

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Special Report on the Department of Commerce, Community, and Economic Development (DCCED); Division of Corporations, Business and Professionals Licensing (DCBPL); Select Occupational Licensing and Enforcement Issues, June 29, 2011

PURPOSE OF THE REPORT

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit to determine: (1) whether DCBPL made the appropriate fee adjustments to licensing fees based on the results of the recent fee analysis; (2) whether FY 11 personal service time for occupational licensing and enforcement employees was accurately recorded; and (3) whether DCBPL has reduced its enforcement activities specified in Title 8 of the Alaska Statutes – specifically, in the area of unlicensed activity.

REPORT CONCLUSIONS

DCBPL did not make all of the appropriate fee adjustments resulting from the most recent fee analysis.

In FY 11, personal service time was accurately recorded for occupational licensing and enforcement employees. However, DCBPL used an unreasonable method for allocating indirect costs that result in overcharges to occupations. Additionally, DCBPL no longer tracks costs directly to occupations.

Due to a lack of complete and accurate investigation data, we could not reasonably identify all unlicensed activity cases. As a result, we could not determine whether DCBPL has reduced its Title 8 enforcement activities.

An issue creating a potential conflict of interest for a Marine Pilot board member was not adequately entered into the public record.

FINDINGS AND RECOMMENDATIONS

1. DCBPL's director should ensure occupational licensing fees are adjusted annually in accordance with state law.

2. DCBPL's director should improve the method for allocating division indirect costs and for tracking occupation direct costs.
3. DCBPL's director should take immediate action to address deficiencies in the new investigations case management system.

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July 19, 2011

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, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
SELECT OCCUPATIONAL LICENSING AND ENFORCEMENT ISSUES

June 29, 2011

Audit Control Number
08-30063-11

This audit determines the extent to which appropriate adjustments were made to licensing fees as required by Alaska Statute 08.01.065; evaluates whether FY 11 personal service time for professional licensing and enforcement employees was properly recorded; and assesses the level that Title 8 of the Alaska Statutes was enforced – specifically in the area of unlicensed activity.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Due to a lack of complete and accurate enforcement data, we could not obtain sufficient appropriate evidence to form a conclusion on the level of enforcement activities in the area of unlicensed activities. Except for the enforcement activities, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report and the effect of the scope limitation are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in black ink, appearing to read "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a special audit of the State of Alaska; Department of Commerce, Community, and Economic Development (DCCED); Division of Corporations, Business and Professional Licensing (DCBPL) on selected occupational licensing and enforcement issues.

The objectives, scope, and methodology of this review are as follows:

Objectives

Specific objectives of this audit were to:

- Determine whether DCBPL made the appropriate fee adjustments to licensing fees based on the results of the recent fee analysis.
- Determine whether FY 11 personal service time for occupational licensing and enforcement employees was accurately recorded.
- Determine whether DCBPL has reduced its enforcement activities specified in Title 8 of the Alaska Statutes – specifically in the area of unlicensed activity.

Scope

This audit covers select DCBPL occupational licensing and enforcement activities from July 2010 through February 2011.

Our scope was limited for the audit objective to determine whether DCBPL has reduced its Title 8 enforcement activities – specifically in the area of unlicensed activity. The migration of data from the existing system to the new database was problematic. A review of the available enforcement data indicated significant inaccuracies and a lack of complete data. As a result, we were unable to obtain complete and accurate information specifically about all cases related to unlicensed activity. Because we did not obtain reliable information, we cannot conclude whether Title 8 enforcement activities have been reduced.

Methodology

Through inquiry and examination of DCBPL written procedures, we gained an understanding of DCBPL's fee analysis process. We obtained and examined the most recent fee analysis to identify the fee adjustment recommendations. Through inquiry and review of state regulations, we identified the extent to which the fee adjustment recommendations were implemented.

To determine whether DCBPL personal service time is being accurately recorded, we reviewed accounting and payroll records to identify how the division distributes personal service time to the various boards and occupations. We also interviewed select employees to gain an understanding of their day-to-day activities and evaluated whether employee activities support how and where the personal service time was charged. We sampled approximately 20% of the total number of DCBPL employees. This non-statistical sample of employees was a judgmental selection based primarily on job title, amount of hours charged during the audit period, and how employees' time was charged.

Additionally, we reviewed state accounting records and agency documentation to evaluate DCBPL methods for tracking direct costs and allocating indirect costs to the various licensing programs.

Field work also included the following:

- Analysis of applicable state laws and regulations pertaining to professional licensing and enforcement.
- Interviews conducted with various investigations and licensing staff, and other state personnel.
- Examination of other agency documentation as necessary through the course of the audit.

ORGANIZATION AND FUNCTION

The Division of Corporations, Business and Professional Licensing (DCBPL) provides administrative and budgetary services for occupational licensing programs under the regulatory purview of the Department of Commerce, Community, and Economic Development.

The specific support services provided by DCBPL include: (1) licensing functions, (2) fee setting and collections, (3) enforcement and investigative services, and (4) corporation registration and business licensing.

Licensing functions include maintaining licensing program files, receiving and issuing application forms, and publishing notices of examinations and meetings.

According to AS 08.01.065, fee setting functions include adopting regulations to establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Enforcement services include investigation and disposition of complaints pertaining to actions of a licensed or unlicensed professional or business. Alaska Statute 08.01.087 authorizes DCBPL on its own initiative or in response to a complaint, to:

1. Conduct an investigation if it appears a person is engaged in or is about to engage in a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual or business.
4. Issue subpoenas for the attendance of witnesses and records.

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BACKGROUND INFORMATION

Occupational Licensing Programs

The Department of Commerce, Community, and Economic Development (DCCED); Division of Corporations, Business and Professional Licensing (DCBPL) provides administrative and budgetary services for 37 occupational licensing programs.¹ In accordance with AS 08.01.050, specific support services provided by DCBPL include: (1) licensing functions, (2) fee setting and collections, and (3) enforcement and investigative services.

DCBPL provides support services to 20 of the 37 licensing programs through occupational boards and commissions established for governing applicable occupations.

The 20 boards and commissions for which DCBPL provides support services are listed in Exhibit 1 (right).

DCBPL also provides direct support services, including regulatory authority, to 17 of the 37 programs. Exhibit 2 (next page) lists the licensing programs administered directly by DCBPL.

As shown in Exhibits 1 and 2, licensing programs may have regulatory authority over multiple occupations or a single occupation, and may be administered directly by DCBPL, or through boards and commissions supported by DCBPL.

For clarity and consistency, this report uses the following terms as defined.

Exhibit 1

Boards and Commissions supported by DCBPL

- Board of Public Accountancy
- State Board of Registration for Architects, Engineers and Land Surveyors
- Board of Barbers and Hairdressers
- Big Game Commercial Services Board
- Board of Chiropractic Examiners
- Board of Certified Direct Entry Midwives
- Board of Dental Examiners
- Board of Marine Pilots
- Board of Marital and Family Therapy
- State Medical Board
- Board of Nursing
- Board of Examiners in Optometry
- Board of Pharmacy
- State Physical Therapy and Occupational Therapy Board
- Board of Professional Counselors
- Board of Psychologists and Psychological Associate Examiners
- Board of Certified Real Estate Appraisers
- Real Estate Commission
- Board of Social Work Examiners
- Board of Veterinary Examiners

¹Alaska Statute 08.01.010 lists the 36 licensing programs subject to DCCED centralized licensing statutory requirements. Alaska Statute 46.03.375 establishes DCCED licensing and fee setting authority over a 37th program, the Underground Storage Tank Workers.

Exhibit 2

Licensing Programs Directly Administered by DCBPL

- Acupuncturists
- Audiologists and Speech-language Pathologists
- Collection Agencies
- Concert Promoters
- Construction Contractors and Home Inspectors
- Dietitians and Nutritionists
- Dispensing Opticians
- Electrical and Mechanical Administrators
- Euthanasia Service Agencies
- Private Professional Guardians and Conservators
- Professional Geologists
- Hearing Aid Dealers
- Morticians
- Naturopaths
- Nursing Home Administrators
- Pawnbrokers
- Underground Storage Tank Workers

Licensing program refers to one of the 37 DCBPL-administered programs listed in Exhibit 1 (previous page) or Exhibit 2 (right).

Boards and commissions refers to one of the 20 occupational boards and commissions listed in Exhibit 1.

Occupation refers to any one of the many licensed occupations regulated by DCBPL under the 37 licensing programs.

Annual Fee Analysis

Alaska Statute 08.01.065(c) requires DCCED to establish fee amounts for all occupations regulated by the department. Fee types include application, examination, licensing, registration, permits,

investigation, and any other fees appropriate for the various covered occupations. DCCED is required to establish fee levels so the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation.² Regulatory costs include all department as well as board and commission expenses attributable to the regulation of an occupation.

To ensure compliance, DCCED is required to annually review each fee level to verify whether the fees collected approximately equal the occupations'/programs' regulatory costs. If not equal, DCCED must calculate and, through regulation change, implement any fee adjustments needed.

DCBPL has an established fee-setting process for the statutorily required annual fee review. DCBPL documents this process in written policies and procedures dated March 1997.

According to the written procedures, DCBPL's annual fee-setting process utilizes cost accounting methods and financial activity recorded and maintained within the Alaska State Accounting System (AKSAS). Using accounting structures (i.e. collocation codes)

²This requirement applies to most occupations. However, for some occupations, DCCED is required to establish fee levels so the total amount of fees collected by a licensing program approximately equals the total regulatory costs for all occupations regulated by the program. These are: (1) State Board of Registration for Architects, Engineers and Land Surveyors, (2) Audiologists and Speech-language Pathologists, (3) Board of Barbers and Hairdressers, and (4) Specialty Contractors, Home Inspectors and Associate Home Inspectors.

established in AKSAS, DCBPL tracks and records regulatory costs as either licensing program, direct expenses or division indirect expenses.³

Licensing program, direct expenses include all expenses that benefit any or all occupations within the program's purview. These primarily include:

- Payroll costs recorded directly to programs by DCBPL staff.
- Legal services billed to specific programs.
- Examination and exam facilities costs.
- Travel and per diem for board or commission members and staff.
- Costs for meetings, advertising, and communications.

For fee analysis calculations, DCPBL allocates licensing program, direct expenses to individual occupations based on the relative number of licensees for each occupation under the purview of the respective licensing programs.

Division indirect expenses include all costs not directly attributable to a single program. These include:

- DCBPL administrative costs – accounting, procurement, information technology (IT) services, and management support (including travel).
- Staff training and all division-wide supplies and equipment expenses.
- Services provided to DCBPL by the commissioner's office and the Division of Administrative Services.

DCBPL allocates indirect division expenses (1) to licensing programs based on the relative number of licensees per program and (2) to individual occupations based on the number of licensees for each occupation under the purview of the respective programs.

The fee analysis methodology projects costs for the next biennial period based on actual expenses from the preceding two full fiscal years. Fee revenue is projected by multiplying each fee amount by the fee activity over the last two years. DCBPL compares projected costs and fee revenues to determine whether a fee adjustment is needed.

Once the analysis is complete, DCBPL proposes recommended adjustments to applicable boards and commissions for fee changes affecting the occupations under board or commission regulatory authority. The department is required to consider board or commission recommendations with respect to proposed changes. However, DCCED has final authority to adopt and adjust fees.

³Prior to 2008, DCBPL also tracked regulatory costs at a more detailed level – specifically at the occupation level. This practice ended due to inconsistent use of tracking codes by staff.

Once the department approves fee adjustments, the adjustments are implemented through regulation change.

Prior Audit Findings

This audit covers activity during FY 11. However, DCCED occupational boards and commissions are subject to audit under the State's sunset provisions mandated in AS 44.66. Prior year sunset audits have identified numerous and varied issues related to licensing and enforcement activities. Some of these issues include:

- Accumulation of excessive deficits or surplus;
- Failure to implement required fee changes;
- Errors in fee analysis calculations;
- Inadequate investigation tracking system;
- Insufficient and/or untimely investigation closure rates; and
- Excessive periods of case inactivity.

REPORT CONCLUSIONS

The objectives of this audit were to:

- Determine whether the Department of Commerce, Community, and Economic Development (DCCED); Division of Corporations, Business and Professional Licensing (DCBPL) made the appropriate fee adjustments to licensing fees based on the results of the recent fee analysis.
- Determine whether FY 11 personal service time for occupational licensing and enforcement employees is being accurately recorded.
- Determine whether DCBPL has reduced its enforcement activities specified in Title 8 of the Alaska Statutes – specifically in the area of unlicensed activity.

Based on our analysis, we determined:

- DCBPL did not make all appropriate fee adjustments resulting from the most recent fee analysis.
- In FY 11, personal services time was accurately recorded for occupational licensing and enforcement employees.
- Weaknesses exist in DCBPL's methods for allocating indirect costs and tracking direct costs.
- A member of the Board of Marine Pilots did not publicly disclose a potential conflict of interest.
- Due to a lack of complete and accurate investigation data, we could not reasonably identify all unlicensed activity cases and, therefore, could not determine whether the division has reduced its Title 8 enforcement activities.

Detailed report conclusions are as follows.

DCCED has not implemented all recommended fee changes from the most recent fee analysis.

Alaska Statute 08.01.065 requires that DCCED set occupational licensing fees so that fees collected approximately equal the regulatory costs for each occupation/program.² To ensure compliance, DCCED is required to conduct an annual fee analysis and make any needed fee adjustments.

DCBPL has not implemented all of the recommended licensing fee adjustments resulting from the most recent fee analysis. A total of 21 fee types under eight licensing programs have not yet had the calculated fee change recommendations approved and implemented by DCBPL management. Nineteen of these are fee increase adjustments, and two are fee decrease adjustments.

Additional instances of noncompliance with statutory requirements include:

- Two licensing programs⁴ were not included in the most recent fee analysis. As a result, DCBPL does not know whether fees for the affected occupations are approximately equal to the regulatory costs. One program was omitted due to a lack of awareness of DCCED licensing authority over the occupation.⁵ The second was simply overlooked by staff responsible for the analysis.
- There were discrepancies between the fees cited in regulation and the fees included in the most recent fee analysis calculations. For five licensing programs, not all fee types cited in regulation were included in the analysis. The differences between fee types in regulation and fee types included in the analysis may result in inaccurate calculations and unreliable fee adjustment recommendations for the affected occupations.

(See Recommendation No. 1.)

Professional licensing and enforcement employees' accurately record their personal service time.

The majority of DCBPL employees working in the area of professional licensing and enforcement use time sheets to record time spent on specific licensing programs. DCBPL uses accounting structures in AKSAS to record employee time to the various programs. The fee analysis process includes distributing program direct costs to individual occupations based on the number of license holders per occupation under the purview of the respective licensing programs.

Employees recording time to boards' direct accounting structures include the investigation section (19 staff), the occupational licensing section (20 staff), and all staff assigned to specific boards (14 positions).

⁴Naturopaths and Underground Storage Tank Workers

⁵Fees for Underground Storage Tank Workers are established in Department of Environmental Conservation regulation 18 AAC 78. However, DCCED has statutory authority for licensing the occupation and fee collection.

The unreasonable method for allocating indirect costs results in overcharges to occupations.

As noted above, the majority of DCBPL employees use time sheets to record time spent on specific licensing programs. These timesheets are used to distribute personal service costs to licensing programs. However, DCBPL records personal service costs for management level employees and records most administrative support staff to a division indirect cost pool designated as management and administrative support.

Exhibit 3

Personal Service Costs by Pool July 1, 2010 – February 28, 2011	
<u>Cost Pools</u>	<u>Amounts</u>
Licensing Programs	\$2,282,574
Management and Administrative Support	741,516
Corporations and Business Licensing	<u>509,215</u>
Total	<u>\$3,533,305</u>

Employees working in the areas of corporations and business licensing record time to a third major cost pool – corporations and business licensing (C&B). (See Exhibit 3 for DCBPL personal service expenditures by cost pool.)

DCBPL’s share of support service costs incurred by the commissioner’s office and the Division of Administrative Services are also charged to the management and administrative support cost pool.

In the fee analysis process, 100% of the management and administrative support cost pool is allocated to occupations based on the relative number of license holders per occupation. However, DCBPL does not allocate any indirect costs to the structure for capturing costs related to C&B licensing activities. This current methodology results in annually overcharging the occupations over \$500,000 for costs that should be allocated to the corporations and business licensing activities. (See Recommendation No. 2.)

DCBPL does not track occupation’s direct costs.

DCBPL records all direct costs to licensing programs rather than occupations. In the fee analysis, the division allocates program costs to specific occupations based on license count. In management’s opinion, attributing costs to occupations based on the number of licensees is a reasonable method, and for most routine and recurring costs, it would be a reasonable and cost effective approach. However, the method is not appropriate when an occupation incurs significant and unusual occupation specific costs such as costs incurred for legal services or major purchases. In these instances, the current methodology causes over allocation of costs to all of the other occupations under the licensing program. (See Recommendation No. 2.)

An issue creating a potential conflict of interest for a member of the Board of Marine Pilots was not adequately entered into the public record.

During the course of a DCBPL investigation of alleged unlicensed activity, a tangential issue was identified creating a potential conflict of interest for a Marine Pilot Board member. The issue creating the potential conflict of interest was documented in the investigations case file. The issue was not established as a discretely presented item for board consideration. Because of this, the issue was tacitly addressed through board action in closing the original unlicensed activity investigation. As a result, the issue and the potential conflict of interest were never entered into the public record.

Due to the confidential nature of DCBPL investigations and certain board proceedings, specific information regarding these issues have been withheld from this public report, but has been conveyed to management in a separate letter.

There is insufficient reliable data to assess the level of enforcement activities.

Complete and accurate data is not available to determine whether DCBPL has reduced its Title 8 enforcement activities.

In late FY 10, DCBPL implemented a new investigations tracking system. The migration of data from the existing system to the new database was problematic. A review of the available enforcement data indicated significant inaccuracies and a lack of complete data. As a result, we were unable to obtain complete and accurate information specific to all cases related to unlicensed activity. Because we did not obtain reliable information, we cannot conclude whether Title 8 enforcement activities have been reduced. (See Recommendation No. 3.)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Commerce, Community, and Economic Development (DCCED); Division of Corporations, Business and Professional Licensing (DCBPL) director should ensure occupational licensing fees are adjusted annually in accordance with state law.

DCBPL does not comply with statutory requirements that the department calculate and implement occupational licensing fee adjustments based on the results of an annual fee analysis. A review of the FY 11 fee analysis identified the following issues related to fee change recommendations and implementations:

- Eight licensing programs had 21 fee adjustments not implemented despite the analysis identifying a change was necessary.
- Two licensing programs did not have an FY 11 fee analysis.
- For five programs,⁶ not all statutory fees were included in the analysis.

Alaska Statute 08.01.065 directs DCCED to establish occupational licensing fee levels. The statute requires that the total amount of fees collected for an occupation approximately equal to the regulatory costs for the occupation/program.² The department must annually review each fee level to verify that regulatory costs and fee collections are approximately equal. The department is required to calculate fee adjustments based on the results of the analysis and implement necessary fee adjustments through regulation changes.

According to division management, all calculated fee changes were not implemented primarily because they were not satisfied with the fee analysis for which they believed the methodology was outdated and the calculations were unreliable. The analysis requires significant detailed review prior to department approval due to results that are oftentimes questionable. Division management is hesitant to go forward with some of the recommendations due to lack of confidence in the methodology and results, and sensitivity to public reaction to fee changes. However, this hesitation and detailed review process was not uniformly applied in FY 11.

Exhibit 4⁷ (following page) lists the unimplemented fee changes.

⁶Eleven fee types under five programs: (1) Board for Architects, Engineers, and Land Surveyors, (2) Board of Professional Counselors, (3) Board of Public Accountancy, (4) Board of Social Work Examiners, and (5) Board of Barbers and Hairdressers.

⁷The current fee level column is the fee amount in current regulation. The proposed fee level column is the recommended fee level based on the FY 11 fee analysis. The proposed adjustment column is the increase or decrease in fee amount necessary based on the results of DCBPL's fee analysis.

Exhibit 4

Board/Occupation and Fee	Current Fee Level	Proposed Fee Level	Proposed Adjustment
Architects, Engineers and Land Surveyors			
Examination Review Per Section Fee	\$ 100	\$ 120	\$ 20
Barbers and Hairdressers			
Initial License	50	100	50
Barber or Hairdresser	100	160	60
Esthetician	100	160	60
Instructor	150	200	50
Shop Owner	150	300	150
Schools and School Owner Combined	400	475	75
Manicurist	100	160	60
Practitioner Tattooing and Permanent Cosmetic Coloring	100	160	60
Practitioner of Body Piercing	100	160	60
Construction Contractors			
Initial Registration or Residential Contractor Endorsement	50	100	50
Certificate of Registration and License Enforcement Support Fee	200	275	75
Biennial Residential Contractor Endorsement Renewal Fee	200	275	75
Electrical Administrator			
Electrical Administrator License Fee	200	125	(75)
Marital and Family Therapist			
Biennial License Fee	865	900	35
Four-Year Associate License Fee for Supervised Practice	445	480	35
Mechanical Administrator			
Mechanical Administrator License and Renewal	250	150	(100)
Optometry			
Application Fee for Initial License	50	100	50
License and Renewal	200	450	250
Veterinary			
Temporary License	75	100	25
Temporary Permit	75	100	25

Source: Current fee levels are from DCCED regulations 12 AAC Part 1. Proposed fee levels are from DCBPL FY 11 fee analysis files.

State law regarding occupational licensing fees is clear; fees are established at amounts necessary to cover the costs incurred by the State in regulating the occupation/program. This objective cannot be met when occupations and specific fees are omitted from the annual analysis, and fee change recommendations are not implemented.

We recommend the DCBPL director implement changes necessary to ensure compliance with licensing fee statutory requirements. If there are concerns regarding the accuracy and

reliability of the fee analysis methodologies, then developing a reliable methodology should be made a high priority.

Recommendation No. 2

DCBPL’s director should improve the method for allocating division indirect costs and for tracking occupation direct costs.

DCBPL’s current method in accounting for costs results in an inappropriate distribution of costs to individual occupations. These accounting deficiencies are primarily in two areas:

1. DCBPL lacks a reasonable methodology for allocating division indirect expenses (costs that are accumulated in the management and administrative support cost pool). Currently, 100% of DCBPL’s indirect expenses are charged to the professional licensing cost pool and none to the corporations and business licensing cost pool.

Division indirect expenses include administrative staff personal service costs as well as DCBPL’s share of department-wide support services costs billed to DCCED divisions via reimbursable service agreements. These costs are incurred in providing services that benefit all sections of the division. However, DCBPL has not implemented a method for ensuring the occupational licensing and the corporations and business licensing pools pay an equitable share of division’s indirect expenses.

Exhibit 5

Section Position Count and Personal Service Costs		
July 1, 2010 – February 28, 2011		
<u>Section</u>	<u>Count</u>	<u>Amount</u>
Occupational		
Licensing	20	\$ 789,855
Investigations	19	975,162
Corporations & Business Licensing	11	445,462
Admin Support	21	679,416
Real Estate		
Commission	3	162,919
Board of Nursing	6	270,963
Medical Board	2	37,693
Architects, Engineers and Land Surveyors	2	101,721
Marine Pilots	1	70,114
Total	85	\$ 3,533,305

DCBPL currently has 64 positions (not including 21 administrative support positions). The corporations and business licensing section accounts for 11 positions (17% of the division’s total 64). The division’s indirect costs totaled \$3.3 million in FY 10. Using 17% as a conservative estimate, corporations and business licensing share of the division’s indirect costs was approximately \$560,000. Since none of the division’s indirect costs were charged to the corporations and business licensing section, \$560,000 were inappropriately allocated to occupations.

2. DCBPL does not separately track occupation direct costs.

All DCBPL direct costs are recorded in AKSAS to licensing programs. The fee analysis process includes allocating these direct costs to occupations based on license count. While this method is efficient for allocating routine and recurring costs, it is not

appropriate when the division incurs significant and unusual costs directly attributable to a single occupation. The current methodology will result in over allocation of costs to all the other occupations under the program.

Alaska Statute 08.01.065 authorizes DCCED to establish occupational licensing fee levels. The statute requires that the total amount of fees collected for an occupation/program be approximately equal to the regulatory costs for the occupation/program.²

To ensure accurate fee adjustments, DCBPL's director should implement a cost accounting method that allocates the division's indirect costs between occupational licensing and the corporations and business licensing based on relative benefits received. Furthermore, the director should implement a method to ensure significant occupation specific costs are attributed to the benefitting occupation.

Recommendation No. 3

DCBPL's director should take immediate action to address deficiencies in the new investigations case management system.

The extent of DCBPL's enforcement of Title 8 of the Alaska Statutes could not be readily measured due to the incomplete and unreliable condition of the data within the division's new case management software application. This is primarily due to management's insufficient oversight of the project planning, data conversion, and system implementation processes. Additionally, DCCED's information technology and investigations staff were not adequately involved.

In June 2010, the department implemented a new investigations case management system, the GL Suite, to manage complaints against corporations, businesses, and professionals licensed in Alaska.⁸ Based on the review of data from the new system, some significant issues were identified as resulting from the conversion from the old system to the new; these included:

- Incomplete and inconsistent data was brought forward from the old database to the new database without review and correction.
- Not all complaint records transferred to the new system.
- Data fields were not properly aligned and linked from the old system to new one.
- The status of some converted data changed (i.e. from closed to open).

Additionally, ongoing deficiencies exist with the GL Suite regarding inadequate data entry and case record maintenance. These deficiencies include:

⁸ DCCED's Division of Banking and Securities is also using the GL Suite for managing its complaints.

- Data fields are not clearly defined which results in inconsistent or misaligned data values entered into the system. For example, some staff may interpret the *disposition date* as the date of board's final order on the case, but other may staff interpret the *disposition date* as the date when the case is sent to the attorney general's office for review.
- Some data input fields contain ambiguous predefined selection options, and there is a lack of clear written instructions for consistent use by end users.
- Data records in the new system are not updated to reflect current case status (i.e. statute/regulations violated or staff assignments).
- Staff assigned responsibility for managing the new system lack adequate administrative database knowledge.
- There is not a detailed user manual for data entry and reporting.
- The system is unable to provide basic useful reports for investigators or management purposes.
- Any investigator can access a specific case and make updated changes, regardless of whether they have been assigned the case.
- System administrators can delete or update case files without review or approval by the chief investigator.

Overall, the new system will not adequately meet the case management needs of the investigation section. For example, the system cannot provide information for complaint analysis and caseload management if data records are not properly maintained. Furthermore, without adequate and appropriate information, the possibility exists that a high priority case that could affect public safety may not be investigated in the timely manner.

DCBPL's director should address its database deficiencies to ensure its data is accurate and complete, not only for managing and monitoring cases, but also for use in case analysis and reporting purposes. We recommend the following steps as a starting place for addressing the database deficiencies.

- Develop useful system administration and training manuals.
- Data fields that were incomplete upon conversion should be addressed for open cases.
- Open complaints data from the old system should be confirmed in the new system; consider verifying electronic data accuracy to hardcopy case files.

- Data elements should be reviewed for proper definition and consistent use.
- Address potential data security issues including: restricting user access to case files on an as-needed basis; establishing appropriate user read and write restrictions; and limiting staff's ability to alter or delete case information.
- Identify reporting requirements, and develop necessary standard reports.



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Office of the Commissioner

Sean Parnell, Governor
Susan K. Bell, Commissioner

August 15, 2011

RECEIVED

AUG 15 2011

LEGISLATIVE AUDIT

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

Re: Preliminary Audit Report, Department of Commerce, Community, and Economic Development (DCCED); Division of Corporations, Business, and Professional Licensing (CBPL); Select Occupational Licensing and Enforcement Issues

Dear Ms. Davidson:

Thank you for the June 29, 2011 preliminary audit report regarding the CBPL Select Occupational Licensing and Enforcement Issues conclusions and recommendations. I appreciate your review and the opportunity to respond to the recommendations.

First, and foremost, it is critical to note that a new Director was appointed to CBPL June 28, 2010 and key division positions were restructured with new incumbents over the past year. This new CBPL management team was assembled specifically to address weaknesses that were hindering the division from achieving intended goals and had resulted in impacts to Alaska businesses, corporations and other agencies. Under this intensive top down management effort it quickly became apparent that a multitude of previously unidentified problems exist within the division, and that a dearth of long term inappropriate historical practices were continuing to impede progress. During this past year, the new CBPL team and other department resources have triaged on critical areas, implemented several corrective actions, and are continuing to work on a long term strategy to correct historical practices and strengthen the division.

Noted in this audit report is CBPL's long historical record of unaddressed audit issues, which goes back about ten years. This is an indicator of the depth of issues and challenges that the new CBPL management has faced this past year. This division is taking action on these historical audit issues. It is noteworthy that the current audit reiterated several issues that the new CBPL management team

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had already identified and were actively taking corrective actions on prior to the audit, although the divisions engagement in corrective efforts was not noted in the report. The new CBPL management team is committed to correcting the long standing issues within the division and to ensuring quality processes and information.

Recommendation No.1

Although we are in concurrence that the CBPL director should ensure occupational licensing fees are reviewed annually in accordance with state law, we do not concur that this review necessarily results in an adjustment. We also do not fully support the conclusion that is corollary to this recommendation, specifically that “CBPL did not make all of the appropriate fee adjustments resulting from the most recent fee analysis.” And last, we believe the audit report failed to convey that the new CBPL management team has performed work to date on identifying fee analysis issues and has started corrective actions towards improving the reliability and methodology of the fee analysis, indicating that this is indeed already a priority of the division.

The audit report, in Exhibit 4, presents a list of supposedly not implemented fees despite an expenditure/revenue analysis indentifying a change; in fact, some fees on this list were adjusted in accordance with state law. Specifically this applies to the fees under Barbers and Hairdressers. These fees were adjusted through the board review and regulation process and are now implemented. At a minimum, Legislative Audit should acknowledge information on Exhibit 4 may be dated and that it is a point in time view.

Exhibit 4 also does not represent the entire fee process, and therefore does not capture other important information that impacts the ultimate fee adoption. The exhibit presents the results of the expenditure/revenue analysis which is the first step of the fee setting process. Statute requires that “If a board regulates an occupation . . . , the department shall consider the board’s recommendations concerning the occupation’s fee levels before revising fee schedules...” (AS 08.01.065(c)). For example, the proposed fee adjustment of \$35 (from \$865 to \$900) for the biennial License Fee for Martial and Family Therapists (MFT) is based on the expenditure/revenue fee analysis. The board’s input process, sanctioned in AS 08.01.065, provides other information that may negate the need for this additional revenue. For example, the Board may decide to hold fewer meetings during the year or to not attend a national association meeting. With Board input, and through the regulatory comment process, the license fee was appropriately set at \$865 rather than increased to \$900. Thus, DCCED believes these fees are appropriate and in compliance with state law.

Noting the historical unaddressed audit findings on page 8 of the preliminary report (errors in fee analysis calculations, accumulation of excessive deficits or surplus, failure to implement required fee changes) and the significant inappropriate historical practices discovered by the new CBPL

management team over the past year, DCCED acknowledges that clarifications and improvements are needed on inclusion or omission of fee types and other fee setting processes.

Establishing a reliable methodology is a priority of the CBPL director and several actions toward that end have occurred but these were not acknowledged by the audit report, including:

- engaging the Administrative Services Division (ASD) to provide standard expense and revenue reports, assist in procedure development and documentation, and provide staff training.
- transfer of five accounting functions to ASD to ensure accurate recording and processing of data.
- reorganized management structure to provide better oversight on functions that impact the accuracy of information effecting fee analysis.
- jointly with ASD, procuring cost allocation expertise to develop a method for allocating indirect costs to occupations.

Recommendation No.2

We concur that the historical method for allocating division indirect costs needs improvement, but we do not fully concur on the recommendation for tracking occupational direct costs. The issues associated with the division's historical method for allocating indirect costs were identified by the new CBPL management team and the division had started pursuing corrective actions prior to the legislative audit review; however, these actions were not acknowledged in the audit report. Legislative Audit's presentation of a PCN allocation is overly simplistic and arbitrary and results in an inaccurate conclusion on allocation charges. In contrast CBPL, jointly with ASD, is procuring cost allocation expertise to develop a method for allocating indirect costs based on weighted PCNs and an analysis of functions, transactions, and systems.

The second item discussed under this recommendation is the tracking of direct costs to occupations rather than at the Board level. This issue is complicated by a statutory definition of "occupation" that both differs from the definition used by Legislative Audit, and that does not distinguish between a singular trade/profession and a Board that may regulate multiple trades and professions. Further, certain trades or professions are explicitly required, under their statute, to have fees established at a Board level versus at a singular trade/profession level.

Alaska Statute 08.010.065 defines occupation as "...a trade or profession listed in AS 08.01.010." This list includes both singular trades/professions and various Boards and Commissions; however, not specified in the list are the various trades/professions that these Boards may regulate. Therefore strict adherence to the statutory definition of "occupation" would indicate that direct costs be

tracked to the Board, Commission or the explicitly listed trade/profession. Although statute defines this list as the “occupations,” Legislative Audit has created a separate definition for this list called “licensing programs” and then defined an occupation as “...any one of the many licensed occupations regulated ...under the 37 licensing programs.” Multiple definitions and the lack of statutory specificity to include various Board regulated trade/professions within the definition of occupation obscure where direct costs should be allocated –whether it should be at the AS.08.01.010 list level (by Board or Commission or the explicitly listed trade/profession) or at the unlisted singular trade/professions level that may fall under a Board.

Historical documents indicate that direct costs were tracked at the Board level through the mid 1990’s and then again returning to this method around 2008; this was for those Boards where a statute did not specifically dictate fee establishment occur at the Board level. Apparently, the primary underlying reason for returning to the Board level method was to align with the statutory definition of occupation in AS 08.01.065. A secondary reason was that the complex structure required to track at the trade/profession level made it cumbersome for staff to use and therefore it was not used consistently and resulted in erroneous data.

At minimum, DCCED supports that where a definition exists in statute, that be the criteria used in an audit review rather than creating new definitions. In addition, CBPL supports pursuing clarification on the interpretation of current statutory language prior to reverting to or implementing a new process.

Recommendation No.3

We concur that the new CBPL management needs to address the deficiencies in the investigations case management system that resulted from inadequate CBPL involvement during system development and installation in 2009 and early 2010. The GL Suite system went into production in June 2010 just prior to the appointment of the new CBPL Director, and the problem areas have become more apparent throughout this year. The concise list of issues and deficiencies identified by Legislative Audit effectively demonstrate the affect of a lack of business user commitment and involvement during system development and testing.

Current CBPL management is committed to addressing the system issues and deficiencies through an engaged business user team.

Audit Conclusion Related to Board of Marine Pilots

DCCED strongly disagrees with the Legislative Audit conclusion (presented in the report without a corresponding recommendation) that a “...potential conflict of interest for a member of the Board of Marine Pilots was not adequately entered into the public record.” Legislative Audit’s conclusion

would indicate a violation or potential violation occurred of AS 39.52.220; however, based on the below information and the Deputy Commissioner's meetings with the Assistant Attorney General (AG) no potential ethics violation was found. In addition, the Board has received no complaints about the way the meeting was conducted and the meeting minutes were approved without dissent.

The case referred to in the audit report is regarding the owner/operator of a pleasure craft of foreign registry who failed to employ a licensed pilot, which is a violation under AS 08.62.040 (f). The subject of this investigation was a 210' foreign-flagged yacht that had re-entered compulsory pilot waters after disembarking their pilot. **The yacht in question had no business relationship with the vessel agent or the Southeast Alaska Pilots Association at the time of the alleged violation.** In reviewing the confidential board report, no conflict of interest was raised by the investigator or CBPL management.

In addition, no potential conflict of interest was raised by the Attorney General's office when the chair of the Board of Marine Pilots met with the AG prior to the Board meeting to review the board agenda including the three investigations and CBPL's recommendation for closure. Further, the Board of Marine of Pilots agenda requires the Declaration of Potential Conflicts of Interest/Recusals pursuant to AS 39.52.110 at the beginning of every meeting. It was done at the January 13, 2011 meeting and no conflict of interest was declared by the seven-member board in regards to this matter. The Board of Marine Pilots operates under Robert's Rules of Order, and the motion to close the Investigative Reports was in proper form. The motion was made and seconded (by the two public members) and carried by the members present. There is no statute or regulation governing how a Board should conduct its votes. The AG's who often attend Board meetings have never commented on Board procedures that follow Robert's Rule of Order.

CBPL takes the utmost in care in presenting investigative case reports and information to Boards and Commission. The Board of Marine Pilots is required to meet in person three times per year. The current Board Chair schedules ethics training once per calendar year. The next scheduled training is at the fall meeting.

Conclusion

In closing, I need to reiterate that this audit addressed very long term historical problems within the division and that the new CBPL management team had already identified and started corrective actions on these issues. The new management team is committed to implementing improvements within the division and providing quality information in support of businesses, corporations, and professionals. Their work is fully supported by the Commissioner's Office and the Division of Administrative Services.

Ms. Davidson
August 15, 2011
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Again, thank you for the opportunity to respond to the preliminary report recommendations. I want to note the department's appreciation for the professionalism of the audit team throughout this review, and also express appreciation if this review generates additional support for the new CBPL management team to continue implementing positive change.

If you have any additional questions please contact me at 465-2500.

Regards,



Susan K. Bell
Commissioner

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

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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August 12, 2011

Members of the Legislative Budget
and Audit Committee

We have reviewed the Department of Commerce, Community, and Economic Development's (DCCED) response to this audit. Nothing contained in the response gives us cause to reconsider our overall conclusions or individual findings. However, we provide the following points of clarification.

Recommendation No. 1

DCCED; Division of Corporations, Business and Professional Licensing (DCBPL) director should ensure occupational licensing fees are adjusted annually in accordance with state law.

Exhibit 4 lists fees that, based on the fee analysis conducted in the fall of 2010, indicate a need for modification. As of the date of the audit, June 29, 2011, the fees had not been modified. Therefore, Exhibit 4 does not reflect any fee changes adopted by DCBPL after that date.

Recommendation No. 2

DCBPL's director should improve the method for allocating division indirect costs and for tracking occupation direct costs.

In its response, DCCED takes exception to the position control number (PCN) allocation method used in the report. This method is simply used to provide a financial context to the significance of DCBPL's overcharging indirect costs to the professional licensing cost pool. It is not intended to nor do we recommend this methodology as the best option for DCBPL to adopt.

Additionally, DCCED takes exception to our use of the term *licensing programs*. The purpose of defining the terms used in this report is to make a clear distinction between

individual occupations, and the various boards and commissions that regulate one or more occupations. *Licensing programs* is used as a convenient phrase to encompass both the individual occupations as well as the boards and commissions listed in AS 08.01.010. Recognizing the financial and budgetary nature of this internal control deficiency, we have adopted the phrase and its use from DCCED's operating budget documents; it is strictly an operational designation and has no legal significance to it.

We reaffirm our recommendation that DCBPL's director improve the method both for allocating DCBPL's indirect costs and for tracking occupation direct costs to ensure significant occupation specific costs are attributed to the benefitting occupation.

Audit Conclusion Related to the Board of Marine Pilots

We appreciate the information DCCED provides and understand its view that an Ethics Act violation did not occur. However, none of the information in the response provides evidence that the potential conflict of interest was adequately entered in the public record. We affirm our conclusion.

In summary, we reaffirm the conclusions and recommendations included in this report.

Sincerely,

A handwritten signature in black ink that reads "Pat Davidson". The signature is fluid and cursive, with the first name "Pat" and last name "Davidson" clearly legible.

Pat Davidson, CPA
Legislative Auditor