

ALASKA LEGISLATURE

1945

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

FISCAL NOTE

Bill Version: CSHB 67 (JUD)
 (H) Publish Date: 4/16/99

**STATE OF ALASKA
 1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to release of certain persons BRU Administration and Operations
 alleged to have committed certain sexual offenses. Component All
 Sponsor Representative Rokeberg
 Requester House Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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						
Other (Specify Type)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will impact the pre-trial inmate population within the department of corrections, to what extent is unknown. It is anticipated that fewer people will be able to make bail or be released to a third party custodian under House Bill 67. It is difficult to predict the fiscal costs resulting from this legislation. Therefore the DOC is submitting an indeterminate fiscal note.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date/Time 2/23/98 4:24 PM
 Approved by Margaret M. Pugh Date 2/22/99
 Agency Department of Corrections

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House Finance Committee

DATE: 4/26

PLACE: HFC

SUBJECT OF MEETING:

HB 34
HB 67
SB 101

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
✓ Annie Carpenter	Law	Room 717 Ct Betty		6-1355	3428	(Y) N	HB 34
✓ Mary Siroky	Dec	#401 Kellereby		5-5355		Y (N)	questions SB101
✓ George Utermohle	LAA - Legal	Legislative Affairs Agency - Jensen				Y N	SB101 available for questions
✓ Carol Canall	DMVA			4730	4730	Y (N)	SB101 answer quest
✓ Janet Seitz	Rep Rokehan			4954		(Y) N	hb 67
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

HB

68

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 26, 1999

FURTHER REFERRALS:

Date of Committee Action: 3/4/99

The FINANCE Committee considered:

HB 68

HOUSE BILL NO. 68

BOARD OF PHARMACY

"An Act extending the termination date of the Board of Pharmacy to June 30, 2005; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) DCED 2/26/99

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Carol Theriault</i>	Theriault	X			
<i>Van Bunde</i>	Bunde	X			
<i>Lori Kohring</i>	Kohring	X			
<i>Wm Austerman</i>	Austerman	X			
<i>Ben Grussendorf</i>	Grussendorf	X			
<i>J. Davies</i>	J. Davies	X			
<i>G. Davis</i>	G. Davis	X			
<i>William Williams</i>	Williams	X			
<i>Foster</i>	Foster	X			

CHAIR'S SIGNATURE *Carol Theriault*
 Theriault

FISCAL NOTE

Bill Version: HB 68

(H) Publish Date: 2/26/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ Dev.
 Title An Act extending the termination of the BRU Occupational Licensing
 Board of Pharmacy _____ Component Occupational Licensing
 Sponsor House Labor and Commerce Committee
 Requester House Labor and Commerce Committee Component Serial No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 61.2

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 68 extends the Board of Pharmacy to June 30, 2005. Funding for continuation of the board in the amount of \$61.2 is included in the department's FY 2000 operating budget request; therefore, new funds are not needed. The program is required to cover its costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs.

Prepared by Jennifer Strickler, Administrative Manager Phone 465-2144
 Division Occupational Licensing Date/Time 1/29/99 11:01 AM
 Approved by Commissioner Deborah B. Sedwick Date 2/1/99
 Agency Commerce & Economic Development

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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**BOARD COSTS
INFORMATION**

HB 68				
DIRECT COSTS			Total	AVG
FY:	97	98	DIRECT	ANNUAL
				COSTS
Personal Services	34.9	35.5	70.4	35.2
Travel	6.2	6.4	12.6	6.3
Contractual Services	18.0	21.3	39.3	19.7
Commodities		0.1	0.1	0.1
Equipment			0.0	0.0
	59.1	63.3	122.4	61.2

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

SPONSOR STATEMENT AND SECTIONAL ANALYSIS HOUSE BILL 68

An Act extending the termination date of the Board of Pharmacy to June 30, 2005

SPONSOR STATEMENT:

As the title indicates, House Bill 68 would extend the termination date of the Board of Pharmacy to June 30, 2005.

The Board of Pharmacy controls registration and disciplinary sanctions and provides for the regulation of controlled substances in the State of Alaska. There are seven members on the Board. The August 25, 1998 Audit Report from the Division of Legislative Audit recommends that this Board be extended to June 30, 2005, which is what the legislation proposes. The Legislative Audit found that the Board does benefit the public's health, safety and welfare.

The last time the Board of Pharmacy was reviewed, the termination date was set at June 30, 1999. If this Board's termination date is not extended this year, the Board will be in its wind down year and would cease to exist, without further action, on June 30, 2000.

In order to provide for some standards of practice in the pharmaceutical field, we would request your support of the extension of this Board.

SECTIONAL ANALYSIS

Section 1: Extends termination date to June 30, 2005

Section 2: Effective date: immediate

ED1:02/20/99

STATE OF ALASKA
Boards and Commissions

PHARMACY BOARD

BOARD: Board of Pharmacy

BOARD IDENTIFICATION NUMBER: 078

DEPARTMENT: DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

AUTHORITY: AS 08.80.010

STATUS: Active

SUNSET DATE: June 30, 1999

REQUIREMENTS: Legislative Confirmation

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

TERM: 4 years

DESCRIPTION: 7 members appointed by Governor: 5 licensed pharmacists actively engaged in practice in Alaska for 3 years immediately preceding appointment; 2 public members with no direct financial interest in health care industry; when possible, one member should represent each judicial district; terms begin April 1; members elect president. Terms of public members shall be staggered so that they do not expire at the same time.

FUNCTION: Controls registration, disciplinary sanctions, provides for the regulation of controlled substances.

CHAIR: Board selects.

SPECIAL FACTS: Serve at the pleasure of the Governor. Quorum - 4 members (3 when examining applications for registration); report to Legislature; members may be removed for cause. Members serve until a successor is appointed. An appointment to fill a vacancy is for the remainder of the unexpired term. A member who has served all or part of two successive terms may not be reappointed unless four years have elapsed since the person has last served. E-mail: Pat_Park-Fisher@commerce.state.ak.us or license@commerce.state.ak.us

COMPENSATION: Standard Travel and Per Diem.

MEETINGS: 3 times per year; 9 days total.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Park-Fisher, Division of Occupational Licensing, DCED, P.O. Box 110806 M/S 0806, Juneau, AK, 99811-0806, Phone: 907-465-2538, Fax: 907-465-2974.

STATE OF ALASKA
Boards and Commissions

Membership Roster
PHARMACY BOARD (078)

Member	Appointed	Reappointed	Term Exp.
Chris E. Coursey Pharmacist AK Regional Hospital P.O. Box 143889 Anchorage, AK 99514-3889	04/23/91	09/14/95	04/01/99
Paul Joseph Gionet Pharmacist IVY Home Infusions 2841 DeBarr Road, Suite 20 Anchorage, AK 99508	04/01/93	11/26/97	04/01/01
Gerry Knasiak Public 119 Austin Street, No. 511 Ketchikan, AK 99901	04/16/98		04/01/01
Martin Krull Pharmacist Director of Pharmacy Carr Gottstein Food Co. 6411 A Street Anchorage, AK 99518	01/21/98		04/01/01
Margaret D. Soden Pharmacist P.O. Box 61328 Fairbanks, AK 99706-1328	12/11/98		04/01/02
Bonnie R. Stewart Public P.O. Box 230132 Anchorage, AK 99523	01/02/97		04/01/00
Stanley P. Thompson Pharmacist 1018 West 73rd Avenue Anchorage, AK 99518	04/09/92	01/02/97	04/01/00

August 25, 1998

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF PHARMACY

August 25, 1998

Audit Control Number

08-1457-98

The objective of this review is to advise the legislature as to whether the Board of Pharmacy should be extended or terminated in statute. Currently, AS 08.03.010(c)(15) has the board scheduled for termination on June 30, 1999. If no action is taken by the legislature, the board has one year in which to conclude its affairs and will be dissolved on June 30, 2000. We recommend that the legislature extend the board's termination date to June 30, 2005.

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

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

In accordance with Title 24 and 44 of the Alaska Statutes, we conducted a review of the activities of the Board of Pharmacy. The primary objective of our review was to advise the legislature as to whether the board should continue in existence.

As required by statute, the legislative committee of reference is to consider this report as part of its oversight process and determining whether the board should be reestablished. The law currently specifies that the board will terminate on June 30, 1999 and will have one year from that date to conclude its affairs.

Scope

The major areas of our review were board proceedings, examination, licensing, and investigations. We also reviewed the existing licensing/fee structure as it relates to financial self-sufficiency of the board.

Methodology

A majority of this review was conducted by another auditor at our direction and supervision. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

To accomplish the audit objectives, the following documents were reviewed and the following interviews were conducted:

- Applicable sections of state statutes and regulations.
- Interviews with employees of the Division of Occupational Licensing (OL), Department of Commerce and Economic Development.
- Minutes of board meetings and annual reports.
- Licensing files for pharmacists and pharmacies.
- Investigation files related to the pharmacy profession.
- Projections of license fee revenues and regulation costs prepared by OL.
- Complaints filed with OL.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Board of Pharmacy was established for the purpose of controlling and regulating the practice of pharmacy in the State. Alaska Statute 08.80.005 states that effective control and regulation of the practice of pharmacy is necessary to promote, preserve, and protect the public's health, safety, and welfare.

Board Membership

The Board of Pharmacy is composed of seven members (see inset at right). Statutes require five board positions be licensed pharmacists actively engaged in the practice of pharmacy in the State for a period of three years immediately preceding their appointment. The remaining two positions are to be filled by individuals from the general public. Statute prohibits these public members from having a direct financial interest in the health care industry.

Board Duties

In general, the board regulates admission into the practice of pharmacy, establishes and enforces competency by ensuring compliance with professional standards, and adopts regulations. Enforcement includes assisting in the investigation of potential violations and suspending or revoking licenses when determined necessary.

The board licenses pharmacists, retail facilities, wholesale distributors, drug rooms, institutional facilities, and out-of-state facilities. It also issues permits to individuals to act as pharmacy interns. Beginning with the FY 98 licensing cycle, the board will be licensing pharmacy technicians.

Applicants for a pharmacist license are required to pass a National Association of Boards of Pharmacy Licensing examination. Additionally, applicants must pass a jurisprudence examination covering Alaska pharmacy law and the Federal Controlled Substance Act. Applicants who are licensed to practice pharmacy in another state may be awarded an Alaska license to practice based on their credentials as long as they have passed the national examination.

BOARD OF PHARMACY MEMBERS

Registered Pharmacists

**Paul Gionet, Chairperson
Chris Coursey
Kenal Kaihoi
Martin Krull
Stanley Thompson**

Public Members

**Gerry Knasiak
Bonnie Stewart**

Division of Occupational Licensing

Division of Occupational Licensing (OL) staff assists the board in its duties. OL staff processes applications, maintains licensing files, answers board-related correspondence, and provides administrative support to the board. Additionally, OL staff investigates complaints involving the practice of pharmacy.

REPORT CONCLUSIONS

Alaska Statute 08.03.010 (c) (15) requires that the Board of Pharmacy be terminated on June 30, 1999. If the legislature does not take action to continue the board, AS 08.03.020 (a) provides the board one year in which to conclude its affairs. Consequently, if no action is taken by the legislature, the Board of Pharmacy will be dissolved June 30, 2000.

The regulation and licensing of qualified professionals and pharmaceutical facilities benefits the public's health, safety, and welfare. By establishing minimum educational and practical experience requirements, the board provides reasonable assurance that individuals licensed are qualified to practice. Assurance that licensed individuals act in a manner consistent with the public interest is also promoted by active investigation of complaints and license revocation or suspension when appropriate.

In our opinion, the Board of Pharmacy serves an important public purpose. It should be continued in statute and its termination date should be extended until June 30, 2005.

(Intentionally left blank)

ANALYSIS OF PUBLIC NEED

Limited Analysis

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

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

The board has operated in the public's interest by licensing qualified applicants, authoring pharmacy related pamphlets, publishing a newsletter, and drafting new regulations in conjunction with extensive legislative revision to the state's pharmacy statutes. According to the board's annual reports, 209 new pharmacists and 181 pharmacies and drug rooms were licensed between FY 94 and FY 98. Beginning July 1, 1998, the board will license pharmacy technicians.

During FY 98, the board authored three pamphlets that further define certain regulations¹ and help explain their legal intent. All three pamphlets are included as appendices to the pharmacy statutes and regulations booklet distributed by the board and the Division of Occupational Licensing (OL). The board also published and distributed newsletters informing licensees of the State's current jurisprudence and the recent revision of statutes and regulations.

The board completed a comprehensive revision of pharmacy regulations that were effective January 16, 1998. The regulation's project was a work in progress for just over five years. According to the board's 1998 annual report, the new regulations reflect the current practice of pharmacy and position the board to serve the public health and welfare in regulating the practice of pharmacy as it evolves over the next decade.

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

Our prior audit of the Board of Pharmacy dated October 26, 1993 took exception to the distribution of board members. Alaska Statute 08.80.010 states, in part, "[w]henver possible, the board shall include at least one member from each judicial district." Traditionally, the Northwest region of the State, which makes up the second judicial district, has not been represented on the

¹ Specifically, the three pamphlets are entitled "Sterile Pharmaceuticals," "Compounding," and "Facility Standards."

board. Only 8 of the 534 licensed pharmacists (1.5%) reside in the Northwestern region of the State.

Current board membership consists of five members from the Southcentral region, one from the Southeast, and one from the Interior. The second judicial district continues to be absent. However, during the past four years, no one from the Northwestern Region has applied for an open board position.

The concentration of board members in the Southcentral region affects the board's availability to the public and to pharmacist candidates, who must take the jurisprudence exam from a board member before they can be licensed.

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

At the urging of the board and the Alaska Pharmaceutical Association, a comprehensive statutory revision to the pharmacy statutes was passed by the legislature in the 1996 session and became effective August 26, 1996. The statutory rewrite was designed to correct obsolete and fragmented pharmacy statutes and to reflect current pharmacy practices. As already discussed, the board completed a comprehensive rewrite of regulations to implement the new statutes.

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.

OL has published notices of all examinations, meetings, and regulation changes. A period of time for public comment was available at each public meeting.

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

Each board meeting agenda allots time for public comment. The public has been encouraged to use these public comment periods to express concerns and obtain information from the board. The public comment period for regulation changes also assures that the public has the opportunity to participate in the regulatory process.

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

From FY 94 through FY 98, OL's investigative unit investigated 39 cases involving pharmacies, pharmacists, and unlicensed pharmacists. Six of the cases remained open as of June 24, 1998. Generally, the cases were resolved in a timely and efficient manner given the nature of the complaints and OL resources.

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

The table below summarizes licensing activity for the past four fiscal years, listing the number of new licenses issued per year and the number of current license holders regulated by the board at the end of FY 98.

Types of Licenses	New Issued in FY 94	New Issued in FY 95	New Issued in FY 96	New Issued in FY 97	New Issued in FY 98	Total Current Active Licenses
Pharmacists	53	32	35	43	46	534
Pharmacies:						
Retail	15	3	5	15	14	92
Hospital	0	0	0	0	3	16
Drug Rooms	0	0	0	3	0	15
Out-of-State	13	16	21	46	22	113
Wholesale	0	0	2	0	3	8

The board ensures that the licensees are qualified through screening of applications, examination and continuing education requirements. When reviewing licensure procedures, we found no instances of unqualified applicants being awarded a license.

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

The board continues to require applicants submit a photograph and answer several personal questions (height, weight, hair color, etc). Our prior audit recommended the board work to eliminate these potentially discriminatory licensing procedures. We found that no progress has been made to address this recommendation. In the past, the State's Equal Employment Opportunities office has discouraged state agencies from asking applicants questions regarding personal appearance. The board believes there is reasonable cause to review such information

because it is important for identifying individuals being licensed to work with controlled substances. The board adopted a motion stating it will continue to review photographs of applicants as part of the licensing process.

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

As discussed above, statutes and regulations have been comprehensively rewritten. Previously obsolete and fragmented statutes and regulations were updated. Such revisions were designed to serve the public welfare by regulating the practice of pharmacy as it evolves over the next decade. However, we did find a problem relating to general fee setting statutes.

As discussed under prior year Recommendation No. 5 in the Auditor's Comments section of the report, the Division of Occupational Licensing is required to set license fees so that **occupations** are self-supporting. Alternately, the division is setting fees so that **boards** are self-supporting. The Board of Pharmacy issues several different types of licenses. The fees charged are not intended to cover the costs associated with each type of license. Further, the division's cost accounting system is not set up to track revenue by occupation. We recommended the division change its procedures to comply with statute.

AUDITOR'S COMMENTS

In the last review of the Board of Pharmacy, dated October 26, 1993, we reported eight findings and recommendations. The current status of each is discussed below.

In summary, prior year Recommendation No. 1 was partially implemented by extending the board until June 30, 1999. Three of the prior year Recommendations (Nos. 2, 6, and 7) were not implemented but do not warrant a finding and recommendation in this report. Three Recommendations (Nos. 3, 4, and 8) were addressed through a comprehensive rewrite of statutes and regulations. Prior year Recommendation No. 5 was reviewed during our audit of license fees dated October 3, 1997. It continues to be an issue as discussed in this report.

Prior Year Recommendation No. 1

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

This recommendation was partially implemented by the legislature when it extended the board until June 30, 1999. We make a similar recommendation regarding extension of the board until June 30, 2005 in the Report Conclusions section.

Prior Year Recommendation No. 2

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

In our prior audit of the Board of Pharmacy, we took exception to the distribution of board members. Traditionally, the Northwestern region of the State, which makes up the second judicial district, has not been represented on the board.

Although the second judicial district continues to go be absent from the board, at this time we do not believe board composition is inconsistent with statutes. Statutes require regional representation "*whenever possible.*" The Boards and Commissions section within the Office of the Governor stated that no one from the second judicial district applied for an open board position during the period of our review.

Prior Year Recommendation No. 3

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

Prior to the comprehensive rewrite of pharmacy statutes and regulations, board members conducted inspections. Board members inspecting their competitors created an awkward situation open to criticisms of partiality. Under the new law, applicants, not board members, conduct the inspections. Each licensee must fill out a self-evaluation form when obtaining or renewing a license. Division of Occupational Licensing (OL) staff views the self-inspections as an improvement and believes the self-inspections are useful in helping the board monitor compliance with statute and regulation.

Prior Year Recommendation No. 4

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

The recent rewrite of statutes and regulations addressed this recommendation. Statutes now reflect current practices.

Prior Year Recommendation No. 5

The Department of Commerce and Economic Development should continue to work with the Office of the Governor, Office of Management and Budget in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

We conducted an audit² during calendar year 1997 of the practices and procedures followed by OL in setting license fees for various professions. In that review, we determined OL was not complying with the statutory requirement that revenues and expenditures be accounted for on an occupation basis.

Specifically, AS 08.01.065 (c) states:

*The department shall establish fee levels [in this] section so that the total amount of fees collected for an **occupation** approximately equals the actual regulatory costs for the **occupation**. [Emphasis added.]*

By not accounting for financial data on an occupation-by-occupation basis, OL could not demonstrate that it met the self-sufficiency standard established in statute. We recommended that OL establish new cost accounting procedures to ensure compliance with the statute requiring financial self-sufficiency at the occupation level.

In performing fieldwork for this audit, we followed-up this general recommendation as it relates specifically to the Board of Pharmacy. We found that OL tracks expenditures by occupation regulated by the Board of Pharmacy but does not account for revenue at the

² The audit was titled *The Department of Commerce and Economic Development – Occupation Fee Setting Policies and Regulatory Costs* dated October 3, 1997.

occupational level or set fees to ensure that each occupation is self-sufficient. Therefore, we conclude that OL's current practice is inconsistent with statute and recommend it adopt procedures to comply with self-sufficiency requirements set out in statute.

Prior Year Recommendation No. 6

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

During the period of our review, applicants were still required to submit a photograph and answer several personal questions (height, weight, hair color, etc). The board believes there is reasonable cause to review personal information because such information is important when licensing individuals working with controlled substances. The board adopted a motion stating it will continue to review photographs of applicants as part of the licensing process. We recognize the importance of identifying applicants who wish to distribute/administer controlled substances. However, the board should take steps to ensure justification is compatible with equal employment law.

Prior Year Recommendation No. 7

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

OL provides administrative assistance to many boards and commissions, including the Board of Pharmacy. OL staff helps during the board meetings, including taking minutes. These minutes are submitted to the board for approval at the subsequent meeting. The board prepares the annual report.

Prior Year Recommendation No. 8

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

OL has implemented this recommendation by improving its procedures for submitting potential violations. According to the Department of Law staff member in charge of monitoring the reports, OL prepares a quarterly report covering all boards and commissions and submits it timely.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442
TDD: (907) 465-5437

October 27, 1998

RECEIVED
OCT 28 1998

Ms. Pat Davidson
Legislative Audit
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3830

LEGISLATIVE AUDIT

Dear Ms. Davidson:

Thank you for the opportunity to respond to the preliminary audit report on the Department of Commerce and Economic Development, Division of Occupational Licensing, Board of Pharmacy (audit control number 08-1457-98).

The department concurs with the report's conclusion that the Board of Pharmacy serves an important public purpose and should be extended. As the auditor's comments indicate, most of the issues raised by the prior audit have been resolved and regulation of pharmacy has been strengthened as a result of legislative and Board action.

The department does not concur with the auditor's comments relating to Prior Year Recommendation No. 5. The auditor states that, "We have found that OL tracks expenditures by occupation regulated by the Board of Pharmacy but does not account for revenue at the occupational level or set fees to ensure that each occupation is self-sufficient." The department addressed these issues in our response to the October 3, 1997, audit of occupation fee setting policies and regulatory costs.

The Division of Occupational Licensing credits revenue to each of the 35 licensing boards and programs as funds are received. Licensing statistics are then used to determine which occupations within a board or program generated the revenue. Licensing statistics are an acceptable means of tracking revenue at the occupation level.

Strict interpretation of AS 08.01.065(c) to require each occupation within a board to cover its own costs is impractical in a state with a small population of licensees and contrary to the public interest. This action would increase the volatility of license fees and make licenses prohibitively expensive for some occupations.

Sincerely,


Deborah B. Sedwick
Commissioner

DBS/CR/dgl/4022cr.doc
102798a

- 15 -

FISCAL NOTE

Bill Version: HB 68

(H) Publish Date: 2/26/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ Dev.
 Title An Act extending the termination of the SRU Occupational Licensing
 Board of Pharmacy _____ Component Occupational Licensing
 Sponsor House Labor and Commerce Committee
 Requester House Labor and Commerce Committee Component Serial No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 61.2

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 68 extends the Board of Pharmacy to June 30, 2005. Funding for continuation of the board in the amount of \$61.2 is included in the department's FY 2000 operating budget request; therefore, new funds are not needed. The program is required to cover its costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs.

Prepared by Jennifer Strickler, Administrative Manager *JS* Phone 465-2144
 Division Occupational Licensing *JS* Date/Time 1/29/99 11:01 AM
 Approved by Commissioner Deborah B. Sedwick *DBS* Date 2/1/99
 Agency Commerce & Economic Development

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**BOARD COSTS
INFORMATION**

HB 68				
DIRECT COSTS			Total	AVG
FY:	97	98	DIRECT	ANNUAL
				COSTS
Personal Services	34.9	35.5	70.4	35.2
Travel	6.2	6.4	12.6	6.3
Contractual Services	18.0	21.3	39.3	19.7
Commodities		0.1	0.1	0.1
Equipment			0.0	0.0
	59.1	63.3	122.4	61.2

HB

68

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/14/99

FURTHER: 5/12/99

DATE TURNED
IN TO OFFICE: 12 May 1999

Finance Committee considered HOUSE BILL NO. 68

"An Act extending the termination date of the Board of Pharmacy to June 30, 2005; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	X				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>					

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

DCEIS	7/1/99	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

Enr Version: HB 68

(H) Publish Date: 2/26/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

5/12/99

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ Dev.
 Title An Act extending the termination of the BRU Occupational Licensing
Board of Pharmacy Component Occupational Licensing
 Sponsor House Labor and Commerce Committee
 Requester House Labor and Commerce Committee Component Serial No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

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ANALYSIS: (Attach a separate page if necessary)

House Bill 68 extends the Board of Pharmacy to June 30, 2005. Funding for continuation of the board in the amount of \$61.2 is included in the department's FY 2000 operating budget request; therefore, new funds are not needed. The program is required to cover its costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs.

Prepared by Jennifer Strickler, Administrative Manager
 Division Occupational Licensing
 Approved by Commissioner Deborah B. Sedwick
 Agency Commerce & Economic Development

Phone 465-2144
 Date/Time 1/29/99 11:01 AM
 Date 2/1/99

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Equipment				0.0 0.0
		59.1	63.3	122.4 61.2

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT & TOURISM, MEMBER



INTERIM:
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

Representative Norman Rokeberg

MEMORANDUM

TO: Senator Sean Parnell, Co-Chairman
Senator John Torgerson, Co-Chairman
Senate Finance Committee

FROM: Rep. Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: April 14, 1999

RE: HB 68 - Extend Board of Pharmacy

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

I would request that you schedule HB 68 for consideration before the Senate Finance Committee.

The bill has a zero fiscal note for FY 2000-2005 and an estimated fiscal impact for FY 99 of \$61,200. As with other occupational licensing boards, the fees paid by the licensees pay for the Board's activities.

The audit performed by Legislative Audit recommends the extension of the board to June 30, 2005, which is the date used in the bill.

Attached are:

1. HB 68
2. Sponsor Statement/Sectional Analysis
3. Fiscal Note
4. Information for the Boards and Commission Book on the Board of Pharmacy
5. Copy of the August 25, 1998 audit report from the Division of Legislative Audit
6. Board of Pharmacy Support Indication.

Thank you for considering this request.

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

SPONSOR STATEMENT AND SECTIONAL ANALYSIS HOUSE BILL 68

An Act extending the termination date of the Board of Pharmacy to June 30, 2005

SPONSOR STATEMENT:

As the title indicates, House Bill 68 would extend the termination date of the Board of Pharmacy to June 30, 2005.

The Board of Pharmacy controls registration and disciplinary sanctions and provides for the regulation of controlled substances in the State of Alaska. There are seven members on the Board. The August 25, 1998 Audit Report from the Division of Legislative Audit recommends that this Board be extended to June 30, 2005, which is what the legislation proposes. The Legislative Audit found that the Board does benefit the public's health, safety and welfare.

The last time the Board of Pharmacy was reviewed, the termination date was set at June 30, 1999. If this Board's termination date is not extended this year, the Board will be in its wind down year and would cease to exist, without further action, on June 30, 2000.

In order to provide for some standards of practice in the pharmaceutical field, we would request your support of the extension of this Board.

SECTIONAL ANALYSIS

Section 1: Extends termination date to June 30, 2005

Section 2: Effective date: immediate

ED1:02/20/99

BOARD COSTS
INFORMATION

HB 68				
DIRECT COSTS			Total	AVG
FY:	97	98	DIRECT	ANNUAL
				COSTS
Personal Services	34.9	35.5	70.4	35.2
Travel	6.2	6.4	12.6	6.3
Contractual Services	18.0	21.3	39.3	19.7
Commodities		0.1	0.1	0.1
Equipment			0.0	0.0
	59.1	63.3	122.4	61.2

STATE OF ALASKA
Boards and Commissions

PHARMACY BOARD

BOARD: Board of Pharmacy

BOARD IDENTIFICATION NUMBER: 078

DEPARTMENT: DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

AUTHORITY: AS 08.80.010

STATUS: Active

SUNSET DATE: June 30, 1999

REQUIREMENTS: Legislative Confirmation

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

TERM: 4 years

DESCRIPTION: 7 members appointed by Governor: 5 licensed pharmacists actively engaged in practice in Alaska for 3 years immediately preceding appointment; 2 public members with no direct financial interest in health care industry; when possible, one member should represent each judicial district; terms begin April 1; members elect president. Terms of public members shall be staggered so that they do not expire at the same time.

FUNCTION: Controls registration, disciplinary sanctions, provides for the regulation of controlled substances.

CHAIR: Board selects.

SPECIAL FACTS: Serve at the pleasure of the Governor. Quorum - 4 members (3 when examining applications for registration); report to Legislature; members may be removed for cause. Members serve until a successor is appointed. An appointment to fill a vacancy is for the remainder of the unexpired term. A member who has served all or part of two successive terms may not be reappointed unless four years have elapsed since the person has last served. E-mail: Pat_Park-Fisher@commerce.state.ak.us or license@commerce.state.ak.us

COMPENSATION: Standard Travel and Per Diem.

MEETINGS: 3 times per year; 9 days total.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Park-Fisher, Division of Occupational Licensing, DCED, P.O. Box 110806 M/S 0806, Juneau, AK, 99811-0806, Phone: 907-465-2538, Fax: 907-465-2974.

STATE OF ALASKA
Boards and Commissions

Membership Roster
PHARMACY BOARD (078)

Member	Appointed	Reappointed	Term Exp.
Chris E. Coursey Pharmacist AK Regional Hospital P.O. Box 143889 Anchorage, AK 99514-3889	04/23/91	09/14/95	04/01/99
* Paul Joseph Gionet Pharmacist IVY Home Infusions 2841 DeBarr Road, Suite 20 Anchorage, AK 99508	04/01/93	11/26/97	04/01/01
Gerry Knasiak Public 119 Austin Street, No. 611 Ketchikan, AK 99901	04/16/98		04/01/01
Martin Krull Pharmacist Director of Pharmacy Carr Gottstein Food Co. 6411 A Street Anchorage, AK 99518	01/21/98		04/01/01
Margaret D. Soden Pharmacist P.O. Box 61328 Fairbanks, AK 99706-1328	12/11/98		04/01/02
Bonnie R. Stewart Public P.O. Box 230132 Anchorage, AK 99523	01/02/97		04/01/00
Stanley P. Thompson Pharmacist 1018 West 73rd Avenue Anchorage, AK 99518	04/09/92	01/02/97	04/01/00

August 25, 1998

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF PHARMACY

August 25, 1998

Audit Control Number

08-1457-98

The objective of this review is to advise the legislature as to whether the Board of Pharmacy should be extended or terminated in statute. Currently, AS 08.03.010(c)(15) has the board scheduled for termination on June 30, 1999. If no action is taken by the legislature, the board has one year in which to conclude its affairs and will be dissolved on June 30, 2000. We recommend that the legislature extend the board's termination date to June 30, 2005.

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

Pat Davidson, CPA
Legislative Auditor

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Department of Commerce and Economic Development.....	15

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

In accordance with Title 24 and 44 of the Alaska Statutes, we conducted a review of the activities of the Board of Pharmacy. The primary objective of our review was to advise the legislature as to whether the board should continue in existence.

As required by statute, the legislative committee of reference is to consider this report as part of its oversight process and determining whether the board should be reestablished. The law currently specifies that the board will terminate on June 30, 1999 and will have one year from that date to conclude its affairs.

Scope

The major areas of our review were board proceedings, examination, licensing, and investigations. We also reviewed the existing licensing/fee structure as it relates to financial self-sufficiency of the board.

Methodology

A majority of this review was conducted by another auditor at our direction and supervision. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

To accomplish the audit objectives, the following documents were reviewed and the following interviews were conducted:

- Applicable sections of state statutes and regulations.
- Interviews with employees of the Division of Occupational Licensing (OL), Department of Commerce and Economic Development.
- Minutes of board meetings and annual reports.
- Licensing files for pharmacists and pharmacies.
- Investigation files related to the pharmacy profession.
- Projections of license fee revenues and regulation costs prepared by OL.
- Complaints filed with OL.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Board of Pharmacy was established for the purpose of controlling and regulating the practice of pharmacy in the State. Alaska Statute 08.80.005 states that effective control and regulation of the practice of pharmacy is necessary to promote, preserve, and protect the public's health, safety, and welfare.

Board Membership

The Board of Pharmacy is composed of seven members (see inset at right). Statutes require five board positions be licensed pharmacists actively engaged in the practice of pharmacy in the State for a period of three years immediately preceding their appointment. The remaining two positions are to be filled by individuals from the general public. Statute prohibits these public members from having a direct financial interest in the health care industry.

Board Duties

In general, the board regulates admission into the practice of pharmacy, establishes and enforces competency by ensuring compliance with professional standards, and adopts regulations. Enforcement includes assisting in the investigation of potential violations and suspending or revoking licenses when determined necessary.

The board licenses pharmacists, retail facilities, wholesale distributors, drug rooms, institutional facilities, and out-of-state facilities. It also issues permits to individuals to act as pharmacy interns. Beginning with the FY 98 licensing cycle, the board will be licensing pharmacy technicians.

Applicants for a pharmacist license are required to pass a National Association of Boards of Pharmacy Licensing examination. Additionally, applicants must pass a jurisprudence examination covering Alaska pharmacy law and the Federal Controlled Substance Act. Applicants who are licensed to practice pharmacy in another state may be awarded an Alaska license to practice based on their credentials as long as they have passed the national examination.

BOARD OF PHARMACY MEMBERS

Registered Pharmacists

Paul Clonet, Chairperson
Chris Coursey
Kenal Kaihol
Martin Krull
Stanley Thompson

Public Members

Gerry Knaslak
Bonnie Stewart

Division of Occupational Licensing

Division of Occupational Licensing (OL) staff assists the board in its duties. OL staff processes applications, maintains licensing files, answers board-related correspondence, and provides administrative support to the board. Additionally, OL staff investigates complaints involving the practice of pharmacy.

REPORT CONCLUSIONS

Alaska Statute 08.03.010 (c) (15) requires that the Board of Pharmacy be terminated on June 30, 1999. If the legislature does not take action to continue the board, AS 08.03.020 (a) provides the board one year in which to conclude its affairs. Consequently, if no action is taken by the legislature, the Board of Pharmacy will be dissolved June 30, 2000.

The regulation and licensing of qualified professionals and pharmaceutical facilities benefits the public's health, safety, and welfare. By establishing minimum educational and practical experience requirements, the board provides reasonable assurance that individuals licensed are qualified to practice. Assurance that licensed individuals act in a manner consistent with the public interest is also promoted by active investigation of complaints and license revocation or suspension when appropriate.

In our opinion, the Board of Pharmacy serves an important public purpose. It should be continued in statute and its termination date should be extended until June 30, 2005.

(Intentionally left blank)

A ANALYSIS OF PUBLIC NEED

Limited Analysis

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

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

The board has operated in the public's interest by licensing qualified applicants, authoring pharmacy related pamphlets, publishing a newsletter, and drafting new regulations in conjunction with extensive legislative revision to the state's pharmacy statutes. According to the board's annual reports, 209 new pharmacists and 181 pharmacies and drug rooms were licensed between FY 94 and FY 98. Beginning July 1, 1998, the board will license pharmacy technicians.

During FY 98, the board authored three pamphlets that further define certain regulations¹ and help explain their legal intent. All three pamphlets are included as appendices to the pharmacy statutes and regulations booklet distributed by the board and the Division of Occupational Licensing (OL). The board also published and distributed newsletters informing licensees of the State's current jurisprudence and the recent revision of statutes and regulations.

The board completed a comprehensive revision of pharmacy regulations that were effective January 16, 1998. The regulation's project was a work in progress for just over five years. According to the board's 1998 annual report, the new regulations reflect the current practice of pharmacy and position the board to serve the public health and welfare in regulating the practice of pharmacy as it evolves over the next decade.

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

Our prior audit of the Board of Pharmacy dated October 26, 1993 took exception to the distribution of board members. Alaska Statute 08.80.010 states, in part, "[w]henever possible, the board shall include at least one member from each judicial district." Traditionally, the Northwest region of the State, which makes up the second judicial district, has not been represented on the

¹ Specifically, the three pamphlets are entitled "Sterile Pharmaceuticals," "Compounding," and "Facility Standards."

board. Only 8 of the 534 licensed pharmacists (1.5%) reside in the Northwestern region of the State.

Current board membership consists of five members from the Southcentral region, one from the Southeast, and one from the Interior. The second judicial district continues to be absent. However, during the past four years, no one from the Northwestern Region has applied for an open board position.

The concentration of board members in the Southcentral region affects the board's availability to the public and to pharmacist candidates, who must take the jurisprudence exam from a board member before they can be licensed.

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

At the urging of the board and the Alaska Pharmaceutical Association, a comprehensive statutory revision to the pharmacy statutes was passed by the legislature in the 1996 session and became effective August 26, 1996. The statutory rewrite was designed to correct obsolete and fragmented pharmacy statutes and to reflect current pharmacy practices. As already discussed, the board completed a comprehensive rewrite of regulations to implement the new statutes.

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.

OL has published notices of all examinations, meetings, and regulation changes. A period of time for public comment was available at each public meeting.

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

Each board meeting agenda allots time for public comment. The public has been encouraged to use these public comment periods to express concerns and obtain information from the board. The public comment period for regulation changes also assures that the public has the opportunity to participate in the regulatory process.

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

From FY 94 through FY 98, OL's investigative unit investigated 39 cases involving pharmacies, pharmacists, and unlicensed pharmacists. Six of the cases remained open as of June 24, 1998. Generally, the cases were resolved in a timely and efficient manner given the nature of the complaints and OL resources.

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

The table below summarizes licensing activity for the past four fiscal years, listing the number of new licenses issued per year and the number of current license holders regulated by the board at the end of FY 98.

Types of Licenses	New Issued in FY 94	New Issued in FY 95	New Issued in FY 96	New Issued in FY 97	New Issued in FY 98	Total Current Active Licenses
Pharmacists	53	32	35	43	46	534
Pharmacies:						
Retail	15	3	5	15	14	92
Hospital	0	0	0	0	3	16
Drug Rooms	0	0	0	3	0	15
Out-of-State	13	16	21	46	22	113
Wholesale	0	0	2	0	3	8

The board ensures that the licensees are qualified through screening of applications, examination and continuing education requirements. When reviewing licensure procedures, we found no instances of unqualified applicants being awarded a license.

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

The board continues to require applicants submit a photograph and answer several personal questions (height, weight, hair color, etc). Our prior audit recommended the board work to eliminate these potentially discriminatory licensing procedures. We found that no progress has been made to address this recommendation. In the past, the State's Equal Employment Opportunities office has discouraged state agencies from asking applicants questions regarding personal appearance. The board believes there is reasonable cause to review such information

because it is important for identifying individuals being licensed to work with controlled substances. The board adopted a motion stating it will continue to review photographs of applicants as part of the licensing process.

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

As discussed above, statutes and regulations have been comprehensively rewritten. Previously obsolete and fragmented statutes and regulations were updated. Such revisions were designed to serve the public welfare by regulating the practice of pharmacy as it evolves over the next decade. However, we did find a problem relating to general fee setting statutes.

As discussed under prior year Recommendation No. 5 in the Auditor's Comments section of the report, the Division of Occupational Licensing is required to set license fees so that occupations are self-supporting. Alternately, the division is setting fees so that boards are self-supporting. The Board of Pharmacy issues several different types of licenses. The fees charged are not intended to cover the costs associated with each type of license. Further, the division's cost accounting system is not set up to track revenue by occupation. We recommended the division change its procedures to comply with statute.

AUDITOR'S COMMENTS

In the last review of the Board of Pharmacy, dated October 26, 1993, we reported eight findings and recommendations. The current status of each is discussed below.

In summary, prior year Recommendation No. 1 was partially implemented by extending the board until June 30, 1999. Three of the prior year Recommendations (Nos. 2, 6, and 7) were not implemented but do not warrant a finding and recommendation in this report. Three Recommendations (Nos. 3, 4, and 8) were addressed through a comprehensive rewrite of statutes and regulations. Prior year Recommendation No. 5 was reviewed during our audit of license fees dated October 3, 1997. It continues to be an issue as discussed in this report.

Prior Year Recommendation No. 1

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

This recommendation was partially implemented by the legislature when it extended the board until June 30, 1999. We make a similar recommendation regarding extension of the board until June 30, 2005 in the Report Conclusions section.

Prior Year Recommendation No. 2

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

In our prior audit of the Board of Pharmacy, we took exception to the distribution of board members. Traditionally, the Northwestern region of the State, which makes up the second judicial district, has not been represented on the board.

Although the second judicial district continues to go be absent from the board, at this time we do not believe board composition is inconsistent with statutes. Statutes require regional representation "*whenever possible.*" The Boards and Commissions section within the Office of the Governor stated that no one from the second judicial district applied for an open board position during the period of our review.

Prior Year Recommendation No. 3

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

Prior to the comprehensive rewrite of pharmacy statutes and regulations, board members conducted inspections. Board members inspecting their competitors created an awkward situation open to criticisms of partiality. Under the new law, applicants, not board members, conduct the inspections. Each licensee must fill out a self-evaluation form when obtaining or renewing a license. Division of Occupational Licensing (OL) staff views the self-inspections as an improvement and believes the self-inspections are useful in helping the board monitor compliance with statute and regulation.

Prior Year Recommendation No. 4

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

The recent rewrite of statutes and regulations addressed this recommendation. Statutes now reflect current practices.

Prior Year Recommendation No. 5

The Department of Commerce and Economic Development should continue to work with the Office of the Governor, Office of Management and Budget in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

We conducted an audit² during calendar year 1997 of the practices and procedures followed by OL in setting license fees for various professions. In that review, we determined OL was not complying with the statutory requirement that revenues and expenditures be accounted for on an occupation basis.

Specifically, AS 08.01.065 (c) states:

The department shall establish fee levels [in this] section so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation. [Emphasis added.]

By not accounting for financial data on an occupation-by-occupation basis, OL could not demonstrate that it met the self-sufficiency standard established in statute. We recommended that OL establish new cost accounting procedures to ensure compliance with the statute requiring financial self-sufficiency at the occupation level.

In performing fieldwork for this audit, we followed-up this general recommendation as it relates specifically to the Board of Pharmacy. We found that OL tracks expenditures by occupation regulated by the Board of Pharmacy but does not account for revenue at the

² The audit was titled *The Department of Commerce and Economic Development – Occupation Fee Setting Policies and Regulatory Costs* dated October 3, 1997.

occupational level or set fees to ensure that each occupation is self-sufficient. Therefore, we conclude that OL's current practice is inconsistent with statute and recommend it adopt procedures to comply with self-sufficiency requirements set out in statute.

Prior Year Recommendation No. 6

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

During the period of our review, applicants were still required to submit a photograph and answer several personal questions (height, weight, hair color, etc). The board believes there is reasonable cause to review personal information because such information is important when licensing individuals working with controlled substances. The board adopted a motion stating it will continue to review photographs of applicants as part of the licensing process. We recognize the importance of identifying applicants who wish to distribute/administer controlled substances. However, the board should take steps to ensure justification is compatible with equal employment law.

Prior Year Recommendation No. 7

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

OL provides administrative assistance to many boards and commissions, including the Board of Pharmacy. OL staff helps during the board meetings, including taking minutes. These minutes are submitted to the board for approval at the subsequent meeting. The board prepares the annual report.

Prior Year Recommendation No. 8

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

OL has implemented this recommendation by improving its procedures for submitting potential violations. According to the Department of Law staff member in charge of monitoring the reports, OL prepares a quarterly report covering all boards and commissions and submits it timely.

October 27, 1998

RECEIVED
OCT 28 1998

Ms. Pat Davidson
Legislative Audit
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3830

LEGISLATIVE AUDIT

Dear Ms. Davidson:

Thank you for the opportunity to respond to the preliminary audit report on the Department of Commerce and Economic Development, Division of Occupational Licensing, Board of Pharmacy (audit control number 08-1457-98).

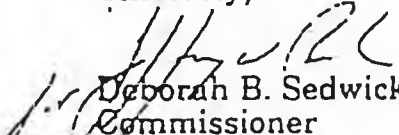
The department concurs with the report's conclusion that the Board of Pharmacy serves an important public purpose and should be extended. As the auditor's comments indicate, most of the issues raised by the prior audit have been resolved and regulation of pharmacy has been strengthened as a result of legislative and Board action.

The department does not concur with the auditor's comments relating to Prior Year Recommendation No. 5. The auditor states that, "We have found that OL tracks expenditures by occupation regulated by the Board of Pharmacy but does not account for revenue at the occupational level or set fees to ensure that each occupation is self-sufficient." The department addressed these issues in our response to the October 3, 1997, audit of occupation fee setting policies and regulatory costs.

The Division of Occupational Licensing credits revenue to each of the 35 licensing boards and programs as funds are received. Licensing statistics are then used to determine which occupations within a board or program generated the revenue. Licensing statistics are an acceptable means of tracking revenue at the occupation level.

Strict interpretation of AS 08.01.065(c) to require each occupation within a board to cover its own costs is impractical in a state with a small population of licensees and contrary to the public interest. This action would increase the volatility of license fees and make licenses prohibitively expensive for some occupations.

Sincerely,


Deborah B. Sedwick
Commissioner

DBS/CR/dgl/4022cr.doc
102798a

08-H2LH

interoffice
MEMORANDUM

to: Catherine Reardon, Director
thru: Carol Whelan, Licensing Supervisor CW
from: Debora Stovern, Licensing Examiner ds
subject: Pharmacy Board Opinion on HB 68
date: February 19, 1999

The Board of Pharmacy met in Anchorage on February 5, 1999; they reviewed HB 68, a bill for an act "extending the termination date of the Board of Pharmacy to June 30, 2005; and providing for an effective date."

The following motion was carried unanimously:

RESOLVED to support House Bill 68.

FEB 26 1999

SENATE FINANCE COMMITTEE

SIGN-IN

HB 68-BCARD OF PHARMACY

NAME: Janet Seitz Sub./Bill No: hb 68

Co./Dept./Title: Rep. Rokberg's office Phone: 4954

Address: Room 24, Capitol, Juneau Zip: 99801

Do you wish to testify? Yes No Respond to Questions

NAME: Catherine Rando Sub./Bill No: H868

Co./Dept./Title: Direct Occ lawyer Phone: 2538

Address: PO 110806 Juneau Zip: 99811

Do you wish to testify? Yes No Respond to Questions *Support only*

NAME: _____ Sub./Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond to Questions

NAME: _____ Sub./Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond to Questions

HB

69

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 8, 1999

FURTHER REFERRALS:

Date of Committee Action: 3/20/99

The FINANCE Committee considered:

HB 69

HOUSE BILL NO. 69

ALCOHOLIC BEVERAGE CONTROL BOARD

"An Act relating to the Alcoholic Beverage Control Board; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 69 (FIN) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

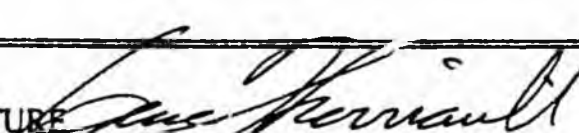
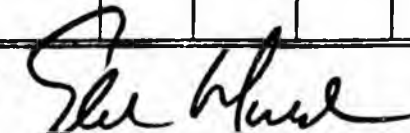
fiscal note(s) DOR 3/8/99

zero fiscal note(s) _____

zero fiscal note(s) DOR 3/8/99

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault	<input checked="" type="checkbox"/>			
<i>John Mulder</i>	Mulder	<input checked="" type="checkbox"/>			
<i>Van Buren</i>	Bunde	<input checked="" type="checkbox"/>			
<i>John N. Davis</i>	J. Davis				<input checked="" type="checkbox"/>
<i>Ben Grissenden</i>	Grissenden				<input checked="" type="checkbox"/>
<i>John Foster</i>	Foster	<input checked="" type="checkbox"/>			
<i>Carl E. Miles</i>	Miles			<input checked="" type="checkbox"/>	

CO CHAIR'S SIGNATURE



 Theriault Mulder

FISCAL NOTE

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. HB 69

Revision Date/Time (Note if correction) _____	Dept. Affected	Revenue
Title <u>An act relating to the Alcoholic Beverage</u>	BRU	ABC Board
<u>Control Board</u>	Component	ABC Board
Sponsor <u>Rep. Rokeberg</u>	_____	
Requester <u>House Labor & Commerce</u>	Component Serial No.	_____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

No fiscal impact directly from extension of ABC Board for three years. ABC Board is funded entirely from program receipts.

Prepared by	Dorg Griffin, Director	Phone <u>465-2301</u>
Division	ABC Board	Date/Time <u>February 22, 1999 10:15 AM</u>
Approved by		Date <u>2/22/99</u>
Commissioner	Wilson L. Condon	
Agency	Department of Revenue	

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4-4
Failed

(1)

A M E N D M E N T

OFFERED IN ~~THE~~ HOUSE FINANCE
TO: CSHB 69(L&C)

BY REPRESENTATIVE ~~COPE~~ DAVIES

1 Page 1, line 4, following "package store licenses;":

2 Insert "relating to alcoholic beverage license protest procedures;"

3 Page 6, following line 23:

4 Insert a new bill section to read:

5 "* Sec. 12. AS 04.11.480(a) is amended to read:

6 (a) A local governing body may protest the issuance, renewal, relocation, or
7 transfer to another person of a license by sending the board and the applicant a protest
8 and the reasons for the protest within 60 days of receipt from the board of notice of
9 filing of the application. A protest received after the 60-day period may not be
10 accepted by the board, and in no event may a protest cause the board to reconsider
11 an approved renewal, relocation, or transfer. The local governing body may protest
12 the continued operation of a license during the second year of the biennial license
13 period by sending the board and the licensee a protest and the reasons for the protest
14 by January 31 of the second year of the license. The procedures for action on a
15 protest of continued operation of a license are the same as the procedures for action
16 on a protest of a renewal application. A local governing body may recommend that
17 a license be issued, renewed, relocated, or transferred with conditions. The board
18 shall consider recommended conditions or a protest and testimony received at a
19 hearing conducted under AS 04.11.510(b)(2) or (4) when it considers the application
20 or continued operation, and the recommended conditions, the protest, and the record
21 of the hearing conducted under AS 04.11.510(b)(2) or (4) shall be kept as part of the
22 board's permanent record of its review. If an application or continued operation is
23 protested or the local governing body recommends conditions, the board shall deny
24 the application or continued operation or impose the recommended conditions unless

1 the board finds that the protest or the recommended conditions are [IS] arbitrary,
2 capricious, and unreasonable."

3 Renumber the following bill sections accordingly.

4 Page 7, line 22:

5 Delete "15"

6 Insert "16"

7 Page 7, line 23:

8 Delete "16"

9 Insert "17"

#2

Failed 3-5

AMENDMENT

OFFERED IN ~~THE~~ HOUSE FINANCE
TO: CSHB 69(L&C)

BY REPRESENTATIVE ~~GRANT~~ DAVIS

1 Page 1, line 6, following "license;":

2 Insert "relating to notice of arrests on premises licensed for alcoholic beverages
3 operations;"

4 Page 7, following line 18:

5 Insert a new bill section to read:

6 **** Sec. 15.** AS 12.25 is amended by adding a new section to read:

7 **Sec. 12.25.075. Notice of arrest on premises licensed for alcoholic**
8 **beverages operations.** (a) If a peace officer makes an arrest on licensed premises,
9 the law enforcement agency that employs the peace officer shall, within 60 days of
10 the arrest, provide notice of the arrest, including a description of the location and
11 circumstances of the arrest, to the Alcoholic Beverage Control Board.

12 (b) In this section. "licensed premises" has the meaning given in
13 AS 04.21.080(b)."

14 Renumber the following bill sections accordingly.

15 Page 7, line 22:

16 Delete "15"

17 Insert "16"

18 Page 7, line 23:

19 Delete "16"

20 Insert "17"

passed
6-2

#3

A M E N D M E N T

OFFERED IN ~~THE~~ HOUSE *FINANCE*
TO: CSHB 69(L&C)

Rep. DAVIES

1 Page 1, line 2, following "organizations;":
2 Insert "relating to peace officer powers of employees of the Alcoholic Beverage
3 Control Board;"

4 Page 3, following line 3:
5 Insert a new bill section to read:

6 **** Sec. 2.** AS 04.06.110 is amended to read:

7 **Sec. 04.06.110. Peace officer powers.** The director and the persons
8 employed for the administration and enforcement of this title may, with the
9 concurrence of the commissioner of public safety, exercise the powers of peace
10 officers when those powers are specifically granted by the board. Powers granted by
11 the board under this section may be exercised only when necessary for the
12 enforcement of the criminally punishable provisions of this title, regulations of the
13 board, and other criminally punishable laws and regulations, including enforcement
14 of laws against prostitution and promoting prostitution described in AS 11.66.100
15 - 11.66.130 and laws against gambling, promoting gambling, and related offenses
16 described in AS 11.66.200 - 11.66.280 [GOVERNING THE MANUFACTURE,
17 BARTER, SALE, CONSUMPTION, AND POSSESSION OF ALCOHOLIC
18 BEVERAGES IN THE STATE]."

investigati
of violation

19 Renumber the following bill sections accordingly.

20 Page 7, line 22:
21 Delete "15"
22 Insert "16"

- 1 Page 7, line 23:
- 2 Delete "16"
- 3 Insert "17"

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 69

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue
 Title An act relating to the Alcoholic Beverage BRU ABC Board
Control Board Component ABC Board
 Sponsor Rep. Rokeberg
 Requester House Labor & Commerce Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact directly from extension of ABC Board for three years. ABC Board is funded entirely from program receipts.

Prepared by Dorg Griffin, Director
 Division ABC Board
 Approved by Wilson L. Condon
 Commissioner
 Agency Department of Revenue

Phone 465-2301
 Date/Time February 22, 1999 10:15 AM
 Date 2/22/99

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STATE OF ALASKA
DEPARTMENT OF REVENUE
Alcoholic Beverage Control Board

TONY KNOWLES, GOVERNOR
550 W. 7TH AVENUE, SUITE 350
Anchorage, Alaska 99501 - 6678
Phone: 907-269-0350
FAX: 907-272-9412

March 18, 1999

Representative Gene Therriault, Co-Chair
House Finance Committee
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801-1182

RE: Community Council Resolution on ABC Board

Dear Representative Therriault:

I am aware of issues being raised by Senator Dave Donley and being circulated to various Community Councils within the Municipality of Anchorage regarding changes to the Alcoholic Beverage Control (ABC) Board. These changes involve amendments to the membership, duties, and procedures of the ABC Board. I would like to respond to the four changes being proposed.

First, Senator Donley calls for replacing one of two alcohol industry members of the ABC Board with an additional public member. This would change the overall make-up of the Board from three public members and two industry members to four public seats and only one industry seat. This change stems in part from statements regarding voting patterns in the September 1997 legislative audit of the ABC Board, which are not supported by research, analysis, or fact. The basis of the assertion by legislative auditors that industry members of the ABC Board are generally softer on the liquor licensees in fulfilling their regulatory and quasi-judicial duties is, in fact, attributed to interviews with me. I recall discussing with auditors the public perception of this assertion, but I felt that this assumption merited review with regard to the present ABC Board. I disagree with how my comments were portrayed and used by Legislative Audit and I am very concerned that now this faulty conclusion is fueling an effort to change in state law the make-up of the ABC Board. The ABC Board is already set up to protect the public with three public members and only two industry members. Governor Knowles has further appointed a representative of the law enforcement community to one of the public seats. The Governor has also appointed industry members who are sensitive to community concerns and hold liquor licensees to high standards in the conduct of their businesses. There is further protection in state law giving the Director of the ABC Board the authority to break a tie vote. Changing the membership would alienate the beverage service industry and create a more adversarial environment in alcoholic beverage regulation. This will have the result of making alcohol beverage law enforcement more difficult, emotional, and expensive. For these reasons, the ABC Board opposes this change.

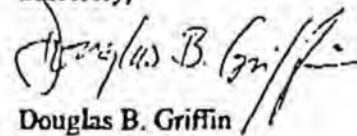
Second, Senator Donley, citing the 1997 audit, calls for "peace officers to notify the ABC Board of arrests at licensed establishments." This recommendation has merit. The ABC Board is now in the process of drafting regulations to require timely and complete reporting of alcoholic beverage license violations from local law enforcement before semi-annual license fee collections are returned to municipalities that enforce liquor laws.

Third, there is a proposal to "allow ABC Board Enforcement Officers to make arrests for prostitution and gambling at liquor licensed facilities." Presently, ABC Investigators have special commissions from Public Safety Commissioner Ron Otto to conduct investigations of prostitution and gambling on liquor licensed premises only. The 1997 audit disputed the legality of this special commission (AS 04.06.110) because it gives ABC personnel the authority to investigate crimes related to, but not strictly part of, Title 4. The ABC Board believes this special commission is legal and sufficient to address the concern. The special commission simply tries to improve government efficiency and responsiveness by allowing the ABC enforcement staff, in the course of monitoring liquor licensees, to also investigate these related illegal activities. A change in the statute giving ABC staff arrest powers has significant legal ramifications. It exceeds the scope of authority the ABC Board believes is warranted for its investigators to carry out their statutory duties. The present ability of enforcement personnel to conduct investigations and issue citations provides significant public protection and is a more legally appropriate level of authority for the task of enforcing alcoholic beverage laws and prostitution and gambling on licensed premises. The ABC Board does not oppose statutory clarification to allow the investigation of gambling and prostitution on liquor licensed premises by ABC personnel.

Finally, Senator Donley wishes to require a two-thirds vote of the ABC Board to take action regarding a liquor license opposed by a local community council or local government body. I believe that this provision raises significant legal issues because it gives a community council authority beyond its capacity as an advisory body. Community councils are not elected officials and conferring power to these informal associations raises concerns of valid representation of the governed and the legal basis for the exercise of this authority. Community councils can provide insight, information, and advice to policy-making groups, but I do not believe they have the authority to make policy on their own. There is not the same legal concern for the requirement of a two-thirds vote of the ABC Board to overrule a municipal protest. This proposal may merit discussion and debate as a policy choice. The law already sets a high standard for the ABC Board to overrule local government protests of transfer, renewal, or continued operation of liquor licenses. The ABC Board must find a municipal protest to be "arbitrary, capricious, and unreasonable" to reject it. While the law does not afford the same protection to community council protests, as a practical matter this ABC Board does give great weight to neighborhood concerns. In my letter of response to the 1997 audit I cited several instances where the ABC Board denied or modified liquor license actions based on reasonable neighborhood concerns. For these reasons, I do not believe that this change merits enactment.

I have responded to these proposals as concisely as possible. I will be happy to provide you with additional information regarding these proposals if it is desired.

Sincerely,



Douglas B. Griffin
Director

cc: Senator David Donley

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 69

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue
 Title An act relating to the Alcoholic Beverage BRU ABC Board
Control Board Component ABC Board
 Sponsor Rep. Rokeberg
 Requester House Labor & Commerce Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact directly from extension of ABC Board for three years. ABC Board is funded entirely from program receipts.

Prepared by Dorg Griffin, Director
 Division ABC Board
 Approved by Wilson L. Condon
 Commissioner
 Agency Department of Revenue

Phone 465-2301
 Date/Time February 22, 1999 10:15 AM
 Date 2/22/99

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17 March 1999

Representative Norman Rokeberg
Chairman, House Labor & Commerce Committee
Alaska State Legislature
State Capitol
Juneau Alaska 99801-1182


Honorable Representative Rokeberg

Thank you for moving CSHB No.69 (L&C) from your committee to the House Finance Committee. Your support and dedication toward this particular piece of legislation is recognized and appreciated.

I understand sections of CSHB No.69 (L&C) dealing with brewpubs clarify specific issues and that additional input by all brewpub licensee's will be provided during each step of the process to pass this legislation.

Extending the Alcohol Beverage Control Board to the year 2003 in this bill is necessary and critical to the licensed beverage industry and enforcement of Title IV statutes. Thank you, again, for your concern and support of this issue.

I remain at your service,


Larry J. "Hack" Hackenmiller
President, CHARR

MAR 18 1999

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us



INTERIM
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

HISTORICAL INFORMATION REGARDING CERTAIN ABC LICENSE CHANGES:

By: Rep. Norman Rokeberg

03/16/99

04.11.130 = Brewery License. First put in statute in 1980.

04.11.135 = Brewpub License. First put in statute in 1988. This license is not transferable. Requires licensee to also hold a beverage dispensary license.

04.11.450 = Prohibited Financial Interest. First put in statute in 1980.

CSSB 276 (FIN), Chapter 111, SLA 1988, "An Act relating to brewpub, brewery, and beverage dispensary liquor licenses; and to prohibited financial interests in a licensed liquor business; and providing for an effective date."

Added AS 04.11.135 adds new section (brewpub license).

HCS CSSB 87 (JUD), Chapter 101, SLA 1995, "Relating to the membership of the Alcoholic Beverage Control Board; relating to community local options for control of alcoholic beverages; relating to the control of alcoholic beverages; prohibiting persons from being on premises involving alcoholic beverages under certain circumstances; relating to the definition of 'alcoholic beverage'; relating to purchase and sale of alcoholic beverages; relating to alcohol server education courses; and providing for an effective date."

Changed AS 04.11.100: Added new subsection: Exempt license provision reduced the menu and percentage of sales restriction in this category of license thereby creating a "tavern" license.

Changed 04.11.135(a) concerning a brewpub license to authorize the holder of a beverage dispensary license to manufacture 75,000 gallons of beer in a calendar year (previous amount was 16,000 gallons). (Section 6)

SCS CSHB 372 (JUD) am S, Chapter 136, SLA 1996, effective October 1, 1996.

Changed 04.11.100(f) to grandfather in exempt licenses (Moose's Tooth Letter). (Section 1)

Changed AS 04.11.135(a) to add two new subsections (3) and (4) concerning sale of licensee's manufactured beer in quantities of not more than 5 gallons per day to individual present on premises; and provide small sample free of charge. (Section 3).

Changed 04.11.450(b) [prohibited financial interest]. Inserted "a restaurant or eating place license" in this subsection which then prevented anyone who was a representative or owner of a wholesale business, brewery, winery, bottling works or distillery for getting a beverage dispensary license package store license, or a restaurant or eating place license. Grandfathered in those who already had a combination of licenses. (Section 4).

CSHB 69 (L&C) - "An Act requiring certain reports or information from alcoholic beverage licensees that are also limited liability organizations; relating to regulation of alcoholic beverage licenses issued to limited liability organizations; relating to brewpub licenses; relating to package store licenses; relating to consumption of alcoholic beverage on licensed premises; relating to the liability of a member of a limited liability organization who also holds an alcoholic beverage license; extending the termination date of the Alcoholic Beverage Control Board to June 30, 2003; and providing for an effective date."

Section 4, page 3, line 23: Amends AS 04.11.135(a): Allows sale of licensee's manufactured beer on *other licensed premises* of licensee.

Section 4, page 3, line 29: Amends AS 04.11.135 (a): Allows sale of licensee's manufactured beer to wholesale.

Section 5, page 4, lines 1-16: Adds new subsection to AS 04.11.135(d) to exempt from (a) the holder of a brewpub license who under (b) formerly held a brewery license and a restaurant or eating place "exempt" license and who, under the former brewery license, manufactured beer at a location other than the premises licensed under the former restaurant or eating place license may (1) manufacture up to 75,000 gallons of beer in calendar year on *premises other than premises licensed under beverage dispensary license*; provide small sample free of charge; sell beer on premises licensed or other licensed premises, to wholesaler, or to individual present on premises in amount of not more than five gallons per day.

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 16, 1999

SUBJECT: Sectional Summary of CSHB 69(L&C).

TO: Representative Norman Rokeberg
Attn: Janet

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Allows the A.B.C. board to adopt regulations regarding reports from limited liability organizations licensed under Title 4.

Section 2. Provides that a person cannot receive or transfer controlling interest in a license issued to a limited liability organization, except with approval of the A.B.C. Board.

Section 3. Requires a limited liability organization to report to the board when 10 percent or more of the ownership of the organization is transferred.

Section 4. Makes changes to the authority of a holder of a brewpub license, regarding sale of manufactured beer.

Section 5. Allows certain brewpub licensees to manufacture beer on premises other than the premises licensed under the beverage dispensary license.

Section 6. Technical amendment.

Section 7. Authorizes a package store licensee to deliver wine or champagne to a cruise ship or hotel guest. Allows a florist or gift basket establishment to purchase wine or champagne for delivery to a cruise ship passenger or a hotel guest. Imposes certain record keeping, delivery, and permit requirements. Allows a package store licensee to deliver alcoholic beverages to a responsible adult at a wedding or wedding reception or other social event defined by regulation of the board.

Representative Norman Rokeberg

March 16, 1999

Page 2

Section 8. Requires a limited liability organization to report certain ownership information to the board.

Section 9. Imposes limitations on issuing a beverage dispensary or package store license to a limited liability organization.

Section 10. Imposes requirements when issuing a liquor license to a limited liability organization.

Section 11. Prohibits leasing a liquor license to a limited liability organization.

Section 12. Allows a person to bring their own wine to a restaurant, with the permission of the licensee. Allows the licensee to charge a corkage fee.

Section 13. Provides that a license held by a limited liability organization does not relieve the licensee of obligations or liability imposed under Title 4, solely because the license is held by a limited liability organization.

Section 14. Definitions.

Section 15. Extends the sunset date of the A.B.C. Board to June 30, 2003.

Section 16. Effective date for sec. 15.

Section 17. Effective date for all sections but sec. 15.

MFF:jdr:glc

99-121.jdr

Moose's Tooth Brewing Co

Phone: 278-4999

Fax: 258-4999

Email: mtbrewco@aol.com

MAR 12 1999

Plant address:
2021 Spar Ave.
Anchorage, AK 99501

Mailing address:
PO Box 202549
Anchorage, AK 99520

March 12, 1999

To Whom It May Concern:

In 1995, we began planning to open a brewpub in Anchorage and applied for a brewery license and a restaurant and eating place license. We were granted these licenses in June and July of 1996 and on October 1, 1996 AS 04.11.450(b) was amended to prohibit the ownership of both a restaurant and eating place license and a brewery license. Although our licenses are currently protected by grandfather rights we are interested in opening a second location but cannot.

Recently Chris Anderson of the Glacier Brewhouse proposed amendments to AS 04.11.135(a) that would allow the original five restaurant/brewery licensees to convert their restaurant and brewery licenses into a brewpub license by purchasing a beverage dispensary license. Although it can be financially difficult for brewpubs that serve only beer and wine to afford a beverage dispensary license we understand the need to address the concerns of CHARR/ARBA, alcohol wholesalers and other beverage dispensary license owners.

Additionally, Section 5 was added to the proposed amendment to insure that all of the five original restaurant/brewery licensees were given equal opportunity to become brewpubs. Unlike the other four restaurant/brewery combinations, the Moose's Tooth Pub and Pizzeria and the Moose's Tooth Brewing Company are not co-located in the same building. The existing language of AS 04.11.135(a) only allows a brewpub to manufacture beer on the premises licensed under the beverage dispensary license. In other words the brewing and dining areas of the brewpub must be adjacent to one another. Section 5 treats all brewery/restaurant combinations licenses before October 1, 1996 alike, whether or not they are co-located and gives all five of the brewery/restaurant licensees the option to become a brewpub.

At present, a grandfathered brewery restaurant license (G.B.R.) can:

- 1) produce an unlimited amount of beer
- 2) sell this beer at the licensee's own restaurant or to other license holders
- 3) never open a second location
- 4) never sell its license because of its grandfathered status

If House Bill 69 passes, a G.B.R. can:


- 1) elect to remain as a G.B.R. and continue to abide by #s 1-4 above, OR
- 2) elect to purchase a beverage dispensary license (market price is currently \$125-150K) and with the purchase of a brewpub license to become a brewpub (which requires the G.B.R. holder to permanently relinquish their brewery license)

If House Bill 69 passes and a G.B.R. elects to become a brewpub, the brewpub licensee can

- 1) produce a limited quantity of beer per year (4838.7 kegs per year)
- 2) purchase other restaurant and eating place licenses in order to open additional locations
- 3) distribute its own beer to other licenses owned by the licensee
- 4) (must) use a wholesaler (a.k.a. a distributor) to sell any beer beyond that consumed at its own locations
- 5) sell its license

Although this bill is not a perfect solution to this problem, we believe that it is the most realistic solution. House Bill 69 allows a G.B.R. to elect to expand (or to remain a G.B.R.) while addressing the concerns of CHARR/ARBA, local wholesalers and existing beverage dispensary licensees.

Sincerely,


Matt Jones

SUMMARY:

A grandfathered restaurant/brewery (G.B.R.) combination can:

Present

- no beer production cap
- sell beer at own restaurant
- sell beer to other licenses
other than its own
- use distributor or self-distribute
- never open a second location
- never sell license as package b/c of grandfather
status

After House Bill 69

- G.B.R. can continue & operate as at present OR
- elect to purchase beverage dispensary
license & become brewpub

If after House Bill 69, G.B.R. elects to become brewpub

- must relinquish brewery license
- accept 4838.7 keg/year production cap
- can purchase other restaurant licenses & open subsequent locations
- can self-distribute to other license owned by beverage dispensary owner
- must use a distributor to distribute product to any license not owned by bev dispensary
owner
- can sell its license as package

DeWitt@legis.state., 08:35 AM 3/17/99 , CSHB 69

To: DeWitt@legis.state.ak.us
From: Dan Coffey <dcoffey@alaska.net>
Subject: CSHB 69
Cc:
Bcc:
Attached:

DENNY: THIS E MAIL IS WRITTEN IN SUPPORT OF CSHB 69, PARTICULARLY AS RELATES TO THE BREW PUB PROVISIONS. AS YOU KNOW, I AM THE ATTORNEY FOR GLACIER BREWHOUSE. MY CLIENT IS ONE OF THE STRONGEST SUPPORTS OF THIS BILL AND ASK THAT I WRITE THIS MEMO.

THE SALIENT POINTS OF THE BILL ARE AS FOLLOWS:

- 1) CHRIS ANDERSON, OF GLACIER BREWHOUSE, HAS WORKED ON THIS BILL AND ITS PREDECESSORS FOR THREE (3) YEARS. WHILE THE PRESENT BILL MAY NOT BE A PERFECT SOLUTION, IT IS A COMPROMISE SOLUTION WHICH IS ACCEPTABLE TO THE VAST MAJORITY OF PEOPLE WHO ARE INTERESTED IN THIS BILL.

- 2) THE BILL ALLOWS THOSE INDIVIDUALS WHO LAWFULLY ENTERED INTO THE RESTAURANT AND BREWERY BUSINESS OVER THREE (3) YEARS AGO AND WHO WERE DENIED THE RIGHT/OPPORTUNITY TO EXPAND THEIR BUSINESSES TO NOW EXPAND THEIR BUSINESSES, BUT IN ORDER TO DO SO, THEY MUST ACQUIRE A BEVERAGE DISPENSARY LIQUOR LICENSE. THE REQUIREMENT OF A BEVERAGE DISPENSARY LIQUOR LICENSE SATISFIES THE CONCERNS OF THOSE IN THE INDUSTRY WHO SUPPORTED THE 1996 AMENDMENT TO AS 04.11.450 (b). THUS, THIS BILL CONTAINS LANGUAGE WHICH ANSWERS THE CONCERNS OF ALL OF THE INTERESTED PARTIES. AS SUCH, IT IS NOT COMPLETELY SATISFACTORY TO EVERYBODY, BUT EVERYBODY SUPPORTS THE BILL BECAUSE THEY HAVE

DeWitt@legis.state., 08:35 AM 3/17/99 , CSHB 69

REACHED THESE COMPROMISES. RESTAURANT/BREWERS CAN EXPAND, BUT THEY HAVE TO BUY A BEVERAGE DISPENSARY LICENSE. THIS PUTS THEM IN THE SAME "FINANCIAL FIELD" AS THOSE WHO OWN A BEV DISP LIC. THE RESTAURANT/BREWERS CAN CONTINUE TO SELL TO THE PUBLIC, BUT THEY MUST GO THRU THE DISTRIBUTOR SYSTEM. THIS KEEPS THE DISTRIBUTORS IN THE GAME.

3) AS NOTED, THE DISTRIBUTORS ARE IN SUPPORT OF THE BILL BECAUSE OF THE PROVISIONS FOUND IN PROPOSED AS 04.11.045 WHICH REQUIRE ANY OFF PREMISES SALE OF BEER CAN ONLY BE MADE THRU A LICENSED DISTRIBUTOR. THIS PROVISION KEEPS A CONTROL ON THE UNFETTERED EXPANSION OF A NEW DISTRIBUTION SYSTEM OUTSIDE OF THE EXISTING SYSTEM. THIS REQUIREMENT WILL ALSO HELP PROTECT THE TAX/REVENUE BASE FOR THE STATE.

4) THE ADDITION OF SECTION 5 TO PROPOSED AS 04.11.135 IS INTENDED TO MAKE SURE THAT THE MOOSE'S TOOTH WILL BE ABLE TO PARTICIPATE UNDER THE NEW PROPOSED LEGISLATION. THEIR OPERATION, PRIOR TO THE NEW LAW IN 1996, CONSISTED OF A PREMISES ON WHICH FOOD WAS SERVED WHICH HELD A RESTAURANT AND EATING PLACE LICENSE TO SELL BEER AND WINE AND AN OFF PREMISES BREWERY LICENSE. THIS PROPOSED SECTION WILL RECOGNIZE THAT FACT AND ALLOW THEM TO BREW BEER FOR THEIR PREMISES AND ANY OTHER PREMISES THEY MAY OPEN JUST AS THOSE THAT HAVE THEIR BREWERY FACILITY ON THE SAME PREMISES.

5) THE ONLY OPPOSITION TO THESE PROVISIONS COME FROM A FEW INDIVIDUALS WHO SIMPLY WANT THE PROVISIONS OF THE 1996 LAW REPEALED. THESE PEOPLE ARE NOT OPPOSED TO THE COMPROMISE LANGUAGE FOUND IN CSHB 69, BUT SIMPLY DON'T SEE THIS LANGUAGE AS THE "RIGHT" ANSWER TO THE PROBLEM. IN THIS REGARD, I AM REFERRING TO THE LANGUAGE

DeWitt@legis.state., 08:35 AM 3/17/99 , CSHB 69

WHICH ADDED "A RESTAURANT OR EATING PLACE LICENSE" TO THE PROVISION OF AS 04.11.450 (b). THE PROBLEM WITH THIS POSITION IS THAT THERE ARE MANY IN THE INDUSTRY WHO ARE NOT IN FAVOR OF ANY REPEAL. THUS, REPEALING THIS PROVISION IS NOT POSSIBLE. THIS BRINGS ME BACK TO MY FIRST POINT. THIS BILL IS A COMPROMISE WORKED OUT BETWEEN ALL INTERESTED PARTIES (CHARR/ARBA. MY CLIENT. OTHER'S IN THE RESTAURANT/BREWERY BUSINESS/BREW PUB OWNERS/DISTRIBUTORS. ETC., ETC. A LOT OF WORK BY THE INDUSTRY HAS GONE INTO THIS BILL AND IT SHOULD BE SUPPORTED FOR WHAT IT IS, A COMPROMISE THAT EVERYONE CAN LIVE WITH.

WE WILL BE AVAILABLE AT THE COMMITTEE HEARING TODAY AT 1:30 P.M. TO TESTIFY IF NECESSARY. THANKS TO YOU AND TO ELDON FOR YOUR CONSIDERATION OF THIS MEMO.

REGARDS, DAN