

HB

294

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 1/26/94

FURTHER:

DATE TURNED INTO OFFICE: 2-8-94

The Finance Committee considered HOUSE BILL NO. 294

"An Act extending the termination date of the Board of Pharmacy."

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous 5 CS HB 294 (L & C)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DCFED #1844	1-24-94	<input checked="" type="checkbox"/>	

Appropriation No Fiscal Note

DO PASS:

Tim Kelly
Steve Hill
A. Kistner
Bob Sharp

OTHER RECOMMENDATIONS:

1. *Tim Kelly* 10/2/95
 Co-Chair: Signature/Recommendation

2. *Steve Hill* Do pass
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 2

Bill Version: HB 294

(S) Publish Date: 1-26-94

**STATE OF ALASKA
1994 LEGISLATIVE SESSION**

Revision Date: 1/24/94
 Title: An Act extending the termination date of
the Board of Pharmacy.
 Sponsor: Rep. Parnell
 Requestor: Senate Labor & Commerce

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						
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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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)

The bill extends the termination date of the Board of Pharmacy to June 30, 1997. Funding for the board is included in the FY 95 operating budget request; therefore, new funds are not required.

Average Annual Cost: \$61.2
 Average Annual Revenue: 56.1

Changes in CS HB 294 (LEC) have no fiscal impact. This fiscal note is appropriate.

1/26/94 /date APF /Comte Aide (initial)

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing
 Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 1-24-94
 Date: _____

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SEAN R. PARNELL



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HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT

HOUSE BILL 294

Extending the Termination Date of the "Board of Pharmacy"

This bill would extend the termination date of the Board of Pharmacy to June 30, 1999.

The Board of Pharmacy provides greatly needed oversight of State and Federal laws pertaining to the pharmaceutical industry and Alaskan's health and safety. The Board provides a very important service for the State of Alaska and is an integral part of Alaska's pharmacy licensing process.

During the Board of Pharmacy's review, the reviewing committee acknowledged the Pharmacy Board's self sufficiency and recommended its renewal.

Passage of House Bill 294 would maintain this valuable service for Alaskans.

Back-up

FISCAL NOTE

↑ 1
 Bill Version: HB 294
 (H) Publish Date: 4/26/93

STATE OF ALASKA 1993 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Commerce & Economic Development
 Title: An Act extending the termination date BRU: Occupational Licensing
of the Board of Pharmacy. Component: Operations
 Sponsor: Rep. Parnell
 Requestor: House Rules COMPONENT SERIAL NO. 1844

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	.0	.0	.0	.0	.0	.0
CAPITAL						
REVENUE FUND SOURCE:	.0	.0	.0	.0	.0	.0

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	.0	.0	.0	.0	.0	.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: \$ None

ANALYSIS:

(Attach a separate page if necessary)

The bill extends the termination date of the Board of Pharmacy to June 30, 1997. Funding for the board is included in the FY 94 operating budget; therefore, new funds are not required. Regulations adjusting fees to cover full program costs are under review in the Department of Law.

Average Annual Costs: \$61.2

Average Annual Revenue: 49.6

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing

Approved by Commissioner: Paul Fuhs
 Agency: Commerce & Economic Development

Phone: 465-2144
 Date: 4/23/93

Date: 4/23/93

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HOUSE OF REPRESENTATIVES

MEMORANDUM

DATE: January 27, 1994

TO: Senator Drue Pearce
Co-Chair of Senate Finance

FROM: Representative Sean Parnell *Sean*

RE: Request to schedule a hearing for SCS HB 294 (L&C) "An Act extending the termination date of the Board of Pharmacy."

This memo respectfully requests that House Bill 294 be scheduled for a hearing in the Senate Finance Committee at your earliest possible convenience.

This bill would extend the termination date of the Board of Pharmacy from June 30, 1993 to June 30, 1999.

Dear Legislators,

The Board of Pharmacy has a termination date of June 30, 1993. Legislation (HB110) was introduced earlier in this session to prevent our sunseting, however the omnibus approach has been slow. The committee which reviewed the regulatory boards acknowledged the Board of Pharmacy's self-sufficiency and recommended its renewal. HB 294 is now before you to ensure that the Board of Pharmacy continues its charge of protecting the public.

A recent example that illustrates the importance of Boards of Pharmacy occurred in the state of Washington in 1991. Tylenol capsules were adulterated with cyanide which killed several people. The Board of Pharmacy quickly embargoed all Tylenol products. This swift action was nationally recognized as a life-saving maneuver.

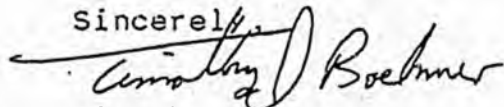
Fortunately, emergencies rarely occur. The use of medication, on the other hand, frequently occurs. The Board of Pharmacy protects the public by examining license applicants to ensure that they are qualified to practice pharmacy. We inspect pharmacies to ensure compliance with state and federal law. Current statutes and regulations that govern pharmacy in Alaska are woefully out-of-date and are being rewritten. This revision will address specific deficiencies in the law as well as enable the Board to regulate the rapidly changing role that pharmacy will play in solving the health care crisis.

Termination of the Board of Pharmacy would essentially prevent Alaska from licensing pharmacists. A pharmacist is licensed by credentials or by taking the National Association of Boards of Pharmacy (NABP) exam. Forty-nine states rely on NABP to test all pharmacy candidates and forty-eight states rely on NABP to serve as the national clearinghouse of all pharmacy licenses (exceptions are California and Florida). NABP requires each state to have a Board of Pharmacy in order to participate in the national testing process and to utilize its services as a clearinghouse.

The Board of Pharmacy promotes, preserves and protects the public by regulating the practice of pharmacy.

I urge you to support HB 294.

Sincerely,



Timothy J. Boehmer RPh.
Acting President
Board of Pharmacy

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

October 26, 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 PHARMACY

October 26, 1993

Audit Control Number

08-1421-94

The objective of the audit was to determine whether the Board of Pharmacy should continue its existence. Alaska Statute 08.03.010(20) 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 extend the board's termination date to June 30, 2003.

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.

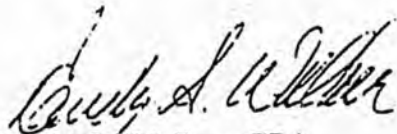

Randy S. Welker, CPA
Legislative Auditor

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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 Pharmacy 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 Pharmacy 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:

1. Applicable statutes and regulations.
2. Interviews with Department of Commerce and Economic Development, Division of Occupational Licensing personnel.
3. Minutes of board meetings.
4. Interviews with Board of Pharmacy board members.
5. Review of other states' boards compositions and duties.
6. Office of the Ombudsman closed case files.
7. Proposed revisions to Board of Pharmacy statutes and regulations.
8. Licensing files for pharmacists and pharmacies.
9. Investigation files.
10. Other documents considered pertinent.

ORGANIZATION AND FUNCTION

Alaska Statute 08.80.010 established the Board of Pharmacy as a regulatory board with seven members. Law requires that two members be public members having no direct financial interest in the health care industry and five members be professionals with three years practical experience and licensed in Alaska. The statute further states that whenever possible, each judicial district should be represented by a board member.

The board regulates six types of licenses: pharmacists, retail pharmacies, wholesale pharmacies, hospital pharmacies, drug rooms, and out-of-state pharmacies. Alaska Statute 08.80.040 establishes the duties of the board. They include:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating licenses in accordance with the Administrative Procedures Act when a person has violated pharmacy statutes or regulations.
3. Adopting regulations insuring that renewal of licenses is contingent upon proof of continued competency.

Applicants for registration as a pharmacist are required to pass the National Association of the Boards of Pharmacy Licensing Examination and a jurisprudence examination covering Alaska pharmacy law and the Federal Controlled Substance Act.

Pharmacists licensed to practice in another state who apply for licensure in Alaska can be licensed by credentials, except for those applicants from California or Louisiana. These two states require applicants to pass a state exam, not the national exam. Consequently, these applicants must take the national examination when applying in Alaska.

The board may also issue temporary or emergency permits. Temporary permits allow qualified applicants to practice until the board can formally license them; emergency permits allow pharmacists licensed in another state to practice in Alaska in an emergency. Both permits are limited in their duration and application.

The board is assisted in its duties by Division of Occupational Licensing (OL) personnel. OL processes applications, maintains licensing files, answers board-related correspondence, and provides administrative support to the board. In addition, OL investigates any complaints involving pharmacists and pharmacies.

Alaska Board of Pharmacy Members

Registered Pharmacists

Timothy Boehmer
Chris Coursey
Stanley Thompson
Paul Gionet
Sally Sarber

Public Members

Charles Lastulka
Patricia Douglas

REPORT CONCLUSIONS

Alaska Statute 08.03.010(20) requires that the Board of Pharmacy 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 the continuance of the board. 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. We recommend that the legislature enact legislation that extends the board's termination date until June 30, 2003 (see Recommendation No. 1).

The Findings and Recommendations section describes areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the board.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The statutory provision for the Board of Pharmacy should be extended until June 30, 2003.

The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Assurance that licensed professionals act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses when appropriate.

Alaska currently has the most restrictive time period for sunset reviews, with sunsets scheduled for every four years. In the 24 states with sunset laws, agency reestablishment has ranged from 4 to 13 years. The average review cycle is eight years with many states going to review cycles of ten years or longer.

The Board of Pharmacy is a well established board that consistently has been found to satisfy a public purpose. The board has demonstrated an ability to conduct business in an adequate manner and deficiencies have been relatively minor. Though the sunset review this year does reveal a few areas to be addressed (see following recommendations), there does not appear to be any need to review the Board of Pharmacy every four years.

Recommendation No. 2

Office of the Governor, Boards and Commissions should appoint Board of Pharmacy members in accordance with Alaska Statute.

Alaska Statute 08.80.010 says, in part, ". . . *Whenever possible, the board shall include at least one member from each judicial district.*" The board consists of seven members, six are from the Southcentral area and one from Southeast. The Interior (Fourth Judicial District) and Northwestern (Second Judicial District) regions of the State are not represented. According to Office of the Governor, Boards and Commissions, there have been no recent applicants from the Northwestern region, and only a few from the Interior.

Alaska Statute 08.80.030(3) gives the Board of Pharmacy the power to ". . . *assist the department in inspections and investigations.* . ." and board members seem to agree on the importance of regular pharmacy inspections. Though the Board of Pharmacy Annual Report lists these inspections as a goal for each coming year, the board has found it increasingly difficult to inspect pharmacies around the State. One reason for this difficulty is that the board has funds to cover travel only to board meetings. In recent history, the board has been able to rely on members to perform inspections in each of their own districts. Though all districts were not covered at all times, some pharmacies in each area were inspected at least

occasionally. The concentration of board members in only the Southcentral and Southeast regions has severely reduced the likelihood of inspections in other regions.

The concentration of board members in only two regions also affects the ease with which pharmacist candidates may become licensed. Pharmacist candidates are required to pass the Alaska Jurisprudence Examination, which must be administered by a board member. Each candidate must schedule the examination with a board member, generally in the board member's home town. Accordingly, candidates outside of the Southeast or Southcentral region must travel to take the jurisprudence examination. While requiring travel may not constitute a barrier to entry into the profession, it does add an inconvenience that would be unnecessary if the examination could be offered in a variety of locations.

Two Board of Pharmacy members report that they were recruited by the Office of the Governor to fill specific board positions. Boards and Commissions should develop an information program for non-participating portions of the State and direct recruitment efforts toward regions of the state for which little or no representation exists.

Recommendation No. 3

The Board of Pharmacy should review pharmacy inspection procedures to ensure that pharmacies inspected are impartially selected and evaluated.

Though board members acknowledge that inspecting competing pharmacies is a potentially awkward situation, little has been done to formalize the process or to limit potential charges of bias. The inspection selection process, the evaluation form, and any potential licensing action all may be subject to criticisms of partiality.

Historically, the board's selection process for pharmacies to be inspected has been relatively informal. Inspections were apparently done at the direction of the president and at the convenience of board members. The lack of formal criteria for selection may leave the board open to charges of favoritism; while some pharmacies are inspected regularly, others, often those in outlying areas, have not been inspected for years. The board should establish a maximum timeframe between pharmacy inspections, then develop a formal selection process to include each pharmacy in the State.

The board should also attempt to quantify inspection forms. The board has developed an extensive checklist for inspections, but it is unclear which or how many infractions would cause a pharmacy to "fail" an inspection or to require a reinspection. Because each pharmacy may be visited by a different team of inspectors, it is important to ensure that criteria for passing or failing a pharmacy are applied consistently. One way to reduce the subjectivity of the form would be to develop a rating scale with a numeric value for each checklist item.

The board has recently discussed the possibility of sanctions against pharmacies that are found, on inspection, to have severe infractions or that, on re-inspection have refused to

correct previously noted infractions. Though such sanctions may be necessary to protect the public, they will further complicate the inspection issue.

According to the Department of Law, a board member cannot be both an inspector and an adjudicator of a case. If licensing action is taken against a pharmacy as the result of an inspection, the board members that inspected the pharmacy should recuse themselves from the vote. The Board of Pharmacy, as described above, is comprised of only seven members. If the two of these members that formed the inspection team cannot vote, the board may find it difficult to secure a quorum.

Though statute gives the board the power to assist the department in inspections, it does not require board members to perform the inspections. In light of the difficulties the board has encountered in accomplishing impartial, supportable inspections, the board should consider the necessity of continuing to inspect pharmacies. If it appears that the inspection capacity of the board will impair the other board functions, the board, in conjunction with the Division of Occupational Licensing, should consider either revising the statute to eliminate inspections as a board responsibility or changing the way in which that responsibility is met.

After the board has developed a workable selection and evaluation process for pharmacy inspections, the mechanics of that process should be added to the board's regulations. Regulations associated with inspections should specify who does inspections, what is inspected, and how often inspections are done. Adding the inspection process to the regulations will benefit the board not only through formalization of the process, but as an educational tool as well. Because regulations are available for public comment, interested members of the general public and the profession would, through the public process, become aware of inspection criteria.

Recommendation No. 4

The Board of Pharmacy should revise these statutes to reflect current pharmacy practices.

Alaska Statute 08.80 describes State of Alaska pharmacy law. Though the statute has been amended slightly over the years, it has not kept pace with changes in the practice of pharmacy. One board member describes the present statute as "woefully out of date." Recent introductions of prescriptions by facsimile machine and home infusion, for example, are not presently covered by Alaska statute. The board has additionally identified the need for more board meetings per year, but has not yet been able to revise the statute to require additional meetings.

In recognition of the many recent changes in the practice of pharmacy, the National Association of Boards of Pharmacy has developed a model act for Boards of Pharmacy. The model act is designed to address changes in the practice of pharmacy and to give individual boards a starting point for drafting their own legislation. Though the model does provide a framework for drafting new legislation, it will require significant tailoring to ensure that the proposed bill is in compliance with the constitution.

The public should have the benefit of statutes that are current with professional practices. Some of the changes suggested by the model act have been necessary for several years and there is no certainty that the required bill to adopt these changes will be introduced this session. We recommend that the Board of Pharmacy statute revision process be initiated without further delay.

Recommendation No. 5

The Department of Commerce and Economic Development (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 Division of Occupational Licensing's (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 that 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 associated with 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. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distributions of costs.

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 October 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, in conjunction with the Equal Employment Opportunity Office (EEO), review the Board of Pharmacy licensure application form to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The pharmacy application requires a photograph of the candidate. 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 that there was no discrimination involved if this type of information had been provided to the board members reviewing the application for licensure.

The pharmacist application form used by OL should be reviewed with EEO to make sure that a photograph is pertinent to the licensure of pharmacy candidates. OL indicated that one of the reasons photographs are required is to prevent fraud when a licensee moves from one state to another. If a photograph is considered necessary for identification, to prevent fraud or for other reasons, it should be separated from the application prior to review of the application for licensure.

Recommendation No. 7

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. 8

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 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, division 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.

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.

According to the board's annual reports for the fiscal years 1990 through 1993, the board has licensed more than 100 new pharmacists and 62 pharmacies and drug rooms. In addition, the board has inspected a number of retail and wholesale pharmacies. During the last two years, the board had added to its licensing responsibilities, by adding the categories of Out-of-State pharmacies and Related Facility Drug Rooms. The board has also administered the National Association of the Boards of Pharmacy Examination for five candidates in the last three years.

The board has developed goals and objectives. One of the major accomplishments of the board is the draft of new statutes and regulations. Some of the areas included in the drafted legislation, such as an increase in the number of annual meetings, address items that the board has listed as goals for several years. Unfortunately, the proposed bill has not yet been presented to the legislature and many of the new regulations cannot take effect until after the statute is amended (see Recommendation No. 4).

Another goal described in several annual reports is the inspection of pharmacies. The board believes that on-site inspections of pharmacies are necessary to protect the health of the consumer, but has been unable to conduct these inspections for rural pharmacies. The board does not receive funding for travel to remote areas and does not currently have a board member from those areas (see Recommendations No. 2 and 3). Many pharmacies that are inspected have minor infractions that require follow-up visits to ensure that problems have been corrected. This follow-up rarely occurs as the board has neither the staff nor the time to do them.

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

Over the last three years, the board has consisted of members from three major geographic areas of the State: Southeast, Southcentral, and Interior. The distribution of board members has not completely met the requirements of the statute creating the board (AS 08.80.010) which says, in part: "Whenever possible, the board shall include at least one member from

each judicial district." The Northwest region of the State has traditionally not been represented on the Board of Pharmacy. Over the last few years, however, board members from various areas around the State have been replaced with new members from the Southcentral area. The board is now comprised of six members from the Southcentral area and one from the Southeast area. Boards and Commissions reports that, for the last round of appointments, there were applicants from the Interior region, but none from the Northwest region.

Board members are chosen based on a variety of qualifications ranging from job experience to letters of support. Because the statutory regional representation is worded as "*whenever possible. . .*", Boards and Commissions has interpreted regional representation as an optional consideration.

The concentration of board members in the southcentral region affects not only the ability of the board to do inspections, but board members' availability to the public and to pharmacist candidates, who must take the jurisprudence examination from a board member before they can be licensed (see Recommendation No. 2).

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

As discussed above, the board has recommended significant changes to Board of Pharmacy statutes and regulations. Board members report that these changes are necessary to address current pharmacy practices and concerns. Some of the issues addressed by proposed legislation are prescription by facsimile machine, home infusion, and the number of annual meetings. Board members have also commented that the existing statute covers some issues more appropriately found in regulations. Accordingly, the board has worked extensively on both statute and regulations revisions.

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.

The Division of Occupational Licensing has published public notices of all examinations, meetings and regulation changes. A period of time for public comment has also been available at each public meeting.

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

Each board meeting has time allotted for public comment. The public has been encouraged to use these public comment periods to express concerns and obtain information from the

board. The public comment period for regulations changes also assures that the public has the opportunity to participate in the regulatory 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.

During FY 90 through FY 93, the Division of Occupational Licensing investigative unit investigated 20 cases against pharmacies, pharmacists, and unlicensed pharmacists. Of these, all but one were handled in a timely and efficient manner. There were no complaints at the Office of the Ombudsman.

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

According to the board's June 30, 1993 Annual Report, 409 pharmacists are licensed by the State. Of these, 20 were licensed in FY 93. The board ensures the qualifications of these members through screening of applications, examination and continuing education requirements. In testing of the licensure procedures, we found no instances of the licensure of unqualified applicants.

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 form for the Board of Pharmacy contains several questions which have been questioned by EEO (see Recommendation No. 6).

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.

As discussed above and in Recommendation No. 4, the few statutory and regulatory changes made in the last few years have not kept pace with changing practices in the profession. The board has reviewed and approved a Model Pharmacy Act provided by The National Association of Boards of Pharmacy. The bill stemming from the model act would address many of the changes in the profession as well as the need for more meetings annually. At this point, the bill has neither been reviewed by legal counsel nor introduced by the administration or the legislature. Please also refer to the previous section, Findings and Recommendations.

APPENDICES

APPENDIX A

Department of Commerce and Economic Development
Board of Pharmacy
Schedule of Revenues Compared with Expenditures
(Unaudited)
(Note 1)

Revenues (Note 2)	\$49,630
Expenditures (Note 3)	<u>61,222</u>
Excess of Expenditures over Revenues (Note 3)	<u>\$(11,592)</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 fee determination. 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. Our understanding of the allocation methodology 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 their profession.

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

Application and Other Fees²

Type of Fee	Amount
Application	\$50
Examination fee	150
Temporary license	50
Emergency permit	90

License Fees

License Category	Initial and Biennial Renewal Fee ³
Pharmacist	\$180
Wholesale drug dealer	200
Retail pharmacy	200
Hospital pharmacy	200
Hospital drug room	200
Nursing home and related facilities for in-patient dispensing	200
Registered pharmacy located outside of the State	100
Pharmacy Intern	50

¹The licensing fees charged by the Division of Occupational Licensing for the Board of Pharmacy are set out in the Alaska Administrative Code at § 12 AAC 02.310. 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 period for the Board of Pharmacy is June 30, 1994.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 15, 1993

Mr. Randy S. Welker
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Mr. Welker:

I am responding to your request for a written response to preliminary audit report 08-1421-93 Department of Commerce and Economic Development, Board of Pharmacy dated October 26, 1993.

Three corrections to the report are as follows:

Page 7, Recommendation No. 2, 1st paragraph:

- 1) In the last three years, there have been no applicants from the Second Judicial District, and only one applicant from the Fourth Judicial District.
- 2) The previous board member from Fairbanks did not apply for reappointment to a second term.

Page 8, Recommendation No. 2, continued, 3rd paragraph:

3) No Board of Pharmacy members were recruited by the Office of the Governor to fill specific Board of Pharmacy positions. Members of the public were provided information about vacancies on boards and commissions, and individuals chose to apply for specific seats on specific boards. The Office of the Governor, Boards and Commissions, is pleased to continue statewide informational programs about participation on boards and commissions, and will continue to strive for balanced geographical representation on all statewide boards.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Kristie D. Leaf".

Kristie D. Leaf
Director, Boards and Commissions

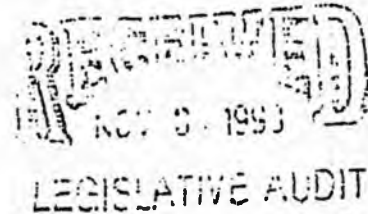
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 463-3841

November 29, 1993

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 (hereinafter "Audit") preliminary audit report of its sunset performance review of the Board of Pharmacy (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on Audit's preliminary findings and recommendations.

Response to Recommendation No. 1

The statutory provision for the Board of Pharmacy should be extended until June 30, 2003.

The Department concurs with this recommendation. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety and welfare.

Response to Recommendation No. 2

Office of the Governor, Boards and Commissions should appoint Board of Pharmacy members in accordance with Alaska Statute.

The Department concurs with this recommendation. However, it is out of the Department's control to see that this recommendation is implemented.

Response to Recommendation No. 3

The Board of Pharmacy should review pharmacy inspection procedures to ensure that pharmacies inspected are impartially selected and evaluated.

The Department concurs that pharmacies selected for inspection must be impartially selected and evaluated. If the Board is going to continue inspecting pharmacies, the Board should have the proper tools for such an inspection, i.e., standardized forms (checklist), guidelines for a pass or fail inspection, etc. The Board is in the process of rewriting their entire set of regulations, and in that rewrite has clarified that anytime there is a change of ownership or change in location of a pharmacy, an inspection would be required. Again, these are simply proposed regulations and have not even been put out for public comment.

An important question is whether the Board should continue with inspections. The Board continues to address this topic at board meetings, and the Department concurs that once a workable solution has been determined, that all steps must be clarified in regulation. However, there are many variables in considering a statewide inspection program, i.e., the vast size of the state, the location of board members, and the cost to inspect each pharmacy. The Department believes that it will be some time before this issue is fully settled, but strongly recommends that the inspection function be separated from the board's responsibility so that the board can act as an impartial body if and when licensing action is required.

Response to Recommendation No. 4

The Legislature should revise Board of Pharmacy statutes to reflect current pharmacy practices.

The Department concurs with this recommendation.

Response to Recommendation No. 5

The Department of Commerce and Economic Development (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.

During 1993, the division accomplished fee revisions for all program areas to reflect program expenses. The calculations were based upon all available data regarding direct and indirect program costs.

Concerns were voiced by various boards regarding their fee increases/program costs. Based on these concerns, the department requested an independent review by OMB of the procedures used in calculating expenses by the Office of Management and Budget. The OMB audit was completed 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.

OMB audit recommended a cap on incremental fee increases of no more than 10-25 percent per licensing period. This is problematic inasmuch as it places a limit on recovering the actual cost of licensing the profession. OMB budget

reviewers placed an even more restrictive cap of seven percent on the license fee this fiscal year. 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 board'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 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 economic hardships for licensees who may wish to renew their licenses, etc. The division will make requests for additional spending allocation to LB&A to alleviate these harsh consequences, but failing favorable consideration 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. It is a real possibility that data generated from the state accounting system for the purposes of this audit has changed from data obtained by division staff at the end of the fiscal year. Since appropriate division staff was not consulted regarding specific financial information, the division cannot agree with this finding until both audit and division staffs have had the opportunity to discuss this matter.

The recommendation of estimating time spent by certain job classes of employees stated in the OMB fee-setting policy assessment audit was implemented on July 1, 1993; and at the start of FY 94, the division prepared an FY 94 budget allocation for each licensing program.

In conclusion, DCED has attempted to work with the OMB auditor regarding this issue, but we have been informed that the audit is over and no more time will be allocated to this issue.

Response to Recommendation No. 6

OL should, in conjunction with the Equal Employment Office (EEO), review the Board of Pharmacy licensure application to assure that personal qualifications of a potential discriminatory nature are essential for prudent licensure.

The Department has been working towards updating all of its licensing applications with emphasis towards the American with Disabilities Act and also EEO concerns. Because of the many considerations involved in revising our applications and the number of professions affected, the Department is not rushing through this project to satisfy immediate concerns, but rather making a concerted effort to give this review the quality of thoroughness it deserves.

EEO's concerns that it may be difficult to prove that discrimination was not a factor in the denial of licensure (because the board had been provided a picture of an applicant) may be unnecessary. Specifically, license denials must be based upon a provision in the board's statutes or regulations. Denial notices must list the specific authority for rejection. We believe the procedures for denying an applicant, and the practice of listing the specific reasons for denial in the notice to the applicant provides adequate protection for the board from being subject to discrimination complaints. Further, your suggestion of separating the photo from an application prior to board review is questionable since licensing applications are public documents and we believe it would be inappropriate for division staff to withhold public information from the board.

Response to Recommendation No. 7

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

The Department concurs with Recommendation No. 6. A rewrite of AS 08.01 makes numerous revisions including amendments to the statutes cited in this recommendation. The rewrite includes revisions which make drafting minutes a Department responsibility. It also provides for 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 Department strongly disagrees that the annual report authority 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.

Response to Recommendation No. 8

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 recognized on behalf of the Department.

November 29, 1993

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/override 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 no. 8 which states: "Functionally, OL staff advise the professional licensing boards 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.

Thank you for this opportunity to respond. If my department can assist you in any other way, please let me know.

Sincerely,


Paul Fuhs
Commissioner

PF/JW/dgl5294D
112993b

cc: Karl Luck, Director, Division of Occupational Licensing