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HOUSE COMMITTEE REPORT

(9)

Date Referred: January 13, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/15/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 365

HOUSE BILL NO. 365

EXTEND BOARD OF BARBERS & HAIRDRESSERS

"An Act extending the termination date of the Board of Barbers and Hairdressers; and providing for an effective date."

RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title
 [] have attached amendments(s)
 [X] do pass
 [] do not pass
 [] no recommendations
 [] individual recommendations
 [] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 [] fiscal impact _____ [] fiscal note(s) _____
 [] zero fiscal note Commerce [] zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Al Vespa</i>	X	<i>Haley Ellberg</i>		✓	
<i>Don Kende</i>	✓				
<i>Scott ...</i>	✓				
<i>Betty Davis</i>	✓				
<i>Tom ...</i>	✓				

[Signature]
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 365

Revision Date: 3/11/94
 Title: An act extending the termination date of
the Board of Barbers & Hairdressers...
 Sponsor: Representative Sanders
 Requestor: Representative Sanders

Department: Commerce and Economic Dev.
 BRU: Occupational Licensing
 Component: Operations
 COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 94) cost: \$ None

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
 HB 365 extends the termination date of the Board of Barbers and Hairdressers to June 30, 1997. Funding for the Board of Barbers and Hairdressers is included in the FY95 operating budget; therefore, new funds are not required.

Prepared by: JoAnne Cummings, Regulations Specialist
 Division: Occupational Licensing
 Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Phone: 465-2537
 Date: 3/11/94
 Date: 3/14/94

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Representative Jerry Sanders

District 19

Vice Chair, Rules Committee
Vice Chair, Community & Regional Affairs Committee
House State Affairs Committee
Special Committee on Oil & Gas
Legislative Council
International Trade & Tourism

SPONSOR STATEMENT

The purpose of House Bill No. 365 is to extend the termination date of the Board of Barbers and Hairdressers from June 30, 1993 to June 30, 1997. The Board is presently in the one year extension period allowed under the 'Sunset' provision for closing down the Board.

If the State allows the Board of Barbers and Hairdressers to Sunset, it will also stop the Division of Occupational Licensing from being able to de-license the industry. An immediate result of losing the ability to de-license will be a large increase in insurance rates for the industry. It is also felt that an additional ramification would be that if the industry is de-licensed and someone does get injured, it is very likely that the State could be held potentially liable in a lawsuit.

Licensure is also required to insure that Barbers and Hairdressers receive required training in the proper use of chemicals, many of which are potentially dangerous. The industry is growing so fast and has so much new technology that there are many potential dangers to public health. For example, color and perm solutions that are improperly applied by untrained or unlicensed people can and have caused damage to the scalp, and also to hearing and eyesight. New microwave technology hair drying machines can also cause severe burns if used improperly.

In order to continue to protect the public's health and safety, we need to continue the Board of Barbers and Hairdressers.

SPONSOR STATEMENT

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

907, 465-3867 or 465-2450

FAX 907) 465-2029

Mail Stop 3101

130 Seward Street, Suite 409

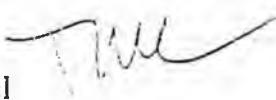
Juneau, Alaska 99801-2105

MEMORANDUM

March 8, 1994

SUBJECT: Sectional Summary of HB 365. (An Act extending the termination date of the Board of Barbers and Hairdressers)

TO: Representative Jerry Sanders
ATTN: Bob Krogseng

FROM: Terri Lauterbach 
Legislative Counsel

Section 1. Extends the board until 1997.

Sec. 2. Immediate effective date.

TML:gc
94-185.glc

SECTIONAL SUMMARY

STATE OF ALASKA
Boards and Commissions

BARBERS AND HAIRDRESSERS

BOARD: Board of Barbers and Hairdressers

BOARD IDENTIFICATION NUMBER: 011

DEPARTMENT: Department of Commerce and Economic Development

AUTHORITY: AS 08.13.010

STATUS: Active

SUNSET DATE: June 30, 1993

REQUIREMENTS: Legislative Confirmation

PROHIBITIONS: Cannot serve more than all or part of two consecutive terms.

TERM: 4 years

DESCRIPTION: 5 members appointed by Governor: 2 licensed barbers, 2 licensed hairdressers and 1 public member; serve at the pleasure of Governor.

FUNCTION: Regulates and controls applications, licenses and permits of barbers, hairdressers and cosmetologists.

CHAIR: Governor may select.

SPECIAL FACTS: Annual report to Governor. Members serve until a successor is appointed. An appointment to fill a vacancy is for the remainder of the unexpired term. A member who has served all or part of two successive terms may not be reappointed unless four years have elapsed since the person has last served. Serve at the pleasure of the governor.

COMPENSATION: Standard Travel and Per Diem. No additional compensation.

MEETINGS: As often as necessary to conduct business.

FOR FURTHER INFORMATION CONTACT: Ms. Adela Florendo, Division of Occupational Licensing, DCED, P.O. Box 110806 M/S 0800, Juneau, AK, 99811 0806, Phone: 907 465 2547

STATE OF ALASKA
Boards and Commissions

Membership Roster
BARBERS AND HAIRDRESSERS (011)

Member	Appointed	Reappointed	Term Exp.
Karen L. Cleek Public 9304 Turn Street Juneau, AK 99801	12/02/93		07/01/96
Elmo Kienbaum Barber 2337 Second Avenue Ketchikan, AK 99901	09/30/91	07/01/93	07/01/97
Jerry Mayfield Barber 750 Highview Drive Anchorage, AK 99515	06/15/91	08/17/92	07/01/96
Mariann Stoffel Hairdresser -- Chair 1352 Pioneer Peak Drive Wasilla, AK 99687	10/09/91	07/01/93	07/01/97
Barbara Watkins Hairdresser 1017 San Fernando Apt. #2 Anchorage, AK 99508	08/14/91		07/01/95

Audit Report



DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
BOARD OF BARBERS AND HAIRDRESSERS

November 5, 1993



Audit Control Number:

08-1406-94

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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November 5, 1993

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF BARBERS AND HAIRDRESSERS

November 5, 1993

Audit Control Number

08-1406-94

The objective of the audit was to determine whether the Board of Barbers and Hairdressers should continue its existence. Alaska Statute 08.03.010(4) has scheduled the board for termination on June 30, 1993. As of the date of this report, the board is technically in its one-year "wrap up" period and, if no action is taken by the legislature, the board will be dissolved at June 30, 1994. We recommend that the legislature consider allowing the board to sunset.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

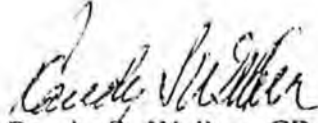

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Barbers and Hairdressers to determine if it should continue in existence.

As required by statute, the legislative committee of reference is to consider this report as part of the legislative oversight process in determining whether this board should be reestablished. The law currently specifies that the Board of Barbers and Hairdressers will terminate on June 30, 1993 and will have one year from that date to conclude its affairs. As of the date of this report, the board is technically in its one-year "wrap up" period.

During the course of our examination, we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Interviews with Board of Barbers and Hairdressers board members.
- Interviews with Department of Commerce and Economic Development, Division of Occupational Licensing personnel.
- Interviews with Alaska Commission on Postsecondary Education personnel.
- Interviews with Human Rights Commission and Equal Employment Opportunity Office personnel.
- Interviews with other states' licensing agency personnel.
- Licensing files.
- Investigation files.
- Annual reports prepared by the board.
- Minutes of the Board of Barbers and Hairdressers' meetings.
- Office of the Ombudsman closed case files.
- Division of Occupational Licensing policy and procedures.
- Contents of the director of the Division of Occupational Licensing correspondence files.
- Other documents as deemed pertinent.

ORGANIZATION AND FUNCTION

Alaska Statute (AS) 08.13.010 creates the Board of Barbers and Hairdressers (board). It was established in 1980 as a result of the legislature combining the Board of Barbers and the Board of Hairdressing and Beauty Culture Examiners. The statutory duty of the board is to exercise general control over the vocations of barbering, hairdressing, and cosmetology. Also, its duty is to examine applicants, approve the issuance of licenses and permits, and authorize the issuance of licenses for schools of barbering, hairdressing and cosmetology.

The board has the power to suspend or revoke a license or permit; conduct hearings and request investigations of the practices of a person, shop, or school involved in the practice or teaching of barbering, hairdressing, or cosmetology; and, adopt regulations. The authority of the board is outlined within Alaska Statutes 08.13.010 - .220.

Members of the board are appointed by the governor and serve staggered terms of four years. The membership of the board (see inset at right) consists of five members which include two licensed barbers, two licensed hairdressers, and one public member. The public member seat has been vacant since June 1, 1993. As of the date of this report, this seat has not been filled.

Barbers and Hairdressers Board Members

Mariaann Stoffel, Chairman
Elmo Kienbaum
Jerry Mayfield
Barbara Watkins

The board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). The department is statutorily responsible for performing administrative duties which include receiving applications and fees, scheduling examinations, issuing licenses as authorized by the board, and providing inspection, enforcement, and investigative services to the board.

Licenses or permits are required for individuals engaged in the practice of barbering, hairdressing, or cosmetology. A license is also required for the shop or school in which they practice. In addition, a person that teaches in a school or supervises an apprentice must be licensed as an instructor.

Applicants for licensure as barbers, hairdressers, cosmetologists and instructors must meet qualifications established in regulations. In addition, applicants must pass a practical and written examination, unless a waiver is approved by the board.

REPORT CONCLUSIONS

Alaska Statute (AS) 08.03.010(4) requires that the Board of Barbers and Hairdressers (board) be terminated on June 30, 1993. Alaska Statute 08.03.020 provides one year in which to conclude its affairs if the legislature does not enact legislation for its continuance. As of the date of this report, the board is technically in its one-year "wrap up" period and, if no action is taken by the legislature, the board will be dissolved June 30, 1994. In the past, the legislature has chosen to extend the existence of the board although we have recommended termination.

Since our last sunset audit, AS 08.01.065(c) has been amended requiring the Department of Commerce and Economic Development to establish occupational licensing fee levels so that the total amount of fees collected for an occupation approximates the actual regulatory costs for the occupation. Therefore, once that statutory requirement has been met (see Recommendation No. 5), occupational licensing boards should be self-sufficient. That is, there should be no cost to the State for their existence.

Based upon the public need factors outlined in AS 44.66.050(c), we do not see a need for the board and recommend the board be allowed to sunset (see Recommendation No. 1). If the legislature chooses to continue the board, the Findings and Recommendations section of this report includes recommendations which, if implemented, will improve the efficiency and effectiveness of the board.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should allow the Board of Barbers and Hairdressers (board) to terminate on June 30, 1994 and amend the relevant statutes to assign board duties to other State agencies.

We reviewed board activities to determine whether they are operating in the public's interest and in accordance with the board's legislative mandate. Alaska Statute (AS) 08.13.030 grants the board general control over the vocations of barbering, hairdressing, and cosmetology. The board's statutory duties are to examine applicants, approve the issuance of licenses and permits to practice, and authorize the issuance of licenses for schools of barbering, hairdressing and cosmetology. In addition, the board may suspend or revoke a license or permit, conduct hearings, request the Department of Commerce and Economic Development (DCED) to conduct investigations, and adopt regulations.

We found the board has performed its statutory duty of administering the practical examination to applicants. The board has also adopted regulations. However, certain board's statutory duties are being performed by other State agencies. Also, the board is not accomplishing the goals and objectives they have established.

Because the public can be adequately protected by the board's duties being conducted by or assigned to state agencies, we recommend that the board be allowed to terminate. Below is an explanation of how these duties are being, or can be, performed by someone other than the board.

Examining applicants can be the responsibility of the Department of Commerce and Economic Development, Division of Occupational Licensing (OL) if the board is terminated.

Presently, applicants for most licenses are required to take a practical and written examination. Current procedures require the practical examination be administered by three people (at least one of which must be a board member). Proctors (barbers and hairdressers) are employed by OL to assist board members in administering the practical examination. A proctor administers the written examination.

If the board is terminated and the statutes so amended, we believe the administration of examinations can be performed by OL. Several options can be explored by OL to determine the most advantageous ways to fulfill this responsibility. OL can consider employing three proctors. Another option is relying on occupational schools to provide proctors to administer the practical examination. The State of Minnesota does not have a board nor does it administer a practical examination. Instead, it requires occupational schools to administer practical examinations.

OL can continue to approve licenses if the board is terminated.

Alaska Statute 08.01.050(3) requires DCED to issue and receive applications. Alaska Statute 08.13.030 requires the board to approve the issuance of licenses and permits. Currently, applicants for examination and licensure submit their applications and supporting documentation to OL. Using the predetermined qualifications adopted in regulations, OL approves the issuance of licenses (see Recommendation No. 3) with the following exceptions. If applicants are applying for licensure by waiver of the examination and their license has been expired for over three years or if their license is from a foreign country, board approval of the issuance of an Alaskan license is requested by OL.

If the board is allowed to sunset, and statutes are so amended, OL can continue to approve applications. Procedures can be initiated by OL to determine how to handle those applications currently approved by the board.

The Alaska Commission on Postsecondary Education (ACPE) could assume sole responsibility for approving the issuance of licenses for schools.

In addition to statutes requiring the board to regulate schools of barbering, hairdressing and cosmetology, statutes also exist mandating that ACPE regulate these schools (see discussion in Recommendation No. 2).

Prior to issuing a license to a school, an on-site visit is made by both ACPE and the board. ACPE makes the first visit. They evaluate program content, inspect facilities and assure that the local government has inspected the physical space for building safety purposes. Once the school passes the ACPE inspection, a board member inspects for adequate equipment. After the school passes the second inspection, a license is issued by OL and an "Authorization to Operate" document is issued by ACPE.

If the board is allowed to sunset, and the statutes are so revised, the regulation of schools can be performed solely by ACPE with assistance from OL. The inspection conducted by the board member can be performed by ACPE staff while they are on site.

Suspension and revocation of licenses would not be seriously impacted if the board terminates.

Complaints associated with activity regulated by the board are received and investigated by OL's Investigative Unit. These complaints usually result in closure reports or adjudication. Closure reports result when complaints are unfounded, lack sufficient information, or closed with a warning letter. These cases do not require action by the board.

During FY 91 through FY 93, 27 cases have been logged by the Investigative Unit. Except for those still open, all have resulted in closure reports. According to a hearing officer, a case has not been adjudicated since 1984. Consequently, this function will not be significantly impacted if the board was allowed to sunset.

Inspection for health and sanitary conditions of a shop or school will continue to be provided by the Department of Environmental Conservation (DEC) if the board terminates.

Alaska Statute 08.13.210 provides that DEC shall supervise the health and sanitary conditions in shops and schools of barbering, hairdressing and cosmetology. If the board is allowed to sunset, the same degree of public protection will be as currently provided for health and sanitary conditions by DEC.

If the legislature allows the board to continue, we recommend implementation of the following changes to the board's operations.

Recommendation No. 2

The board, DCED, and ACPE should formalize in writing their overlapping responsibilities regarding the licensure and inspection of barbering, hairdressing, and cosmetology schools.

Alaska Statutes mandates regulating schools of barbering, hairdressing, and cosmetology to both the board and ACPE. Alaska Statute (AS) 08.13.110 mandates that the board adopt regulations for the licensing of schools. Regulations adopted include the details of curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsibility of the owner. ACPE is authorized by AS 14.48.010 to provide for the protection, education, and welfare of the citizens of the State, its postsecondary educational institutions, and its students by establishing minimum standards concerning quality of education, health and safety, and fiscal responsibility to protect against substandard, transient, unethical, deceptive, or fraudulent institutions and practices.

- A. ACPE statutes require that a postsecondary institution must demonstrate that the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered. The board has adopted a curriculum in 12 AAC 09.160, .163, and .165.
- B. ACPE's statutes require a postsecondary institution to demonstrate that it has access to adequate space, equipment, instructional materials, and personnel to achieve its stated objective. Minimum space and equipment requirements have been established by the board in 12 AAC 09.125.
- C. ACPE's statutes require an institution to demonstrate that the education or experience qualifications of instructors ensure that students receive an education consistent with the objectives of the course. Instructor license requirements have been adopted by the board in 12 AAC 09.106.
- D. ACPE's statutes grant them the power to investigate complaints relating to violations of its statutes. Similarly, AS 08.13.030 gives the board the power to conduct hearings and request DCED to investigate the practices of a school involved in the practice or

teaching of barbering, hairdressing, or cosmetology.

The board and ACPE are aware of the overlap in statutes and, as a result, have attempted to coordinate their activities. An employee of ACPE stated they have approved the curriculum that is currently required by the board. Also, if an instructor is licensed by the board, ACPE accepts that licensing as complying with ACPE's statute.

In 1992, an ACPE employee attended a Board of Barbers and Hairdressers meeting. It was decided that a task force would be formed to determine whether they were duplicating their efforts. The task force consisted of two board members and two ACPE personnel. However, due to illness of one of the members, the task force meeting never took place.

The efforts of the board, DCED and ACPE to eliminate duplication of program efforts are commendable. However, some board members say they are not sure that all statutory functions are being performed. For example, some feel that schools should be inspected periodically, but because of the dual regulation with ACPE, they are not sure whether ACPE is already periodically conducting the inspections. We recommend that the board, DCED, and ACPE formalize in writing their respective areas of responsibility. This is necessary so that expectations of each will be clear. In addition, as board members and state employees change, documentation will be available to their successors.

Recommendation No. 3

The board should consult with the Department of Law (Law) to determine whether their current procedures are in accordance with State laws.

- A. Alaska Statute 08.13.030(b) mandates that the board examine applicants and approve the issuance of licenses and permits to practice. During our review, we noted that with few exceptions, it is OL, not the board, that approves applicants for licensure. The board does approve requests from applicants for waiver of the examination when their license is from a foreign country or their license has lapsed for more than three years.

OL staff asserts that, approximately five years ago, the board gave them authority to approve licenses. They believe by using predetermined regulation criteria, they can easily determine whether a person should be licensed or scheduled for an examination. Hence, action from the board is not required.

We recommend that OL consult Law for an opinion as to whether the board can delegate the approving of licenses to OL.

- B. Applicants for licensure by examination are required to take a written and practical examination. The practical examination is administered by three examiners — usually

one board member and two proctors (barbers and hairdressers employed by OL to administer tests). Each examiner scores each applicant and the final grade is the average of the three scores.

There are no written procedures requiring examiners to excuse themselves from grading any applicant where they may have a conflict of interest. For example, OL indicates that if an examiner is a former instructor of the applicant, that examiner's scoring is disregarded in OL's computation of the final grade.

We recommend that OL consult Law for an opinion as to which situations might present a potential ethical violation of the Executive Branch Ethics Act (AS 39.52.120). Formal procedures should then be established to ensure compliance with that Act.

- C. Applicants for the practical examination are required by 12 AAC 09.035 to secure their own model upon which to demonstrate their competency. The applicant must provide the board with a statement releasing the State from any liability as executed by the model on a form provided by DCED. The model must be at least 15 years of age.

The form provided by DCED requires the model's signature. There is no requirement for minors to have a parent or guardian sign. We question whether the signature of a model under the age of majority is sufficient enough to legally release the State from liability. We recommend the board consult Law to determine whether the signature of a parent or guardian should be required for models that are under the age of majority in order to protect the State from potential liability.

Recommendation No. 4

The board should review existing statutes and regulations and seek appropriate revision where necessary.

During our examination, we reviewed the board's statutes and regulations to determine if any were obsolete and unclear. We noted the following:

- A. Alaska Statute 08.13.185(a)(2) states that DCED shall set fees for school owner licenses. 12 AAC 02.140(b)(5) sets that license fee at \$100. However, 12 AAC 09.120 requiring a school owner license was repealed in February 1988. It is unclear if the board intends that school owners be licensed. According to OL, they do not collect the fee for school owner licenses. This finding was noted in the FY 88 sunset audit. However, no action has been taken to resolve this issue.
- B. Alaska Statute 08.13.120 begins with a statement that the board shall adopt regulations for the licensing of shops. However, the rest of this statute refers to licensing of shop owners. It is unclear if the shop or the shop owner, or both, are to

be licensed. This finding was also noted in the FY 88 sunset audit. However, no action has been taken to resolve this issue.

- C. 12 AAC 09.020 requires DCED to assign each applicant for examination a number by which he or she is identified during the examination and no applicant may reveal his or her identity to an examiner until grading has been completed. However, numbers are assigned at the examination site by a board member who is an examiner. This board member is also required to look at photograph identification to ensure the right person is taking the examination. OL states that they do not assign numbers nor do they know the purpose for having to do so. This requirement appears to be obsolete.
- D. Alaska Statute 08.13.100(d)(3) requires a person applying for a license by credentials to pay a credential investigation fee. 12 AAC 02.140 does not include such a fee. OL personnel state that this kind of fee is not required for this board as applicants are required to submit all their supporting documentation with their application. According to OL personnel, no additional investigation is required.
- E. 12 AAC 09.056 identifies the written examination for barbers as the National Board of Barber Examiners Certified Examination for Registered Barbers, written and sponsored by the National Association of Boards of Barber Examiners of America (NABBEA). The examination administered by the board is the National Barbers Test, sponsored by the Professional Testing Corporation. According to OL staff, NABBEA is no longer in existence.
- F. 12 AAC 09.070 indicates that an applicant for the instructor examination may choose the Instructor Examination, written and sponsored by the NABBEA or the Community College Teacher Test. Since NABBEA is no longer in existence, we recommend this regulation be revised.

The board cannot carry out its legislative mandate effectively without clear, concise, and current statutes and regulations. Therefore, we encourage the board to pursue necessary and appropriate changes.

Recommendation No. 5

DCED should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

OL's methodology for determining FY 93 fees allocates costs to a board or occupation in one of two ways. Some costs, termed direct costs by OL, are directly distributed to a specific licensing program. Direct costs include personnel assigned to one specific occupation, travel associated with board business, public notices of board proceedings, and printing of board applications and statute booklets. Other costs, termed indirect costs, are

allocated based upon the percentage of licensees in each occupation compared to the total number of occupational licensees. These costs include the expenditures associated with licensing examiners', investigators', hearing officers', management's, and clerical staff's time.

Effective August 24, 1992, DCED was required to establish fee levels so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation (AS 08.01.065(c)). Prior to FY 93, DCED could establish fees that reflected, but did not exceed, the actual costs of the activity for which the fee was charged and could establish a fee at less than full cost if they deemed it unreasonable to impose the full cost of the activity on the licensee.

Our office and OMB have both reviewed OL's cost allocation methodology to determine if it is sufficient to meet the requirements of AS 08.01.065(c). Both our office and OMB do not believe that OL's cost allocation methodology distributes costs reflective of the actual effort spent. The primary disparity involves the classification of licensing examiners', investigators', and hearing officers' time. The manner in which these three categories of employees' cost have been allocated prior to FY 94 can cause occupations with a large number of licensees to absorb costs that are not reflective of the actual effort spent regulating their profession.

In addition to our concerns with OL's cost allocation methodology, we found problems in how they distributed costs in their calculation of a two-year average of expenditures used in determining FY 93 license fees. The percentages applied to allocate indirect costs were not always correct. These inconsistencies were caused by formula errors on spreadsheets prepared by OL staff. Also, documentation supporting some expenditures on the spreadsheets has not been retained. Review of selected current information available does not confirm these numbers. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distributions of costs.

Further, in a report issued by our office entitled *A Special Report on Selected Boards and Commissions Issues* (October 1992), we found the barber/hairdressers licensees were allocated \$57,600 in investigator personal services expenditures, representing nearly one investigator position. Yet, review of investigator staff assignments in that audit indicated that the investigator responsible for barber and hairdresser complaints not only worked part-time, but also handled several other professions and unlicensed business complaints.

In their September 1993, *Occupational Licensing Fee-Setting Policy Assessment* report OMB made seven recommendations to OL on how to allocate costs so that the intent of AS 08.01.065(c) is met. According to OMB's report, "A follow-up review for this project will be scheduled for March 1994." DCED has recently indicated that, for the determination of the FY 94 fees, they will allocate costs for licensing examiners, investigators, and hearing officers based on estimated time spent by those employees, with periodic adjustments to actual time spent in accordance with our office and OMB's recommendations. As of November 1993, the allocation of direct and indirect costs using FY 93 expenditure data has not been performed.

DCED should continue to work with OMB in establishing fee levels for occupational licensees that are more reflective of actual regulatory cost of the occupation.

Recommendation No. 6

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

Alaska Statute 08.01.050 establishes DCED's administrative duties for professional licensing boards. Alaska Statute 08.01.070 identifies the administrative duties of the boards. Included in the board's responsibilities are the taking of minutes and records of all proceedings, forwarding of a draft of the minutes of proceedings to the department within 20 days after the proceedings, and submission of an annual performance report to the department before the end of the fiscal year. However, we found that OL rather than the board performed these duties.

For example, the licensing examiner is responsible for tape recording the board proceedings, recording votes, taking notes, and preparing the minutes. OL also compiles much of the information in the board's annual report. OL has the records needed to determine statistics such as the number of licenses issued and examinations given and passed.

We recommend that OL review the statutes and request changes that reflect actual responsibilities and timelines that are both practical and timely.

Recommendation No. 7

OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law (Law).

The Alaska Executive Branch Ethics Act (AS 39.52) requires members of boards and commissions to disclose potential violations of that Act to their designated supervisor. The designated supervisor for members of a board is the chair or acting chair of the board. Functionally, OL staff advise the professional licensing boards associated with them as to the reporting necessary for compliance with the Ethics Act, as does Law. Disclosures by board members are compiled by OL for submission to Law. These reports are required to be submitted on a quarterly basis. Law reviews these submissions and makes available to the public a summary of the reports received with sufficient deletions to prevent disclosure of a person's identity.

These reports have not been submitted in a timely manner. In 1991, no reports were submitted to Law. In 1992, reports were submitted three to six months after the end of the quarter. In 1993, the first two quarters' reports were submitted in July. In addition, OL personnel have indicated that there is some confusion as to what should be reported. While staff at Law believe that OL understands what should be reported, written policies and

procedures governing the reporting of potential ethical violations would benefit OL as well as board members. There would be clear criteria for OL staff to follow as to what should be reported as well as when it should be reported.

Recommendation No. 8

OL should, in conjunction with the Equal Employment Opportunity Office (EEO), review applications forms used by OL for licensure to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

EEO within the Department of Administration, Division of Personnel discourages agencies from asking applicants information on sex, height, weight, and hair and eye color. If an applicant were denied a license, the board or OL may find it difficult to prove there was no discrimination involved if this type of information was used while reviewing the application for licensure.

Application forms used by OL should be reviewed with EEO to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

The Board of Barbers and Hairdressers (Board) is required by AS 08.13.040 to give examinations at least twice a year. Over the past three fiscal years, the board has increased the number of examinations. In FY 91, examinations were administered every other month in Anchorage and once in Fairbanks. Currently, the examination is scheduled every month in Anchorage, six times a year in Ketchikan and three times a year in Fairbanks.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The board has been unable to accomplish certain goals and objectives

We reviewed the goals and objectives listed in the board's FY 91 through FY 93 annual reports. Some were dropped without being accomplished while others are repeated but still unaccomplished. Three of the board's goals and objectives are noted below.

1. Alaska Statute 08.13.100 states that the board may, by regulation, create areas of limited professional licensing in the field of cosmetology, except that the board may not restrict or otherwise regulate the practice of manicure or pedicure.

The board has been trying for several years to change the statutes so they can license manicurists. In the FY 88 sunset audit report, it was reported that the board had proposed statutory changes regarding manicurists. In its FY 92 annual report, the board stated that they had contacted a legislator concerning the need for a change in statute. The board is still discussing this issue.

2. In the FY 88 sunset audit report, it was reported the board was proposing to change the statute to rename cosmetologist to esthetician. In its FY 91 annual report, the board listed this change as a goal/objective. The minutes of the September 13, 1990 board meeting indicate the board proposed the change. However, as of the date of this report, no statutory or regulatory change has occurred.

3. Schools of barbering, hairdressing and cosmetology are statutorily regulated by both the board and Alaska Commission on Postsecondary Education (ACPE) (see Recommendation No. 2). A goal of the board for FY 92 was to form a task force with ACPE to work this out. The minutes of the September 24, 1992 meeting evidences that a representative from ACPE was in attendance. A task force was formed with two board members and two individuals from ACPE. Based on discussions with board members, the task force never met because one of the task force appointees became ill. This issue has not since been discussed according to the board's meeting minutes.

Confusing statutes and regulations impede the board's effectiveness

Board members surveyed expressed confusion over several statutes and regulations. Some feel that such confusion impedes their effectiveness. These are discussed in Recommendation No. 4.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

Since the last sunset audit, no statute changes have been made by the board. See previous section for statutory revisions suggested by the board.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

In accordance with AS 44.62.310 and AS 08.01.050, board meetings have been open to the public and each meeting and examination have been public noticed. A public comment period is made available at the meetings.

A goal/objective listed in the board's FY 92 and FY 93 annual reports is to "generate more interest in the board, such as more advertising for board meetings." Some board members think this can be accomplished by sending advertisements of meetings to schools and supply houses. Currently, notice is placed in certain Alaskan newspapers.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

As discussed above, a public comment period is made available at each meeting. Regulations go through a public participation process.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

Since the last sunset audit in FY 88, 37 cases have been reported by the Department of Commerce and Economic Development, Division of Occupational Licensing's (OL) Investigative Unit and two by the Ombudsman. We reviewed a sample of cases reported to the Investigative Unit during the period FY 91 and FY 93. Cases are being satisfactorily investigated and resolved.

The extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

As discussed in Recommendation Nos. 1 and 3, OL staff approve the majority of license issuances. Based on the numbers reported in the board's annual reports, the number of licenses by category is as listed below.

Category	Total Licenses	Issued in FY 93
Barber	282	20
Hairdresser	2,227	193
Cosmetology	695	16
Instructor	219	12
Shop Owner	416	21
School	14	1
Total	3,853	263

In addition, 281 student permits and 65 temporary permits were issued in FY 93.

Applicants can apply for licensure by examination or by credentials. Applicants by examination are required to take a written and practical examination. The practical examination is scored by three people, with at least one being a board member. OL staff is responsible for totalling the points by category for each examiner and averaging the points for the three examiners to arrive at the applicant's final grade.

A letter from OL to the board indicated there were inconsistencies in the scoring of the examinations. That letter noted that six examination candidates' score sheets were not scored. According to OL's letter, one candidate lost 70 points because five different sections

were not scored by two proctors. Rather than fail that candidate, which would have occurred if only the reported scores were considered, the candidate was passed. The other five candidates' scores were high enough to pass the examination with the missing scores.

The extent to which state personnel practices, including affirmative action requirements have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

The Application forms used by OL for licensure should be reviewed by the Equal Employment Opportunity Office of the Department of Administration, Division of Personnel for any personnel questions of a potential discriminatory nature (see Recommendation No. 8).

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the Findings and Recommendations section of this report.

APPENDICES

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APPENDIX A

Department of Commerce and Economic Development
Board of Barbers and Hairdressers
Schedule of Revenues Compared with Expenditures

(Unaudited)

(Note 1)

Revenues (Note 2)	\$191,466
Direct Expenditures	37,556
Designated Indirect Expenditures	127,517
Undesignated Indirect Expenditures	<u>164,104</u>
Total Expenditures (Note 3)	<u>329,177</u>
Excess of Expenditures over Revenues (Note 3)	<u>(\$137,711)</u>

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from discussions with Division of Occupational Licensing (OL) personnel and from OL prepared documents comparing revenue and expenditures for determining fee structures. The records were not audited by us and, accordingly, we do not express an opinion on the board's Schedule of Revenues Compared with Expenditures.

Note 2

A significant portion of revenues is comprised of license renewal fees. For the current fee structure, see Appendix B. Licenses are renewed biennially. Because of the renewals, revenues vary substantially year to year. Therefore, OL combined revenues collected in FY 90 and FY 91 and calculated an average in order to obtain a representative amount of annualized revenues collected for comparison with expenditures.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of overhead costs of OL. Those allocated costs include designated indirect costs that are shared costs which can be distributed according to a systematic methodology for allocation to specific regulatory programs. They include personal services costs for license examiners, investigators, and hearing officers. Undesignated indirect costs are those which are not easily associated with a specific

regulatory activity, but are the result of administrative and support activities to carry out regulatory functions for all regulated programs.

Our understanding of the allocation methodology presently used by OL is discussed in Recommendation No. 5 of this report and is the subject of a September 1993 Office of Management and Budget (OMB), Division of Audit and Management Services report entitled *Occupational Licensing Fee-Setting Policy Assessment*. Both our office and OMB do not believe that OL's method of allocating costs to a professional licensing board distributes costs reflective of the actual effort spent regulating that respective profession.

APPENDIX B
Department of Commerce and Economic Development
Board of Barbers and Hairdressers
Application, License and Other Fees¹

Application and Other Fees²

Type of Fee	Amount
Application	\$50
Barber, hairdresser, cosmetologist, or instructor examination fee	50
Temporary permit	50
Student permit or apprentice fee	50

License Fees

License Category	Initial	Biennial Renewal ³
Barber or Hairdresser	\$150	\$150
Cosmetologist	80	80
Instructor	100	100
Shop Owner	100	100
School Owner	100	100
School	700	250

¹The licensing fees charged by the Division of Occupational Licensing for the Board of Barbers and Hairdressers are set out in the Alaska Administrative Code at § 12 AAC 02.140. The last fee change for this board was effective May 28, 1993. According to Division of Occupational Licensing staff, at this time there are no planned fee changes for this board.

²The Division of Occupational Licensing is also authorized to charge administrative fees. Administrative fees include: duplicate license fee, photocopying fee, and penalty for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

³The next biennial renewal date for the Board of Barbers and Hairdressers is August 31, 1995.

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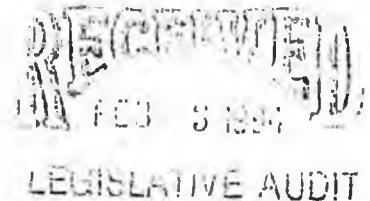
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

February 3, 1994

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Mr. Randy Welker
Legislative Auditor
Legislative Budget & Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811



Dear Mr. Welker:

This is written in response to the Audit Division's (Audit) Preliminary Audit Report for the Board of Barbers and Hairdressers (Board). Below is the Department of Commerce and Economic Development's comments on Audit's preliminary findings and recommendations.

Recommendation No. 1

The Legislature should allow the Board of Barbers and Hairdressers (Board) to terminate on June 30, 1994 and amend the relevant statutes to assign board duties to other state agencies.

The department takes a neutral position on whether the board should be terminated. That is a decision for the Legislature to make. However, the department will respond to Audit's recommendations concerning assignment of duties.

Examining applicants can be the responsibility of the Division of Occupational Licensing (OL) if the board is terminated.

Providing the statutes are amended to allow for this transfer of duties, OL concurs that this is a responsibility that could be administered without a board.

OL can continue to approve licenses if the board is terminated.

The current statutory and regulatory requirements to receive a license are so precise that board review of applications is not necessary unless extenuating circumstances exist. The department concurs with this recommendation providing the statutes are amended to give OL authority in this area.

The Alaska Commission on Postsecondary Education (ACPE) could assume sole responsibility for approving the issuance of licenses for schools.

The department concurs with this recommendation.

Suspension and revocation of licenses would not be seriously impacted if the board terminates.

The department concurs with this recommendation.

Inspection for health and sanitary conditions of a shop or school will continue to be provided by the Department of Environmental Conservation (DEC) if the board terminates.

The department agrees with this recommendation.

Recommendation No. 2

The board, DCED, and ACPE should formalize in writing their overlapping responsibilities regarding the licensure and inspection of barbering, hairdressing, and cosmetology schools.

The department concurs with this recommendation. Depending upon the outcome of this legislative session concerning the continuation of the board, the department will initiate communication with ACPE by the end of the fiscal year.

Recommendation No. 3

The board should consult with the Department of Law (Law) to determine whether their current procedures are in accordance with State laws.

A. The department concurs that authority to issue licenses has never been delegated to OL by statute, consequently the board does not have the authority to delegate this responsibility if the board is not sunset. It is recommended that the Legislature consider this option.

B and C. The department concurs with Audit's recommendation that we consult with Law for an opinion as to which situations might present an ethical violation concerning the administration of the practical examination. We will also have Law review the release form used by models to clarify whether models between the ages of 15 and 18 years also need parental/guardian release.

Recommendation No. 4

The board should review existing statutes and regulations and seek appropriate revision where necessary.

The department concurs with this recommendation and will address those areas that do not require legislative change. However, as noted in the audit report, legislative intervention will be required for some of the changes.

Recommendation No. 5

DCED should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

The department agrees with the recommendation subject to the following comments:

An OMB audit of the department's fee setting practice was completed in early October. OMB's recommendations for defining direct costs, including the implementation of timekeeping records for licensing staff, investigators, and hearing officers, has been implemented effective July 1, 1993 by the division.

The OMB audit recommended a cap on incremental fee increases of no more than 10-25% per licensing period. This is problematic inasmuch as it places a limit on recovering the actual cost of licensing the profession. Unpredictable and unforeseen program expenses occur due to investigations, litigation, and legal challenges which are not controlled by the board or the division. Limiting expenditures in order to comply with these caps is anticipated to have serious effects on the division's abilities to comply with their statutory mandates. Under the present scheme, once a program has expended its "acceptable limit" for fee increase adjustments under the OMB recommendations and in accordance with AS 08.01.065, the board will effectively be shut down for the remainder of the fiscal year. The consequences have potential health and safety risks as well as potential economic hardships for licensees who wish to renew their licenses, sit for examinations, etc. The division will make requests for additional spending allocation to Legislative Budget and Audit Committee to alleviate these harsh consequences, but failing favorable consideration, the division must control its expenditures.

The division does not fully concur with the audit findings that errors were made in the calculation of a two-year average of expenditures used to determine the FY 93 license fees, and as a result, license fees did not truly reflect the cost of providing regulatory services to each occupation. Detailed expenditure information used in calculating a two-year average was based on information obtained from the state accounting system. The data generated from the state accounting system for the purposes of this audit has changed from data obtained by division staff when fee decisions were made.

In conclusion, the Department of Commerce and Economic Development has worked with the OMB auditor regarding this issue.

Recommendation No. 6

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

A rewrite of AS 08.01 is available, and the division is seeking legislative support to introduce it. The rewrite makes numerous revisions including amendments to the statutes cited in this recommendation.

The rewrite included revisions which make drafting minutes a department responsibility. It also provides for an annual report deadline submission of August 1. The annual report deadline revision is necessary as many statistics needed for the annual report are not available until June 30, thus making it impossible for the boards to meet the existing deadline of submission by June 30.

The division disagrees that the annual report authorship should be amended to make annual report submission a department responsibility. We recognize that division staff are instrumental in assisting boards when completing reports. Staff provide statistical and clerical assistance, however, this report must be reflective of the board's position on various matters involving the profession regulated including legislative and regulatory needs, budget requests, and upcoming goals. These are areas which the board is solely responsible for developing.

Recommendation No. 7

OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law (Law).

The department agrees and will comply with this recommendation. A written procedure developed by staff will be limited to include directives for staff follow-up at each meeting with collection of ethic reports as well as clarifying dates which quarterly reports must be compiled and forwarded to the Attorney General's Office. We concur that staff is responsible for the timely submission to the Department of Law. This is the limit of responsibility on behalf of the department.

All other policy, procedures, interpretations, and written directives for what must be reported must come from the Department of Law. Guidance on when a member must report a conflict, what should be reported, confirmation of what constitutes a conflict, and who has authority to rule/overrule a decision made by a designated supervisor are all matters which are beyond the scope of DCED staff expertise. Consequently, the department disagrees with the statement in the text of recommendation Number 7 which states "Functionally, OL staff advise the professional licensing boards associated with them as to the reporting necessary for compliance with the Ethics Act"

The department has asked for a written directive from the Department of Law, in layman's terms, which clarifies these matters. Any forthcoming directives from the Department of Law will be distributed to board members.

Response to Recommendation No. 8

OL should, in conjunction with the Equal Employment Opportunity Office (EEO), review application forms used by OL for licensure to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The department disagrees with this recommendation. We believe the procedures for denying an applicant and the practice of listing the specific reasons for denial in the notice to the applicant provide adequate protection for the board from being subject to discrimination complaints based on the height/weight questions.

Thank you for the opportunity to comment. If my department can assist you in any other way please let me know.

Sincerely,


Paul Fuls
Commissioner

PF/vs513t
020394c

cc: Karl Luck, Director, Division of Occupational Licensing