# HB 126

<TARGET><BILL>HB 126</BILL><SUBJECT>HB 126</SUBJECT><COMM>HFIN27</COMM></TARGET>

# HOUSE COMMITTEE REPORT

(11)

**Date Referred to Committee: February 14, 2011** **FURTHER REFERRALS:**

**Date of Committee Action:** 3/8/11

**The FINANCE Committee considered:** **HB 126**

**HOUSE BILL NO. 126**
**"An Act extending the termination dates of the Board of Nursing, the Board of Dental Examiners, the Board of Barbers and Hairdressers, the Regulatory Commission of Alaska, and the Alcoholic Beverage Control Board; and providing for an effective date."**

**HB 126 OMNIBUS BOARD EXTENSIONS**

**Recommends it be replaced with [ ] HCS** *or* **[√] CS** *for* HB 126 (FIN)
*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____ **[ ] Same Title [√] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

*List of Abbrev for Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*FN# is assigned by Chief Clerk's Office

| *FN# | List by Dept(s): | Fiscal | Indet. | Zero |
|---|---|---|---|---|
| | CED | √ | | |

***PREVIOUS* FISCAL NOTES**

| FN# | List by Dept(s): | Fiscal | Indet. | Zero |
|---|---|---|---|---|
| | | | | |

| Signing with recommendations | Printed Last Name | DP | DNP | NR | AM |
|---|---|---|---|---|---|
| Anna L Fairclough | FAIRCLOUGH | √ | | | |
| [illegible] | Gara | | | √ | |
| Mike Dogan | DOGAN | √ | | | |
| Tammie Wilson | T WILSON | | | √ | |
| [illegible] | NEUMAN | √ | | | |
| [illegible] | COSTELLO | √ | | | |
| Bryce Edgmon | Edgmon | | | √ | |
| [illegible] | GUTTENBERG | | | √ | |
| [illegible] | Joule | √ | | | |
| Chair: [illegible] | Stoltze | √ | | | |
| Chair: [illegible] | Thomas | √ | | | |

# FISCAL NOTE

**STATE OF ALASKA**
**2011 LEGISLATIVE SESSION**

Fiscal Note Number
Bill Version: HB 126
() Publish Date

Identifier (file name) HB126-CCED-CBPL-02-16-11
Dept. Affected: DCCED

Title: Omnibus Board Extentions
Appropriation: Corporations, Business and Professional Licensing

Sponsor: Rules by request of Leg. Budget & Audit
Allocation: Corporations, Business and Professional Licensing
Requester: House Labor & Commerce
OMB Component Number: 2360

**Expenditures/Revenues** (Thousands of Dollars)

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

| | Appropriation Required | Information | | | | | |
|---|---|---|---|---|---|---|---|
| **OPERATING EXPENDITURES** | **FY 2012** | **FY 2012** | **FY 2013** | **FY 2014** | **FY 2015** | **FY 2016** | **FY 2017** |
| Personal Services | | 979.0 | 979.0 | 979.0 | 979.0 | 979.0 | 979.0 |
| Travel | | 62.5 | 62.5 | 62.5 | 62.5 | 62.5 | 62.5 |
| Services | | 380.5 | 380.5 | 380.5 | 380.5 | 380.5 | 380.5 |
| Commodities | | 9.9 | 9.9 | 9.9 | 9.9 | 9.9 | 9.9 |
| Capital Outlay | | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Grants | | | | | | | |
| Miscellaneous | | | | | | | |
| **TOTAL OPERATING** | **0.0** | **1,431.9** | **1,431.9** | **1,431.9** | **1,431.9** | **1,431.9** | **1,431.9** |
| **CAPITAL EXPENDITURES** | | | | | | | |
| **CHANGE IN REVENUES** | | | | | | | |

**FUND SOURCE** (Thousands of Dollars)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | | |
| 1003 GF Match | | | | | | | |
| 1004 GF | | | | | | | |
| 1005 GF/Program Receipts | | | | | | | |
| 1037 GF/Mental Health | | | | | | | |
| 1156 Receipt Support Services | | 1,431.9 | 1,431.9 | 1,431.9 | 1,431.9 | 1,431.9 | 1,431.9 |
| **TOTAL** | | **1,431.9** | **1,431.9** | **1,431.9** | **1,431.9** | **1,431.9** | **1,431.9** |

**Estimate of any current year (FY2011) cost** _____

**POSITIONS**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

**Why this fiscal note differs from previous version**

**This fiscal note combines the three previous fiscal notes from the Division of Corporations, Business and Professional Licensing into one.**

Prepared by: Don Habeger, Director — Phone 465-2536
Division: Corporations, Business and Professional Licensing — Date/Time 2/17/11 8:00 AM
Approved by: Susan K. Bell, Commissioner — Date 2/17/2011
Commerce, Community and Economic Development

Revised 12.29.2010 OMB)

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 126

## Analysis

HB 126 extends the Board of Nursing to June 30, 2019. In accordance with AS 08.03.020 funding extends one year following the termination date allowing the Board to conclude its affairs. The FY2012 funding is included in the Operating Budget request and costs shown are an average of direct costs for a biennial license period.

Personal Service cost include an Executive Administrator, Records & Licensing Supervisor, two Investigators, Office Assistant I, three Licensing Examiners and other support staff who directly charge a portion of their time to the board. Travel expenses represent transportation and per diem for the seven member board and one staff to meet in accordance with AS 08.68.080. Services includes contractual obligations, interdepartmental support costs, legal, printing and other necessary services. Commodities include small equipment and business supplies.

The program is required to cover costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs of $1,070.8.

New funds are not required to implement this bill.

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HB 126 extends the Board of Dental Examiners to June 30, 2019. In accordance with AS 08.03.020 funding extends one year following the termination date allowing the Board to conclude its affairs. The FY2012 funding is included in the Operating Budget request and costs shown are an average of direct costs for a biennial license period.

Personal Service cost include a full-time licensing examiner and other support staff who directly charge a portion of their time to this board. Travel expenses represent transportation and per diem for the nine member board and one staff to meet in accordance with AS 08.36.040. Services includes contractual obligations, interdepartmental support costs, legal, printing and other necessary services. Commodities include small equipment and business supplies.

The program is required to cover costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs of $200.9.

New funds are not required to implement this bill.

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HB 126 extends the Board of Barbers and Hairdressers to June 30, 2019. In accordance with AS 08.03.020 funding extends one year following the termination date allowing the Board to conclude its affairs. The FY2012 funding is included in the Operating Budget request and costs shown are an average of direct costs for a biennial license period.

Personal Service cost include a full-time licensing examiner and other support staff who directly charge a portion of their time to this board. Travel expenses represent transportation and per diem for six board member and one staff to meet each year in accordance with AS 08.13.040. Services include contractual obligations, interdepartmental support costs, legal, printing and other necessary services. Commodities include small equipment and business supplies.

The program is required to cover costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs of $160.2.

New funds are not required to implement this bill.

# CS FOR HOUSE BILL NO. 126(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

**BY THE HOUSE FINANCE COMMITTEE**

**Offered:**
**Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE**

## A BILL

## FOR AN ACT ENTITLED

**"An Act extending the termination dates of the Board of Nursing, the Board of Dental Examiners, and the Board of Barbers and Hairdressers; and providing for an effective date."**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

* **Section 1.** AS 08.03.010(c)(4) is amended to read:

(4) Board of Barbers and Hairdressers (AS 08.13.010) - June 30, **<u>2019</u>** [2011];

* **Sec. 2.** AS 08.03.010(c)(7) is amended to read:

(7) Board of Dental Examiners (AS 08.36.010) - June 30, **<u>2019</u>** [2011];

* **Sec. 3.** AS 08.03.010(c)(13) is amended to read:

(13) Board of Nursing (AS 08.68.010) - June 30, **<u>2019</u>** [2011];

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

EXEMPTION FROM AS 44.66.050(e). This Act is exempt from the provision of

1 AS 44.66.050(e) that prohibits a bill from reestablishing more than one board or commission.

2 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

Adopted 3/8/11

27-LS0321\I
Kirsch
3/1/11

# CS FOR HOUSE BILL NO. 126(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

**BY THE HOUSE FINANCE COMMITTEE**

**Offered:**
**Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE**

## A BILL

## FOR AN ACT ENTITLED

**"An Act extending the termination dates of the Board of Nursing, the Board of Dental Examiners, and the Board of Barbers and Hairdressers; and providing for an effective date."**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

* **Section 1.** AS 08.03.010(c)(4) is amended to read:

(4) Board of Barbers and Hairdressers (AS 08.13.010) - June 30, **2019** [2011];

* **Sec. 2.** AS 08.03.010(c)(7) is amended to read:

(7) Board of Dental Examiners (AS 08.36.010) - June 30, **2019** [2011];

* **Sec. 3.** AS 08.03.010(c)(13) is amended to read:

(13) Board of Nursing (AS 08.68.010) - June 30, **2019** [2011];

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

EXEMPTION FROM AS 44.66.050(e). This Act is exempt from the provision of

1 AS 44.66.050(e) that prohibits a bill from reestablishing more than one board or commission.

2 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature
HOUSE FINANCE COMMITTEE
Agenda
9:00 AM

Tuesday, March 8, 2011

HB 13-WORKERS' COMPENSATION: MEDICAL FEES
HB 80-SELF DEFENSE
HB 126-OMNIBUS BOARD EXTENSIONS
NEW CS WORK DRAFT 27-LSO32\I
NEW FN CED $ component 2360 replaces #1,2,3
NEW FN CED $ component 2417 replaces #4

3/8/11

# Alaska State Legislature
# Legislative Budget & Audit Committee

*Interim:*
**716 West 4th Ave**
**Anchorage, Alaska 99501**
**(907) 269-0244**

*Session:*
**State Capitol Building**
**Juneau, Alaska 99801**
**(907) 465-4949**

Representative Mike Hawker, Chairman

## House Bill 126
## Sponsor Statement

### Short Title: Omnibus Board Extensions

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House Bill 126 extends four boards and one commission which would otherwise expire in 2011.

The Board of Barbers and Hairdressers would be extended to June 30, 2019; the Board of Dental Examiners to June 30, 2019; the Board of Nursing to June 30, 2019; the Alcoholic Beverage Control Board to June 30, 2015; and the Regulatory Commission of Alaska to June 30, 2019.

The sunset dates in House Bill 126 are as recommended by auditors to the Legislative Budget and Audit Committee.

The bill also creates an exemption from a statute that prohibits a single bill reauthorizing more than one board or commission. The omnibus extension is a more efficient mechanism for routine board and commission extensions. This approach is particularly appropriate in the context of a 90-day legislative session.

3/8/11

# Division of Legislative Audit

## Report Digest #08-20067-11

SUMMARY: A Sunset Review on the Department of Commerce, Community, and Economic Development (DCCED), Regulatory Commission of Alaska (RCA), October 16, 2010

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the RCA. The purpose of this audit was to determine if there is a demonstrated public need for its continued existence and if it has been operating in an effective manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the RCA should be reestablished. Currently, under AS 44.66.050(a)(3), the RCA will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

REPORT CONCLUSIONS

In our opinion, the RCA fulfills a public need and is serving Alaskans by:

- Assessing the capabilities of utility and pipeline companies to safely serve the public;
- Evaluating tariffs and charges made by regulated entities;
- Verifying the pass-through charges to consumers from electric and natural gas utilities;
- Adjudicating disputes between ratepayers and regulated entities;
- Providing consumer protection services; and
- Performing financial reviews of utilities for the State's power cost equalization program.

Under AS 44.66.010(a)(3), the RCA is scheduled to terminate June 30, 2011. We recommend the legislature extend the RCA's termination date until June 30, 2019.

FINDINGS AND RECOMMENDATIONS

The prior sunset audit recommended improvements in three areas: (1) establishing timelines for matters not covered by statute; (2) establishing standards for certain aspects of discovery; and (3) clarifying terms used in statute that relate to established timelines for certain formal proceedings.

In May 2007, HB 209 amended the statutory timelines in AS 42.05.175 to include a new section for other adjudicated matters. The amendment also modified the timeframes from months to days. The concerns related to this part of the prior audit recommendation have substantially been addressed.

The concerns related to discovery standards have not been addressed, but the RCA is currently in the process of evaluating industry and public input on discovery regulations.

The third part of the prior audit recommendation states that the RCA should clarify terms used in statute that relate to established timelines for certain formal proceedings. Specific terms include complete applications, tariff filings, formal complaints and petitions. The RCA adopted new regulations specific to complete and incomplete applications. The RCA management stated that no regulations were adopted for the terms complete tariff filings, formal complaints, and petitions.

The prior recommendation also suggested that an alternative solution could be to clarify terms by developing the practice of issuing an order to memorialize the date when the initial record is considered complete. The RCA did implement this practice by issuing an initiating order on each matter which calculates and identifies the statutory deadline. Parties disputing the calculation of the statutory deadline may petition the RCA for reconsideration within 15 days of the initiating order. Under this revised procedure, the statutory deadline is known and communicated to all parties early in the proceeding.

In summary, the overall recommendation has been partially resolved.

3/8/11

# 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
legaudit@legis.state.ak.us

December 14, 2010

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA
SUNSET REVIEW

October 16, 2010

Audit Control Number

08-20067-11

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Currently, under AS 44.66.010(a)(3), the Regulatory Commission of Alaska is scheduled to terminate on June 30, 2011. In our opinion, the termination date for this commission should be extended. We recommend the legislature extend the termination date to June 30, 2019.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson, CPA
Legislative Auditor

# TABLE OF CONTENTS

# OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Regulatory Commission of Alaska (RCA) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process to determine whether the RCA should be reestablished. Currently, under AS 44.66.010(a)(3), the board will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

## Objectives

The RCA was created to regulate public utilities and pipeline carriers. In regulating public utilities and pipeline carriers, the RCA's activities include certificating qualified providers of public utility and pipeline service, and ensuring reliable services and facilities at just and reasonable rates, terms, and conditions.

To this end, the primary objective of this audit was to determine whether there is a public need for the RCA and if its existence should be extended.

The secondary objective was to determine if the RCA is serving the public's interest in its commissions and administrative activities.

## Scope

Alaska Statute 44.66.050 outlines the factors to be considered in determining whether the RCA has demonstrated public need for its continued existence. We reviewed the RCA activities that occurred between FY 07 and FY 10.

## Methodology

In order to meet the various objectives of the audit:

- We evaluated a statistical sample of 73 dockets[1] and a statistical sample of 73 tariff filings[2] to determine that dockets and tariff filings were processed within the applicable, if any, statutory timeline or within tariff regulations.

[1]The sample included: 62 utility dockets, 8 pipeline dockets, and 3 rule-making dockets.
[2]The sample included: 63 utility tariffs, 7 pipeline tariffs, and 2 interexchange tariffs.

- We reviewed the RCA regulation changes and board minutes for adequate public notice and public comment.

- We reviewed proposed legislation and related testimony for statutory changes and the RCA's position.

- We generated ALDER management reports to prepare a schedule of revenues and expenditures for FY 07 through FY 10.

- We examined a random sample of 25 power cost equalization eligible non-regulated utilities to determine if the RCA was performing reviews of annual financial reports.

- We interviewed the RCA's Consumer Protection Section and American Association of Retired Persons (AARP) representatives on the extent of the RCA public outreach efforts.

- We analyzed consumer complaints received during July 1, 2006 to April 9, 2010, to assess the timely processing of the complaints. On a sample basis, we also selected 25 consumer complaints for examination of compliance with the RCA regulations and procedures.

- We reviewed appealed RCA decisions to determine the status of the decision and the explanation for the court remanding the appealed decisions back to the RCA.

- We evaluated the reliability of certain data maintained in the commission database.

- We surveyed a sample of representatives from public utilities, pipeline companies, and individuals who were party to formal proceedings or tariff filings during July 1, 2006 through April 9, 2010. We also surveyed a sample of parties involved in informal complaints during the same time period.

**Exhibit 1**

| Survey Group | Response Rate |
|---|---|
| Utility Dockets | 42% |
| Rule-making Dockets | 44% |
| Pipeline Dockets | 21% |
| Tariff Filings | 41% |
| Informal Complaints | 26% |

- We interviewed the RCA staff, commissioner, and various individuals from other state agencies. We also contacted the State Ombudsman, the Office of Victims' Rights, the Alaska State Human Rights Commission, the United States Equal Employment Opportunity Commission, the Alaska Labor Relations Agency, and the equal employment opportunity staff within the Department of Administration.

# ORGANIZATION AND FUNCTION

The Regulatory Commission of Alaska (RCA) was created July 1, 1999, upon reorganization of the Alaska Public Utilities Commission by Ch 25, SLA 99. Under state law, the RCA is responsible for ensuring safe, adequate, and fair public utility and pipeline services. This is to be done by allowing regulated entities to charge users rates and provide service in a manner consistent with the interests of both the public and regulated entity. The RCA has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

The RCA regulates pipeline, telephone, electric, natural gas, water, sewer, refuse, cable TV, and heat services through a certification process. A public utility or pipeline company must obtain a certificate of public convenience and necessity, which describes the authorized service area and scope of operations. A certificate is issued when the RCA formally finds the applicant to be fit, willing, and able to provide the service requested.

In addition to the certification process, the RCA also may economically regulate the rates, classifications, rules, regulations, practices, and services of public utility facilities, and pipeline carriers covered by Alaska Statutes. The RCA determines whether the rates being charged or proposed by regulated entities are fair, just, and reasonable.

The RCA records in dockets the activities relating to certification and regulation of public utilities and pipeline carriers; resolution of formal complaints; and adoption of regulations. These dockets are categorized into three types: utility, pipeline, and regulatory. (See Exhibit 3 on page 10.)

As shown in Exhibit 2, the RCA consists of five commissioners. The commissioners are appointed by the governor, confirmed by the legislature for six-year terms, and must either be a member of the Alaska Bar Association or have a degree in engineering, finance, economics, accounting, business administration, or public administration from an accredited college or university. The RCA's staff includes administrative law judges, engineers, financial analysts, telecommunications specialists, tariff analysts, consumer protection officers, paralegals as well as administrative and support staff. The RCA also receives legal advice from counsel assigned to it by the Department of Law.

**Exhibit 2**

| Regulatory Commission of Alaska Members |
|---|
| Robert Pickett, Chair<br>Term expires March 2014 |
| T.W. Patch<br>Term expires March 2016 |
| Kate Giard<br>Term expires March 2013 |
| Paul Lisankie<br>Term expires March 2015 |
| Jan Wilson<br>Term expires March 2012 |

The staff of RCA is organized around seven major functions: administration, administrative law, finance, tariff, engineering, common carriers, and consumer protection. The RCA had

57 permanent funded positions[3] in its $8 million FY 10 operating budget. A brief description of the services provided by each RCA function is as follows.

- Administration: This function is responsible for fiscal and personnel administration, budget preparation, and records management - including the case management system. The commission chair is responsible for this function and is aided by an administrative manager, a commission section manager, an advisory section manager, documents processing and accounting personnel, and other clerical support staff.

- Administrative Law: This function is responsible for setting procedural schedules for dockets, making discovery and evidentiary rulings, issuing procedural orders, conducting hearings, advising commissioners on legal issues in pending dockets, and drafting the RCA orders. An administrative law judge is assigned to each docket shortly after it is opened and, along with an assigned commissioner and staff docket manager, works on the docket until it is closed.

- Finance: This function examines, analyzes, and evaluates financial statements submitted for rate cases. The finance staff audits financial records of utilities and pipeline companies and examines historical operating year data and pro forma adjustments. These analyses are presented at proceedings before the RCA.

- Tariff: This function examines, analyzes, and investigates tariff filings and presents recommendations to the RCA at biweekly tariff action meetings. Administrative duties include organizing those meetings, ensuring that public notice requirements on tariff filings are met, and maintaining current master tariffs for all utilities.

- Engineering: This function is responsible for certification proceedings and the investigation of utility and pipeline company procedures and practices affecting service quality. The engineering staff also reviews legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. These analyses are presented in proceedings before the RCA.

- Common Carriers: This function develops, recommends, and administers policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications common carriers within the State involving the use of wire, cables, radio, and space satellites.

- Consumer Protection: This function investigates and resolves informal consumer complaints, and is responsible for public affairs and media relations as well as responding to information requests.

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[3]This total does not include three non-permanent positions and the assistant attorney general that the Department of Law furnishes to RCA through a reimbursable services agreement.

# REPORT CONCLUSIONS

In developing our conclusion regarding whether the termination date of the Regulatory Commission of Alaska (RCA) should be extended, we evaluated RCA operations using the 11 factors set out in AS 44.66.050. Under the State's "sunset" law, these factors are to be used in assessing if an agency has demonstrated a public policy need for continuing operations.

In our opinion the RCA fulfills a public need and is serving Alaskans by:

- Assessing the capabilities of utility and pipeline companies to safely serve the public;
- Evaluating tariffs and charges made by regulated entities;
- Verifying the pass-through charges to consumers from electric and natural gas utilities;
- Adjudicating disputes between ratepayers and regulated entities;
- Providing consumer protection services; and
- Performing financial reviews of utilities for the State's power cost equalization program.

Under AS 44.66.010(a)(3), the RCA is scheduled to terminate June 30, 2011. We recommend the legislature extend the RCA's termination date until June 30, 2019.

(Intentionally left blank)

# FINDINGS AND RECOMMENDATIONS

In our previous sunset audit,[4] we made one recommendation. The recommendation was for the Regulatory Commission of Alaska (RCA) to develop regulations that would enhance the transparency, accountability, and efficiency of the RCA's decision making process. The recommendation included three areas for improvement: (1) establishing timelines for matters not covered by statute; (2) establishing standards for certain aspects of discovery; and (3) clarifying terms used in statute that relate to established timelines for certain formal proceedings. This overall recommendation has been partially resolved.

In May 2007, HB 209 amended the statutory timelines in AS 42.05.175 to include a new section for other adjudicated matters. The amendment also modified the timeframes from months to days. The concerns related to this part of the prior audit recommendation have substantially been addressed.

The second part of the recommendation stated that the RCA should establish standards for certain aspects of discovery. The RCA opened a docket in October 2006 to seek comments from regulated entities and interested parties regarding potential regulation projects that should be viewed as priorities. One of the potential projects noted in the docket is regulations for discovery. However, no action was taken regarding discovery regulations, and the 2006 regulations docket was subsequently closed. In May 2010, the RCA opened another docket to solicit comments on discovery regulations. The docket states:

> *We are required by AS 42.05.175(e) to issue a final decision in a rulemaking proceeding not later than 730 days after the order initiating the proceeding is issued. However, until we have received public comment and evaluated the availability of staff resources, we will not know whether it is appropriate to initiate one or more rule-making proceedings, and, if so, the proper scope and subject matter of those proceedings. Consequently, we may close this docket without further action once we complete our information gathering effort, or we may issue one or more orders initiating separate rule-making proceedings.*

Comments were received, and the RCA is currently in the process of reviewing the comments in order to assess if one or more orders initiating separate rule-making proceedings are necessary. The concerns related to this part of the prior audit recommendation have not been addressed, but the RCA is currently in the process of evaluating industry and public input on discovery regulations.

The third part of the prior audit recommendation states the RCA should clarify terms used in statute that relate to established timelines for certain formal proceedings. Specific terms

[4]Department of Commerce, Community and Economic Development; Regulatory Commission of Alaska, Sunset Review, October 20, 2006, Audit Control No. 08-20048-06.

include *complete*: applications, tariff filings, formal complaints and petitions. The RCA adopted new regulations specific to complete and incomplete applications.[5] The RCA's management stated that no regulations were adopted for the terms *complete*: tariff filings, formal complaints, and petitions.

The prior recommendation also suggested an alternative solution to clarifying terms by developing a practice of issuing an order to memorialize the date when the initial record is considered complete. The RCA did implement this practice by issuing an initiating order on each matter which calculates and identifies the statutory deadline. Parties disputing the calculation of the statutory deadline may petition the RCA for reconsideration within 15 days of the initiating order. Under this revised procedure, the statutory deadline is known and communicated to all parties early in the proceeding.

[5] 3 AAC 48.648 "Complete Applications" and 3 AAC 48.650 "Incomplete Applications."

# ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Regulatory Commission of Alaska (RCA) is operating in the public's interest. The RCA identifies its core services as the following:

1. Thoroughly review utility and pipeline filings for compliance and approval.
2. Clear guidance to utility and pipeline service providers.
3. Ensure Alaska's interests are considered in the development of federal legislation and regulation.
4. Dispute resolution involving regulated entities.
5. Public information and education to enhance the public's understanding and use of utility and pipeline services.

In carrying out its responsibilities, the RCA acts much of the time in a quasi-judicial manner. Accordingly, decisions must be supported by findings of fact, and the findings of fact must be based solely upon the evidence as it appears in the record of a given proceeding. The RCA implemented a new practice beginning in FY 08 for the RCA's legal counsel to review final orders ensuring final decisions are based on evidentiary record and contain justification for the decision reached. Review of final orders from a sample of utility dockets indicates that the RCA has substantially implemented this new practice. The RCA continues to be very concerned about affording all parties involved in a given decision appropriate due process, while at the same time being responsive to concerns about the timeliness of its decision making process.

The RCA has responded well to legislative concerns about timeliness. In 2007, the legislature amended the RCA's statutory timeline requirement by adding AS 42.05.175(i) to address other adjudicated matters that were not already subject to a federal law, state law, or statutory timeline of AS 42.05.175(a)-(e). We reviewed a sample of formal proceedings

subject to statutory timelines[6] and a sample of tariff filings subject to regulatory timelines.[7] Testing showed that the RCA was in compliance with its statutory and regulatory timelines.[8]

**Exhibit 3**

**Regulatory Commission of Alaska Dockets**
**FY 07 – FY 10**

| Docket Type | Utility | Pipeline | Regulatory | Total |
|---|---|---|---|---|
| FY 07 | | | | |
| Open as of July 1, 2006 | 75 | 17 | 13 | 105 |
| Opened during FY 07 | 150 | 18 | 6 | 174 |
| Closed during FY 08 | 142 | 17 | 7 | 166 |
| FY 08 | | | | |
| Open as of July 1, 2007 | 83 | 18 | 12 | 113 |
| Opened during FY 08 | 166 | 16 | 5 | 187 |
| Closed during FY 08 | 163 | 12 | 5 | 180 |
| FY 09 | | | | |
| Open as of July 1, 2008 | 86 | 22 | 12 | 120 |
| Opened during FY 09 | 154 | 13 | 5 | 172 |
| Closed during FY 09 | 146 | 7 | 5 | 158 |
| FY 10 (as of April 9, 2010) | | | | |
| Open as of July 1, 2009 | 94 | 28 | 12 | 134 |
| Opened during FY 10 | 76 | 13 | 1 | 90 |
| Closed during FY 10 | 66 | 5 | 1 | 72 |

Source: The RCA Case Management System

Exhibit 3, details the number of dockets the RCA processed for FY 07 through FY 10. The RCA opened 175 dockets, on average, over the three year period of FY 07 through FY 09. Additionally, the RCA closed, on average, almost 170 dockets for the same three year period.

Surveys were sent to representatives from utility and pipeline companies who were parties to a sample of formal proceedings or tariff filings presented before the RCA during FY 07 through April 2010. Surveys were also sent to a sample of consumers who filed an informal complaint with the RCA during the same time period. Over the past three years, approximately 85% of survey respondents stated that the RCA's overall operations stayed the

[6]Alaska Statute 42.05.175(a)-(i)
[7]3 AAC 48.220 – 3 AAC 48.280
[8]RCA management reported during our sunset audit that there were two tariff filings that went into effect without the required commission approval.

same or improved. Additionally, comments from two utility survey respondents regarding the RCA serving the public interest stated:

- *Sometimes it is more important to carry out the RCA's purpose of protecting the public than it is to "be efficient."*

- *Continue the good public service.*

The RCA's efforts at resolving consumer complaints with regulated utilities also serve the public's interest. The commission resolves most informal complaints within 45 days. Most of the respondents to the informal complaint survey reported that the RCA's complaint resolution process was efficient.

***Determine 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.***

During FY 07, the RCA created an administrative law section comprised of four administrative law judges (ALJs) and a professional support staff. The RCA made this change based on input from regulated entities seeking streamlined pre-hearing and hearing processes as well as enhanced quality and timeliness of commission orders. The ALJs set procedural schedules for dockets, make discovery and evidentiary rulings, issue procedural orders, conduct hearings, advise the RCA on legal issues in pending dockets, and draft RCA orders. An ALJ is assigned to each docket shortly after it is opened and, along with an assigned commissioner and staff docket manager, oversees the processing of the docket until it is closed.

Although over half the utility survey respondents felt the efficiency of the RCA's hearing process did not change in the last three years, a third felt that the process is more efficient now. Utility survey respondents suggested the following areas for improvement in the efficiency of the hearing process:

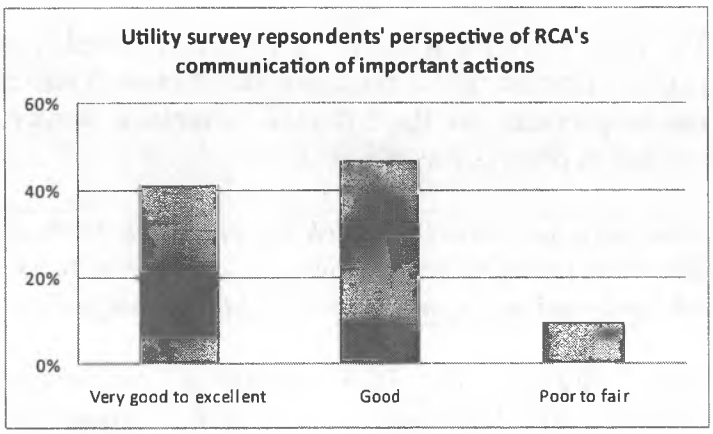
- Utilizing the ALJs for discovery and evidentiary rulings;
- Requiring only three commissioners to sit on the hearing panel; and
- Limiting the number of issues to be addressed and ensuring they are defined and fully explained.

Also, during FY 07, the RCA implemented the new procedure of issuing an initiating order that identifies: (1) the statutory or regulatory authority and timeline; (2) the RCA panel assigned to the docket; and (3) the ALJ assigned to the docket. The initiating order should document the application completion date, tariff filing date, or petition date. These dates are critical as they trigger the statutory timeline.

The RCA conducts two docket status meetings each month to review open dockets and the associated statutory timelines to ensure the dockets: will be evaluated, will proceed to the hearing process, and a final order will be issued prior to the statutory timeline. Additionally, the RCA monitors its tariff filings to ensure timelines are met and holds two tariff action meetings each month to approve tariff filings.

Almost all the utility survey respondents involved in formal proceedings before the RCA reported that they were informed by the RCA of the statutory timelines related to their dockets. As illustrated in Exhibit 4, over 40% of the utility survey respondents stated that the RCA's communication of important matters related to their formal proceeding was very good to excellent and almost 50% said that communication was good.

**Exhibit 4**




The RCA's total expenditures remained relatively stable from FY 07 through FY 10. The funding source for almost all of these expenditures was the regulatory cost charges paid by regulated entities. The RCA's total revenues remained stable between FY 07 and FY 09; however in FY 10, the RCA had $900,000 more in revenues than in expenditures. Appendix A summarizes the RCA's revenues and expenditures for FY 07 through FY 10.

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

During FY 07, the RCA opened a docket requesting recommendations for statutory revisions and sought comments on five specific areas of potential statutory reform.[9] The RCA invited two rounds of comments, held a public workshop and a public hearing, and discussed the proposed statutory revisions at three public meetings. The RCA then voted to transmit several proposed statute changes to include revising:

- Public utility and pipeline carrier regulatory costs;
- Civil penalties for public utilities and pipeline carriers;
- Timeliness for issuance of final orders;
- Potential conflict of interest of legal counsel;

[9]The areas were: (1) a specific statutory interest rate or interest formula to apply to refund obligations; (2) an increase to the statutory exemption levels in AS 42.05.711; (3) statutory timelines for AS 42.05 and AS 42.06 matters not currently subject to timelines; (4) updated civil penalties; and (5) statutory authorization for the chairman to appoint ALJs to hear certain types of cases and present proposed decision.

- Partially exempt position structures; and
- Qualification levels for commissioners.

The transmittal also included adding an administrative law section and a natural gas and oil pipeline section to the RCA's statutes that were forwarded to the governor for consideration. According to RCA management, the governor's intention was to support a bill that would enact many of the requested statute changes. However, based on committee minutes[10], the governor did not pursue the legislation and requested that the RCA work with the legislature. The resulting bill that was presented to the legislature did not contain many of the original statutory changes the RCA sought.

During the 2007 legislature, the RCA chair provided testimony to the legislature in support of establishing a deadline for formal proceedings not currently subject to statutory timelines. This legislation was passed and created statutory timelines for adjudicatory matters that come before the RCA and are not subject to federal timelines or timelines in AS 42.05.175(a)-(e). Also, in 2007, the legislature amended the RCA's annual report statutes[11] to include specific language in the statute that requires the RCA's annual report to contain details about the RCA's compliance with the statutory timeline requirements under AS 42.05.175(a)-(e), with the timeline extensions made by the commission under AS 42.05.175(f), and with other performance measures established by the commission.

The RCA did not recommend any statutory changes during FY 08 through FY 10. While numerous statutory changes were made by the legislature, the RCA did not have an official position on the changes.

***Determine 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 RCA affords the public opportunities to speak at publicly noticed, RCA meetings. The RCA uses a variety of methods for notifying the public of formal proceedings. Notices appear on the RCA and the State's website. Notices are also placed in newspapers in the affected regions of the State or maybe included with utility customer billings.

Additionally, as part of its operating mission, the RCA has an active consumer protection function which provides utility customers an avenue to seek resolution of complaints. The RCA generally tries to resolve disputes between customers and utilities informally, before

[10] House Labor and Commerce Committee, April 13, 2007

[11] Alaska Statute 42.05.211 and AS 42.06.220. Note: AS 42.06.220 states, "*The report must address regulation of oil and gas pipeline facilities in the state ... and must contain details about the commission's compliance with performance measures reported by the commission.*"

opening a formal complaint. Exhibit 5 below illustrates the consumer complaints filed with the RCA regarding utility types during the first ten months of FY 10.

The RCA resolved 84% of consumer complaints within 45 days of those filed between July 1, 2006 and April 9, 2010. Additionally, most of the respondents to our survey, who were involved with the informal complaint resolution process, reported the RCA was efficient in processing their complaint.

**Exhibit 5**

**Consumer Complaints filed with the RCA between July 1, 2009 to April 9, 2010**

| | Number Filed | Total Complaint % |
|---|---|---|
| Telecommunications | 94 | 40% |
| Electric | 68 | 29% |
| Water / Sewer | 30 | 13% |
| Natural Gas | 25 | 10% |
| Cable Television | 12 | 5% |
| Refuse Collection | 6 | 3% |
| Totals | 235 | 100% |

Source: The RCA case management system

Beginning in 2007, the RCA, in a joint venture with the American Association of Retired People (AARP) Alaska, participated in several workshops for outreach in financial education and consumer protection. The RCA has continued to collaborate with consumer groups such as the Alaska Housing Finance Corporation to educate ratepayers and homebuyers about utility rates and services. The RCA also had an informational booth present at the Alaska Federation of Natives convention and was present at the Better Business Bureau seminars. As part of the consumer protection workshops, staff taught classes to educate consumers on utility rates and services.

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

The quasi-judicial manner in which the RCA operates provides opportunities for all interested and affected parties to informally and formally respond to proposed regulations and decisions. Review of a sample of proposed regulations confirms that the RCA provided opportunities for public comment at the public meetings, workshops, and through the RCA's website.

The RCA's website is instrumental for communicating with the public. The RCA makes a computer terminal available at its office for the public to use for researching RCA records. Besides notices of upcoming meetings, formal actions are posted on the RCA website along with the commission's annual reports, discussions of major regulatory issues, and a forum for public comment. The process for filing a consumer complaint is explained and visitors to the website can subscribe to direct e-mail notices related to specific topics of interest.

Half of the survey respondents[12] report that the RCA's website is easy to use for finding information and provided sufficient information regarding dockets and filings. However, a third of the respondents stated that the website was not user friendly. Areas for improvement suggested by survey respondents include:

- Better search capabilities;
- Access to historical decisions;
- Status of pending motions for dockets;
- Continuous updates of current forms and information; and
- Allow for electronic filings.

***Determine 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 victims' rights or the office of the ombudsman have been processed and resolved.***

The Department of Commerce, Community, and Economic Development, the Boards and Commission within the Office of the Governor, and the Office of Victims' Rights reported receiving no complaints about the RCA over the past four years. The State's Office of the Ombudsman opened 24 cases based on contacts from the public. The majority of the cases were about how to contact the RCA. There were four cases filed by consumers regarding complaint processing and public meeting activities of the RCA. Based on our review of these cases, we determined that the ombudsman's investigation was appropriate resulting in the case being closed with no further recommendation for the RCA.

The RCA's orders and decisions are subject to appeal to the state courts. Since the prior sunset review, 18 of the RCA's final orders reflecting docket decisions have been appealed to the State's Superior Court. The Superior Court remanded two of the decisions back to the RCA for further proceedings due to the RCA not adequately articulating the reason for one decision and the other due to the RCA denying a direct refund to the affected entity. One remanded decision is pending a final decision before the RCA and the other was settled prior to further proceedings before the RCA. Eight appealed decisions are open and pending at the Superior Court, six were dismissed, and the Superior Court affirmed two of RCA's decision.

Additionally, the State's Supreme Court issued decisions related to four RCA docket decisions, resulting in affirming two RCA decisions, reversing the RCA's decision on one appealed decision and denying the RCA's appeal of a Superior Court's decision.

[12]Survey respondents included representatives from utility and pipeline companies who were a party to a utility, pipeline, rule-making docket or a tariff filing.

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

A public utility or pipeline carrier must obtain from the RCA a certificate of public convenience and necessity, which describes the authorized service area and scope of operations. A certificate is issued upon the RCA formally finding the applicant to be fit, willing, and able to provide the service requested. The RCA generally regulates the rates, services, and practices of these entities.

As of June 2010, there were 622 active certificated entities. Of these, 153 were economically regulated. Exhibit 6 is a summary, by service type, of the economically regulated entities.

**Exhibit 6**

| RCA Economically Regulated Certificates by Service Type | |
|---|---|
| Telecommunications | 56 |
| Electric | 37 |
| Pipeline | 24 |
| Water | 14 |
| Gas | 6 |
| Refuse | 6 |
| Sewer | 6 |
| Cable TV | 2 |
| Heat | 2 |
| Total | 153 |

Source: The RCA case management system

To ensure utilities meet requirements, the RCA employs utility financial analysts and utility engineers to perform the appropriate analyses to make a determination of an applicant's capabilities before granting a certificate. Between July 1, 2007 and June 30, 2010, the RCA issued 54 certificates of public convenience and necessity, of which 18 were for economically regulated entities.

***Determine 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.***

We found no evidence of the RCA's hiring practices or appointments that were contrary to state personnel practices. Since July 2006, no complaints have been filed with any of the following: (1) Alaska State Commission on Human Rights within the Office of the Governor; (2) the United States Equal Employment Opportunity Commission; (3) the Alaska Labor Relations Agency with the Department of Labor and Workforce Development; or (4) staff specializing in equal employment opportunity issues in the Division of Personnel within the Department of Administration.

***Determine 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.***

Almost half of all survey respondents[13] reported the existing statutes and regulations are

[13]Except for consumer complaint survey recipients.

obsolete, vague, unduly restrictive, or inadequate. Some of the areas that the respondents believe should be addressed by statutory or regulatory changes are:

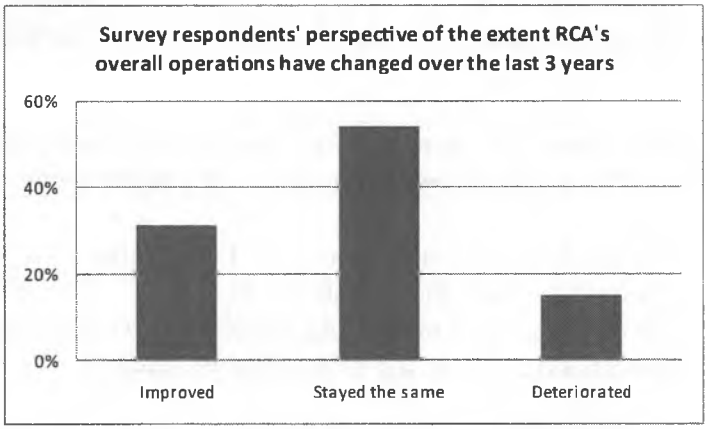
- Clarifying statute for definition of a final order;
- Revising regulations to allow for electronic filings;
- Establishing regulations for discovery;
- Amending parts of AS 42.05.175 to segregate the timeframes between adjudicative proceedings and the time given for the RCA to issue its final order at the close of such proceedings;
- Shortening the statutory timeline for decisions in rate proceedings; and
- Revising ex parte communication rules.

Again, the last three items are survey respondents' issues from the prior sunset audit.

***Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.***

As shown in Exhibit 7, almost 55% of all survey respondents stated that the RCA's overall operations have stayed the same and over 30% stated they improved during the past three years.

**Exhibit 7**




The review of the data from the case management system for our analysis identified many errors with the data entry into the system. The RCA does not have comprehensive written procedures to ensure the data entered into the system is accurate, consistent, and complete. This was also identified during our audit of the RCA's FY 09 Annual Report and is documented in the Findings and Recommendations section of that report.[14] Although these errors were still present during our sunset audit, the RCA's management has acknowledged and agreed that improvements are needed.

[14]Department of Commerce, Community, and Economic Development, Regulatory Commission of Alaska, FY 09 Annual Report Audit, September 21, 2010, Audit Control No. 08-30057-10.

The RCA assists in the administration of the State's power cost equalization (PCE) program. The Alaska Energy Authority (AEA) administers the PCE program based on the PCE rate calculations performed by the RCA.[15]

There are approximately 70 non-regulated PCE recipients, and the RCA has set an internal performance measure to review one-third of the annual reports received annually. Exhibit 8 details the number of annual reports the RCA has reviewed during FY 07 to FY 10. The RCA has improved on the number of annual report reviews and has exceeded their internal performance measure for FY 10.

**Exhibit 8**

**Non-regulated PCE entities' annual reports reviewed by the RCA**

| | FY 07 | FY 08 | FY 09 | FY 10 |
|---|---|---|---|---|
| Number of Non-Regulated PCE Entities | 79 | 84 | 69 | 69 |
| Goal (30% of entities) | 24 | 25 | 21 | 21 |
| Number of Annual Report Reviewed by RCA | 11 | 7 | 9 | 30 |

Source: Compiled from the RCA annual reports and RCA management

During FY 10, the RCA was awarded a grant under the American Recovery and Reinvestment Act (ARRA) for $767,500 to help fund positions to manage an increase in its responsibilities resulting from the ARRA electricity-related projects.[16] As of June 30, 2010, the RCA has expended roughly $7,000 of the ARRA funding. The RCA hired staff[17] who worked on reviewing utility tariffs language, provided analysis and commission support in hearing reviews, and reviewed applications for the transfer of an electric utility. The staff also participated in the development of new electrical interconnection regulations.

***Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.***

The RCA's mission is to assure viable utility and pipeline service is provided with just and reasonable rates to consumers in Alaska. The RCA's role is to reach decisions which consider the often competing interests of the concerned parties in pursuit of outcomes which protect and promote the overall public interest.

The Regulatory Affairs and Public Advocacy (RAPA) section within the Department of Law also protects the public's interest. The responsibility of the RAPA was established in July 2003 to advocate on behalf of the public's interest in utility matters that come before the

[15] 3 AAC 52.660 states that in order for the RCA to determine if the PCE rate is just and reasonable, a non-regulated utility shall file an annual report for review. The RCA, using its discretion under 3 AAC 42.640, will adjust the PCE rates based on review of the annual report. However, non-regulated utilities can request the RCA to review its annual report for the PCE adjustment at any time.

[16] The ARRA electricity related projects include, but are not limited to, energy efficiencies, electricity-based renewable energy, energy storage, smart grids, electric and hybrid-electric vehicles, demand response equipment, coal with carbon capture and storage.

[17] The ARRA funding is for two positions. The RCA filled one position with an engineering analyst; however, it has not found a qualified applicant for the financial analyst position.

RCA,[18] in court appeals, and before the legislature and other policymakers. The attorney general, as the public advocate, determines and advocates for the general public's interest with particular attention to the interests of consumers who would not otherwise have an effective voice regarding the rates and services of regulated utilities or pipeline carriers operating in the State. No legal services are provided directly to the people. Individual utility customers who seek assistance may contact the Consumer Protection Section of the RCA.

There is a common mission between the two organizations; however, they both perform different functions. The RCA issues decisions on utility matters in the public's interest and the RAPA advocates for the public.

Almost 90% of the survey respondents[19] stated that the RCA did not duplicate the activities of another government agency or private sector. The areas the survey respondents stated were duplicated include reports that are filed with the RCA and with the Federal Communications Commission and reports filed with the RCA and with the AEA. The duplicate reporting between the RCA and the AEA indicates this is an area for improved communication between the two state entities.

[18]Alaska Statute 44.23.020(e)

[19]Survey respondents include representatives from utility and pipeline companies who were parties to a utility, pipeline, rule-making, informal complaint docket or tariff filing that were open at one point between FY 07 to April 9, 2010. Survey respondents also included consumers of informal complaint dockets.

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## ATTACHMENT A

Department of Commerce, Community, and Economic Development
Regulatory Commission of Alaska
Schedule of Revenues and Expenditures
FY 07 through FY 10
(rounded to nearest hundred)
(unaudited)

| Revenues | FY 07 | FY 08 | FY 09 | FY 10 |
|---|---|---|---|---|
| Utility Regulatory Cost Charge | $ 7,548,400 | $ 7,464,700 | $ 7,745,700 | $ 9,420,500 |
| Utility Application Fee | 10,400 | 9,400 | 15,300 | 21,000 |
| Utility Hearing Reimbursement | 4,200 | 4,100 | 6,000 | 2,700 |
| Public Document Sale | 5,800 | 4,500 | 700 | 5,800 |
| 3rd Party Collection | 4,000 | 4,400 | 2,200 | 1,300 |
| Total Revenues | $ 7,572,800 | $ 7,487,100 | $ 7,769,900 | $ 9,451,300 |
| **Expenditures** | | | | |
| Personal Services | $ 4,132,400 | $ 4,274,600 | $ 4,782,300 | $ 4,934,500 |
| Travel | 131,600 | 61,500 | 37,400 | 77,300 |
| Contract Services | 2,347,500 | 1,509,700 | 1,689,500 | 1,809,000 |
| Commodities | 132,400 | 131,600 | 211,900 | 161,200 |
| Capital Outlay | 169,700 | 603,700 | 42,900 | 0 |
| Total Expenditures | $ 6,913,600 | $ 6,581,100 | $ 6,764,000 | $ 6,982,000 |
| **Transfers To** | | | | |
| Department of Law - Regulatory Affairs and Public Advocacy[20] | $ 1,425,000 | $ 1,327,500 | $ 1,498,300 | $ 1,537,300 |

Source: Alaska State Accounting System

[20]Expenditures for public advocacy, the responsibility of the Regulatory Affairs and Public Advocacy section within the Department of Law, are appropriated from fees paid by regulated entities.

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

*Sean Parnell, Governor*
*Susan K. Bell, Commissioner*

RECEIVED
JAN 04 2011
LEGISLATIVE AUDIT

January 4, 2011

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
P.O. Box 113300
Juneau, AK 99811-3300

RE: Response to preliminary audit report, Department of Commerce, Community, and Economic Development, Sunset Audit of the Regulatory Commission of Alaska (RCA)

Dear Ms. Davidson,

I have reviewed preliminary audit report on the sunset review of the RCA and concur with the recommendation that the legislature extend the RCA's termination date to June 30, 2019.

Your letter notes that the RCA has not resolved a recommendation from a prior audit that standards for discovery be developed. You also recognized that the RCA is currently evaluating input regarding discovery regulations. I have every reason to believe the matter will be appropriately addressed.

In addition, the audit's in-depth analysis of the RCA, with suggestions from survey respondents, provides an alternative perspective from which the RCA can evaluate its operations.

Thank you for the opportunity to comment on the preliminary audit report.

Sincerely,

Susan K. Bell
Commissioner

P.O. Box 110800, Juneau, Alaska 99811-0800
Telephone: (907) 465-2500 Fax: (907) 465-5442 Text Telephone: (907) 465-5437
Email: questions@alaska.gov Website: http://www.commerce.alaska.gov/

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

*Sean Parnell, Governor*
*Susan K. Bell, Commissioner*
*Robert M. Pickett, Chairman*

**Regulatory Commission of Alaska**

January 4, 2011

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
PO Box 113300
Juneau, AK 99811-3300

RECEIVED
JAN 04 2011
LEGISLATIVE AUDIT

RE: Response to preliminary audit report,
Department of Commerce, Community, and Economic Development (DCCED),
Sunset Audit of the Regulatory Commission of Alaska (RCA)

Dear Ms. Davidson:

Thank you for the opportunity to respond to the confidential preliminary audit report. The RCA appreciates the conclusion that it fulfills a public need and is serving Alaskans.

The report details the RCA's response to the 2006 sunset audit report recommendation that the RCA enhance the transparency, accountability, and efficiency of its decision-making process. As noted, the first part of the three-part recommendation was addressed through a statutory change; another part was addressed through the use of initiating orders which calculate and identify statutory deadlines for new proceedings. Through a rule-making proceeding, the RCA is currently pursuing the remaining part of the recommendation by considering discovery regulations. As interested entities have conflicting views, new regulations take time and careful consideration. However, the RCA is currently evaluating industry and public input regarding discovery regulations.

In summary, the RCA concurs with the recommendation that the legislature extend the RCA until June 30, 2019. Thank you for the opportunity to comment on the preliminary audit report.

Sincerely,

Robert M. Pickett, Chair
Regulatory Commission of Alaska

cc: The Honorable Susan Bell
Commissioner
Department of Commerce, Community and Economic Development

701 W. 8th Street, Suite 300, Anchorage, Alaska 99501-3469
Telephone: (907) 276-6222 Fax: (907) 276-0160 Text Telephone: (907) 276-4533
Website: www.rca.alaska.gov

3/8/11

# Division of Legislative Audit

## Report Digest #08-20068-10

SUMMARY: A Sunset Review on the Department of Commerce, Community, and Economic Development (DCCED), Board of Barbers and Hairdressers (BBH), September 30, 2010

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of BBH to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether BBH should be reestablished. Currently, under AS 08.03.010(c)(4), the board will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

REPORT CONCLUSIONS

BBH should continue to regulate barbers, hairdressers, estheticians, manicurists, tattooists/permanent cosmetic colorists, and body piercers. The board is serving the public interest by promoting the competence and integrity of those who provide services to the public under these professions. We recommend the legislature extend the board's termination date to June 30, 2019.

DCCED, Division of Corporations, Business and Professional Licensing's investigation unit did not address all investigations in a timely manner.

The current public board member is a licensed practitioner and therefore does not meet the statutory requirements.

FINDINGS AND RECOMMENDATIONS

1. The division's chief investigator should take steps to ensure complaints and cases are investigated timely.

2. The current public board member should either surrender her license or be removed from the public board member position.

3/8/11

# 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
legaudit@legis.state.ak.us

October 26, 2010

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Barbers and Hairdressers (BBH), and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF BARBERS AND HAIRDRESSERS

September 30, 2010

Audit Control Number
08-20068-10

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Under AS 08.03.010(c)(4), the board will terminate on June 30, 2011. If the legislature does not extend the termination date, the board will have one year to conclude its administrative operations. In our opinion, BBH's termination date should be extended until June 30, 2019. The board is serving the public interest by promoting the competence and integrity of those who provide services to the public as licensed barbers, hairdressers, estheticians, manicurists, tattooists/permanent cosmetic colorists, and body piercers.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson

Pat Davidson, CPA
Legislative Auditor

# TABLE OF CONTENTS

# OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Barbers and Hairdressers (BBH) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether BBH should be reestablished. Currently, under AS 08.03.010(c)(4), the board will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

## Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of BBH should be extended.

2. To determine if BBH is operating in the public's interest.

3. To determine if the board has exercised appropriate regulatory oversight of licensed barbers, hairdressers, estheticians, manicurists, tattooists/permanent cosmetic colorists, and body piercers.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for BBH.

## Scope and Methodology

The major areas of our review were board proceedings, licensing, complaint investigations, and resolution functions for fiscal years ending June 30, 2005 through June 30, 2010. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations related to the licensing of barbers, hairdressers, estheticians, manicurists, instructors, tattooists/permanent cosmetic colorists, and body piercers.

- Minutes of BBH meetings.

- Annual reports issued BBH.

- Complaints filed with the Department of Commerce, Community, and Economic Development, Division of Corporations, Business, and Professional Licensing (DCBPL), Office of the Ombudsman, and the Alaska Human Rights Commission.

- Financial records related to the revenues generated and the operating costs incurred by BBH.

- Files related to applicants for, and holders of, licenses issued by BBH.

- Complaint and related investigative case files maintained by the investigative unit of the DCBPL.

- Files related to applicants for board member seats maintained by the Division of Boards and Commissions with the Office of the Governor.

Additionally we interviewed DCBPL staff.

# ORGANIZATION AND FUNCTION

The Board of Barbers and Hairdressers (BBH) is established under the authority of AS 08.13.010. 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. In 2000, the board size was increased from five to six with the sixth member being an individual licensed to practice either body piercing or tattooing/permanent cosmetic coloring.

The six member board is appointed by the governor to four-year terms. Terms are staggered in order to promote continuity and enhance historical perspective.

The board is made up of two barbers; two hairdressers (one of whom must also be a licensed esthetician); an individual licensed to practice either body piercing or tattooing/permanent cosmetic coloring;[1] and one public member. (For the current board members, see Exhibit 1.)

**Exhibit 1**

**Board of Barbers and Hairdressers (As of September 30, 2010)**

Debra Long
Hairdresser/Chairperson

Glenda Ledford
Barber

Jynal C. Radziukinas
Hairdresser/Esthetician

Lorenda Brittan
Tattooist/Permanent Cosmetic Colorist/Body Piercer

Carol J. Hernley
Barber

Kelley Sherman
Public Member

BBH evaluates the qualifications of candidates, administers examinations, issues certificates and licenses to practice, promulgates rules of professional conduct, and takes disciplinary action.

Licensing Requirements

In general, under state law, a person may not practice barbering, hairdressing, esthetics, body piercing, or tattooing/permanent cosmetic coloring without a license, temporary permit, temporary license, or student permit issued by the board.[2] All such practice must take place in a licensed shop or school licensed under terms set by statute and the board. BBH also regulates school operations related to barbering, hairdressing, or esthetics.

[1] Alaska Statute 08.13.220(13) defines *tattooing* and *permanent cosmetic coloring* as "*the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into the dermal layer of the skin so as to form indelible marks, figures, or decorative designs for nonmedical purposes.*"

[2] Under AS 08.13.160(d)(1), the licensing and permit provisions do not apply to a person practicing barbering, hairdressing, manicuring, or esthetics in a community having a population of less than 1,000 people that is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public.

Department of Commerce, Community and Economic Development (DCCED), Division of Corporations, Business and Professional Licensing (DCBPL)

DCBPL provides administrative and investigative assistance to BBH. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.065 mandates that DCCED, with the concurrence of BBH, adopt regulations to establish the amount and manner of payment of fees for applications, examinations, licenses, registration, permits, investigations, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers DCBPL with the authority to conduct an investigation on its own initiative or in response to a complaint.

The division may:

1. Conduct an investigation if it appears a person is engaged, or is about to engage, in a prohibited professional practice.

2. Bring an action in superior court to enjoin the act.

3. Issue subpoenas for the attendance of witnesses and records.

# REPORT CONCLUSIONS

The Board of Barbers and Hairdressers (BBH) is operating in an efficient and effective manner and should continue to regulate the professions it governs. We believe the board is safeguarding public's interest by ensuring the competence and integrity of those who present themselves to the public as licensed barbers, hairdressers, estheticians, manicurists, tattooists/permanent cosmetic colorists, and body piercers.

BBH has conducted its business in a satisfactory manner. It continues to propose changes to regulations to improve the board's effectiveness and ensure that professionals are properly licensed.

Under AS 08.03.010(c)(4), BBH is scheduled to terminate on June 30, 2011. If not extended by the legislature, under AS 08.03.020, the board will have a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2019.

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# FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Corporations, Business, and Professional Licensing's (DCBPL) chief investigator should take steps to ensure complaints and cases are investigated timely.

The division's investigation section often does not complete investigations in a timely manner. The section's effectiveness is further diminished by the outdated and unreliable Enforcer database system currently in use.

It is the division's responsibility to provide investigative support for The Board of Barbers and Hairdressers (BBH). Investigators examine and research each complaint to determine jurisdiction and whether a violation exists. If the complaint meets these qualifications, a case is opened and a priority level is assigned. The priority level reflects the degree of imminent danger to the public.

During the period beginning July 1, 2006, and ending March 31, 2010, there were a total of 106 complaints and 197 cases active. Of the 20 files inspected, 6 cases were inactive for over a year.

Investigative staff attributed the delays to higher priority cases and tasks taking precedence. The staff also believes the investigative database contributed to the problem. The database does not have a user-friendly mechanism for flagging inactive cases. Consequently, supervisors and investigators are not effectively monitoring caseloads. Ineffective monitoring leads to unnecessary delays.

Complaints and cases that are inactive for lengthy periods may allow an individual who is licensed in a low risk profession to perform high risk procedures such as a licensed hairdresser practicing permanent cosmetic coloring.

Cases with life threatening repercussions should take priority. However, it is still reasonable for the public to expect that all complaints against licensees will be addressed as efficiently as possible. We recommend the division's chief investigator establish procedures to ensure:

- Consistent treatment of complaints and cases in the priority levels assigned.
- Priorities within each assigned level are outlined.
- Cases and complaints with periods of inactivity are identified and addressed.

Recommendation No. 2

The current public member should surrender her hairdresser license or be removed from the public member board position.

The public member appointed on January 29, 2008, was, and is currently, a licensed hairdresser.

According to AS 08.13.10, BBH is to be composed of six members – two barbers; two hairdressers (one of whom must also be a licensed esthetician); an individual licensed to practice either body piercing or tattooing/permanent cosmetic coloring; and one public member. Alaska Statute 08.29.010 requires the Office of the Governor to appoint both public and professional board members. Alaska Statute 08.01.025 states:

> *A public member of the board may not (1) be engaged in the occupation that the board regulates; (2) be associated by legal contract with a member of the occupation that the board regulates except as a consumer of the services provided by a practitioner of the occupation; or (3) have a direct financial interest in the occupation that the board regulates.*

Furthermore, AS 08.13.220(10) defines a practitioner as someone who is licensed to practice barbering, hairdressing, manicuring, esthetics, tattooing/permanent cosmetic coloring, or body piercing.

The Office of the Governor erroneously believed that since the licensee was not actively practicing hairdressing, she met the statutory requirements for a public member.

The professional members of the board provide technical expertise, while the public member provides a consumer perspective. Since the public member appointed did not meet statutory requirements, the consumer perspective has not been represented. Accordingly, we recommend that the current public board member either surrender her hairdresser's license or be removed from the public board member position.

# ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). The analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Board of Barbers and Hairdressers (BBH) has operated in the public interest by licensing qualified individuals. The board established licensing requirements and minimal practice standards that licensed professionals must adhere to in the course of practice. BBH has established regulations governing its duties and licensure requirements, enforced laws for issuing licenses in a uniform and consistent manner, held meetings, and administered examinations in accordance with statutory requirements.

The public board member did not meet statutory requirements for the board appointment; as of October 19, 2010, the board member holds a current hairdresser license. Since the public member appointed did not meet statutory requirements, the consumer perspective has not been represented. (See Recommendation No. 2 for more details.)

***Determine 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.***

Under AS 08.01.065(c), The Department of Commerce, Community, and Economic Development must *"establish fee levels... so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation."* BBH reviews and provides feedback on changes to fees proposed by the division.

BBH revenues come from licensing and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in board revenues, with BBH receiving most of its revenues during the even-numbered fiscal years. We reviewed the division's internal records to identify BBH revenues and expenditures. Exhibit 2 (on the following page) presents the board's revenues and expenditures for FY 07 through FY 10.

**Exhibit 2**

**State of Alaska**
**Board of Barbers and Hairdressers**
**FY 07 – FY 10**
**Schedule of Revenues and Expenditures**
(Unaudited)

| | | FY 07 | FY 08 | FY 09 | FY 10 |
|---|---|---|---|---|---|
| Revenue | $ | 234,785 | 698,753 | 225,094 | 546,695 |
| Direct Expenditures | | | | | |
| Personal Services | | 126,621 | 122,627 | 100,909 | 111,935 |
| Travel | | 6,677 | 9,995 | 13,031 | 15,475 |
| Contractual | | 24,663 | 24,394 | 28,166 | 46,021 |
| Supplies | | 304 | 108 | 4,917 | 352 |
| Equipment | | - | - | - | - |
| Total Direct Expenses | | 158,265 | 157,124 | 147,023 | 173,783 |
| Indirect Expenses | | 289,296 | 280,508 | 290,651 | 379,185 |
| Total Expenses | | 447,561 | 437,632 | 437,674 | 552,968 |
| Annual Surplus (Deficit) | | (212,776) | 261,121 | (212,580) | (6,273) |
| Beginning Cumulative Surplus (Deficit) | | 235,654 | 22,878 | 283,999 | 71,419 |
| Ending Cumulative Surplus (Deficit) | $ | 22,878 | 283,999 | 71,419 | 65,146 |

By the end of FY 08, BBH's biennial roll-forward balance was $283,999. In response to the surplus, licensing fees for the FY 10 renewal cycle were reduced from $135 to $100 for practitioners; from $450 to $400 for schools; from $195 to $150 for instructors; and from $175 to $150 for shop owners.

The decrease in fees was proposed based on a fee setting analysis containing several errors in the accounting information. Also, after the FY08 renewal cycle, the Department of Law (LAW) determined that BBH was not required to follow the Department of Labor and Workforce Development's (DLWD) determination that individuals renting chairs from business owners must also obtain a shop owner's license. Combined, these two matters have put the board at risk of experiencing a significant cumulative deficit for FY 11.

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

The professions of tattooing/permanent cosmetic coloring and body piercing are relatively new to BBH as regulatory responsibilities. The board continues to add regulations as well as revise existing ones in order to provide further protection to the public.

Specifically, for tattooing/permanent cosmetic coloring, BBH revised regulation 12 AAC 09.185. The revisions included outlining the trainer's responsibilities for student documentation as well as training requirements.

***Determine 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 locations, dates, and times of upcoming board meetings and notices of proposed changes in regulations are published in the Anchorage Daily News, the board's website, and the State's on-line public notice website. The State also offers a subscription service whereby the State e-mails subscribers the requested public notices. Meeting minutes and agendas indicate time is set aside for the board to take public comment. BBH minutes also reflect public participation throughout the meetings. Proposed regulations are circulated to those affected through professional trade journals, public notice advertisements, or direct mail correspondence from the Division of Corporations, Business, and Professional Licensing.

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

Public notices of proposed regulations are published in major newspapers. Meetings are adequately advertised, and time is set aside for public testimony.

On several occasions, there was evidence of extensive participation from the public in the continued development of board regulations related to the tattooing/permanent cosmetic coloring and body piercing professions.

Also, from August 2004 to January 2005, there was substantial public comment regarding chair rentals in salons. There was opposition to requiring individuals renting chairs from business owners to obtain shop owner licenses. The majority of the public believed it was the shop owner's responsibility rather than the individual renting the chair's responsibility to obtain a shop owner license. Some shop owners believed that since they were not providing any service other than renting out chairs, they should not be required to obtain a shop owner license – thereby putting the responsibility on the person renting the chair. This issue was brought up by DLWD when they were considering economic dependence for labor related

statutes and regulations. There was evidence of DLWD and BBH working together to find a solution; however, LAW ruled that BBH did not have to follow DLWD's determination.

***Determine 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 victims' rights or the office of the ombudsman have been processed and resolved.***

As of late March 2010, there were 106 complaints and 197 cases active during the time period beginning July 1, 2006, and ending March 31, 2010. Exhibit 3 summarizes the actions taken for those complaints and cases.

**Exhibit 3**

| **Complaints** | **Number of Actions** |
|---|---|
| Case Opened | 94 |
| Dismissed (no violation, insufficient evidence, etc.) | 8 |
| Corrective Action Taken | 4 |
| **Total Complaints** | **106** |
| **Cases** | |
| Advisement Letter | 119 |
| Dismissed (no violation, insufficient evidence, etc.) | 21 |
| License Action | 42 |
| Corrective Action Taken | 9 |
| Other | 4 |
| Case Still Open | 2 |
| **Total Cases** | **197** |

Of these, we inspected 7 complaints and 13 cases for a more in-depth analysis. The analysis indicated the need for timely investigations. (See Recommendation No. 1.)

No complaints or investigations specifically involving the actions and activities of BBH were received or undertaken by either the Office of the Ombudsman or the Office of Victim's Rights within the past six fiscal years.

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

BBH is adequately regulating entry into the professions of barbers, hairdressers, estheticians, manicurists, tattooists/permanent cosmetic colorists, and body piercers. Controls are in place and consistently performed to ensure BBH presents only qualified applicants to serve the public. When received, the applications are subjected to a checklist to verify that all required documentation, such as test scores and proof of education or experience, are present.

Exhibit 4 (on the following page) summarizes new licenses and permits issued by BBH for the period beginning July 1, 2005, and ending June 30, 2009. This information was compiled from annual reports issued by the board.

**Exhibit 4**

| New Permits issued (Exclusive of Renewals) | FY 05 | FY 06 | FY 07 | FY 08 | FY 09 | Total Licenses (as of June 30, 2009) |
|---|---|---|---|---|---|---|
| Barbers | 5 | 10 | 7 | 6 | 9 | 191 |
| Hairdressers | 191 | 173 | 142 | 141 | 172 | 2,447 |
| Estheticians | 56 | 37 | 63 | 70 | 41 | 420 |
| Instructors | 9 | 15 | 11 | 14 | 7 | 190 |
| Manicurists | 140 | 141 | 156 | 177 | 218 | 927 |
| Body Piercers | 6 | 2 | 1 | 3 | 4 | 26 |
| Tattooists | 7 | 7 | 6 | 18 | 12 | 79 |
| Shop Owners | 100 | 109 | 202 | 282 | 104 | 1,043 |
| Schools | 1 | 4 | 1 | 3 | 1 | 17 |

In FY 07 and FY 08, the licenses for shop owners experienced a sharp increase in the number of new licenses in comparison to other fiscal years. This was due to DLWD determining that individuals renting chairs were required to obtain a shop owners license. LAW later ruled that the board was not required to follow DLWD's ruling and several fees were refunded.

Applicants can apply for licensure by examination or by waiver (credentials). When applying for licensure by examination, barber, hairdresser, and esthetician applicants are required to take both a written and practical examination. Three people, with at least one being a board member, score the practical examination. For body piercers and tattooists/permanent cosmetic colorists, licensure by examination applicants are only required to pass an administered written exam. In order to obtain a license by credential, applicants must prove they have met the requirements of another state, including that state's exam, as well as prove that they have fulfilled Alaska's practical hour requirements.

***Determine 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.***

We did not find any evidence that BBH was not in compliance with state personnel practices, including affirmative action, in qualifying applicants. In no instances has BBH denied an applicant a license based on a person's attributes.

***Determine 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.***

BBH made several recommendations for statutory changes in its FY 09 annual report. The report listed the following recommendations:

1. Separate licenses. The board would like to license tattooing and permanent cosmetic coloring separately. Currently, these two professions are under the same license.

2. Increase practical hours and exam requirements. BBH recommended that manicurists be required to pass a National Manicurist written exam and increase the number of practical hours to 350.

3. Increase the size of the board. BBH made a similar recommendation in FY 04, where they were asking for the board to be increased to nine. In FY 09, the board recommended that a position be added to represent body piercing.[3]

4. Raise instructor requirements. BBH recommends that the instructor requirements be modified to include 5 years of work experience, or 3 years work experience and 600 hours of student instructor training.

To date, these recommendations have not been acted upon.

This report makes no recommendations for statutory, regulatory, or budgetary changes.

***Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.***

BBH has met its purpose and objectives effectively and efficiently during the period under review.

BBH enacted a number of regulation changes. Most significantly, it passed regulations to continue required Department of Environmental Conservation inspections on body piercing, tattooing, and cosmetic coloring establishments – a clear step toward protecting the public health.

Other enacted regulations include:

- Inspection requirements for school premises.

- Requiring documents pertaining to remedial training after a written exam was failed multiple times.

- Requiring all temporary licensing applicants to pay for all licensing fees at the time of application. This prevents individuals with no intention of getting an Alaska license from obtaining a temporary license.

[3]Current statute designates that one seat on BBH be filled by either a licensed tattooist/permanent cosmetic colorist or body piercer; the current incumbent is a tattooist. The board's proposal would eliminate the necessity that the two professions share a seat.

***Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.***

We did not find evidence of other state or private agencies that duplicate the efforts of the board.

The board is a member of two national organizations, the National Association of Barber Boards and the National Interstate Council of State Boards of Cosmetology. Both of these organizations provide channels for state boards to obtain information pertaining to the professions. They do not have regulatory capabilities; therefore, the board is not duplicating the activities of another governmental agency or the private sector.

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# Office of Governor Sean Parnell
STATE OF ALASKA

November 22, 2010

RECEIVED
NOV 2 2 2010
LEGISLATIVE AUDIT

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Davidson,

This letter is in response to your October 29, 2010 letter to Governor Parnell regarding the "CONFIDENTIAL" preliminary audit report on the Board of Barbers and Hairdressers (BBH).

Recommendation No. 2: The current public member should surrender her hairdresser license or be removed from the public member board position.

The public member has decided to surrender her license to practice barbering. This decision resolves the disagreement about whether or not the member violates the provisions of AS 08.01.025 regarding public member qualifications.

If you need additional information, please contact me at 907-465-3934.

Sincerely,

Jason Hooley
Director
Boards and Commissions

cc: Mike Nizich, Chief of Staff, Office of the Governor

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Office of the Commissioner

*Sean Parnell, Governor*
*Susan Bell, Commissioner*

RECEIVED
NOV 19 2010
LEGISLATIVE AUDIT

November 19, 2010

Ms. Katina Holmberg
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Re: Preliminary Report, Department of Commerce, Community Economic Development (DCCED) Board of Barbers and Hairdressers (BBH)

Dear Ms. Holmberg:

Thank you for a copy of the preliminary report dated September 30, 2010 regarding audit conclusions and recommendations concerning the State Board of Barbers and Hairdressers. I appreciate your review and the opportunity to provide input into the process. In general, the department concurs with the report conclusion and recommendations and our comments are provided below.

Report Conclusion

DCCED agrees with the report conclusion that "BBH is operating in an efficient and effective manner and should continue to regulate the professions it governs. We believe the board is safeguarding the public interest by ensuring the competence and integrity of those who present themselves to the public as licensed barbers, hairdressers, estheticians, manicurists, tattooists, and cosmetic colorists, and body piercists.". DCCED diligently strives to fulfill its duty of supporting licensed professionals and State boards to protect the public.

Recommendation No.1

DCCED concurs that the Division of Corporations, Businesses, and Professional Licensing (CBPL) chief investigator should take steps to ensure complaints and cases are investigated timely, and the division has already implemented positive measures toward that end. Specifically, the management letter recommends establishing procedures to ensure consistent treatment of complaints and cases in the priority levels assigned, that priorities are outlined and that cases and complaints with periods of inactivity are identified and addressed. The management letter also presents that staff believe the existing database did not have a user-friendly mechanism for flagging inactive cases and this contributed to delays.

P.O. Box 110800, Juneau, Alaska 99811-0800
Telephone: (907) 465-2500 Fax: (907) 465-5442 Text Telephone: (907) 465-5437
Email: questions@commerce.state.ak.us Website: http://www.commerce.state.ak.us/

CBPL was previously aware of the above described issues and took steps to improve timely investigations, including management changes, investments in updated technology, and staff training. A new Chief Investigator was hired in July 2010 and will be establishing procedures to outline priorities and to identify cases with inactive periods. In June 2010 CBPL implemented a new database system (GLSuite) that has significant functionality improvements over the prior outdated "Enforcer" system, including a more user-friendly mechanism for flagging inactive cases. In addition, staff training has and will continue to occur to maximize the utilization of the new system. CBPL expects that these steps will help ensure complaints and cases are investigated in a timely manner.

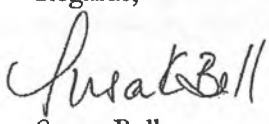
Recommendation No.2
CBPL supports the management letter comments that professional members of the board provide technical expertise, while the public member provides a consumer perspective. We will work with the BBH and the Office of the Governor Boards and Commissions to ensure that the public board member meets the requirements stated in AS 08.01.025 on a public member of the board.

Analysis of Public Need
CBPL reviewed the information presented in this section of the preliminary report and has comments related to the budgetary information provided on Page 4 paragraph 3-6. We appreciate the discussion on the risk of experiencing a cumulative deficit due to the combined effect of errors in accounting information associated with fee setting and the impact resulting from Department of Law's determination that shop owner licenses do not need to be obtained by individuals renting chairs from business owners. The Department is reviewing the issues raised and their impact on licensing fees, and our systems and procedures.

We have no other comments on this section.

Again, thank you for an opportunity to provide input. We are pleased your review has, in general, found the Board of Barbers and Hairdressers to be working well. Should you have any questions about the contents of this letter, please do not hesitate to contact me at 907-465-2500.

Regards,



Susan Bell
Commissioner

Cc: Don Haberger, Director CBPL
JoEllen Hanrahan, Director ASD

ALASKA STATE BOARD OF BARBERS AND HAIRDRESSERS

**Katina Holmberg**
**Senior Auditor**
**Division of Legislative Audit**

RECEIVED
NOV 19 2010
LEGISLATIVE AUDIT

**RE: Audit Conclusions & Recommendations**

**Thank you for your findings that BBH is operating efficiently and effectively and for the recommendation that legislature extend the board's termination date until 2019.**

**Concerning Recommendation # 1**

**The Investigative staff is working to improve treatment of cases and complaints. BBH has been assigned additional Investigator.**

**Regarding Recommendation # 2**

**Our current public member has consented to surrender her hairdressers license to remain on the board.**

**The BBH is aware of the budget problems and we are taking steps to lower our meeting and travel cost.**

**If I can be of further help feel free to contact me at 474-0448**

**Sincerely,**

Debra Long

**Debra Long**
**Chairperson**

3/8/11

# Division of Legislative Audit

## Report Digest #08-20069-10

SUMMARY A Sunset Review on the Department of Commerce, Community, and Economic Development (DCCED), Board of Dental Examiners (BDE), September 30, 2010

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of BDE. The purpose of this audit was to determine if there is a demonstrated public need for its continued existence and if it has been operating in an effective manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the BDE should be re-established. Currently, under AS 08.03.010(c)(7), BDE will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

REPORT CONCLUSIONS

BDE should continue to regulate dentists and dental hygienists. The board is serving the public's interest by promoting the competence and integrity of those who provide services to the public as licensed dentists and dental hygienists. We recommend the legislature extend BDE's termination date to June 30, 2019.

DCCED's, Division of Corporation, Business and Professional Licensing's (DCBPL) investigation unit did not address all investigations in a timely manner.

FINDINGS AND RECOMMENDATIONS

1. DCBPL's chief investigator should take steps to ensure complaints and cases are investigated timely.

3/8/11

# 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
legaudit@legis.state.ak.us

October 25, 2010

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Dental Examiners (BDE), and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY
AND ECONOMIC DEVELOPMENT
BOARD OF DENTAL EXAMINERS

September 30, 2010

Audit Control Number
08-20069-10

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Under AS 08.03.010(c)(7), BDE will terminate on June 30, 2011. If the legislature does not extend the termination date, BDE will have one year to conclude its administrative operations. In our opinion, BDE's termination date should be extended until June 30, 2019. BDE is serving the public's interest by promoting the competence and integrity of those who provide services to the public as licensed dentists and dental hygienists.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson, CPA
Legislative Auditor

# TABLE OF CONTENTS

# OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Dental Examiners (BDE) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether BDE should be reestablished. Currently, under AS 08.03.010(c)(7), BDE will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

## Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of BDE should be extended.

2. To determine if BDE is operating in the public's interest.

3. To determine if BDE has exercised appropriate regulatory oversight of licensed dentists and dental hygienists.

The assessment of the operations and performance of BDE was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for BDE.

## Scope and Methodology

The major areas of our review were board proceedings, licensing, complaint investigations, and resolution functions from FY 05 through FY 10. During the course of our examination, we reviewed and evaluated the following:

- Applicable statutes and regulations related to the licensing of dentists and dental hygienists.

- Minutes of BDE meetings.

- Annual reports issued by BDE.

- Complaints filed with the Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Business, and Professional

Licensing (DCBPL), Office of the Ombudsman, and the Alaska Human Rights Commission.

- Financial records related to the revenues generated and the operating costs incurred by BDE.
- Files related to applicants for and holders of licenses issued by BDE.
- Complaint and related investigative case files maintained by DCBPL's investigative unit.
- Files related to applicants for board member seats maintained by the Office of the Governor's Division of Boards and Commissions.

Additionally, we interviewed DCCED, DCBPL employees.

# ORGANIZATION AND FUNCTION

The Board of Dental Examiners (BDE) was established in 1955. As shown below in Exhibit 1, this regulatory board is comprised of six licensed dentists, two licensed dental hygienists, and one public member. The dentists and dental hygienists must have been practicing in Alaska for the five years immediately preceding their appointment to BDE. Alaska Statute also requires that the public member of the board have no direct financial interest in the occupation BDE regulates. Board members are appointed by the governor and serve staggered terms of four years.

Alaska Statute 08.36.070 establishes BDE's authority and includes:

- Examining and issuing licenses to qualified applicants.
- Holding hearings and ordering the disciplinary sanction of a person who violates the provisions of AS 08.32, AS 08.36, or a BDE regulation.
- Adopting regulations ensuring that license renewal is contingent upon proof of continued competency.
- Issuing permits to licensed dentists and dental hygienists who meet standards determined by BDE for specific procedures that require specific education and training.

**Exhibit 1**

**Board of Dental Examiners (As of September 1, 2010)**

Robyn Chaney
Public Member

David L. Eichler
Dentist

Cheryl Fellenberg
Dental Hygienist

Thomas J. Wells
Dentist

Mary Ann Navitsky
Dentist

Arne R. Pihl
Dentist

Deborah W. Stauffer
Dental Hygienist

Newell Walther
Dentist

Clifford D. White
Dentist

BDE is responsible for safeguarding the public's interest by ensuring the competence and integrity of those who hold themselves out to the public as dentists and dental hygienists. BDE evaluates the qualifications of candidates, administers examinations, issues certificates and licenses to practice, promulgates the rules of professional conduct, and takes disciplinary action.

The Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Business, and Professional Licensing (DCBPL)

DCCED, DCBPL provides administrative and investigative assistance to BDE. Administrative assistance includes budgetary services and functions such as collecting fees,

maintaining files, receiving and issuing application forms, and publishing notices of examination and meetings.

Alaska Statute 08.01.065 requires DCCED, with the concurrence of BDE, to adopt regulations establishing the amount and manner of payment of fees for applications, examinations, licenses, registration permits, investigations, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers DCBPL with the authority to conduct an investigation on its own initiative or in response to a complaint.

The DCBPL may:

1. Conduct an investigation if it appears a person is engaged or is about to engage in a prohibited professional practice.
2. Bring an action in Superior Court to enjoin the act.
3. Issue subpoenas for the attendance of witnesses and records.

# REPORT CONCLUSIONS

The Board of Dental Examiners (BDE) is operating in an efficient and effective manner and should continue to regulate the professions of dentists and dental hygienists. We believe BDE is safeguarding the public's interest by ensuring the competence and integrity of those who present themselves to the public as licensed dentists and dental hygienists.

BDE has conducted its business in a satisfactory manner. It continues to propose changes to regulations to improve its effectiveness and ensure that professionals are properly licensed.

Alaska Statute 08.03.010(c)(7) terminates BDE on June 30, 2011. If not extended by the legislature, under AS 08.03.020, BDE will have a one-year period to administratively conclude its affairs. We recommend the legislature extend BDE's termination date to June 30, 2019.

(Intentionally left blank)

# FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Corporations, Businesses, and Professional Licensing's (DCBPL) chief investigator should take steps to ensure complaints and cases are investigated timely.

DCBPL's investigation section often does not complete investigations in a timely manner. The section's effectiveness is further diminished by the outdated and unreliable Enforcer database system currently in use.

It is DCBPL's responsibility to provide investigative support for BDE. Investigators examine and research each complaint to determine jurisdiction and whether a violation exists. If the complaint meets these conditions, a case is opened and a priority level is assigned.[1] The priority level reflects the degree of imminent danger to the public.

During the period of July 1, 2006 through March 31, 2010, there were a total of 40 complaints and 32 cases active. Of these, we inspected six complaints and five cases for a more in-depth analysis.

Three complaints and one case were inactive for lengthy periods (six months or more). The case that was inactive for a lengthy period was designated as a *priority level 2*, but no activity has been documented since it was opened on January 29, 2008.

Investigative staff attributed the delays in case investigations to higher priority cases and tasks taking precedence. Staff also believe the investigative database contributed to the problem. The database does not have a user-friendly mechanism for flagging inactive cases. Consequently, supervisors and investigators are not effectively monitoring caseloads. Ineffective monitoring leads to unnecessary delays.

Complaints and cases that are not investigated timely may allow an individual who is practicing inappropriately or outside his or her scope to continue these violations.

Cases with life threatening repercussions should take priority; however, it is still reasonable for the public to expect that all complaints against licensees will be addressed as efficiently

[1] A *priority level 1* signifies incidents which represent an immediate danger to the public health and safety. A *priority level 2* signifies incidents which, by the severity of their nature, dictate a high priority. A *priority level 3* signifies incidents that are less serious in nature and do not appear to constitute immediate or sever public danger or serious damages. A *priority level 4* signifies incidents involving failure to comply with statutes or regulations which are discovered through the course of proactive enforcement but do not meet the criteria of priority 1 through 3.

as possible. We recommend DCBPL's chief investigator establish procedures to ensure priorities within each assigned level are outlined as well as cases and complaints with periods of inactivity are identified and addressed.

# ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Board of Dental Examiners (BDE), through regulation of the licensure of dentists and dental hygienists, has provided the public with qualified professionals in the dental industry. The profession has adopted regulations related to continuing professional education to ensure licensees remain current in the field of dentistry and dental hygiene practice.

BDE licenses applicants by (1) examination and (2) credentials. Licensure by examination requires passing the exam administered by the Western Regional Examining Board. Licensure by credentials requires that the applicant document their previous work history as a dentist or dental hygienist as a basis for receiving a state license to practice.

BDE has successfully implemented changes and modifications to regulations and statutes that govern fields it covers. The new modifications to the statutes and regulations include, but are not limited to:

1. Inspections and registration of radiological equipment (12 AAC 28.965 and 12 AAC 28.960 respectively).
2. Creation of a limited license allowing a person not licensed in Alaska to practice for a specified time period for a specified reason. This will increase the ability of rural communities in Alaska to receive dental care (12 AAC 28.955).
3. Allowing a maximum of four hours of CPR training to be counted for meeting overall continuing education hours for each renewal period (12 AAC 28.410).

***Determine 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.***

Under AS 08.01.065(c), the Department of Commerce, Community, and Economic Development must *"establish fee levels... so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation."* BDE reviews and provides feedback on changes to fees proposed by the division.

BDE revenues come from licensing and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in BDE revenues, with BDE receiving most of its

revenues during the odd-numbered fiscal years. We reviewed the Division of Corporations, Business, and Professional Licensing's (DCBPL) internal records to identify BDE revenues and expenditures. Renewal and permit fees for dentists and dental hygienists were reduced for the FY 09 renewal cycle.

Exhibit 2 (below) presents BDE's revenues and expenditures for FY 07 through FY 10.

**Exhibit 2**

**State of Alaska**
**Board of Dental Examiners**
**Schedule of Revenues and Expenditures**
**FY 07 - FY 10**
(Unaudited)

| | | FY 07 | FY 08 | FY 09 | FY 10 |
|---|---|---|---|---|---|
| Revenue | $ | 416,333 | 127,664 | 334,845 | 47,740 |
| Direct Expenditures | | | | | |
| Personal Services | | 60,392 | 46,306 | 74,937 | 94,571 |
| Travel | | 18,121 | 20,764 | 24,409 | 29,444 |
| Contractual | | 38,772 | 39,181 | 60,953 | 29,464 |
| Supplies | | 230 | 954 | 1,018 | 1,038 |
| Equipment | | | | | |
| Total Direct Expenditures | | 117,515 | 107,205 | 161,317 | 154,517 |
| Indirect Expenditures | | 104,085 | 88,869 | 85,055 | 81,158 |
| Total Expenditures | | 221,600 | 196,074 | 246,372 | 235,675 |
| Annual Surplus (Deficit) | | 194,733 | (68,410) | 88,473 | (187,935) |
| Beginning Cumulative Surplus (Deficit) | | 114,200 | 308,933 | 240,523 | 328,996 |
| Ending Cumulative Surplus (Deficit) | $ | 308,933 | 240,523 | 328,996 | 141,061 |

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

BDE has made numerous recommendations for statute changes. These are mostly comprised of changes to the wording of existing statutes. To date, these changes have not been made.

***Determine 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 locations, date, and time of upcoming BDE meetings and notices of proposed changes in regulations were published in the Anchorage Daily News, BDE's internet website, and the State's on-line public notice internet website. The State also offers a subscription service whereby the State will e-mail the subscriber requested public notices. Meeting minutes and agendas indicate time was set aside for BDE to take public comment. BDE minutes also reflected public participation throughout the meetings. Proposed regulations are circulated to those affected by the proposed regulations through professional trade journals, public notice advertisement, or direct mail correspondence from DCBPL.

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

Public notices of proposed regulations are published in major newspapers. Meetings are adequately advertised, and time is set aside for public testimony.

Public members as well as practitioners are given the opportunity to address BDE at each meeting. The majority of the comments received were in regards to proposed changes to statutes and regulations that were proposed by both BDE and the public. Members of the public also sought BDE clarification on statutes and regulations.

Practitioners are especially concerned with the limitations of dentists holding specialty and general licenses. Statutes currently require that a dentist who holds both licenses must limit the scope of practice to that of the specialty and cannot practice general dentistry. BDE is working with the Department of Law for a determination on this issue.

***Determine 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 victims' rights or the office of the ombudsman have been processed and resolved.***

As of late March 2010, there were 40 complaints and 32 cases active during the time period beginning July 1, 2006, and ending March 31, 2010. Listed in Exhibit 3 (following page) is a summary of the actions taken by BDE for these complaints and cases.

**Exhibit 3**

| Complaints | Number of Actions |
|---|---|
| Case opened | 6 |
| Dismissed (no violation, insufficient evidence, etc.) | 24 |
| Corrective Action Taken | 7 |
| Advisement Letter | 2 |
| Other | 1 |
| **Total Complaints** | **40** |
| **Cases** | |
| Dismissed (no violation, insufficient evidence, etc.) | 2 |
| License Action | 16 |
| Corrective Action Taken | 1 |
| Other | 6 |
| Still Under Investigation | 7 |
| **Total Cases** | **32** |

Of these, we inspected 6 complaints and 5 cases for a more in-depth analysis. The analysis shows that investigations need to be more timely. (See Recommendation No. 1.)

No complaints or investigation specifically involving the actions and activities of BDE were received, or undertaken by either the Office of the Ombudsman or the Office of Victim's Rights within the past six fiscal years.

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

BDE is adequately regulating entry into the professions of dentistry and dental hygienists. Controls are in place and consistently performed to ensure it has presented only qualified applicants to serve the public. BDE considers each applicant, interviews those applying by credentials, and verifies that licensing requirements are satisfied prior to issuing a license.

Listed in Exhibit 4 (below) is a summary of new licenses and permits issued by BDE for the period beginning July 1, 2006, and ending June 30, 2009.

**Exhibit 4**

| New Permits Issued (Excluding Renewals) | FY 06 | FY 07 | FY 08 | FY 09 | Total Licenses (as of June 30, 2009) |
|---|---|---|---|---|---|
| Dental Hygienist | 29 | 29 | 29 | 32 | 516 |
| Dentist | 27 | 38 | 26 | 36 | 637 |
| Local Anesthetic Permit | 25 | 25 | 22 | 31 | 428 |
| Specialty License | 4 | 1 | 4 | 11 | 105 |
| Parenteral Sedation Permit | 2 | 0 | 2 | 2 | 37 |
| General Anesthetic Permit | 0 | 0 | 0 | 1 | 21 |

The application process for licensing is reasonable and appropriate. BDE is not creating barriers into entry, nor allowing unqualified individuals to practice. Continuing education is

required by BDE to promote a high level of quality performance and to help ensure the integrity of the profession.

***Determine 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.***

We did not find any evidence that BDE was not in compliance with state personnel practices, including affirmative action in qualifying applicants. In no instances has BDE denied an applicant a license based on a person's attributes.

***Determine 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.***

In its recent annual reports, BDE has made several recommendations for proposed statutory and regulatory changes. The FY 09 annual report listed the following recommendations:

1. Add Dental Hygienists to AS 08.36.070(12). This recommendation proposes to allow dental hygienists to obtain a waiver from CPR training due to physical impairments. The statute already allows dentists to obtain such a waiver.

2. Change the clinical hours for licensure by credential in AS 08.36.234(a)(1)(D). This recommendation proposes to change the current wording to say that BDE will allow a dentist to be licensed if he or she proves to BDE that he or she "*has been engaged in continuous active clinical practice averaging at least 1000 hours per year for each of the five years immediately preceding the application.*" Currently, the statute says that an applicant must prove to BDE:

   > *[The applicant] has been engaged in either continuous active clinical practice averaging at least 20 hours a week for a full-time dental supervisory position in an agency of, or the armed forces of, the United States for each of the five years immediately preceding the application.*

3. Add the requirements of clinical and ethical competence to AS 08.36.234(a)(7). This recommendation proposes to add another subsection to AS 08.36.234(a) that, as a prerequisite to licensure, an applicant "*provides to the board satisfactory letters of recommendations that support the applicant's clinical and ethical competence. Unfavorable references may be the basis for denial of license.*"

4. Allow specialty license holders to practice general dentistry under AS 08.36.246. This change affects both AS 08.36.246 and AS 08.36.110. The intent of this change is to drop stand-alone, dental specialty licenses and allow for only general dental licenses with the specialty as an endorsement of that license.

To date, only recommendation number one has been completed by use of the words "*applicant or licensee*" in the 2009 Alaska Statutes.

This report makes no recommendations for statutory, regulatory, or budgetary changes.

***Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.***

BDE has met its purpose and objectives effectively and efficiently during the period under review.

BDE enacted a number of regulation changes, including:

- Requiring an applicant for licensure by examination to pass the written Alaska jurisprudence examination authorized under AS 08.32.060 and conducted by BDE with a passing score of at least 70 percent.

- Requiring first time renewals of active licenses to submit documentation evidence of continued professional competence.

***Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.***

We did not find evidence of other state or private agencies that duplicate the efforts of BDE.

We identified two national organizations, the American Dental Association and the American Dental Hygienist Association, that provide educational advancement and suggestions. These organizations do not have regulatory capabilities; therefore, BDE is not duplicating the activities of another governmental agency or the private sector.

STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

*Sean Parnell, Governor*
*Susan Bell, Commissioner*

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LEGISLATIVE AUDIT

November 19, 2010

Ms. Katina Holmberg
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Re: Preliminary Report, Department of Commerce, Community Economic Development (DCCED)
Board of Dental Examiners (BDE)

Dear Ms. Holmberg:

Thank you for your letter dated September 30, 2010 regarding audit findings and recommendations concerning the State Board of Dental Examiners. I appreciate your review and the opportunity to provide input into the process. In general, the department concurs with the report conclusions and recommendations and our comments are provided below.

Report Conclusion
DCCED agrees with the report conclusion that "BDE is operating in an efficient and effective manner and should continue to regulate the professions of dentists and dental hygienists. We believe the board is safeguarding the public interest by ensuring the competence and integrity of those who present themselves to the public as licensed dentists and dental hygienists." DCCED diligently strives to fulfill its duty of supporting licensed professionals and State boards to protect the public.

Recommendation No.1
DCCED concurs that the Division of Corporations, Businesses, and Professional Licensing (CBPL) chief investigator should take steps to ensure complaints and cases are investigated timely, and the department has already implemented positive measures toward that end. Specifically, the management letter recommends establishing procedures to ensure priorities are outlined and that cases and complaints with periods of inactivity are identified and addressed. The management letter also presents that staff believe the existing database did not have a user-friendly mechanism for flagging inactive cases and this contributed to delays.

DCCED was previously aware of the above described issues and took steps to improve timely investigations, including management changes, investments in updated technology, and staff training. A

P.O. Box 110800, Juneau, Alaska 99811-0800
Telephone: (907) 465-2500 Fax: (907) 465-5442 Text Telephone: (907) 465-5437
Email: questions@commerce.state.ak.us Website: http://www.commerce.state.ak.us/

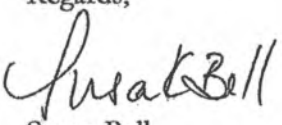
new Chief Investigator was hired in July 2010 and will be establishing procedures to outline priorities and to identify cases with inactive periods. In June 2010 CBPL implemented a new database system (GLSuite) that has significant functionality improvements over the prior outdated "Enforcer" system, including a more user-friendly mechanism for flagging inactive cases. In addition, staff training has and will continue to occur to maximize the utilization of the new system. CBPL expects that these steps will help ensure complaints and cases are investigated in a timely manner.

Analysis of Public Need

DCCED reviewed the information presented in this section of the preliminary report and has no additional comments.

Again, thank you for an opportunity to provide input. We are pleased your review has, in general, found the Board of Dental Examiner's system to be working well. Should you have any questions about the contents of this letter, please do not hesitate to contact me at 907-465-2500.

Regards,



Susan Bell
Commissioner

Cc: Don Habeger, Director CBPL
JoEllen Hanrahan, Director ASD

David L. Eichler, D.M.D., P.C.

3375 Badger Road, Suite 1
North Pole, AK 99705
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RECEIVED
NOV 0 4 2010
LEGISLATIVE AUDIT

November 2, 2010

Pat Davidson
Division of Legislative Audit
P. O. Box 113300
Juneau, AK 99811-3300

Dear Pat:

This is a response to your preliminary audit report for Sunset Review of the Board of Dental Examiners. I agree absolutely with your recommendation #1 that the DCBPL needs to address all complaints and investigations in a timely manner. This has been a serious concern of the Board for at least my tenure of nearly eight years and by report, for much longer. The Board has been rebuffed by DCBPL and the Department of Law in any efforts to exercise influence and direction in the manner in which the investigative office operates. We invite the legislature to exert any influence if may have to assist us in this area.

One other subject needs to be addressed. By statute approximately eleven years ago, responsibility for dental radiological equipment inspections was placed with the Board. So far, adequate personnel and database support has not been appropriated to enable the Board to properly carry out this function so this needs to be addressed to properly safeguard the public.

We, in collaboration with the Dental Society and Dental Hygiene Association, have embarked on a major revision of the dental statures as recommended by the Department of Law. We hope this will enable the Board to be more effective in its function.

Thank you for this opportunity to participate in this process.

Sincerely,

David Eichler
President, Alaska Board of Dental Examiners

3/8/11

# Division of Legislative Audit

## Report Digest #08-20070-10

SUMMARY: A Sunset Review of the Department of Commerce, Community, and Economic Development, Board of Nursing (BON), September 30, 2010

PURPOSE AND SCOPE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of BON to determine if there is a demonstrated public need for its continued existence and if it has been operating in an effective manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether BON should be reestablished. Currently, under AS 08.03.010(c)(13), BON will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

REPORT CONCLUSIONS

BON is operating in an efficient and effective manner and should continue to regulate the professions it governs. We believe the board is safeguarding the public interest by ensuring the competence and integrity of those who present themselves to the public for the professions regulated by BON: licensed registered nurses, licensed practical nurses (LPN), advanced nurse practitioners (ANP), certified registered nurse anesthetists, certified nurse aides, and nurse and nurse aide training programs.

BON has conducted its business in a satisfactory manner. It continues to propose changes to regulations to improve the board's effectiveness and to ensure that professionals are properly licensed.

Under AS 08.03.010(c)(13), BON will terminate on June 30, 2011. If not extended by the legislature, under AS 08.03.020, BON will have a one-year period to administratively conclude its affairs. We recommend that the legislature extend the board's termination date to June 30, 2019.

FINDINGS AND RECOMMENDATIONS

1. BON should take steps to ensure all appropriate entities are notified when an ANP's authority to write prescriptions has been revoked or suspended.

2. The BON chairman should take steps to ensure that the required training program reviews are being conducted.

3. The Division of Corporations, Business, and Professional Licensing's chief investigator should take steps to ensure that complaints and cases are investigated timely.

4. The director of Boards and Commissions, Office of the Governor, should fill the LPN position with an LPN currently involved in institutional nursing services.

*Prepared by Rep. Hawker's office*

*Staff contact: Rena Delbridge, 465-6959*

3/8/11

# 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
legaudit@legis.state.ak.us

October 26, 2010

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Nursing (BON), and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF NURSING

September 30, 2010

Audit Control Number
08-20070-10

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Under AS 08.03.010(c)(13), BON will terminate on June 30, 2011. If the legislature does not extend the termination date, BON will have one year to conclude its administrative operations. In our opinion, BON's termination date should be extended until June 30, 2019. The board has generally displayed an ability to conduct its business in a professional, competent, and efficient manner – with the exception of the areas noted in the recommendations. BON is serving the public interest by promoting the competence and integrity of those who provide services to the public as licensed nurses and nurse aides.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson, CPA
Legislative Auditor

# TABLE OF CONTENTS

# OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Nursing (BON) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether BON should be reestablished. Currently, under AS 08.03.010(c)(13), BON will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

## Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.

2. To determine if the board is operating in the public interest.

3. To determine if the board has exercised appropriate regulatory oversight of licensed registered nurses, licensed practical nurses, advanced nurse practitioners, certified registered nurse anesthetists, certified nurse aides, and nurse and nurse aide training programs.

The assessment of the operations and performance of BON was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for BON.

## Scope and Methodology

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions for fiscal years ending June 30, 2006, through June 30, 2010. During the course of our examination, we reviewed and evaluated the following:

- Applicable statutes and regulations related to the licensing and certification of registered nurses, licensed practical nurses, advanced nurse anesthetists, certified nurse aides, and nurse and nurse aide training programs.

- Minutes of meetings of BON.

- Annual Reports issued by BON and the investigative unit of the Division of Corporations, Business and Professional Licensing (DCBPL).
- Complaints filed with DCBPL, Office of the Ombudsman, and the Alaska Human Rights Commission.
- Financial records related to the revenues generated and the operating costs incurred by BON.
- Complaints and related investigative case files maintained by the investigative unit of DCBPL.
- Files related to applicants for, and holders of, licenses issued by BON.
- Files related to applicants for board member seats maintained by the Division of Boards and Commissions with the Office of the Governor.

Additionally we interviewed employees of DCBPL and members of BON.

# ORGANIZATION AND FUNCTION

The Board of Nursing (BON) was established for the purpose of controlling and regulating the practice of nursing in the State. Alaska Statute 08.68.100 identifies BON's responsibilities and authority to provide effective control and regulation of the practice of nursing as well as the standards for training necessary to promote, preserve, and protect the public's health, safety and welfare.

**Exhibit 1**

Board of Nursing
As of September 30, 2010

Beth Farnstrom, RN
Chairperson

Agnes Jack, LPN

Janine McCready, Public Member

Denise Ekstrom, RN, ANP

Thomas Hendrix, PhD, RN
Baccalaureate Nursing Education

Kevin Dougherty, Public Member

Erin Pringle, RN Position

## Board Membership

BON is composed of seven members. State law requires that one member be a licensed practical nurse (LPN) currently involved in institutional nursing services, one member be a registered nurse (RN) engaged in baccalaureate nursing education, three members be RNs at large, and two members be persons who have no direct financial interest in the health care industry. For current board members, see Exhibit 1.

## Board Duties

In general BON regulates admission into the practice of nursing; establishes and enforces competency by ensuring compliance with professional standards and adopting regulations; and ensures that training programs are performing up to both statewide and national standards.

Most licensing requirements are established by statute. Nurses are either licensed by examination or endorsement.
Examinations for RNs and LPNs are nationally administered exams; the National Council Licensure Examination is administered through a contract with the private sector. Certified nurse aides are tested using the National Nurse Aide Assessment Program (NNAAP) exam. The NNAAP was formulated by the National Council of State Nursing Boards and is administered locally in conjunction with the training centers that have been approved by BON.

Licenses by endorsement, including certifications of nurse aides by endorsement, are issued to nurses licensed in other states that have licensing requirements acceptable to BON.

BON regulates nursing practices in part by:

1. Establishing and amending policy and regulations necessary and desirable to enforce state statutes.

2. Approving curricula for nursing and nurse aide programs; along with adopting standards for basic and continuing competency programs designed to prepare persons for licensure and ensure the maintenance of competency.

3. Issuing licenses on the basis of examination or endorsement to qualified applicants.

4. Holding hearings to resolve investigations that may lead to revocation, suspension, or other disciplinary action against an individual holding a license issued by the board.

5. Periodically reviewing and approving the facility training programs for individuals employed and certified as nursing aides.

6. Keeping the public informed of pertinent information through the use of BON's website which includes disciplinary databases, advisory opinion databases, board meetings and agenda's, meeting minutes, licensure information, regulations and other public notices.

Division of Corporations, Business and Professional Licensing (DCBPL)

DCBPL staff provide administrative support, including budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and posting public notices.

The DCBPL investigative unit is empowered with the authority to act on its own initiative or in response to a complaint. They may:

1. Conduct an investigation if it appears a person is engaged in, or is about to engage in a practice over which the Department of Commerce, Community and Economic Development has authority.

2. Issue an order for a licensed individual to stop the practice.

3. Bring an action in superior court to enjoin the act.

4. Examine the books and records of an individual.

5. Issue subpoenas for the attendance of witnesses and records.

# REPORT CONCLUSIONS

The Board of Nursing (BON) is operating in an efficient and effective manner and should continue to regulate the professions it governs. We believe the board is safeguarding the public's interest by ensuring the competence and integrity of those who present themselves to the public as licensed registered nurses, licensed practical nurses, advanced nurse practitioners, certified registered nurse anesthetists, certified nurse aides, and nurse and nurse aide training programs.

BON has conducted its business in a satisfactory manner. It continues to propose changes to regulations to improve the board's effectiveness and to ensure that professionals are properly licensed.

Under AS 08.03.010(c)(13), BON is scheduled to be terminated on June 30, 2011. If not extended by the legislature, under AS 08.03.020, the board will have a one-year period to administratively conclude its affairs. We recommend that the legislature extend the board's termination date to June 30, 2019.

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# FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Nursing (BON) should take steps to ensure all appropriate entities are notified when an advanced nurse practitioner's (ANP) authority to write prescriptions has been revoked or suspended.

During the prior sunset review, we recommended that BON develop procedures to notify the Board of Pharmacy when there is a termination or change to a nurse's prescriptive authority as required by regulation. After our review in FY 02, BON repealed these regulations and developed a disciplinary database accessible on their website.

During the period from July 1, 2002, to March 31, 2010, there were two incidents where a nurse's authorization to write prescriptions was revoked by BON. One involved an ANP whose license to practice was revoked along with prescriptive authority. In January 2010, another ANP lost prescriptive authority for a period of one year.

The ANP, whose nursing license and authority to write prescriptions was revoked, continued to write prescriptions after the revocation, putting the public at risk. The other ANP whose authority to write prescriptions was revoked for a time frame of one year, has the opportunity to continue writing prescriptions. The disciplinary database accessible on the BON website is not an effective control for stopping illegal prescriptions from being filled.

Nurses must apply with BON in order to receive authorization to write prescriptions. Once the state grants authorization, the nurse must receive a registration number from the federal Drug Enforcement Agency (DEA) before they can start writing prescriptions. The DEA keeps a database listing the current status of registration numbers. Currently, there is no statute or regulation in place requiring the board to notify the DEA if a nurse's ability to write prescriptions has been revoked. Not notifying the DEA that a prescriber's authorization has been revoked or suspended can result in illegal prescriptions being filled.

BON is established under AS 08.68 for the purpose of controlling and regulating the practice of nursing, including: ANPs, nurse anesthetists, registered nurses (RN), licensed practical nurses (LPN), and certified nurse aides (CNA). BON's mission statement is: "*to* actively *promote and protect the health of the citizens of Alaska through the safe and effective practice of nursing as defined by law.*" We recommend BON establish procedures to ensure that the DEA is notified whenever authorization to write prescriptions is revoked or suspended. We also recommend that BON ensure in-state pharmacies, hospitals, and clinics are aware of the disciplinary proceedings database on BON's website.

Recommendation No. 2

The BON chairman should take steps to ensure that the required training program reviews are being conducted.

BON is not consistently providing the required oversight of CNA training programs.

The required site reviews are not being conducted for all the CNA training programs. As of June 30, 2010, only 11 of the 21 required reviews for the year had been performed. As a result, training programs are being given approval to operate for another two years without the reviews being conducted or processed.

Additionally, in years the on-site reviews are not done, the self-evaluation forms completed by the training program staff are not being processed. As a result, BON is not aware of any issues that are highlighted in the self-evaluations.

According to regulation 12 AAC 44.857, Training Program Review:

> *(a) The board will approve a certified nurse aide training program for a two-year period. Within two years after the date of the initial approval of a certified nurse aide training program, the board will conduct an on-site review of the training program to determine continued compliance with regulations 12 AAC 44.835 - 12 AAC 44.847 and 12 AAC 44.852 - 12 AAC 44.860. If the board determines that the training program complies with those requirements, the board will extend its approval of that program for another two years.... (c) During a year in which on-site review is not scheduled, the program provider shall complete a self-evaluation form provided by the board.*

When the Nurse Consultant I position was vacated in 2002, the vacancy was not filled. As a result, the site reviews were only done sporadically. In June 2009, the board contracted for a part-time person to complete the site reviews. However, this has not fully addressed the problem.

We recommend that BON take steps to ensure that the onsite reviews and self evaluations are being completed in a timely manner to ensure that the training programs are presenting qualified applicants.

Recommendation No. 3

The Division of Corporations, Businesses, and Professional Licensing's (DCBPL) chief investigator should take steps to ensure that complaints and cases are investigated timely.

DCBPL's investigative section often does not complete investigations in a timely manner. The section's effectiveness is further diminished by the outdated and unreliable Enforcer database system currently in use.

It is DCBPL's responsibility to provide investigative support for BON. Investigators examine and research each complaint to determine jurisdiction and whether a violation exists. If the complaint meets these conditions, a case is opened and a priority is assigned. The priority reflects the level of imminent danger to the public.

During the period of July 1, 2006, through March 31, 2010, there were a total of 136 complaints and 412 cases active. Of these, 6 complaints and 20 cases were inspected for a more in-depth analysis.

Nine cases and two complaints experienced lengthy periods of inactivity (six months or more). One of those cases was assigned a priority level of "2".[1]

Investigative staff attributed the delays to higher priority cases and tasks taking precedence. Staff also believed that the investigative database contributed to the problem. The database does not have a user-friendly mechanism for flagging inactive cases. Consequently, supervisors and investigators are not effectively monitoring caseloads. Ineffective monitoring leads to unnecessary delays.

Complaints and cases that are not investigated timely may allow an individual who is practicing inappropriately, or outside of his or her scope, to continue these violations.

Cases with life threatening repercussions should take priority. However, it is still reasonable for the public to expect that all complaints against licensees will be addressed as efficiently as possible. We recommend that the DCBPL chief investigator establish procedures to ensure that priorities within each assigned level are outlined and that cases and complaints with periods of inactivity are identified and addressed.

---

[1]A priority level of "1" signifies incidents which represent an immediate danger to the public health and safety.
A priority level of "2" signifies incidents which, by the severity of their nature, dictate a high priority.
A priority level of "3" signifies incidents that are less serious in nature and do not appear to constitute immediate or severe public danger or serious damages.
A priority level of "4" signifies incidents involving failure to comply with statutes or regulations which are discovered through the course of proactive enforcement, but do not meet the criteria of priority 1 through 3.

Recommendation No. 4

The director of Boards and Commissions, Office of the Governor should fill the LPN board position with an LPN currently involved in institutional nursing services.[2]

The LPN board member appointed on June 12, 2007, for the institutional nursing services position is not currently involved in that field. She is currently an emergency medical technician and works for an emergency medical services company conducting training. There is no evidence on file that she has ever been involved in institutional nursing services.

The prior board member appointed to this position did not meet statutory requirements either. That board member was a clinical nurse, not an institutional nurse.

Under AS 08.68.010, BON is made up of seven members: one LPN currently involved in institutional nursing services, one RN engaged in baccalaureate nursing education, three RNs at large, and two public members.

It is the responsibility of the LPN currently involved in the institutional nursing services board member position to give technical advice related to the special needs of those in long-term care facilities and nursing homes. Without representation by an LPN involved in institutional nursing services, the long term care facilities and nursing homes are being underrepresented on the board. Accordingly, we recommend that the current LPN member be removed from the LPN board position and replaced with an individual meeting the statutory requirement.

[2]Institutional nursing services include facilities such as long-term care, Pioneer's Homes, and nursing homes.

# ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Board of Nursing (BON) has served the public by ensuring that qualified applicants are licensed as nurses or certified as nurse aides. Regulations related to licensure and certification provide reasonable assurance of competence, without being overly restrictive to entry into the nursing profession.

BON has generally displayed an ability to conduct its business in a professional, competent, and efficient manner - with the exception of the areas noted in the recommendations. BON has consistently proposed changes to statutes and regulations to improve its effectiveness in regulating the nursing profession in Alaska.

***Determine 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.***

BON has changed many regulations as well as added several new ones, to bring the nursing profession in Alaska into line with the Model Nurse Practice Act that was commissioned by the National Council of State Boards of Nursing (NCSBN). The idea is to standardize as many of the regulations as possible across the United States and Canada so that nurses can be licensed in multiple states. BON has also worked on implementing the commitment to ongoing regulatory excellence (CORE) best practices. These best practices are based on data collected by the NCSBN from boards of nursing and stakeholder groups to measure outcomes, outputs, and efficiencies of nursing regulations during 2000 and 2002. This data was analyzed to discover those boards with consistently high ratings in outputs and effectiveness in each of five functional groups: discipline, licensure, education program approval, practice and governance. BON has adopted the CORE format and has formed a strategic plan around the five functional groups.

Under AS 08.01.065(c), the Department of Commerce, Community, and Economic Development (DCCED) must *"establish fee levels... so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation."* BON reviews and provides feedback on changes to fees proposed by the division.

BON revenues come from licensing and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in board revenues, with BON receiving most of its revenues during the odd-numbered fiscal years. We reviewed the Division of Corporations, Business, and Professional Licensing's (DCBPL) internal records to identify BON revenues and expenditures. Exhibit 2 (shown below) presents BON's revenues and expenditures for FY 07 through FY 10.

**Exhibit 2**

**Board of Nursing**
**Schedule of Revenues and Expenditures**
**FY 07 – FY 10**
(Unaudited)

| | | FY 07 | FY 08 | FY 09 | FY 10 |
|---|---|---|---|---|---|
| Revenue | $ | 2,436,683 | 1,055,587 | 2,688,408 | 1,055,141 |
| Direct Expenditures | | | | | |
| Personal Services | | 555,647 | 580,516 | 646,370 | 627,158 |
| Travel | | 23,289 | 14,867 | 12,615 | 23,081 |
| Contractual | | 316,439 | 205,323 | 318,455 | 253,686 |
| Supplies | | 4,459 | 4,083 | 7,534 | 5,169 |
| Total Direct Expenditures | | 899,834 | 804,789 | 984,974 | 909,094 |
| Indirect Expenditures | | 761,660 | 721,682 | 751,754 | 876,908 |
| Total Expenditures | | 1,661,494 | 1,526,471 | 1,736,728 | 1,786,002 |
| Annual Surplus (Deficit) | | 775,189 | (470,884) | 951,680 | (730,861) |
| Beginning Cumulative Surplus (Deficit) | | 883,330 | 1,658,519 | 1,187,635 | 2,139,315 |
| Ending Cumulative Surplus (Deficit) | $ | 1,658,519 | 1,187,635 | 2,139,315 | 1,408,454 |

Due to errors in the reporting of information to BON and DCBPL, there was a large cumulative surplus at the end of FY 10. The errors were the result of a past DCBPL employee who did not have the accounting experience necessary to schedule expenditures and revenues properly or to forecast future revenues and expenditures - experience which is necessary to set fees for future periods. To address this, DCCED is recommending to BON that licensing fees for the occupations regulated by the board be dropped approximately 20% for the FY 11 and FY 12 renewal cycles.

that licensing fees for the occupations regulated by the board be dropped approximately 20% for the FY 11 and FY 12 renewal cycles.

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

New regulations were enacted to address the passing rate for registered nurse (RN) and certified nurse aide (CNA) training program students. Programs are monitored for their pass rates and if one falls below a cumulative pass rate of 80% annually, then the program must submit a plan for improvement to the board and come into compliance prior to being approved for continuing the program (12 AAC 44.055).

BON instituted new regulations regarding criminal background checks for licensees and required photographs with applications (12 AAC 44.319 and 12 AAC 44.290(a)(1)(A) respectively).

BON passed regulations allowing RN's to administer Food and Drug Administration regulated vitamins and minerals as provided by their health care provider (12 AAC 44.945(d)). BON also passed standards for the delegation of nursing duties to other persons (12 AAC Article 9).

BON made several suggestions for statutory changes. These changes included rescinding obsolete statutes, as well as changing the wording for other existing statutes, and were ordered by priority. To date, none of these changes have been made.

***Determine 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.***

BON's website has information on licensing, agendas, board meetings, minutes, regulations and complaints. The board's website contains several helpful links for obtaining additional information regarding the profession of nursing. Interested persons are encouraged to call the BON office to schedule testimony time and get information for up-coming board meetings. The location, date and time for board meetings are also posted on the State of Alaska Online Public Notice website and are published in the Anchorage Daily News.

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

Public notices of proposed regulations are published in major newspapers. Meetings are adequately advertised, and time is set aside for public testimony.

There is evidence of extensive participation from the public in the continued development of BON regulations. Meeting minutes evidenced public comment on existing regulations and on proposed regulations. Public comments were heard by teleconference during times when interested persons were unable to attend the meetings in person.

***Determine 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 victims' rights or the office of the ombudsman have been processed and resolved.***

There have been 136 complaints and 412 cases active during the time period from July 1, 2006, to March 31, 2010. Listed in Exhibit 3 (shown below) is a summary of the actions taken for those complaints and cases.

**Exhibit 3**

| **Complaints** | **Number of Actions** |
|---|---|
| Case Opened | 68 |
| No Action (no violation, insufficient evidence, etc.) | 41 |
| Corrective Action Taken | 4 |
| Other | 4 |
| Advisement Letter | 2 |
| Still Under Investigation | 17 |
| **Total Complaints** | **136** |
| **Cases** | |
| Advisement Letter | 14 |
| No action (no violation, insufficient evidence, etc.) | 52 |
| License Action | 231 |
| Corrective Action Taken | 21 |
| Other | 43 |
| Still Under Investigation | 51 |
| **Total Cases** | **412** |

Of these, 6 complaints and 20 cases were inspected for a more in-depth analysis. Of the 26 files reviewed, 11 were not investigated in a timely manner (see Recommendation No. 3).

No complaints or investigations specifically involving the actions and activities of BON were received, or undertaken by, either the Office of the Ombudsman or the Office of Victim's Rights within the past six fiscal years.

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

BON is adequately regulating entry into the profession of nursing. Controls are in place and consistently performed to ensure it has presented only qualified applicants to serve the public. When received, the applications are subjected to a checklist to verify that all required documentation, such as test scores and proof of education or experience, are present, ensuring that the applicant meets all statutory and regulatory requirements.

Exhibit 4 (shown below) is a summary of new licenses and permits issued by BON for the time period from July 1, 2005, to June 30, 2009. This information was compiled from annual reports issued by the board.

**Exhibit 4**

| New Licenses Issued (Exclusive of Renewals) | FY 05 | FY 06 | FY 07 | FY 08 | FY 09 | Total Licenses (as of June 30, 2009) |
|---|---|---|---|---|---|---|
| Registered Nurse | 815 | 1084 | 1561 | 1251 | 1611 | 9304 |
| Licensed Practical Nurse | 110 | 114 | 176 | 129 | 188 | 958 |
| Advanced Nurse Practitioner | 51 | 47 | 60 | 58 | 60 | 635 |
| Registered Nurse Anesthetist | 4 | 17 | 25 | 22 | 11 | 135 |
| Certified Nurse Aide | 692 | 907 | 1201 | 1077 | 544 | 2842 |

Fiscal year 2009 experienced a sharp decline in the number of CNAs licensed as a result of some training programs closing and others limiting the numbers of students they would accept.

We reviewed the requirements for licensure and they appear reasonable and appropriate to ensure that qualified professionals are licensed and the public's best interest is protected. Continuing education requirements are reasonable and are audited in accordance with statute.

***Determine 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.***

We found no evidence that the board has not complied with state personnel practices, including affirmative action, in the qualifying process of applicants. Each time the board has denied an applicant's licensure or certification, reasoning has been based on requirements set out by statute and regulation, not on the personal attributes of applicants. The reasons for denials are stated in writing, with the applicant always informed of their rights and of the process by which they can contest or appeal any denial of licensure or certification.

***Determine 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.***

See discussion in Recommendations No. 1 through No. 4 in the Findings and Recommendations section of this report. DCBPL, along with BON, should take measures to address the following:

1. Establish procedures to ensure that the Drug Enforcement Agency is notified when prescriptive authority is revoked or suspended and establish procedures to ensure in-

state pharmacies, hospitals, and clinics are aware of the disciplinary proceedings database on the board's website.

2. Ensure that onsite reviews and self evaluation forms are completed in a timely manner for all CNA training programs.

3. Ensure complaints and cases are investigated timely.

4. Fill the licensed practical nurse (LPN) board member position with an LPN meeting statutory requirements.

***Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.***

In FY 09, BON adopted a balanced scorecard form of strategic planning based on the CORE best practices and set their strategic goals by the five functional groups: discipline, licensure, education program approval, practice and governance. They set their agendas to complement their strategic goals and revisit their plan annually in October. The board is continuing to implement these best practices and is improving their strategic goals.

***Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.***

There are several state and national organizations that provide newsletters, continuing education, and legislative support. The NCSBN provides national licensing exams for the nursing professions, acts as a clearing house for applicants of licensure by reciprocity, provides legislative support, and assists state boards in the standardization of regulations. We conclude that there is no evidence that any of these organizations provide the same public protection or duplicate the operations of BON. In addition, we did not find evidence of other state or private sector agencies that conduct or duplicate the efforts of BON.

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Governor@alaska.gov

# Office of Governor Sean Parnell
STATE OF ALASKA

November 22, 2010

RECEIVED
NOV 2 2 2010
LEGISLATIVE AUDIT

Ms. Pat Davidson
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Davidson,

This letter is in response to your October 29, 2010 letter to Governor Parnell regarding the "CONFIDENTIAL" preliminary audit report on the Board of Nursing (BON).

Recommendation No. 4: The director of Boards and Commissions, Office of the Governor should fill the LPN board position with an LPN currently involved in institutional nursing services.

The Office of the Governor agrees that the member appointed to the LPN seat is not currently involved in institutional nursing services. We are working to appoint an LPN who meets the statutory criteria.

If you need additional information, please contact me at 907-465-3934.

Sincerely,

Jason Hooley
Director
Boards and Commissions

cc: Mike Nizich, Chief of Staff, Office of the Governor

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STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

*Sean Parnell, Governor*
*Susan K. Bell, Commissioner*

RECEIVED
NOV 19 2010
LEGISLATIVE AUDIT

November 18, 2010

Ms. Katina Holmberg
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Re: Preliminary Report, Board of Nursing, Department of Commerce, Community and Economic Development (DCCED)
Dear Ms. Holmberg:

Thank you for report dated September 30, 2010 regarding audit conclusions and recommendations concerning the State Board of Nursing (BON). I appreciate your review and the opportunity to provide input into the process. In general, the department concurs with the report conclusion and recommendation and our comments are provided below.

Report Conclusions
DCCED agrees with the report conclusion that the BON "is operating in an efficient and effective manner and should continue to regulate the profession it governs. We believe the board is safeguarding the public interest by ensuring the competence and integrity of those who present themselves to the public as LPNs and CNAs." DCCED diligently strives to fulfill its duty of supporting licensed professionals and State boards to protect the public.

Recommendation No. 1
DCCED concurs that notification to the Federal Drug Enforcement Agency and other appropriate entities should occur when an advanced nurse practitioner's authority to write prescriptions is revoked or suspended. The Department will work with the BON, the Board of Pharmacy and other affected healthcare agencies and professionals to establish protocols for awareness of disciplinary proceedings and sanctions on a licensee.

Recommendation No. 2
DCCED supports the report recommendation for timely certified nurse aide training program reviews and/or training program self-evaluations. One difficulty in finding equitable solutions to this issue is past budget cuts and the resulting reduction in state personnel. A part time contract employee has not sufficiently filled the training inspection service gap. DCCED will endeavor to assist the BON chairman in finding solutions that provide adequate levels of inspection and self-evaluation review.

P.O. Box 110800, Juneau, Alaska 99811-0800
Telephone: (907) 465-2500 Fax: (907) 465-5442 Text Telephone: (907) 465-5437
Email: questions@alaska.gov Website: http://www.commerce.alaska.gov/

Recommendation No. 3
DCCED concurs that the Division of Corporations, Business and Professional Licensing (CBPL) chief investigator should take steps to ensure complaints and cases are investigated timely, and the division has already implemented positive measures toward that end. Specifically, the preliminary report recommends establishing procedures to ensure consistent treatment of complaints and cases in the priority levels assigned, that priorities are outlined and that cases and complaints with periods of inactivity are identified and addressed. The preliminary report also presents that staff believe the existing database did not have a user-friendly mechanism for flagging inactive cases and this contributed to delays.

CBPL was previously aware of the above described issues and took steps to improve timely investigations, including management changes, investments in updated technology, and staff training. A new Chief Investigator was hired in July 2010 and will be establishing procedures to outline priorities and to identify cases with inactive periods. In June 2010 CBPL implemented a new database system (GLSuite) that has significant functionality improvements over the prior outdated "Enforcer" system, including a more user-friendly mechanism for flagging inactive cases. In addition, staff training has and will continue to occur to maximize the utilization of the new system. CBPL expects that these steps will help ensure complaints and cases are investigated in a timely manner.

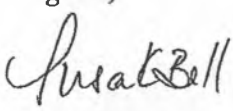
Recommendation No. 4
DCCED supports the management letter comments that the Licensed Practical Nurse board member should represent the institutional nursing services discipline as outlined in AS 08.68.010. We will work with the BON and the Office of the Governor Boards and Commissions to ensure that the LPN Board seat meets the statutory requirements.

Analysis of Public Need
CBPL reviewed the information presented in this section of the preliminary report and concurs with the reports comments.

We have no other comments on this section.

Again, thank you for an opportunity to provide input. We are pleased your review has, in general, found the Board of Nursing to be working in an efficient and effective manner. Should you have any questions about the content of this letter, please do not hesitate to contact me at 907-465-2500.

Regards,



Susan K. Bell
Commissioner

RECEIVED
NOV 17 2010
LEGISLATIVE AUDIT

Beth Farnstrom
Chair of the Board of Nursing
18751 Villages Scenic Parkway
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b_gartner@yahoo.com
Phone (h) 907-349-6074

Pat Davidson
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

November 14, 2010

Dear Ms. Davidson,

As the Chair of the Board of Nursing, I have reviewed the preliminary audit report on the Department of Commerce, Community and Economic Development (DCCED), Board of Nursing Sunset Review, September 30, 2010. A few clarifications I would like to address.

**Recommendation No. 1**
BON should take steps to ensure all appropriate entities are notified when an advanced nurse practitioner's (ANP) authority to write prescriptions has been revoked or suspended.

The Board's plan is when an ANP's authority to write prescriptions has been revoked or suspended by the BON the Executive Administrator will:

- notify the DEA on the first day after the BON meeting concludes
- Submit the ANP's name to the Board of Pharmacy on the first day after the BON meeting concludes. The Board of Pharmacy will notify the pharmacies in the State of Alaska.
- notify the employer of an ANP on the first day after the BON meeting concludes
- update the ANP disciplinary data base found on the BON website with in two weeks after the BON meeting has concluded

Within 3 weeks after the BON meeting, the Executive Administrator will send out a message on the BON listserv stating when an ANP's authority to write prescriptions is revoked or suspended.

**Recommendation No. 2**
The BON chairman should take steps to ensure that the required CNA training program reviews are being conducted.

Recommendation No. 2 is for the required review of the CNA training programs. This issue has been addressed with Director Urion, Director Davis, Director Smith and Director Habeger. The Board of Nursing has had 4 Directors since I was appointed to the Board in March 2007. As found in the audit, the position of nurse consultant 1 was vacated in 2002. The Board identified that the posted position was not being filled due to the low salary compared to other nursing positions available. The best the Board has been able to do is a contract position. The contract employee has completed 3/4 of the first reviews of CNA programs as of July 2010 and others are in progress since then. The Board has recommended the position needs to be posted but with a competitive salary to ensure an experienced qualified candidate will apply. Director Habeger attended the October BON meeting and the issue of needing this position filled was addressed. I will continue to address this issue until the position is filled and in the interim the contract employee will continue the reviews.

**Recommendation No. 3**
The Division of Corporations, Business, and Professional Licensing's chief investigator should take steps to ensure that complaints and cases are investigated timely.

The Board of Nursing takes the responsibility that all complaints are investigated in a timely manner. I have learned that the Board of Nursing has some "older" cases due to a previous investigator who had some complaints that were never investigated. The current investigators are working to prioritize and complete the investigations. Chief, Quinten Warren has added another investigator to the BON and made Ken Weimer the senior investigator so there will now be a great deal more help to catch up the backlog plus deal with the daily intake. Also, the case situation will be monitored much more now than in the past as new procedures and computer system get up and running. The average of most cases would be that they are open from 3 months to one year if they do not involve litigation prior to the attorney general being involved, expert review and that type of process. Of course more complex cases or cases involving legal counsel and such do not fit these time frames. Cases are prioritized. The system is a 1-4 system with 1 being the highest priority, which would be cases of great potential for public harm and 4 being cases with low potential such as falsified application cases. The new GLS system is being used. However, it has many "bugs" in it which are still be rectified and causing all sort of disruptions and such. This system is actively being perfected each week. The chief and senior staff meet with other Division users in banking and security and them a meeting is held each week with the GLS people to address problems and working on correcting them. Hopefully by year's end the system will be working as expected. The Board will obtain an update with the investigative team at the January 2011 Board meeting.

**Recommendation No.4**
The Director of Boards and Commissions, Office of the Governor, should fill the LPN position with an LPN currently involved in institutional nursing services.

Recommendation No. 4 is the appointment of a qualified LPN. The previous Chair for the Board of Nursing recognized that the present LPN did not meet the requirements. The Chair contacted the previous Governor's office but no action was taken. The Board agrees that we need a practicing LPN for input on practice issues. The present LPN on the Board term ends March 2011. I have contacted Jason Hooley to address the issue for the future LPN appointment to the BON and have offered to evaluate potential LPN candidates prior to their appointment.

Analysis of Public Need on page 7 accounting error. I would like to highlight that the Volunteer Board of Nursing found the large accounting error that the state paid employees made. The Board will take credit for finding this error. With this error corrected, The Board was able to reduce our 2010 renewal fees.

Analysis of Public Need on Page 8 about statutory changes. The Board was asked by Director Davis in April 2008 to submit obsolete statutes. The Board promptly submitted 8 pages of changes with the rationale for the changes and the priority of these changes. The Board meets with the Director on a quarterly basis at our meeting. We have repeatedly asked our Director about where these statutory changes are in the system. The Board again asked Director Habeger at our October 2010 meeting if these statues are going to be presented as a Division or should the BON present these changes on our own. Director Habeger informed the Board that there is an omnibus with our statute requests in place. Director Habeger will follow up on this and report back to the Board at the January 2011 meeting.

Thank you for the opportunity to address a few of the items that required clarification and actions to rectify the deficiencies addressed in the preliminary BON sunset audit.

Sincerely,

Beth Gartner Farnstrom, RN

Beth Gartner Farnstrom, RN
BON Chair

3/8/11

Alaska State Legislature
ABC Board Audit Review Subcommittee of the
Legislative Budget & Audit Committee

In August 2010, the Alcoholic Beverage Control (ABC) Board Audit Review Subcommittee, under the direction of the Legislative Budget and Audit Committee, held hearings related to the 2009 ABC Board Sunset Audit and the provisional one year extension of the ABC Board's operations. Specifically, the Subcommittee was tasked with performing an analysis of the Board and policy issues related to its 2004 transfer from the Department of Revenue to the Department of Public Safety, and to make recommendations regarding the continuance of its operations.

The Subcommittee held two meetings where it solicited testimony and data from both the alcohol industry and the regulatory and enforcement agencies providing oversight to it. On August 13, 2010, the Subcommittee received presentations from Alaska Cabaret, Hotel, Restaurant and Retailer's Association (CHARR), Anchorage CHARR and the Anchorage Responsible Beverage Retailers Association (ARBRA), as well as public testimony in the form of written submissions from individual licensees. Then, on August 27, 2010, the Subcommittee received a presentation on ABC Board operations from Director Shirley Gifford, testimony from Commissioner Masters of Department of Public Safety (DPS) and ABC Board Chairman Bob Klein, and updated audit information from the Legislative Audit Division.

Regarding recent audits, testimony indicated the administration and operations of the ABC Board have greatly improved under the tenure of Director Gifford, who received high praise from all parties. Testimony also indicated the 2004 move of the ABC Board to Public Safety had been successful in achieving the more rigorous enforcement atmosphere which had served as the original justification for the transference. These positive points were counter-balanced, however, by recognition that the cultural shift towards a more exclusively enforcement mentality had inadvertently created an adversarial relationship between the ABC Board and industry and, in the words of ABC Board Chair Klein, an apparent loss of recognition of and/or respect for the industry's "commercial aspects".

It is acknowledged by the ABC Board it will continue to perform its enforcement and oversight duties regardless of the Department under which it operates. It is further acknowledged by the Department of Public Safety (which provides administrative services to the Board but, by admission, exercises little or no directive control) it will continue to assist the ABC Board with its enforcement and compliance activities. Therefore, recognizing such a move should entail no diminishment of service by the ABC Board but is likely to engender a greater sensitivity on its part for the commercial benefits the industry generates for the State, it is the recommendation of the ABC Board Audit Review Subcommittee that the ABC Board be transferred to the Department of Commerce, Community and Economic Development.

Respectfully submitted by Subcommittee Members:

Senator Kevin Meyer, Chair
Representative Mike Hawker
Representative Bill Stoltze
Senator Linda Menard, Alternate

3/8/11

# Division of Legislative Audit

## Report Digest #12-20063-09

SUMMARY: A Sunset Review on the Department of Public Safety, Alcoholic Beverage Control Board, August 14, 2009

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Alcoholic Beverage Control Board (ABC Board or the Board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an effective and efficient manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the ABC Board should be reestablished. Currently, under AS 44.66.010(a)(1), the Board will terminate on June 30, 2010 and will have one year from that date to conclude its administrative operations.

The primary objective of this audit was to determine whether there is a public need for the Board and if its existence should be extended. The secondary objective was to determine if the ABC Board is serving the public interest in regards to licensing/permitting functions, administrative activities, board activities, and enforcement activities by reviewing these major functions for effectiveness and efficiency of operations.

REPORT CONCLUSIONS

In our opinion, the ABC Board should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages in Alaska in order to protect the public's health, safety, and welfare. The Board has demonstrated a need for its continued existence by providing protection to the general public through the issuance, renewal, revocation, and suspension of liquor licenses. Protection has also been provided through active investigation of suspected licensing violations and enforcement of the State's alcoholic beverage control laws and regulations.

With the exceptions noted in the Findings and Recommendations section of this report, the ABC Board is operating in the public interest. However, improvements are needed to improve the effectiveness and efficiencies of its operations.

This is the third audit performed in the last seven years in which we have recommended a stronger internal control environment be implemented to include written policies and operating procedures, as well as a strategic plan governing enforcement activities. Although the current director has taken immediate action to make improvements to the ABC Board, we are nonetheless concerned that certain issues in the last three audits have not yet been addressed. Therefore, we recommend that AS 44.66.010(a)(1) be amended to extend the termination date of

the Alcoholic Beverage Control Board to June 30, 2014.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The ABC Board members and director should establish quantifiable and objective enforcement goals and develop a clear plan by which they will direct its enforcement resources to most efficiently and effectively accomplish those goals in a verifiable manner.

There is no enforcement strategy to prioritize and apply resources in a cohesive fashion to enforce the alcoholic beverage laws. The agency does not know if inspecting and checking half the licenses is a good or bad outcome for their efforts, an effective or efficient use of their resources, or in the best interest of the public.

The ABC Board continues to be without a systematic strategy to ensure resources are used effectively and efficiently to enforce the alcoholic beverage laws. The ABC Board members and director should make it a priority to develop and implement goals for enforcement activities that have tangible metrics.

Recommendation No. 2

The ABC Board members and director should develop and enforce written policies and procedures to ensure the staff's compliance with state laws and decisions made by the board and director.

There are instances of non-compliance and non-enforcement with state laws, overpayments to municipalities, possible nonpayment of fees by license holders, and incomplete and inaccurate tracking of data. The ABC Board staff's lack oversight and accountability over their activities to ensure compliance with state laws and decisions made by the board and director.

The ABC Board members and director should ensure written policies and procedures are developed, and followed by staff to ensure compliance with state laws and directives from the board and director.

3/8/11

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

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August 14, 2009

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities and the attached report is submitted for your review.

DEPARTMENT OF PUBLIC SAFETY
ALCOHOLIC BEVERAGE CONTROL BOARD
SUNSET REVIEW
July 27, 2009

Audit Control Number
12-20063-09

This review examines the activities of the Alcoholic Beverage Control Board (ABC Board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. Alaska Statute 44.66.010 specifies that the ABC Board will terminate on June 30, 2010, and will have one year from that date to conclude its administrative operations. We recommend that the legislature extend the ABC Board's termination date until June 30, 2014.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson

Pat Davidson, CPA
Legislative Auditor

# TABLE OF CONTENTS

# OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Alcoholic Beverage Control Board (ABC Board or the Board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the ABC Board should be re-established. Currently, under AS 44.66.010(a)(1), the Board will terminate on June 30, 2010 and will have one year from that date to conclude its administrative operations.

## Objectives

The ABC Board was created to regulate the manufacture, sale, barter, and possession of alcoholic beverages in order to protect the public health, safety, and welfare of citizens in the State.

To this end, the primary objective of this audit was to determine whether there is public need for the Board and if its existence should be extended.

The secondary objective was to determine if the ABC Board is serving public interest in regards to licensing/permitting functions, administrative activities, board activities, and enforcement activities by reviewing these major functions for effectiveness and efficiency of operations.

## Scope

Alaska Statute 44.66.050 outlines the factors to be considered in determining whether the Board has demonstrated public need for its continued existence. We reviewed the ABC Board's activities that occurred from FY 07 through FY 09. We also reviewed the board's proceedings to determine whether it complied with Alaska Statutes and regulations.

## Methodology

In order to meet the various objectives of the audit, our fieldwork included:

- Review of Title IV; and Title 13, Chapter 104 of the Alaska Administrative Code to determine the ABC Board's compliance to its statutes and regulations.

- Attendance at the February and May 2009 ABC Board meetings. Examination of the ABC Board meeting records to identify board actions. We obtained notifications from the

Alaska Online Public Notice System, and used board meeting minutes to verify compliance with the public notice and board meeting requirements.

- Analysis of the ABC Board's enforcement records and the DPS information system, APSIN, case data for enforcement activities.

- We performed a reconciliation between the ABC Board's licensing database fees and the State Accounting System financial accounts. Using ALDER management reports and the ABC Board's licensing database information, we prepared a schedule of revenues, expenditures, and a list of licensing fees for FY 07 through FY 09.

- On a sample basis we selected 86 license files for examination of compliance with the ABC Board statutes, regulations, and procedures.

- We reviewed newspaper articles pertaining to liquor licensing in Alaska.

- We surveyed local governing bodies, law enforcement agencies, community groups (community councils and Mother's Against Drunk Driving) and active licensees for their opinions on the operations and decisions of the ABC Board.

  The survey questionnaires were sent to all the police departments, using information from the Alaska Peace Officer Association and to Village Public Safety Officers. All local governing bodies and community and village councils were surveyed. For the approximately 1800 active licensees, we selected a random and judgmental sample totaling 385 licensees.

| Survey Group | Response Rate |
|---|---|
| Local Government | 45% |
| Law Enforcement | 48% |
| Active Licensees (Sample Basis) | 48% |
| Community Groups | 19% |

- We tallied and analyzed responses from the survey for use in the analysis of public need section of the report

- We examined miscellaneous documents related to the board's operations as necessary for evaluating if the Board is operating in the public interest.

- We interviewed the ABC Board's staff, the director, the current board chair, and various individuals from other state agencies. We also contacted the Alaska Ombudsman; the Office of Victim's Rights Commission; Human Rights Commission; U.S. Equal Opportunity Office; Department of Administration, Division of Personnel; and Boards and Commissions regarding any complaints against the ABC Board.

# ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (ABC Board or the Board) was established in 1959 by Title IV of the Alaska Statutes as a regulatory and quasi-judicial agency. For administrative purpose, the ABC Board is located within the Department of Public Safety (DPS). The Board controls the manufacture, barter, possession, and sale of alcoholic beverages in the State. The duties of the Board include overseeing the issuance, transfer, renewal, suspension, and revocation of licenses, and proposing and adopting regulations necessary to carry out the purposes of governing statutes in a manner that will protect the public health, safety, and welfare. In addition, the Board may grant peace officer powers to persons employed for the administration of Title IV. These powers are used as necessary for the enforcement of the criminally punishable provisions of the Title, regulations of the Board, and other criminally punishable laws and regulations including laws against prostitution and gambling. These powers are subject to the concurrence of the DPS commissioner.

The Board is composed of five members appointed by the governor and confirmed by the legislature. State law requires two board members be persons actively involved in the alcoholic beverage industry (excluding wholesale) and at least three members representing the general public. No three members of the Board may be engaged in the same business, occupation, or profession. Board members, including their immediate family, representing the general public, may not have any financial interest in the alcoholic beverage industry. Board members are appointed for overlapping three-year terms. A director, appointed by the governor, serves as the executive officer and is responsible for enforcing Title IV and the regulations adopted by the Board.

Exhibit 1

| Alcoholic Beverage Control Board Members as of July 15, 2009 |
|---|
| **Robert Klein, Chairman**<br>Anchorage, Industry Member<br>Term expires March 1, 2011 |
| **Ethan Billings**<br>Juneau, Industry Member<br>Term expires March 1, 2012 |
| **Belen Cook**<br>Cordova, Public Member<br>Term expires March 1, 2010 |
| **Joseph DelDonno**<br>Anchorage, Public Member<br>Term expires March 1, 2011 |
| **Ellen Ganley**<br>Fairbanks, Public Member<br>Term expires March 1, 2012 |

Title IV specifies the type of licenses, licensing fees and the activities allowed under each class of license issued by the Board. Title IV also establishes procedures for the issuance of new and renewal licenses.

ABC Board employees ensure that the approximately 1,800 licensees comply with Title IV. Employees provide three functions that involve licensing, enforcement, and administration activities. These services are briefly described as follows:

- Licensing

  The three-member licensing staff is responsible for processing license and permit applications, maintaining licensing records and files, collecting licensing fees, and

answering licensing questions asked by the public and licensees. The licensing supervisor is also responsible for preparing board meeting packets and for recording and transcribing the board meeting minutes.

- Enforcement

  The six-member enforcement staff currently consists of two Anchorage-based investigators, one Fairbanks-based investigator, one Juneau-based investigator, one Anchorage-based administrative clerk, and one Anchorage-based enforcement supervisor. Investigators perform various duties including inspecting licensed premises, investigating complaints of suspected licensing violations, conducting compliance checks, and responding to questions from licensees and the public. Investigators monitor server training courses and perform background checks on applicants. They also give lectures relating to alcoholic beverage control laws and regulations on behalf of the Board and provide Title IV training to law enforcement agencies on request. The administrative clerk maintains the statewide written order database which contains a monthly record of the alcohol purchased by, and shipped to a person who resides in a municipality or established village that has restricted the sale of alcohol beverages.

- Administration

  The ABC Board's director and an administrative assistant comprise the administrative staff. Administrative duties include preparation of budget documents, calculation and issuance of revenue sharing payments to local municipalities, issuing public notices, processing of vendor invoices, and the preparation of bank deposits. The director provides oversight, guidance and direction to staff, participates in public hearings and meetings, and addresses inquiries and requests from licensees, law enforcement agencies, and the general public.

The ABC Board's office is located in Anchorage. In FY 09, the Board has an operating budget of approximately $1.3 million for its ten staff positions and activities (excluding revenue sharing).

# REPORT CONCLUSIONS

In our opinion, the Alcoholic Beverage Control Board (ABC Board) should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages in Alaska in order to protect the public's health, safety, and welfare. The Board has demonstrated a need for its continued existence by providing protection to the general public through the issuance, renewal, revocation, and suspension of liquor licenses. Protection has also been provided through active investigation of suspected licensing violations and enforcement of the state's alcoholic beverage control laws and regulations.

With the exceptions noted in the Findings and Recommendations section of this report, the ABC Board is operating in the public interest. However, improvements are needed to improve the effectiveness and efficiencies of its operations.

This is the third audit performed in the last seven years in which we have recommended a stronger internal control environment be implemented to include written policies and operating procedures as well as a strategic plan governing enforcement activities. The current director assumed these responsibilities in January 2009, and has made significant improvements in a matter of a few months. The current director has been proactive in improving daily operational functions and addressing outstanding and current audit issues. Although the current director has taken immediate action to make improvements to the ABC Board, we are nonetheless concerned that certain issues in the last three audits have not yet been addressed. Therefore, we recommend that AS 44.66.010(a)(1) be amended to extend the termination date of the Alcoholic Beverage Control Board to June 30, 2014.

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# FINDINGS AND RECOMMENDATIONS

A current status of the previous sunset audit[1] four recommendations are presented below.

Prior Audit Recommendation No. 1 – The Alaska Beverage Control Board's (ABC Board or the Board) members and director should strengthen the control environment over alcohol regulatory functions.

This recommendation has been partially resolved. However, continued improvements are needed to improve the licensing database data, procedures, and retention of documents. These issues are further addressed in the current Recommendation No. 2 of this report.

Prior Audit Recommendation No. 2 – The ABC Board members and director should develop and implement an overall plan of enforcement activities to ensure the effective allocation of their resources.

This recommendation has not been resolved. An overall strategy has not been implemented to ensure enforcement goals are met in an efficient and effective manner. The Board continues to lack a strategy for selecting licensed premise inspections and compliance checks. Some data is entered inconsistently or inaccurately into the enforcement database system. Improvements for enforcement are discussed at Recommendations No. 1 and No. 2.

Prior Audit Recommendation No. 3 – The ABC Board's director should ensure compliance with public notice requirements and establish procedures to ensure board meeting records are complete and accurate.

This recommendation has not been implemented. The ABC Board's staff is still not providing adequate public notification of its board meetings, and meeting records are still incomplete. (See current Recommendation No. 2 for further details.)

Prior Audit Recommendation No. 4 – The legislature should consider amending Title IV to remove the voting ability of the board's director.

The ABC Board's director periodically votes on issues decided in board meetings. AS 04.06.060 provides, "*If a majority of the board is present and voting, the director, with the consent of the members present, may cast a tie-breaking vote.*"

Allowing the director a vote removes an important check and balance of good government – a separation of the executive and quasi-judicial functions. To ensure an appropriate balance

[1]Department of Public Safety, Alcoholic Beverage Control Board, August 31, 2006, (Audit Control No. 12-20047-06).

of government, we recommended that the legislature consider amending the statute to remove the director's voting ability.

The situation remains the same and there is no current legislation to address this issue. The board and the director have not reached a concurrence of opinion in developing a better methodology in solving this matter that occurs infrequently.

Current Recommendations

Recommendation No. 1

The ABC Board members and director should establish quantifiable and objective enforcement goals and develop a clear plan by which they will direct its enforcement resources to most efficiently and effectively accomplish those goals in a verifiable manner.

There is no enforcement strategy to prioritize and apply resources in a cohesive fashion to enforce the alcoholic beverage laws. The ABC Board's enforcement investigators[2] are charged with enforcing alcoholic beverage laws and are currently given wide individual latitude in selecting licensees to inspect or check for compliance. However, without quantifiable and objective goals and a review process, the agency does not know if inspecting and checking half the licenses is a good or bad outcome for their efforts, an effective or efficient use of their resources, or in the best interest of the public.

Review of the enforcement database indicates that of the approximately 1800 current active licenses, 47% had premise inspections[3] and 50% had compliance checks[4] during the three-year period of FY 07 through FY 09. The remainder of the licenses were not inspected or checked for compliance during this period. It also appears many licenses were inspected multiple times, while many were not inspected at all. The ABC Board continues to be without a systematic strategy to ensure resources are used effectively and efficiently to enforce the alcoholic beverage laws.

The ABC Board members and director should make it a priority to develop and implement goals for enforcement activities that have tangible metrics. This plan should maximize their resources and provide direction to investigators to ensure they are performing their duties effectively and efficiently, and according to the direction of the board and director.

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[2]The ABC Board's enforcement staff consists of four investigators, with one based in Juneau, one based in Fairbanks, two based in Anchorage, as well as an enforcement supervisor in Anchorage. One Anchorage inspector is specifically assigned to conducting compliance checks. Premise inspections are conducted by the three remaining investigators.

[3]A premise inspection involves an enforcement investigator inspecting a licensed premise for compliance to the alcohol beverage laws.

[4]Compliance checks specifically involve determining whether licensees or agents of the licensee are furnishing alcohol to persons under the drinking age limit of 21 years and over-serving to patrons.

Recommendation No. 2

The ABC Board members and director should develop and enforce written policies and procedures to ensure their staff's compliance with state laws and decisions made by the board and director.

There are instances of non-compliance and non-enforcement with state laws, overpayments to municipalities, possible nonpayment of fees by license holders, and incomplete and inaccurate tracking of data. The ABC Board's staff lacks oversight and accountability over their activities to ensure compliance with state laws and decisions made by the board and director. Specific issues include:

1. Records Retention. The ABC Board's staff is not consistently retaining documents in accordance with the State records retention laws and the ABC Board's statutes with respect to premise inspection reports, notice of violations, criminal history records, permit applications, and notification letters.

   Premise inspection reports document an investigator's inspection of a licensed premise. Notices of violations communicate to a licensee and to the ABC Board alcoholic beverage violations by the license holder or agents of the licensee. The Board uses the criminal history records for evaluating an applicant's qualification for issuance, transfer, or renewal of an alcohol license.[5] The data from these documents should be recorded in the enforcement database; however, not all documents are retained to confirm the completeness and accuracy of the data.

   Applications received for issuance of caterers, special events, and other permits are also not retained. These applications provide important information regarding the event and conditions of approvals (e.g. police department authorizations and the ABC Board's approval).

   Notification letters to local governing bodies and expired license notifications were missing from the license files. A written notice to the local governing body is to be given within ten days after receipt of an application so that the local governing body may protest the issuance, renewal, relocation, or transfer of a license.[6] Additionally, the director is to mail a notice of expiration to each licensee who has not renewed.[7]

   All these documents serve to provide important evidence of, and support for, the board and director's actions. The staff's failure to retain these documents as records supporting the ABC Board's activities may impede the organization's ability to operate effectively, efficiently, and serve the public interest.

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[5]Alaska Statute 04.11.295. Criminal justice information and records.
[6]Alaska Statute 04.11.520. Notice to local governing body.
[7]Alaska Statute 04.11.550. Notice of expiration.

2. Licensing Revenues. Licensing fee revenues recorded in the ABC Board's database does not agree with nor is reconciled to the same revenue as it is recorded in the State accounting system. The failure to reconcile has resulted in overpayments to municipalities and missed payments by licensees. Timely, complete, and accurate reconciliation between the two systems would likely resolve these problems and provide information for the board and director to take immediate action regarding noncompliant licensees.

3. Licensing and Administrative Procedures. The ABC Board members and director are not providing appropriate guidance and oversight to staff to ensure compliance with state laws, and with its decisions.

   The ABC Board does not consistently adhere to the statutory requirement of notifying the local governing body within ten days of receipt of an application per AS 04.11.520. This important requirement allows time for the local government to review and possibly protest the issuance, renewal, relocation or transfer of a license.

   The ABC Board is also not enforcing the law requiring the return of caterers and special event permits within 48 hours. Other deficiencies in the ABC Board's licensing files, recordkeeping, database, and administrative processes include:

   - No current written policy and procedures to give guidance in situations where licensees are involved in bankruptcy proceedings.
   - Staff routinely failed to properly use existing checklists for verifying the completeness of licensing applications.
   - Instances where staff had not submitted local government protests in a timely manner to the board for review and action.
   - Significant occurrences of expired and/or unpaid licenses being incorrectly listed as active license holders.
   - Failure to detect instances where required wholesale affidavits had not been filed by wholesale licensees.
   - Municipalities being over or under paid for municipal license fee refunds.
   - The ABC Board's staff is not confirming and enforcing reports that should be filed by municipal law enforcement agencies prior to refunding municipal license fees.
   - The concerns of local governments that the ABC Board's policy and procedures do not include written notification to local governments regarding expired licenses.

   The above activities show that the ABC Board may not be operating effectively and efficiently and is not achieving its potential in furthering the public interest.

4. Enforcement Data Procedures. The ABC Board's investigators inconsistently or inaccurately entered case record information into the Alaska Public Safety Information

Network (APSIN) database. Enforcement staff is not adequately trained, and there are no written procedures to ensure the proper recording of enforcement activities into the database. The quality and completeness of information about enforcement activities entered into APSIN database is critical for analyzing, planning, and managing enforcement activities. Therefore, the lack of procedures governing quality and accuracy of data reported diminishes the ABC Board's ability to evaluate the performance of enforcement staff and the effectiveness of enforcement activities.

5. Statewide Database. The ABC Board's staff is not recording and verifying on a regular basis that all restricted alcohol purchasers[8] are included in the Statewide Database. The Statewide Database[9] is used to track written orders placed with alcohol package stores for shipment to communities with alcohol restrictions. One hundred thirty-four restricted purchasers were not included in the Statewide Database. Six restricted purchasers were listed as authorized purchasers in the database and three of these individuals purchased alcohol through the Statewide Database system since it went online in July 2008.

   Package (retail) stores are required to consult the Statewide Database first before shipping alcoholic beverages to municipalities or established villages that have restrictions on the sale of alcohol beverages. The Statewide Database tracks orders of alcohol purchased by, and shipped to, a person who resides in a municipality or established village throughout Alaska that has restricted the sale (volume) of alcoholic beverages in its community.

   Periodically verifying all restricted purchasers information in the database would help with the compliance and enforcement of the law by reducing the possibilities of package stores unknowingly selling alcohol to restricted purchasers.

6. Public Notice Requirements and Meeting Records. From FY 07 through FY 09, 11 of 16 board meetings were not adequately publicly notified per statute or board policy requirement. Four meetings were not advertised on the State's Online Public Notice system; seven meetings were not advertised in the local newspaper of the board meeting venue, and seven meetings were not advertised timely.

   A review of board meeting minutes showed over 50% of official board meeting records were incomplete and not adequately maintained. The board's agendas and meeting minutes did not adequately document public comment periods. The records also showed the board failed to document its purpose for executive sessions in almost all of their motions which is required under AS 44.62.310(b).

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[8]A restricted alcohol purchaser is a person who has been convicted of alcohol violation(s) under Alaska Statute 04.11.010. The ABC Board maintains a list of restricted alcohol purchasers to provide to package stores who are then prohibited from selling alcoholic beverages through written orders to these restricted purchasers under 13 AAC 104.645(1).

[9]Alaska Statute 04.06.095. Statewide Database.

In summary, the ABC Board members and director should ensure written policies and procedures are developed, and followed by staff to ensure compliance with state laws and directives from the board and director. Specific guidance should provide for: (1) conformance with state and agency records retention laws, policies, and procedures; (2) timely reconciliation of licensing revenues and licenses; (3) proper execution and documentation of licensing, permitting, and administrative activities; (4) accurate and complete data entry about enforcement activities into ASPIN; (5) confirmation that all restricted purchases are included in the Statewide Database; and, (6) adequate and timely public notification of board meetings, and accurate recording and record retention regarding board actions.

# ANALYSIS OF PUBLIC NEED

The following analyses of the Alcoholic Beverage Control Board's (ABC Board or the Board) activities address both positive and negative conditions related to the public need factors established in AS 44.66.050. These analyses are not intended to be all-inclusive, but rather address those areas we were able to examine within the scope of our review.

To help assess the impact of the Board's programs and procedures, we sent questionnaires to local governing bodies, law enforcement agencies, community councils/groups, and active licensees. The surveys covered a number of issues. Pertinent results are incorporated into applicable areas of this analysis.

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

The ABC Board is operating in the public's interest and protects the public's health, safety, and welfare. The ABC Board has made an effort to allow only qualified applicants to own and operate licensed premises. It conducts background checks to ensure that licenses are not initially granted to individuals with significant criminal records. On an ongoing basis, the Board receives, reviews, and takes action on notification of any reported criminal activity of licensees.

The ABC Board also controls the manufacture and sale of alcohol in designated areas by ensuring compliance and enforcing alcoholic beverage laws. The ABC Board's staff notifies the local governing body of new applications, renewals, transfers, denials, suspensions, and revocations. The board takes into consideration the local government's response or protest in the application review process. The board restricts the number of licenses within population sizes and around churches and schools according to state law. It also provides license regulation and enforcement, investigates complaints, and when warranted, revokes or suspends a license.

From FY 07 through FY 09, the board took individual actions approving 163 new license applications, 303 transfer requests, 101 license waivers, and 25 license resurrections. The board imposes fines and may suspend or revoke licenses or permits previously authorized if it is in the best interest of the public. The disciplinary actions taken by the board are summarized in Exhibit 2.

Exhibit 2

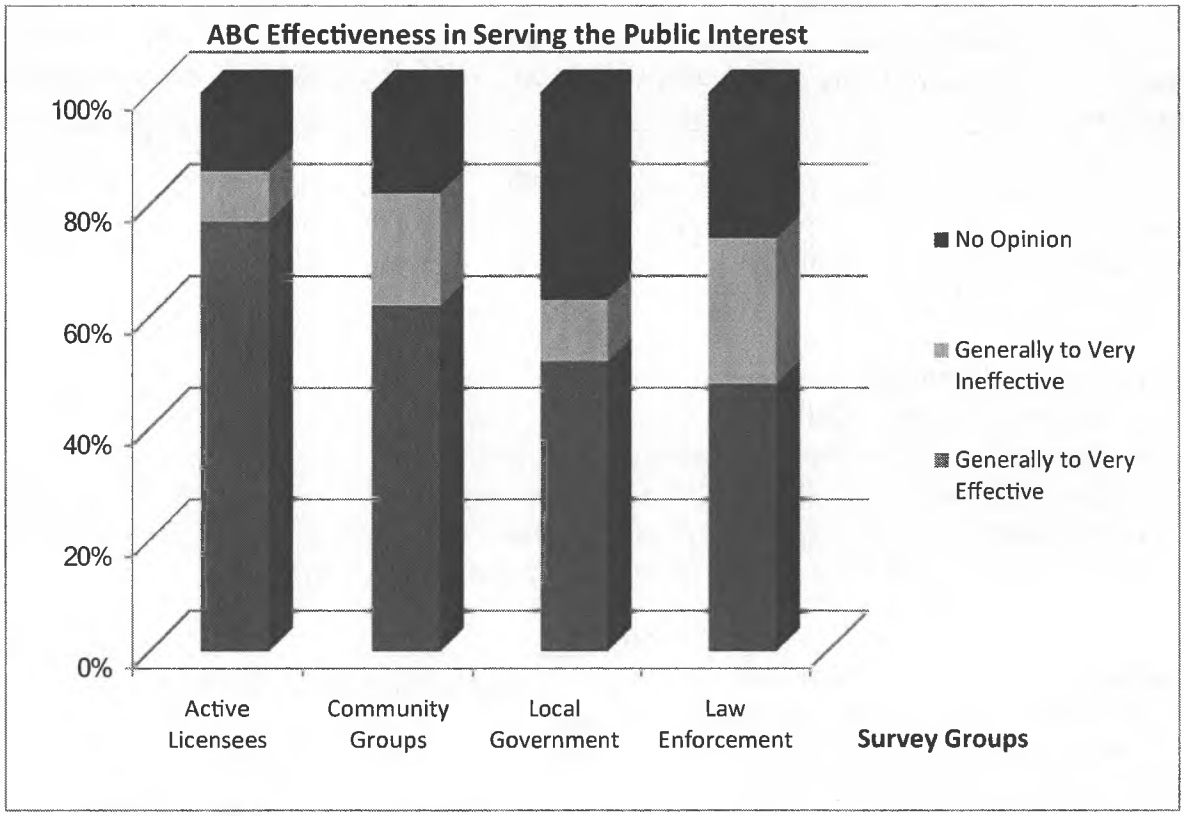
| ABC Board Disciplinary Actions FY 07 to FY 09 | | | | |
|---|---|---|---|---|
| **Actions** | **FY07** | **FY08** | **FY09** | **Total** |
| Fines | 12 | 5 | 8 | 25 |
| Suspensions | 17 | 7 | 12 | 36 |
| License Denials | 0 | 0 | 1 | 1 |
| Renewals Denied | 0 | 0 | 2 | 2 |
| Transfers Denied | 0 | 1 | 1 | 2 |
| Waivers Denied | 0 | 2 | 1 | 3 |
| Revocations | 0 | 0 | 0 | 0 |
| Total | 29 | 15 | 25 | 69 |

The lack of revocations is due to the board avoiding the process when possible. The board essentially revokes a license by either denying the renewal or allowing a licensee a set time period to transfer or sell the license. If the license is not transferred within the allotted time period, the license holder must "voluntarily" relinquish it. This is done through an informal settlement process. In the period reviewed, nine licenses were voluntarily relinquished to the board at a meeting.

The ABC Board's enforcement staff conducts premise inspections and compliance checks to ensure license holders are following the alcoholic beverage laws. However, we found the enforcement program lacked overarching goals and a plan to maximize their resources. (See Recommendation No.1)

In addition, the ABC Board's staff monitors the alcohol server training courses and answers questions from members of the public, licensees, law enforcement agencies, and local governments regarding alcoholic beverage controls statutes and regulations. We surveyed four groups (active licensees, law enforcement, local government, and community groups) to ask their overall opinion as to how effective or ineffective the ABC Board is in serving the public interest. The opinions were mixed as is shown in Exhibit 3.

Exhibit 3




Active licensees and community groups provided the most favorable rating. Alternatively, local government (at 11%) and law enforcement (at 26%) gave the least favorable rating regarding the ABC Board's effectiveness in serving the public interest.

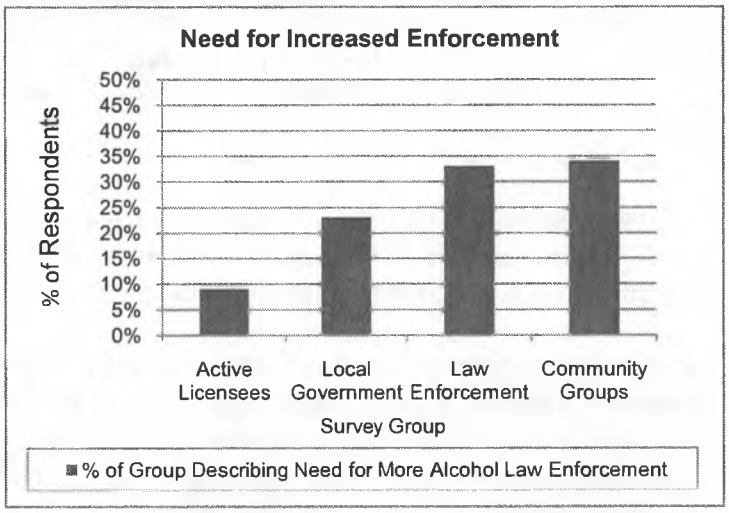
A few community group statements indicated unfamiliarity with the ABC Board. Active licensees reported having more interaction with the Board's staff than the other groups surveyed; mostly about license status, renewals, and clarification of laws. In general, active licensees indicated they found the ABC Board's staff knowledgeable, friendly, and helpful. The ABC Board provides trainings to local law enforcement regarding the enforcement of alcoholic beverage laws. Trainings may consist of conducting formal trainings at police academies, or inquires and requests from local enforcement agencies, licensees, and district attorneys. Forty-two percent of law enforcement respondents indicated they have no contact with the Board. Overall, it appears the ABC Board could do a better job working with and reaching out to educate and raise awareness of their efforts to the various groups through better communications, networking, and trainings.

***Determine 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 ABC Board's mission is to protect the public from alcoholic beverage abuse by enforcing state laws regulating alcoholic beverage commerce. Community and licensee respondents indicated that enforcement regarding the following activities are moderately adequate to very adequate:

- Sale of alcohol sale to minors.
- Sale of alcohol to inebriates.
- Sale of alcohol outside regulated hours of operation.
- Sale of alcohol without an alcohol servers training card.
- Gambling or prostitution on a licensed premise.
- Alcohol purchase limits in communities with alcohol restrictions.

Exhibit 4




It is noteworthy that more than half of the local law enforcement respondents were unaware of the ABC Board's enforcement staff's efforts to prevent and regulate the above activities. Respondents identified their concerns and need for improved or increased enforcement as indicated in Exhibit 4.

The community and law enforcement groups identified drunk driving and bootlegging as their primary concern. It appears that the ABC Board's only established preventative program for combating bootlegging in communities with alcohol restrictions is the Statewide Database.

One-third of local law enforcement respondents in communities with established alcohol restrictions were unaware of the Statewide Database. Of those who were aware of the purpose of the database, only 40% felt it was effective in helping maintain purchasing limits in their jurisdiction. Some of the local governing body respondents were not aware of the purpose of the Statewide Database. We asked active licensee respondents their opinion regarding the effectiveness of the Statewide Database for limiting alcohol purchases in communities. Two-thirds of the respondents who used the database to process orders to

restricted communities thought that the database was effective in managing alcohol purchasing limits.

Approximately 45% of the licensee respondents reported that they had not been subjected to any inspections or compliance checks and 24% believe the ABC Board's enforcement is not active in their area. The majority of law enforcement respondents also believe the ABC Board's enforcement is not active in their jurisdiction. Some smaller enforcement communities reported their belief that due to their size the ABC Board does not appear to be interested in working with them. A significant number of licensee respondents believe the ABC Board does not enforce the laws equally due to difficulty in traveling to remote locations and to the Board prioritization of addressing public concerns or complaints.

Exhibit 5

**Inspections and Compliance Checks Performed on Active Licenses FY 07–FY 09**

| Region | Active Licenses Per Region | Number of Licenses Inspected | Total Inspections Performed | Number of Licenses Checked | Total Compliance Checks Performed |
|---|---|---|---|---|---|
| Southcentral | | | | | |
| Anchorage | 458 | 224<br>49% | 974 | 341<br>74% | 1,086 |
| Other Areas | 447 | 165<br>37% | 229 | 219<br>49% | 473 |
| Interior | | | | | |
| Fairbanks | 93 | 71<br>76% | 374 | 59<br>63% | 147 |
| Other Areas | 155 | 106<br>68% | 373 | 67<br>43% | 159 |
| Far North | | | | | |
| Nome | 17 | 1<br>6% | 1 | 16<br>94% | 56 |
| Other Areas | 2 | 0 | 0 | 0 | 0 |
| Southeast | | | | | |
| Juneau | 80 | 55<br>69% | 146 | 59<br>74% | 153 |
| Other Areas | 185 | 123<br>66% | 266 | 66<br>36% | 127 |
| Southwest | | | | | |
| Kodiak | 22 | 18<br>82% | 35 | 19<br>86% | 49 |
| Other Areas | 72 | 17<br>24% | 27 | 17<br>24% | 25 |

Note: Table does not include licenses listed as Alaska Waters, Alaska Railroad, Alaskan Skies, and other licenses not identified in a Region.

*Source: Enforcement Database*

Exhibit 5 identifies the number and frequency of license inspections and compliance checks conducted by the ABC Board's enforcement officers on active licenses from FY 07 through FY 09. The information is presented by region with a breakdown by the primary urban area and other areas in that region. In total 50% of active license holders were inspected or checked for compliance. However, as seen in the exhibit, the highest rates for compliance checks and inspections are in the Interior and Southeast Region, with the Southwest Region having the lowest. Additionally, some licenses were inspected multiple times, while many were not inspected at all. While Exhibit 5 illustrates the enforcement activities, we found the ABC Board continues to be without a systematic strategy to ensure their enforcement resources are used effectively and efficiently. (See Recommendation No. 1.)

The ABC Board's total budget has remained relatively stable from FY 07 through FY 09. (See Appendixes A-C for revenue and expenditure information and for the current fee structure.)

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

The board did not recommend any statutory changes during FY 07 through FY 09. While numerous statutorily changes were made, the ABC Board only supported language modifications to the winery license type.

In June 2007, a new statute, AS 04.06.095, went into effect that involved the ABC Board creating and maintaining a Statewide Database containing a monthly record of alcohol purchased by, and shipped to, a person who resides in a municipality or established village that has restricted the sale of alcohol beverages. In addition, various restrictions were added to the local option laws. Legislative language was added to AS 04.11.499(b) to restrict the purchase from another person who has sent, transported, or brought alcohol into a municipality or established village that restricted the sale of alcohol. The package store license statute (AS 04.11.150) was also amended to address its responsibilities regarding shipments to restricted alcohol communities and for their use of the Statewide Database.

A destination resort license[10] was added to the licensing statues along with changes and clarifications to other license types. The possession of homebrew ingredients in restricted alcohol areas, AS 04.16.035, was added to prohibited acts. There were also modifications to other prohibited acts, penalties, and forfeitures (AS 04.16) during FY 07 through FY 09.

[10]Alaska Statute 04.11.255. Destination Resort License.

***Determine 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 board is required by statute to hold an annual meeting in each of the four judicial districts of the State in order to consider issues from both statewide and various local perspectives. It is also required to provide adequate public notice of these meetings. During FY 07 through FY 09, the board met in Anchorage, Fairbanks, Juneau, and Nome at least once per year; however, the ABC Board continues to have difficulty in providing adequate public notice for every meeting. (See Recommendation No. 2.)

A significant number of active licensee and community survey respondents are not aware they can participate in board meetings in person or by teleconference. This raises concern regarding the adequacy of the ABC Board's public notification and networking to encourage participation in its decision making process.

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

Survey responses and the lack of adequate public notices indicate that the ABC Board may not always encourage public participation in its decision making process.

As discussed in Recommendation No. 2, the ABC Board does not consistently provide adequate public notice of its meetings. Additionally, approximately 55% of licensee survey respondents reported sporadic or no receipt of timely notification of proposed regulations which would allow them to participate in board meetings. Those same respondents indicated they had not participated in the ABC Board's meetings in the past three years, and a majority did not know they could participate or attend by teleconference.

The majority of local government respondents did not know they could provide public comment on proposed changes to the ABC Board's regulations. These respondents also indicated they did not know they could recommend conditions be placed on specific alcohol licenses according to law. The ABC Board does not consistently adhere to the statutory requirement of notifying the local governing body within ten days of receipt of a license application per AS 04.11.520. This important requirement allows time for the local governing body to review and possibly protest the issuance, renewal, relocation or transfer of a license. Over half of the local government respondents indicated they have never, or only sometimes, received adequate notice of application for new licenses, transfers, relocations, or renewals of existing licenses. Twenty-one percent of these respondents reported they protested a new license or the renewal, relocation or transfer of an existing license. The majority of the protests were related to delinquent taxes and most of those protest respondents indicated they were not notified of when the board would consider their protest.

Additionally, 47% of the local government respondents were not aware they could recommend conditions be placed on license holders. (See Recommendation No. 2.)

***Determine 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 victims' rights or the office of the ombudsman have been processed and resolved.***

For the period of FY 07 through April 2009, no complaints were filed with the Office of Victim Rights, Office of the Ombudsman, Boards and Commission, and Department of Public Safety. The current ABC Board director routinely responds to inquires, objections, and complaints about license and enforcement issues.

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

Overall, the board does an adequate job of regulating entry into the alcohol industry. The board acts on all new, renewal, and transfer applications through approval or denial. The board determines if applicants meet all required statutory qualifications. Some of the requirements include: proving the applicant advertised the location and type of license in a local newspaper; demonstrating the applicant posted the license application on the proposed licensed premises; proving right, title, or interest in the premises; and approval from the local governing body.

Our review of license files indicated appropriate action had been taken on applications made. However, we noted untimely reviews of local governing body protests and found several documentation and policies and procedures issues during this review. (See Recommendation No. 2.)

***Determine 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.***

We found no evidence that hiring practices or board appointments were contrary to state personnel practices. No complaints were filed with the Human Rights Commission, U.S. Equal Opportunity Office, or Boards and Commission about the ABC Board. The Department of Administration, Division of Personnel and the Department of Public Safety received no formal complaints; however, the agencies responded to informal complaints or accusations appropriately.

***Determine 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.***

Recommendations for operational changes enabling the board to better serve the public interest are described in Recommendations Nos. 1 and 2.

***Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.***

The ABC Board is generally effective in its objective of regulating the manufacture, sale, barter, and possession of alcoholic beverages in Alaska. The board has protected the general public through the licensing process and administrative actions. It has proposed or supported statute changes to benefit the public, actively inspected licensees to ensure compliance with the alcoholic beverage laws, conduct underage checks, and provides other enforcement activities.

Improvements are still necessary to improve the ABC Board's operations to help provide for better effectiveness and efficiencies as described in Recommendation Nos. 1 and 2. Additionally, the active licensees, law enforcement, local government, and community groups surveyed indicate that the ABC Board is generally effective in serving the public interest. However, the ABC Board could do a better job communicating and networking with these survey groups about its mission and involving them in their decision making process.

***Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.***

The ABC Board is the only entity in the State that issues licenses for selling alcohol. In this regard, there is no duplication of this activity by another governmental agency or the private sector.

The ABC Board's enforcement efforts include investigation of gambling and prostitution activity, which duplicates state trooper and local law enforcement efforts throughout Alaska; however, our review of the ABC Board's participation in these efforts was minimal. All law enforcement agencies in the State also contribute to the enforcement of alcohol laws; consequently, there is an overlap in jurisdiction. This duplication was the intent of the legislature in creating the ABC Board as a regulatory and quasi-judicial agency.

The perception among the active licensee and local enforcement survey respondents is that the ABC Board's enforcement staff's efforts complement, rather than duplicate their efforts. However, the majority of law enforcement respondents also indicated that the ABC Board's enforcement staff was not active in their jurisdiction.

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**APPENDIX A**

Department of Public Safety
Alcohol Beverage Control Board
Schedule of Revenues
FY 07 through FY 09
(unaudited)

| Revenue *(rounded to nearest hundred)* | FY 07 | FY 08 | FY 09 |
|---|---|---|---|
| License Application Fees | $ 171,900 | $ 184,600 | $ 179,500 |
| Beverage Dispensary Licenses | 750,400 | 808,500 | 755,200 |
| Restaurant Licenses | 93,900 | 107,100 | 98,700 |
| Club Licenses | 48,600 | 52,800 | 46,800 |
| Brewery Licenses | 5,000 | 3,500 | 7,000 |
| Package Store Licenses (retail) | 288,800 | 285,800 | 294,800 |
| Wholesale Licenses | 20,000 | 16,000 | 30,000 |
| Malt Beverage and Wine Wholesale Licenses | 2,400 | 400 | 2,800 |
| Common Carrier Licenses | 27,000 | 68,000 | 35,500 |
| Winery License | 2,000 | 3,000 | 1,500 |
| Miscellaneous[1] | | | |
| Wholesale Annual Fees | 150,500 | 157,800 | 154,500 |
| Other License Types | 14,100 | 24,900 | 20,300 |
| Permits | 72,000 | 61,700 | 55,400 |
| Other | 189,300 | 167,000 | 150,000 |
| Federal Grant Funds (DHSS) | 100,000 | 99,600 | 100,000 |
| Total Revenues | $ 1,935,900 | $ 2,040,700 | $ 1,932,000 |

Source: Alaska State Accounting System, ABC Board

[1]Miscellaneous includes annual wholesale fees; low volume licenses such as Pub, Golf, and Lodge Licenses; fingerprint fees; waiver fees; as well as fines and penalties and other miscellaneous receipts.

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**APPENDIX B**
Department of Public Safety
Alcoholic Beverage Control Board
Schedule of Expenditures
FY 07 through FY 09
(unaudited)

| Expenditures<br>*(rounded to nearest hundred)* | FY07 | FY08 | FY09 |
|---|---|---|---|
| Personal Services | $ 782,500 | $ 817,800 | $ 924,000 |
| Travel | 44,000 | 80,900 | 85,400 |
| Services | 275,500 | 375,300 | 213,100 |
| Commodities | 9,500 | 39,500 | 41,700 |
| Capital Outlay | - | - | 26,400 |
| Transfers to Municipalities[11] | 785,600 | 889,600 | 813,400 |
| Total Expenditures | $ 1,897,100 | $ 2,203,100 | $ 2,104,000 |

Source: Alaska State Accounting System

[11]In accordance with Alaska Statute 04.11.610, refunds of annual license fees, excluding annual wholesale license fees, collected within a municipality are to be given to the municipality semiannually. The total of these refunds is the "Transfers to Municipalities" amount. This activity is budgeted under the Department of Revenue as shared taxes.

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**APPENDIX C**
Department of Public Safety
Alcoholic Beverage Control Board
Licenses, Permits, and Fees
FY 07 through FY 09

| Type | Amount |
|---|---|
| Application Filing Fees – new, transfer, or relocation of premises | $100 |
| Application Filing Fees – renewal | 200 |
| Beverage Dispensary License | 2,500 |
| Beverage Dispensary License – Duplicate | 2,500 |
| Beverage Dispensary License – Seasonal | 1,250 |
| Beverage Dispensary License – Tourism | 2,500 |
| Beverage Dispensary License – Tourism Seasonal | 1,250 |
| Beverage Dispensary License – Public Convenience | 2,500 |
| Brewery License | 1,000 |
| Brewery License – Seasonal | 500 |
| Brewpub License | 500 |
| Brewpub License – Seasonal | 250 |
| Club License | 1,200 |
| Club License – Seasonal | 600 |
| Common Carrier License | 1,000 |
| Common Carrier License – Seasonal | 500 |
| Common Carrier License – Multiple Destination | 2,000 |
| Common Carrier License – Multiple Destination Seasonal | 1,000 |
| Destination Resort License | 1,250 |
| Destination Resort License – Seasonal | 625 |
| Distillery License | 1,000 |
| Golf Course License | 400 |
| Lodge License | 1,250 |
| Lodge License – Seasonal | 625 |
| Package Store License | 1,500 |
| Package Store License – Community License | 1,500 |
| Package Store License – Seasonal | 750 |
| Pub License | 800 |
| Permit, Caterers | 50 |
| Permit, Club | 100 |
| Permit, Conditional Contractor's – Provisional | 1,200 |
| Permit, Special Events (per day) | 50 |
| Recreational Site License | 800 |
| Recreational Site License - Seasonal | 400 |
| Restaurant/Eating Place License | 600 |
| Restaurant/Eating Place License – Seasonal | 300 |
| Restaurant/Eating Place License – Tourism | 600 |
| Restaurant/Eating Place License – Exempt | 600 |
| Restaurant/Eating Place License – Public Convenience | 600 |
| Restaurant/Eating Place License – Public Convenience Seasonal | 300 |
| Theatre License | 600 |
| Wholesale License – General | 2,000 |
| Wholesale License – Malt Beverage and Wine | 400 |
| Winery License | 500 |
| Winery License – Seasonal | 250 |

Source of Information: Alcohol Beverage Control Board

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# State of Alaska
**Department of Public Safety**
# Alcoholic Beverage Control Board

**Sean Parnell, Governor**
**Joseph A. Masters, Commissioner**


August 21, 2009

RECEIVED
AUG 27 2009
LEGISLATIVE AUDIT

Pat Davidson
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
PO Box 113300
Juneau, Alaska 99811-3300

RE: Response to Preliminary Report Department of Public Safety, Alcoholic Beverage Control Board, Sunset Audit

To the Committee:

I have reviewed your preliminary report regarding the sunset audit conducted over the past several months of the Alcoholic Beverage Control Board. I appreciate you and your staff taking the time to conduct such a thorough audit. The Board of Directors will use your findings as an excellent tool to refine our processes. I have met with ABC Board Director Shirley Gifford and she has shared with me the numbers of issues that were "fixed" during the time your auditors were gathering their findings. I feel assured that all other areas brought forward will be taken care of in the same manner, and with the same level of diligence and dedication.

Many of the issues raised are critically important to running the agency effectively and proficiently. Fortunately, most corrections can be made with a dedicated effort of the current staffing level. Others may only be corrected with an increase in staff. In any event capturing proper statistics and developing a strategic plan will help to utilize staff in the best way possible. The written order database was a monumental project implemented during this period of review and it appears as though some errors have occurred that will be minimized in the future with a system of verification as you have recommended.

Since Director Gifford was appointed January 5, 2009 she has made progress in some areas that had been neglected in the past. She has implemented a method for capturing the activities of licensing and enforcement staff and in addition to sharing the figures with the Board of Directors she will use the figures in developing the strategic plan. Other areas where she has brought improvement include the purchase and upgrade of equipment necessary for staff to adequately perform their duties; training and education from and for staff; many policies and procedures written for the enforcement unit, licensing, and ABC Board administration; and refinement in processes that include an inspection tracking form and the consolidation of three permit


**Alcoholic Beverage Control Board**
**5848 E. Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0350 - Fax (907) 272-9412**

applications into one. Director Gifford started the strategic plan a couple of months ago and now with the audit complete will focus on the plan. She has already identified the goals and objectives and will ensure the issues raised in past audits will be addressed. Prior audit recommendations 1, 2, and 3 are included within your current recommendations and will be addressed under those headings. Prior audit recommendation no. 4 was not included in the current recommendation; however, steps have been taken to rectify this recommendation entitled, "The legislature should consider amending Title IV to remove the voting ability of the board's director." Director Gifford and I have met and whereas a solution had not been found I believe the solution comes with a tie vote resulting in a vote taken later if a voting member is absent, or in the event a member is recused the issue under consideration may be taken to an administrative hearing officer and superior court. This allows for the process to remain in the quasi-judicial and judicial process with no overlap with the executive branch of government. Director Gifford has met with Commissioner Masters regarding this proposal.

I will respond to the specific issues under Recommendations No. 1 and No. 2 in your letter:

Recommendation No. 1

The members of the ABCB and executive director should establish quantifiable and objective enforcement goals and develop a clear plan by which they will direct its enforcement resources to most efficiently and effectively accomplish those goals in a verifiable manner.

I agree with this recommendation. A strategic plan is being developed to capture specific, measurable, attainable, realistic, and timely (S.M.A.R.T.) goals. An inspection form has already been created and distributed to the investigators to ensure the best and most fair coverage for inspections. When a licensee fails an inspection we expect a follow-up inspection is conducted to ensure compliance; therefore, I expect more than one inspection of some premises within the year. When inspections over two in a single year occurred we found investigators were capturing "walk-throughs" in the database as inspections. As many walk-throughs that can be conducted are encouraged by the board of directors. Many areas are not easily accessible; however, the travel budget has been increased and many of these areas are now being inspected.

I appreciate your recognition that a plan will maximize the enforcement resources and expect direction will be given to the investigators "...to ensure they are performing their duties effectively and efficiently and according to the direction of the board and director."

Recommendation No. 2

The members of ABCB and executive director should develop and enforce written policies and procedures to ensure staff's compliance with state laws and decisions made by the board and director.

I agree with this recommendation. I fully expect the director will provide oversight and hold staff accountable for "their activities to ensure compliance with state laws and decisions made by the board and director." I appreciate you providing specific issues with which to address:

1. Records Retention. Records retention laws will be reviewed and written into the ABC Board Standard Operating Procedure (SOP)

a. Inspection reports and notices of violation will become part of the licensing file as opposed to keeping the documents in separate enforcement files. Criminal history records will be kept in a secure confidential file after the director has summarized the contents when necessary for the board to make decisions regarding the issuance, transfer, or renewal of a license.
b. The permit applications are now being copied onto the back of the permit with a copy kept in the permit file before presenting the permit to the licensee.
c. Notification letters will be sent to local governing bodies within 10 days after receipt of an application. This procedure will be written into the current procedures regarding notification. The director will also mail a notice of expiration to each licensee who has not renewed.

2. Licensing Revenues. Timely, complete, and accurate reconciliation between the two systems will be written into procedure and followed in an effort toward immediate action regarding noncompliant licensees.

3. Licensing and Administrative Procedures. The director takes full responsibility for not following this statutory requirement. The director believes taking care of this issue will assist local governing bodies to make timely decisions regarding licensees in their communities as well as improve the image of the ABC Board. Representatives of the local governing bodies generally take licensing seriously and count on the ABC Board staff to provide them with the information necessary to properly govern their areas. This procedure will be written and enforced. The licensing supervisor is responsible for this action and may have to delegate some of her other duties to ensure this is followed.

   A new procedure is being developed to deal with the return of caterers and special events permits. A spreadsheet will be created showing returns and notices. The director will be seeking direction from the board for a procedure as statute reads, "Failure to surrender the permit is cause, in the discretion of the board for denial of future permits."

   a. Other deficiencies to be addressed and resolved by staff:
      i. Bankruptcy proceedings
      ii. Licensing checklist applications
      iii. Local government protests to the board
      iv. Accuracy of active license holders
      v. Wholesale affidavits
      vi. Municipal revenue sharing
      vii. Notification to local governing bodies of expired licenses

4. Enforcement Data Procedures. I agree with the importance of these procedures and believe not only the incorporation of procedures to govern quality and accuracy but training to ensure all investigators understand the procedures and are uniformly entering data. Once the procedures and the training are complete the ability to evaluate performance will be enhanced.

   The APSIN database logs case numbers with their associated activity code. When investigators performed "walk throughs" of premises, they were obtaining case numbers

and activity codes for inspections, which would indicate some establishments had been inspected numerous times.

The only way to differentiate between an actual inspection and a walk through would be to hand count the APSIN activity entries and look for which inspections were checked IR (report generated) or IL (log only). If the activity was an IR, it meant an actual inspection was conducted and an inspection report generated. An IL would indicate a walk through; log only.

Procedures have been put in place and are being adhered to requiring inspection reports and NOV's be placed in the licensee file, along with an electronic inspection tracking form on our internal K drive to log inspections. An activity code for walk throughs in APSIN will be pursued. Procedures governing quality and accuracy of data will enhance the ability of the director to evaluate the performance of enforcement staff and the effectiveness of enforcement activities.

5. Statewide Database. Last year the enforcement staff hand entered all the names and information from the restricted purchaser list into the database software. Apparently, one entire section of the list did not get entered. Nevertheless, package stores were provided with an updated restricted purchaser list. The licensees who sold to restricted purchasers were in violation of Title IV. Since this has been revealed through the audit an investigation of the licensees is being conducted as licensees should have been in possession of the list of restricted purchasers. A periodic verification will be conducted to ensure the list is accurate.

6. Public Notice Requirements and Meeting Records. Policies and procedures were written by the previous director dated October 31, 2006 and were found included in the board of directors' packet for the meeting of November 29, 2006, along with the 2006 audit report. Unfortunately, these were not compiled in a book specifically labeled policies and procedures with no availability to staff as a quick reference. The policies and procedures dictate, "The date, time, location, and contact information will be noticed in at least one newspaper of general circulation within the municipality where the meeting is to be held at least 5 and no more than 14 days prior to the meeting." Director Gifford is developing with staff a "check list" of actions necessary before each board meeting. This item is on the check list and the director will go over the list with the employees responsible for specific parts of the organization of the meeting.

   Two meetings in 2006 and two meetings in 2007 were not advertised on the state's Online Public Notice system; however, the noticing on this system has been consistent since 2007. The current procedure dictates that, "At least 30 days prior to the next ABC Board meeting, the Administrative Assistant will forward to the appropriate person identified in the Commissioner's Office of the Department of Public Safety the meeting notice for publication on the Alaska Online Public Notice System. If this notice is transmitted by email, the Director is to be copied so that he may verify the timely forwarding of the notice." This procedure has recently been followed and will continue to be followed. The administrative assistant is now using Microsoft Outlook Calendar to set reminders for advertising requirements.

A frame has been installed in the lobby of the ABC Board office which will hold an inserted page showing the upcoming location, date, and time of the meeting as the meetings are set by the board of directors. The director has sent and will continue to send notice to staff of the next meetings in order that all employees are aware and can inform the public.

All of the board meeting minutes are now as complete as possible with an effort to create the files from existing files in offices other than the administrative assistant's, and will be adequately maintained. The files should include the sign-in sheet (the sheet was not signed in Juneau at the February 24, 2009 meeting), the minutes, a copy of the board packet, and the recording of the meeting.

Public testimony is allowed and encouraged in every board of directors meeting. Documentation of this will be provided in addition to what the recordings have provided. Public testimony was not specifically listed on the agenda but was listed for the July 14, 2009 meeting in Juneau and will continue to be listed for future meetings.

ANALYSIS OF PUBLIC NEED

Several issues identified through questionnaires provided to local governing bodies, law enforcement agencies, community councils/groups, and active licensees were addressed in the recommendations; therefore, I will address the findings that were not previously addressed. I am pleased that this audit shows that the ABC Board is operating in the public's interest and protects the public's health, safety, and welfare; that the ABC Board is controlling the manufacture and sale of alcohol in designated areas by ensuring compliance and enforcing alcoholic beverage laws; and that individual disciplinary actions are acceptable for licensees. Some issues that come before the board are complex and staff has provided the board with the information necessary to make good decisions on behalf of licensees, potential licensees, local governing bodies, and the communities affected. The statutes are difficult to reference and translate at times. Debate, conflict, and confrontation, although not every day occurrences are handled professionally and timely.

The ABC Board director and staff are making concerted efforts to provide education and training. Within the past six months the following presentations have been provided:

- Fire and Life Safety Building Inspectors Forum
- Anchorage International Airport Police
- Hoonah Police Department
- Tanana Valley Campus Police Academy
- Alaska Peace Officers Association Anchorage Chapter
- Alaska Association of Chiefs of Police semi-annual meeting
- Alaska Peace Officers Association Newsletter

The director is scheduled as a keynote speaker at the Alaska CHARR Convention in September as well as patrol briefings for the Anchorage Police Department. The effort to educate, improve communications, and network will continue throughout the state.

The mission of the ABC Board is to protect the public from alcoholic beverage abuse by enforcing state laws regulating alcoholic beverage commerce. Although pleased that the

ABC Board is seen to be "generally" effective in its objective of regulating the manufacture, sale, barter, and possession of alcoholic beverage in Alaska and "generally" effective in serving the public interest with the adoption of the recommendations I look forward to increasing the level of effectiveness.

Director Gifford has shared with me your positive approach to a critical process and that she and the staff enjoyed working with you and your group of professionals. I also appreciated you taking the time to talk with me about the performance of the ABC Board. I appreciate you making allowances for the many issues that were resolved during the audit. Certainly, that was your prerogative and to focus on those issues left outstanding is appreciated by all involved.

Sincerely,

Robert Klein
Chair
Alcoholic Beverage Control Board

cc: Joseph A. Masters, Commissioner, DPS
Shirley A. Gifford, Director, ABC Board

# State of Alaska
# Department of Public Safety

**Sean Parnell, Governor**
**Joseph A. Masters, Commissioner**

September 4, 2009

Pat Davidson
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

RECEIVED
SEP 10 2009
LEGISLATIVE AUDIT

RE: Response to Preliminary Report on a Sunset Review on the Department of Public Safety, Alcoholic Beverage Control Board, August 14, 2009

Dear Ms. Davidson:

I have reviewed your preliminary report on the Alcoholic Beverage Control Board (ABCB), Sunset Audit and concur with the report's conclusion that the ABCB should continue.

Your audit made two recommendations and I agree with both.

Recommendation No. 1

The members of the ABCB and executive director should establish quantifiable and objective enforcement goals and develop a clear plan by which they will direct its enforcement resources to most efficiently and effectively accomplish those goals in a verifiable manner.

Recommendation No. 2

The members of ABCB and executive director should develop and enforce written policies and procedures to ensure staff's compliance with state laws and decisions made by the board and director.

Your audit notes that both recommendations contain unresolved elements of prior audit recommendations. As you know, since your last audit the department has been actively involved with the ABCB and its staff in an attempt to improve business practices of the board. Those efforts met with limited success until recently.

The development and implementation of appropriate solutions are under the direct and immediate control of the Alcoholic Beverage Control Board and the Executive Director. As your audit notes, significant improvements have been made since the current executive director assumed her duties. I have every reason to believe this improvement will continue.

**Office of the Commissioner**
**5700 E. Tudor Road – Anchorage, AK 99507 – Voice (907) 269-5086 – Fax (907) 269-4543**
**Juneau Office – Voice (907) 465-4322 – Fax (907) 465-4362**

I have reviewed the response to each of your recommendations by the ABCB Chair, Bob Klein. I agree that these responses are appropriate for the recommendations. The department will work with the ABCB and its staff to assist them in implementing corrective action.

Sincerely,

Joseph A. Masters
Commissioner

Cc: Bob Klein, Chair, Alcoholic Beverage Control Board
Shirley A. Gifford, Director, ABC Board

**Office of the Commissioner**
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# FISCAL NOTE

**STATE OF ALASKA**
**2011 LEGISLATIVE SESSION**

| | |
|---|---|
| Fiscal Note Number | 5 |
| Bill Version | HB 126 |
| (H) Publish Date | 2/14/11 |

| | |
|---|---|
| Identifier (file name) | HB126-DPS-ABCB-02-07-11 |
| Title | "An Act extending the termination dates of the Boards of...Alcoholic Beverage Control Board" |
| Sponsor | Legislative Budget and Audit |
| Requester | House Labor & Commerce |

| | |
|---|---|
| Dept. Affected | Public Safety |
| Appropriation | Statewide Support |
| Allocation | Alcoholic Beverage Control Board |
| OMB Component Number | 2690 |

**Expenditures/Revenues** (Thousands of Dollars)

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

| | Appropriation Required | Information | | | | | |
|---|---|---|---|---|---|---|---|
| **OPERATING EXPENDITURES** | **FY 2012** | **FY 2012** | **FY 2013** | **FY 2014** | **FY 2015** | **FY 2016** | **FY 2017** |
| Personal Services | | 1,125.0 | 1,125.0 | 1,125.0 | 1,125.0 | 1,125.0 | |
| Travel | | 85.9 | 85.9 | 85.9 | 85.9 | 85.9 | |
| Services | | 285.1 | 285.1 | 285.1 | 285.1 | 285.1 | |
| Commodities | | 9.6 | 9.6 | 9.6 | 9.6 | 9.6 | |
| Capital Outlay | | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 | |
| Grants | | | | | | | |
| Miscellaneous | | | | | | | |
| **TOTAL OPERATING** | **0.0** | **1,505.7** | **1,505.7** | **1,505.7** | **1,505.7** | **1,505.7** | **0.0** |
| **CAPITAL EXPENDITURES** | | | | | | | |
| **CHANGE IN REVENUES** | | | | | | | |

**FUND SOURCE** (Thousands of Dollars)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | | |
| 1003 GF Match | | | | | | | |
| 1004 GF | | | | | | | |
| 1005 GF/Program Receipts | | 1,384.6 | 1,384.6 | 1,384.6 | 1,384.6 | 1,384.6 | |
| 1037 GF/Mental Health | | 121.1 | 121.1 | 121.1 | 121.1 | 121.1 | |
| Other (please identify) | | | | | | | |
| **TOTAL** | **0.0** | **1,505.7** | **1,505.7** | **1,505.7** | **1,505.7** | **1,505.7** | **0.0** |

**Estimate of any current year (FY2011) cost** _____

**POSITIONS**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Full-time | | 11 | 11 | 11 | 11 | 11 | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Not applicable, initial version.

| | | | |
|---|---|---|---|
| Prepared by | Shirley Gifford, Director | Phone | 907-269-0351 |
| Division | Alcoholic Beverage Control Board | Date/Time | 2/7/11 4:30 PM |
| Approved by | Joseph Masters<br>Commissioner | Date | 2/7/2011 |

(Revised 1/27/2011 OMB)

FISCAL NOTE #5

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 126

**Analysis**

This legislation extends the Alcoholic Beverage Control Board four years.