

整理

126

<TARGET><BILL>HB 126</BILL><SUBJECT>HB
126</SUBJECT><COMM>SFIN27</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 4/6/11

FURTHER:
DATE TURNED _____
IN TO OFFICE: _____

Finance Committee considered CS FOR HOUSE BILL NO. 126(FIN)

HB 126-BOARD EXTENSIONS :NURSE/DENTIST/BARBERS

"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."

and recommends:

- be replaced with SCS CSHB 126 (FIN) Same Title Technical Title Change New Title/SCR No. _____
- adopt previous SCS _____ (_____) Same Title Technical Title Change New Title/SCR No. _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	LEG
ADM	LAW
CED	LWF
COR	MVA
CRT	DNR
EED	DPS
DEC	REV
DFG	DOT
GOV	UA
DHS	

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
SKN/DPS	V			

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DEC	V			6

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		PRINTED LAST NAME	DO PASS	DO NOT PASS	No REC	AMEND
		Thomas	<input checked="" type="checkbox"/>			
		Espar	<input checked="" type="checkbox"/>			
		McDevine	<input checked="" type="checkbox"/>			
		O'Son	<input checked="" type="checkbox"/>			
		Ellis	<input checked="" type="checkbox"/>			
CO-CHAIR:						
CO-CHAIR:						
CO-CHAIR:						

FISCAL NOTE

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

Fiscal Note Number
Bill Version
() Publish Date

SCS CS HB 126(FIN)

Identifier (file name) _____ Title Omnibus Board Extensions Dept. Affected _____ Public Safety

_____ House Rules Committee by Request _____ Appropriation _____ Statewide Support

Requester _____ Senate Finance Committee _____ 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						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services		1,125.0						
Travel		85.9						
Services		285.1						
Commodities		9.6						
Capital Outlay		0.1						
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	1,505.7	0.0	0.0	0.0	0.0	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						
1037 GF/Mental Health		121.1						
Other (please identify)								
TOTAL		0.0	1,505.7	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____ 0.0

POSITIONS	Full-time	Part-time	Temporary
	11		

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note reflects the change made by the Senate Finance Committee to extend the termination date of the Alcohol Beverage Control Board to June 30, 2012.

Prepared by Darwin Peterson Phone 465-3873

Senate Finance Committee staff Date/Time 4/13/11 6:30 PM

Senator Bert Stedman, Co-Chair Senate Finance Committee Date 4/13/2011

Senator Lyman Hoffman, Co-Chair Senate Finance Committee

FISCAL NOTE

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

Fiscal Note Number
Bill Version
(H) Publish Date

6
CSHB 126(FIN)
3/9/11

Identifier (file name) HB126-CCED-CBPL-02-16-11

Dept. Affected **DCCED**
Appropriation Corporations, Business and Professional Licensing

Title Omnibus Board Extensions
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						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services		979.0	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	62.5
Services		380.5	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	9.9
Capital Outlay		0.0	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	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	1,431.9
TOTAL		1,431.9	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

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.

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.

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.

Adopted
4.14.11

27-LS0321VE
Kirsch
4/12/11

SENATE CS FOR CS FOR HOUSE BILL NO. 126(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION
BY THE SENATE 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 relating to qualifications for serving on a state board or commission; extending the termination dates of the Board of Nursing, the Board of Dental Examiners, the Board of Barbers and Hairdressers, and the Alcoholic Beverage Control Board; 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. AS 39.05.100 is amended by adding a new subsection to read:

(c) A person convicted of a felony may not serve on a board or commission of

1 the state government unless the conviction has been overturned on appeal or otherwise
2 set aside.

3 * Sec. 5. AS 44.66.010(a)(1) is amended to read:

4 (1) Alcoholic Beverage Control Board (AS 04.06.010) - June 30, **2012**
5 [2011];

6 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 EXEMPTION FROM AS 44.66.050(e). This Act is exempt from the provision of
9 AS 44.66.050(e) that prohibits a bill from reestablishing more than one board or commission.

10 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION
BY THE SENATE FINANCE COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State
2 Legislature, concerning House Bill No. 126, extending the termination dates of the
3 Board of Nursing, the Board of Dental Examiners, and the Board of Barbers and
4 Hairdressers.

5 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
7 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
8 changes to the title of a bill, are suspended in consideration of House Bill No. 126, extending
9 the termination dates of the Board of Nursing, the Board of Dental Examiners, and the Board
10 of Barbers and Hairdressers.

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 Version CSHB 126(FIN)

Short Title: Omnibus Board Extensions

CSHB 126(FIN) extends the termination date of the Board of Barbers and Hairdressers, the Board of Dental Examiners and the Board of Nursing, which are all scheduled to sunset on June 30, 2011. The boards would be extended until 2019, based on the recommendations of the Legislative Auditor to the Legislative Budget and Audit Committee.

The bill also exempts the reauthorization from a state statute prohibiting a single bill reestablishing more than one board or commission.

The omnibus extension is a more efficient mechanism for routine board and commission reauthorizations, particularly in a 90-day legislative session. The omnibus extension further allows for straightforward continuation of these important boards and commissions, disallowing policy shifts best managed through separate legislation

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 Omnibus Board Extensions Summary of Changes

House Labor & Commerce Committee: No changes were made.

House Finance Committee: CSHB 126 (FIN) was adopted.

The FIN CS removed the sunset extensions for the Regulatory Commission of Alaska (RCA) and the Alcohol Beverage Control (ABC) Board. Both the RCA and the ABC Board are scheduled to sunset on June 30, 2011.



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

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.

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.

²Institutional 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 (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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Office of Governor Sean Parnell
STATE OF ALASKA

November 22, 2010

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

RECEIVED
NOV 22 2010
LEGISLATIVE AUDIT

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,

A handwritten signature in black ink, appearing to read "Jason Hooley".

Jason Hooley
Director

Boards and Commissions

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



ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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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.

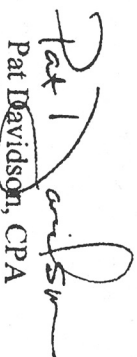
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT BOARD OF BARBERS AND HAIRDRESSERS

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, CPA
Legislative Auditor

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 BH 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, BH 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. BH 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.

³Current 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.

ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Division of Legislative Audit



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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 Davidsen, CPA
Legislative Auditor

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.

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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 licensees 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)
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.