association, Anchorage, Alaska, testified by invitation on SB 196. He said that the gist of the issue had already been discussed and added that he was available for questions.

[1:46:40 PM](#)

CHAIR BJORKMAN opened public testimony on SB 196; finding none, he held public testimony open.

[1:47:14 PM](#)

CHAIR BJORKMAN held SB 196 in committee.

[1:47:17 PM](#)

At ease

**SB 234-EXTEND MARIJUANA CONTROL BOARD**

[1:49:38 PM](#)

CHAIR BJORKMAN reconvened the meeting and announced the consideration of SENATE BILL NO. 234, "An Act relating to the Marijuana Control Board; and providing for an effective date."

[1:49:54 PM](#)

KONRAD JACKSON, Staff, Senator Jesse Bjorkman, Alaska State Legislature, Juneau, Alaska, presented SB 234 on behalf of the Senate Labor and Commerce Standing Committee. He said that this legislation proposes to extend the Marijuana Control Board sunset date by 3 years. He drew attention to the recent legislative audit, which noted three issues that need to be addressed. He noted that the legislative auditor would be discussing these in more detail. In addition, he stated that the director of the Alcohol & Marijuana Control Office and the chair of the Marijuana Control Board would also be testifying. He noted that the proposed three-year extension is significantly shorter than the typical 8-year extension. He explained that there are several reasons for this, including changes with the Marijuana Control Office, Marijuana Control Board, and Alcohol & Marijuana Control Office (AMCO), which may create significant changes that the legislature will want to be aware of. Additionally, a three-year sunset extension would put the Marijuana Control Board sunset and audit date in-line with that of the Alcohol & Marijuana control office.

[1:52:27 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Alaska State Legislature, Juneau, Alaska, testified by invitation on SB 234. She presented report findings from "A Sunset Review of the Department of Commerce, Community, and Economic Development, Marijuana Control Board." She paraphrased from the following report conclusions:

[Original punctuation provided.]

Overall, the audit concluded that the Marijuana Control Board (MCB or board) served the public's interest by holding its meetings in compliance with state law, actively amending regulations and

conducting investigations in a timely manner. The audit also concluded that licenses were issued in accordance with statutes and regulations; however, applications were not processed in a timely manner. Additionally, Alcohol and Marijuana Control Office (AMCO) staff did not maintain adequate documentation to show compliance with marijuana handler permit laws.

MS. CURTIS directed attention to page 9 of the report and said that exhibit 3 provides a summary of all regulations passed during the audit period. She explained that for MCB, a vote by the majority of board members, with a quorum present, is needed for action. She noted that licensing actions require a vote by a majority of the board. She explained that because MCB is a five-member board, approval of licensing actions requires a "yea" vote from three members. Non-licensing actions require a quorum to be present and a "yea" vote from two of the three members present. She drew attention to the June 2021 meeting, when MCB passed a regulation increasing the allowable THC levels for edibles with two "yea" votes and one "nay" vote by the board's public safety member. She noted that there were only three members present at this meeting (the rural member was absent, and the [public health] seat was vacant). She stated that the audit questions whether this was in the public's best interest and added that she would return to this question when discussing the audit's recommendations.

1:54:20 PM

MS. CURTIS drew attention to exhibit 4 on page 10 of the report and explained that, as of April 2023, there were 475 active licenses and just over 6,600 active marijuana handler permits. Auditors reviewed 10 new licenses and 8 renewed licenses and found that all were issued in accordance with state law; however, applications were not handled in a timely manner. She directed attention to page 13, exhibit 6, which summarizes these results. She noted that, on average, it takes approximately one year for applicants to obtain a new marijuana license. She stated that, given the high financial investment required to be eligible for a marijuana license, this lengthy processing time represents a barrier to entry into the marijuana industry. In addition, the audit reviewed 25 marijuana handler permits for compliance with state law and found that AMCO staff did not maintain background checks. Further, six of the 25 were missing additional documentation, which prevented auditors from determining whether the permits were operating in accordance with statutes and regulations.

1:55:34 PM

MS. CURTIS directed attention to page 16 and stated that, as of April 2023, there were 59 marijuana cultivators who were delinquent in paying their marijuana excise taxes. She noted that this is a high number, representing over half of the marijuana cultivators. Collectively, they owed \$3.1 million in delinquent taxes. She pointed out that marijuana fees are set at a level that exceeds the cost of regulating the industry; however, when the program was created, legislative intent directed the board to establish a fee structure that would cover the costs of regulating the industry while also recouping the \$5.5 million of state general funds that were spent to establish the program. She stated that management reported an expectation that the \$5.5 million debt would be repaid in full by the end of FY24. Directing attention to survey questions and responses on page 33 of the report, she explained that the survey went out to the 319 licensees and had a 35 percent response rate. She said that, in general, respondents expressed a low degree of satisfaction with the board. She pointed out that 37 percent of respondents said that the board was not effective at serving the public's interest - a marked difference from the 2017 audit, which showed that licensees were very satisfied with the board's performance.

MS. CURTIS said that the audit recommends the board be extended for three years. This recommendation is made in recognition of a report issued by the Governor's advisory task force on recreational marijuana. She explained that this report may lead to significant changes in MCB and AMCO duties and processes. She noted that a new information system (which would significantly change licensing and enforcement processes) was expected to be implemented by 2023. A three-year extension would allow for a more timely evaluation of these significant changes and would align the MCB sunset date with that of the Alcoholic Beverage Control Board (ABC). She stated that the audit contains three recommendations. The first is that AMCO establishes procedures to ensure that the marijuana handler permit documentation is properly maintained.

1:58:30 PM

MS. CURTIS discussed the second audit recommendation that MCB and the AMCO director should continue to implement a new license and enforcement information system. She explained that the audit showed that license and enforcement processes were being administered via many spreadsheets, which were prone to error and inefficient. The new information system is expected to address these findings. Finally, the audit recommends that the

legislature consider requiring that MCB regulation changes be made by a majority of board members. She reiterated that certain changes related to THC content were made without input from the rural and public health members - and despite a "nay" vote from the public safety board member. While this action was lawful, the audit questions whether it was in the public's best interest. She noted that the Department of Commerce, Community and Economic Development (DCCED) commissioner concurs with recommendations one and two but believes that requiring a minimum number of three board members would not serve the public's interest in moving forward regulatory projects. The TCB chair also concurs with recommendations one and two but not recommendation three. She stated that, with respect to recommendation three, the TCB chair stressed that the board did not fail to consider public health, public safety, or the rural board position when approving the regulations to increase allowable THC levels. Further, the TCB chair believes that requiring a majority vote on regulation changes would likely lead to greater delays in reviewing and updating regulations.

[2:00:29 PM](#)

CHAIR BJORKMAN asked for clarification that during the June 21, 2021 meeting, one board member was absent, and one seat was vacant.

[2:00:47 PM](#)

MS. CURTIS replied that this is correct.

[2:00:53 PM](#)

CHAIR BJORKMAN asked if there was agreement that the action taken by the board with regard to increasing the allowable THC levels for edibles was lawful.

[2:01:07 PM](#)

MS. CURTIS replied yes. She explained that all board actions - with the exception of licensing actions - require a majority vote with a quorum present. This is a five-member board with a three-person quorum requirement - two "yea" votes are needed.

[2:01:31 PM](#)

CHAIR BJORKMAN expressed his understanding and asked for more information regarding how an action may be "lawful" and not being in the best interest of the public.

[2:01:49 PM](#)

MS. CURTIS explained that the audit questions whether it is prudent to change regulations that may directly affect rural

areas, public health, and public safety - when those seats are absent or vacant. She pointed out that, according to the board chair, some members may have voted for the regulations to be posted for public comment. She asserted that voting for regulation changes to be posted for public comment is very different from voting for regulation changes to occur. She opined that the concern about needing more votes in order to move regulation projects forward is valid and acknowledged that the need for more board member input must be weighed alongside what will allow administrative responsibilities to proceed. However, she pointed out that licensing actions are required to have a majority (3 "yea" votes) to pass. She added that the June 21, 2021 meeting was the only meeting that did not have at least 4 members in attendance. She noted that audit criteria are included in the last pages of the audit and reiterated that the actions taken were not unlawful. Rather, the audit brings attention to this so that the legislature is aware.

2:04:08 PM

JOAN WILSON, Director, Alcohol and Marijuana Control Office (AMCO), Department of Commerce, Community and Economic Development (DCCED), Anchorage, Alaska, testified by invitation on SB 234. She said that she took over as director of AMCO in May of 2022 and much of the audit period was prior to this date. She said that there are many positive things to report about MCB and AMCO - which are reflected in the audit. She added that there are other changes which support extending the sunset date for three years, as the audit recommends. She stated that there are currently 461 operating and licensed marijuana licensees in Alaska. This includes 98 limited cultivators, 133 standard cultivators, 22 concentrate manufacturers, 40 product manufacturers, 176 retail stores, and 2 testing facilities.

MS. WILSON directed attention to the audit survey and pointed out that while [37 percent] of respondents said the board was "ineffective", approximately 63 percent of survey respondents found the board "effective" or "very effective". She opined that, while there is room for improvement, it is worth focusing on the 63 percent. She responded to points raised by Ms. Curtis and said that AMCO is very excited about changes to the application review process. She explained that AMCO is currently reviewing applications submitted in early January 2024 - which reflects a 60-day application processing time. She noted that much of the processing time reflected in the audit report is outside of AMCO's control. She explained that once an application is complete, AMCO waits for local governments and others to give any reasons why an application should not be

approved. Once all approvals are in place, the board waits for the licensee to indicate that they are ready to move forward. She emphasized that both she and the MCB chair are committed to reducing any unnecessary barriers for the industry.

MS. WILSON indicated that the new licensing system, AK Access will be available for marijuana licensees in the future. She expressed her confidence that AMCO would be able to address any concerns regarding marijuana handler permits. She noted that AMCO had concerns about maintaining confidential information about applicants, such as social security numbers and criminal history. She opined that AMCO and MCB have done an excellent job ensuring that those who are entitled to a marijuana handler permit get one while those who are not entitled do not. She expressed support for maintaining documentation to back up these decisions.

2:07:54 PM

MS. WILSON referred to the final audit recommendation regarding voting requirements and stated that MCB is very active in reviewing regulations 3 AAC 306. She explained that the statute is skeletal and added that most of the regulations for the marijuana industry come through 3 AAC 306. She stated that the board is very responsive to public health and public safety concerns, consumer needs, and economic growth. She stated that while a vote was taken during a meeting with only three members in attendance, in compliance with the law, this was after a long consideration of other votes in prior meetings. She asserted that the board knew where each member stood on the issue - and added that if members thought it was detrimental or that a voice was not being heard, the vote would have been delayed. She acknowledged that the board's public health seat is currently vacant and is not likely to be filled in time for the April 2024 meeting. She noted the board's small size and shared her belief that the statute is working well. She shared her belief that members consider potential public health and safety concerns - even if they are not filling these seats on the board. She stated that both she and the commissioner's office disagree with the audit's final recommendation.

2:09:23 PM

MS. WILSON said that while most boards extend four or five years, there is a benefit to aligning the audits of the ABC and MCB audits. She expressed hope that MCB would be able to show its success of AK Access and license review time. She added that the board would also be considering licensing fees and acknowledged that current fees were set at a rate that would

allow for the repayment of the \$5 million to the operating budget. She said that MCB will be able to repay in the current fiscal year. In addition, MCB will be able to either reduce licensing fees or request additional AMCO support. She shared that her preference would be the latter; however, she responds to the board and the needs of licensees. She expressed pride in MCB and AMCO and acknowledged that there is room for improvement. She expressed appreciation for the oversight provided by the legislature.

[2:10:47 PM](#)

SENATOR GRAY-JACKSON asked if the budget shortfall was due to the \$3 million in delinquent taxes.

[2:10:59 PM](#)

MS. WILSON sought clarification of "budget shortfall."

[2:11:07 PM](#)

SENATOR GRAY-JACKSON clarified that she heard Ms. Wilson refer to a budget shortfall.

[2:11:10 PM](#)

MS. WILSON clarified that she was referring to the audit finding that licensing fees were too high. She explained that the current licensing fees were set at this level in order to pay back the operating budget loan that allowed for the creation of MCB. She asked if this clarifies the budget question and offered to also address the question regarding taxes.

[2:11:37 PM](#)

SENATOR GRAY-JACKSON replied yes and asked for more information regarding the \$3 million in unpaid taxes.

[2:11:53 PM](#)

MS. WILSON referred to the February 2024 delinquent taxes list. She said this list shows 19 cultivators (19 out of 232 cultivators) on the tax delinquency list. She added that three on the list have a significant amount - over \$70 thousand - and the board has directed AMCO to file to revoke these licenses. She said that 1-2 are behind \$25-\$50 thousand and the remainder owe less than \$10 thousand. She clarified that of the \$3.5 million due in back taxes, approximately \$400 thousand is from active licensees. This is the only group that the board has some ability to address by potentially revoking these licenses. She stated that collecting back taxes from expired licenses falls to the Department of Revenue and added that it can be very difficult to collect back taxes once licenses expire.

[2:13:36 PM](#)

MS. WILSON explained that if a previous cultivator is on back taxes list and applies for a retail or a manufacturer license, the board will consider the actions taken as a cultivator and determine whether this should bar them from receiving a new license in the industry. She stated that the board consistently refuses licenses for those who do not pay taxes. However, she noted that this industry has the highest tax rate at the cultivation level and there is currently legislation to adjust this. She surmised that changing the tax rate may help to ensure that licensees remain in good standing with respect to their tax payments.

[2:15:00 PM](#)

SENATOR GRAY-JACKSON said that her questions were answered.

[2:15:16 PM](#)

CHAIR BJORKMAN asked if the rural seat was vacant for the entirety of 2021.

[2:15:40 PM](#)

MS. WILSON replied that the seat was held by three different individuals in 2021 and said she could provide information on the length of the vacancies at a later date.

[2:16:15 PM](#)

CHAIR BJORKMAN commented that it would be helpful to know how long the vacancies lasted. He asked how long the public health seat has been vacant.

[2:16:35 PM](#)

MS. WILSON replied that the public health seat has been vacant since February 28, 2024. She noted that while there have been attempts to find members, the search is still ongoing. The seat will most likely remain vacant for the next board meeting. She added that this seat is the most difficult to fill due to the requirements for this position.

[2:17:09 PM](#)

CHAIR BJORKMAN asked if there are specific requirements under subhead of public health that present significant barriers to filling this position.

[2:17:23 PM](#)

MS. WILSON shared an example of an applicant who worked in the medical profession, had experience working with patients, and an

understanding of the public health risks - but did not hold a public health position and therefore did not meet the requirements to fill this vacancy. She acknowledged that requiring that the individual hold a public health position in state or municipal government is within the legislature's purview; however, she opined that a doctor or pharmacist would have the relevant knowledge and understanding of the public health risks.

[2:18:21 PM](#)

BRUCE SCHULTE, Chair, Marijuana Control Board, Anchorage, Alaska, testified by invitation on SB 234. He said that outstanding taxes that went unpaid have been a problem for years. He noted that there is a proposed legislative solution that the board supports. He stated that in 2019, the board began to work more diligently to collect back taxes. This was done by requiring that licensees be up-to-date on tax payments prior to license renewal or that they be on a repayment plan with the Department of Revenue. He shared his belief that this stance was welcomed by those in the industry who were paying taxes. In addition, it helped to keep the tax burden to a minimum. He said that he is not sure what avenues are available to collect back taxes from businesses that are now closed and corporate structures make this even more difficult. He shared his belief that the proposed legislation to change the tax structure would be of great benefit.

MR. SCHULTE said that MCB members shared concerns regarding the timeline for license approval. He added that AMCO staff have worked to shorten the timeline as much as possible, although some parts of this process are out of AMCO's control. He stated that 60 days is a significant improvement. With regard to the audit's concerns about the voting process, he explained the issue being considered (increasing THC levels for edibles) had been a topic of discussion at several board meetings and was sent out for public comment for an extended period. He stated that Alaska's allowable THC level was notably lower than that of other states; the board voted to bring Alaska's level in-line with other states.

[2:21:52 PM](#)

MR. SCHULTE stated that the board members work well together. He said that if members know that a particular issue is important to a certain member, this issue is held until that member can be in attendance. He added that several discussions on significant issues were rescheduled. He stated that it has been difficult to have all board members present (and all seats filled) at

meetings. He noted that these are volunteer positions and explained that one member left the state on short notice to pursue a degree while others were not available for some meetings due to other responsibilities. He expressed concern that requiring a majority of "all board members" rather than a majority of those present would create even greater barriers to board actions. He shared examples of why members may not be present at the meeting and reiterated that he is concerned about this change.

[2:23:37 PM](#)

MR. SCHULTE discussed the licensing fees and shared his understanding that the initial fee structure was intended to match the operating costs of the AMCO office. He said that it is encouraging that the fees may be reduced over time - or that more services would be made available to licensees. He shared his belief that either reducing fees or increasing services would be supported by the industry and the board. He acknowledged the work done by AMCO to streamline the process.

[2:24:33 PM](#)

SENATOR MERRICK asked if there would be a benefit to increasing the number of board members.

[2:24:46 PM](#)

MR. SCHULTE answered no. He opined that the board is robust and has a broad representation of viewpoints. He explained that MCB was modeled after ABC.

[2:25:19 PM](#)

MS. WILSON clarified an earlier comment regarding the board's public health seat and provided additional details about this requirement. She said that the legislature previously amended ABC regulations to allow someone who is retired from these professions to fill this vacancy and suggested that this might be something to consider.

[2:26:33 PM](#)

CHAIR BJORKMAN opened public testimony on SB 234; finding none, he held public testimony open.

[2:27:00 PM](#)

CHAIR BJORKMAN held SB 234 in committee.

[2:27:30 PM](#)

There being no further business to come before the committee, Chair Bjorkman adjourned the Senate Labor and Commerce Standing Committee meeting at 2:27 p.m.