

HB

555

HFIN

FILE

HB 555 : re occupational licensing fees & receipts

(H. Rules)

[Union-amend HB 464]

★ adds fines & penalties
to the license fee calculation

★ changes how fees are established

FN #1 ✗ DCED/occup
Lic 2360 4.22.04

Subject: [Fwd: HB 464]

Date: Wed, 24 Mar 2004 15:14:07 -0900

From: Pat Davidson <pat_davidson@legis.state.ak.us>

To: Peter Ecklund <Peter_Ecklund@legis.state.ak.us>



This Message

Applies to HB 555

Hi Pete

This is the message I send to Henry Webb, LBA Committee staff about the suggested changes to HB 464.

Please let me know if you have any questions.

Pat

legal concern - due process ethics -

Subject: HB 464

Date: Thu, 18 Mar 2004 11:44:17 -0900

From: Pat Davidson <pat_davidson@legis.state.ak.us>

To: Henry Webb <Henry_Webb@legis.state.ak.us>

CC: rick_urion@dced.state.ak.us, jenny_strickler@dced.state.ak.us

public policy choice:
whether fees are set by the Board or the occupation

Hi Henry,

You asked that I put my thoughts down regarding the amendments proposed by Rick Urion from the Department of Community and Economic Development, Division of Occupational Licensing to HB464. This bill currently extends the termination date for the Board of Real Estate Appraisers.

This amendment covers two items.

1. Additions of fines and penalties

The public policy aspects of whether includes fines and penalties in determining the fees paid by licensees is certainly open for debate. However, I believe that there may be some legal concerns as well as policy concerns.

Jean Mischel from Legal Services has raised the question as to whether the inclusion of fines and penalties in the calculation of licensee fees would create a bias on the part of board members. Before fines or penalties can be assessed individuals have due process rights. Those rights include a fair hearing by an unbiased adjudicatory body (in this case the board). Ms. Mischel's concern is that linking fines and penalties to the licensing fees may, in some certain instances result in an unfair proceeding, because of bias on the part of the board that could be overturned by a court on due process grounds.

I hadn't thought about a due process argument, but had some concerns from an ethics perspective. After reviewing the Executive Branch Ethics Act, it appears that the direct linking of fines and penalties with licensing fees may put board members in violation of AS 39.52.120(b)(2) and (4). I have contacted Barbara Ritchie at the Department of Law for their opinion, but haven't heard back yet.

Whether there is a due process or ethics concerns comes down to materiality. If the effect on any individual member licensee fee is very small, then there won't really be a problem. However there are some boards with a very small pool of licensees - such as the Board of Direct Entry Midwives which has between 25 to 30 licensees, and the effect of a penalty may not be immaterial.

Since the amendment is to the centralized licensing statute it will apply to all the boards. Therefore it must be constructed so that no board members are put in a position to violate ethics or due process regardless of the size of the fine being assessed or the number of licensees.

I will keep you apprised of any new information coming in from the Department of Law regarding the ethics issue.

2. Fees established at board not occupation level

Besides adding fines and penalties to the license fee calculation it also changes how the fees are to be established.

This amendment will also change how the fees are to be calculated. Currently the statutes require that the fees be established so they will cover the cost incurred by an occupation. This amendment would change that so the fees would be set so they would, collectively, cover the cost of the board which oftentimes includes more than one occupation.

We can use the Board of Dental Examiners to illustrate the effect of this change. Assume the Board undertook a project to update regulations relating to the practice of dentistry. In addition to involvement of the board members there would be time spent by the Division's regulation specialist and attorney's in the Department of Law.

Under the existing statutes, the costs for the project, including the regulation specialist and the Department of Law would be covered by the fees paid for by dentists. Under the amended statute, the additional costs of the project would be paid for by not only dentists but also dental hygienists, who are also licensed by the Board of Dental Examiners.

Whether the fees are set at the board or occupation is a public policy choice. I just make a note of it so that it can be thoroughly discussed during the committee hearings.

I've cc'd this to Rick Union and Jennifer Strickler from Occupational Licensing and I'm sure they will correct me for anything that I've missed.

Let me know if you have any questions.

Pat

Alaska State Legislature

House of Representatives



Official Business

COMMITTEE ON RULES
Representative Norman Rokeberg, Chairman

State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

SPONSOR STATEMENT HOUSE BILL 555

"An Act relating to occupational licensing fees and receipts"

House Bill 555 would require that:

- a) Return of any fines and penalties collected as the result of a decision by a licensing Board or Commission to the Division to help offset its regulatory costs;
- b) Clarifies that total amount of fees together with fines and penalties, shall approximately equal the total actual costs of the board and department of all occupations regulated by the board.

Currently, fines and penalties are recorded as restricted revenue; however, occupational licensing is not allowed to use the fines and penalties to help offset actual costs. The Board or Commission does not receive any reimbursement for the cost of investigating a complaint or taking disciplinary action against a licensee. Current law requires that licensees of the Board or Commission must pay for the total cost of that licensing board. Since investigations and/or disciplinary actions are part of the total costs, licensing fees are increased to cover those costs. Under HB 555, relief would be granted to the licensees, as they would not be required to pay for the entire enforcement costs of the Board or Commission. This is a fairer way to handle these fines and penalties than the current system.

Current law also requires each occupation regulated by a Board to pay its own costs. This is not always practicable and some Boards have chosen to increase fees in certain occupations to shoulder greater costs than other occupations within the same Board to support the profession as a whole (for example, registered nurse fees support some of the nurse aide costs). HB 555 provides clarification to support this practice.

Your support for this legislation would be appreciated.

Alaska State Legislature

House of Representatives



Official Business

COMMITTEE ON RULES Representative Norman Rokeberg, Chairman

State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

SECTIONAL ANALYSIS

House Bill 555

Prepared by Rep. Norman Rokeberg, Chairman

- Section 1: Amends current language on occupational licensing fees so that fines and penalties assessed by a Board or Commission would be returned to the Department. Requires that each Board collect enough funds from licensees to pay for the total actual costs for all occupations regulated by a board.
- Section 2: Amends statutes concerning the Architects, Engineers, and Land Surveyors Board to require that fee levels are the same for all occupations regulated by this Board.
- Section 3: Amends statutes concerning the Audiologists and Speech Pathologists to require that fee levels are the same for all occupations regulated under AS 08.11 (Audiologists and Speech Pathologists).
- Section 4: Amends statutes concerning the Construction Contractors to require that fee levels are the same for all occupations covered under AS 08.18 (Construction Contractors). These occupations include: general contractors, specialty contractors, residential contractors, electrical contractors, mechanical contractors, and home inspectors.)
- Section 5: Amends the Fiscal Procedures Act to conform to Sections 1-4 of this legislation.
- Section 6: Repeals 08.95.920 regarding unified occupations under the laws addressing the Board of Social Work Examiners.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
 Bill Version: HB 555
 () Publish Date:

Revision Date/Time (Note if correction): Dept. Affected: DCED
 Title Occupational Licensing RDU Occupational Licensing (117)
Fees and Receipts Component Occupational Licensing
 Sponsor House Rules
 Requester House Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 GF						
1005 GF/Program Receipts						
1037 GF/ Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 HB 555 allows fines and penalties to be included when setting fees to ensure the total amount collected approximately equals the total actual costs. Under the self-sufficiency statute, AS 08.01.065, licensing programs are responsible to pay their total costs, including investigations and disciplinary actions, yet the fines and penalties collected currently go to the general fund. This bill clarifies the handling of fines and penalties, and also clarifies that all occupations within a Board must support total actual costs of the Board and the Department for all occupations regulated by that Board.

 An annual estimate of fines and penalties collected is \$65.9. This is based on an average of fines collected in the last three fiscal years (FY03: \$101.7; FY02: \$35.7; FY01: \$60.4). Fines and penalties change annually depending on the number of investigations and disciplinary actions.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division Occupational Licensing Date/Time 4/22/04 1:33 PM
 Approved by: Edgar Blatchford, Commissioner Date 4/22/2004
 Agency Department of Community and Economic Development