

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE



Division of Legislative Audit

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SUMMARY OF: A Sunset Review on the Department of Commerce, Community, and Economic Development, Alcoholic Beverage Control Board, May 30, 2014

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Department of Commerce, Community, and Economic Development's (DCCED) Alcoholic Beverage Control Board (board). The purpose of this audit was to determine if there is a demonstrated public need for its continued existence and if it has been operating in an effective manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, under AS 44.66.010(a)(1), the board will terminate on June 30, 2015, and will have one year from that date to conclude its administrative operations.

REPORT CONCLUSIONS

We conclude that the board's termination date should be extended. The board is serving the public's interest by effectively licensing and regulating the manufacture, barter, possession, and sale of alcoholic beverages in Alaska. The board has demonstrated a need for its continued existence by protecting the general public through the issuance, renewal, revocation, and suspension of alcoholic beverage licenses. Protection has also been provided through investigations of suspected licensing violations and enforcement of the State's alcoholic beverage control laws and regulations.

We conditionally recommend that the board's termination date be extended five years to June 30, 2020. If the marijuana voter initiative passes, we recommend a shorter extension of no more than three years as the initiative significantly expands the board's duties.

FINDINGS AND RECOMMENDATIONS

The prior sunset audit included three recommendations. Two prior recommendations have been resolved, and the other has been partially resolved and is reiterated as parts of Recommendation Nos. 1 and 2. This report makes three new recommendations.

1. The board's director should ensure that all board meetings are properly published on the State's Online Public Notice System.

2. The board should notify local governing bodies of applications for new and transfer licenses within 10 days of receipt.
3. The board should issue catering permits in accordance with statutory requirements.
4. The board should issue recreational site licenses in accordance with statutory requirements.
5. The board should implement a process to monitor and track all complaints to ensure they are resolved in a timely manner.

ORGANIZATION AND FUNCTION

The board was established in 1959 by Title IV of the Alaska Statutes as a regulatory and quasi-judicial agency. In 2013, the board's administration moved from the Department of Public Safety (DPS) to the Department of Commerce, Community, and Economic Development (DCCED) for administrative purposes.

The board controls the manufacture, barter, possession, and sale of alcoholic beverages in the State. The board's duties include overseeing license issuances, transfers, renewals, suspensions, and revocations; and proposing and adopting regulations necessary to carry out the purposes of governing statutes in a manner that will protect the public's health, safety, and welfare. Contingent upon the DPS commissioner's concurrence, the board may grant peace officer authority to those charged with administering Title IV.

The board is composed of five members appointed by the governor and confirmed by the legislature. State law requires that two members be actively involved in the alcoholic beverage industry (excluding wholesale) and at least three members represent the general public.

One public member must reside in a rural area, and no three board members may be engaged in the same business, occupation, or profession. Board members representing the general public and their immediate family members are prohibited from having a financial interest in the alcoholic beverage industry. Board members are appointed for overlapping three-year terms.

The board's primary objective is to regulate 1,861 alcoholic beverage licensees in accordance with Title IV. A director, appointed by the governor, serves as the executive officer and is responsible for enforcing Title IV and regulations adopted by the board. To assist in carrying out its objectives, board staff includes licensing examiners, enforcement investigators, and an administrative assistant. Staff conducts the following activities:

- **Licensing**

Licensing staff is responsible for processing license and permit applications, maintaining licensing records and files, and collecting licensing fees. The types of licenses, licensing fees, and activities allowed under each license and the procedures for issuing new and renewal licenses are specified and established in Title IV.

Exhibit 1

**Alcoholic Beverage Control
Board Members as of
May 30, 2014**

Bob Klein
Chair, Industry Member

Ethan Billings
Industry Member

Marvin Yoder
Public Member

Robert Evans
Rural Public Member

Ellen Ganley
Public Member

Licensing staff also works closely with the director to prepare board meeting packets. Three licensing positions are authorized as part of the FY 15 budget.

- **Enforcement**

Enforcement staff performs various duties including inspecting licensed premises, investigating complaints of suspected licensing violations, conducting compliance checks, and responding to questions from licensees and the public. Investigators monitor server training courses and perform background checks on applicants. Investigators also provide Title IV training to law enforcement agencies on request. The enforcement supervisor maintains the statewide written order database which contains a monthly record of the alcohol purchased by and shipped to a person who resides in a municipality or established village that has restricted the sale of alcoholic beverages. Six enforcement positions are authorized as part of the FY 15 budget.

- **Administration**

The director provides oversight, guidance, and direction to staff; participates in public hearings and meetings; and addresses inquiries and requests from licensees, law enforcement agencies, and the general public. The FY 15 budget also authorizes one administrative assistant position. Administrative duties include preparing budget documents, calculating and issuing revenue sharing payments to local municipalities, issuing public notices, processing vendor invoices, and preparing bank deposits and board meeting minutes.

The board's FY 15 budget is approximately \$1.75 million.

FINDINGS AND RECOMMENDATIONS

The Alcoholic Beverage Control Board's (board) 2009 sunset audit included three recommendations. The prior year recommendation that the legislature consider amending Title IV of the Alaska Statutes to remove the board director's voting ability was resolved through a statutory change. The prior recommendation that the board establish quantifiable enforcement goals and develop a clear plan for deploying enforcement resources was resolved through procedural improvements. The prior recommendation that the board develop and enforce written policies and procedures to ensure staff comply with state laws and decisions made by the board and director has been partially resolved. The recurring parts of this recommendation are presented as part of Recommendation Nos. 1 and 2. Additionally, three new recommendations are made as a part of this audit.

Recommendation No. 1

The board's director should ensure that all board meetings are properly published on the State's Online Public Notice System.

Prior Finding

From FY 07 through FY 09, 11 of 16 board meetings were not adequately publicly noticed per statute or board policy requirements. Four meetings were not advertised on the State's Online Public Notice System; the venues for seven board meetings were not advertised in the local newspaper; and seven meetings were not advertised timely.

Current Status

From FY 09 through February 2014, three of 25 board meetings were not published on the State's Online Public Notice System. Although the board has procedures for public noticing, Department of Commerce, Community, and Economic Development staff did not adhere to procedures due to general oversight.

Alaska Statute 44.62.310(e) requires reasonable public notice be given for meetings. Failure to publicly notice board meetings may limit public input in the regulatory process. Lack of public input may reduce the board's effectiveness in addressing public concerns.

We recommend the board's director ensure all board meetings are properly published on the State's Online Public Notice System.

Recommendation No. 2

The board should notify local governing bodies of applications for new and transfer licenses within 10 days of receipt.

Prior Finding

The board did not consistently adhere to the statutory requirement of notifying the local governing body within 10 days of receiving an application as required by AS 04.11.520. This requirement allows time for local governments to review and possibly protest a license being issued, renewed, relocated, or transferred.

Local governing bodies were not consistently notified because board members and the director did not provide appropriate guidance and oversight to staff to ensure compliance with state laws, and with its decisions.

Current Status

For two of 10 new or transfer licenses tested, the board did not inform the local governing body within 10 days of receiving the application. Both notifications were sent between 11 and 20 days after the board received the application. The errors resulted from prior board staff not adhering to the board's policies and procedures which require local governing bodies be notified in a timely manner.

Alaska Statutes specify a timeline for the board to review applications, notify local governing bodies, and receive protests. Alaska Statute 04.11.510 requires the board to review applications within 90 days of receipt. Alaska Statute 04.11.520 requires the board to notify local governing bodies within 10 days of receiving an application. A local governing body may protest within 60 days as provided by AS 04.11.480. Delays in notifying local governing bodies may result in inappropriately limiting the time the local governing body and/or the board has to review applications.

We recommend the board notify local governing bodies of applications for new and transfer licenses within 10 days of receipt.

Recommendation No. 3

The board should issue catering permits in accordance with statutory requirements.

Catering permits may be issued to beverage dispensary licensees (BDL) to sell alcoholic beverages at conventions, picnics, social gatherings, sporting events, or similar affairs. The permits expire after seven days and can only be used for events hosted off licensed premises. Alaska Statutes 04.11.230(a) states:

A caterer's permit authorizes the holder of a beverage dispensary license to sell or dispense alcoholic beverages at conventions, picnics, social gatherings, sporting events, or similar affairs held off the holder's licensed premises. The permit may only be issued for designated premises for a specific occasion and for a limited period of time.

A review of four licensees that received more than six consecutive catering permits during the audit period yielded three instances of noncompliance. Two were related to catering permits issued to serve alcohol in another room of the same premises. The permits were issued for six to 14 consecutive weeks while the board processed the licensee's application for a duplicate BDL. A duplicate BDL allows a licensee to serve alcohol in another room of an establishment.

The third noncompliant permit resulted from the board issuing a catering permit to one licensee to serve alcohol for another business with an expired BDL. In this case, the permits were issued for eight consecutive weeks while the board processed the licensee's renewal application.

Each of the three variances represent a statutory violation because the permits were issued with the intention to serve alcohol on a licensed premises and to maintain daily operation of a business rather than for a short term social gathering or similar event. Circumventing licensing laws weakens the board's role as regulator and may result in inequitable treatment of applicants. Inquiries with board members revealed that the board considered the issuance of the noted catering permits a convenience to both licensees and the public. At the time, the board believed that issuing the license or permit was appropriate to ensure the businesses could continue to operate.

We recommend that the board issue catering permits in accordance with statutory requirements.

Recommendation No. 4

The board should issue recreational site licenses in accordance with statutory requirements.

Recreational site licenses may be issued to businesses that host non-school-related recreational events held during a season.

Of the 32 recreational licensees active during the audit period, the audit found 15 businesses (47 percent) did not meet the criteria for a recreational license. Ineligible businesses include bowling alleys, a sports center and pub, an exercise gym, a gift shop, theatres, and pool halls. These business types did not meet the definition of a recreational site nor were operations limited to a season. The issuance of these licenses expanded the number of establishments licensed to sell alcohol over the number allowed by statute.

According to AS 04.11.210(a), the holder of a recreational site license may sell beer and wine at a recreational event during and one hour before and after recreational events. AS 04.11.210(c) defines *recreational events* as baseball games, car races, hockey games, or curling matches regularly held during a season.

Inquiries with board members revealed that the improper issuance of recreational site licenses was caused by an historic misunderstanding of what qualifies as a recreational event.

We recommend that the board issue recreational site licenses in accordance with statutory requirements.

Recommendation No. 5

The board should implement a process to monitor and track all complaints to ensure they are resolved in a timely manner.

The board has not established a process to monitor and track all complaints to ensure they are resolved in a timely manner. The board does have a process to receive complaints from licensees or law enforcement agencies through their website, telephone, or emails. However, complaints are only tracked if they result in an inspection or investigation. If the complaint is deemed invalid, it is not documented. Furthermore, the basis for a decision not to investigate is not documented and maintained.

The efficiency with which complaints are investigated is one of the sunset evaluation criteria used in the legislative oversight process. Alaska Statute 44.66.050(c)(6) specifies the sunset review must evaluate:

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

By not tracking complaints, there is an increased risk that board staff may not investigate complaints received and/or not investigate complaints in a timely manner. Such instances could reduce the board's ability to effectively enforce alcoholic beverage laws. Additionally, complaints received directly by board staff via telephone or email may never be resolved in the event of staff turnover. Because there was no statutory mandate, the board director did not consider tracking all complaints as necessary.

We recommend that the board establish a process to monitor and track all complaints to ensure that they are resolved in a timely manner.



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Commerce, Community,
and Economic Development

OFFICE OF THE COMMISSIONER

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November 19, 2014

RECEIVED

NOV 20 2014

LEGISLATIVE AUDIT

Kris Curtis, CPA, CISA
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Re: Committee request for a more detailed corrective action plan, dated October 31, 2014 to
Department of Commerce, Community, and Economic Development (DCCED),
Alcoholic Beverage Control Board (ABC),

Dear Ms. Curtis:

Thank you for the opportunity to respond and to provide further information on our corrective
action plan, our comments are provided below.

Recommendation No. 1

The board's director should ensure that all board meetings are properly published on the State's
Online Public Notice System.

The Department concurs with this recommendation. Beginning in 2012, the agency began to
immediately publish the date of the next board meeting on the ABC website with a notation
indicating "Location to be Determined" the next business day after the announcement of the date.
The date for the following meeting having been discussed and scheduled during the prior board
meeting, with the Administrative Assistant tasked with establishing the location of the next board
meeting within two weeks of the previous meeting. The ABC website is then updated to include the
location of the meeting. The Department has taken additional steps to assure that the board
meetings are published online in the State's Online Public Notice System at least 30 days in advance
of the meeting and in at least one local newspaper at least 14 days in advance of the meeting. In
order to monitor and be able to accurately provide maximum notification time the Administrative
Assistant is tasked with monitoring Outlook Calendar items which were implemented by the New
Director to ensure compliance with Public Notice requirements.

Recommendation No. 2

The board should notify local governing bodies of applications for issuing new and transfer licenses within 10 days of receipt.

The Department concurs with this recommendation. In June, 2014, Sarah Oates was appointed Licensing Supervisor. Ms. Oates began a process of weekly notifications to local governing bodies regarding new applications, assuring that the 10 day deadline is met in every application.

Recommendation No. 3

The board should issue catering permits in accordance with statutory requirements.

The Department concurs with this recommendation. The Department recognizes that the delegation by the board to issue catering permits requires each statutory requirement is checked and met, to assure that catering permits are issued in strict accordance with statute. The agency refined its process of approving catering permits after the February 11, 2014 board meeting when the board addressed the Director regarding the issuance of catering permits. The current process since that meeting requires a business registration examiner to review the permit application for statutory requirements and a second review of the application by the Chief of Enforcement to assure that the named event qualifies for the permit. The permit will not be issued without both reviews.

Recommendation No. 4

The board should issue recreational site licenses in accordance with statutory requirements.

The Department concurs with this recommendation. The ABC Board took public testimony at its July 23, 2013 board meeting regarding recreational site licenses and considered drafting regulations to clarify which types of businesses would qualify for recreational site licenses. The Board then determined that no regulations would be passed and the board directed the agency to return to a strict stator interpretation of AS 4.11.210 for issuing recreational site licenses. Since July of 2013, all recreational site licenses applications have received strict scrutiny from the Director and the board, and the Board Chair has stated his intent that the recreational site license statute be applied as written.

Recommendation No. 5

The board should implement a process to monitor and track all complaints to ensure they are resolved in a timely manner.

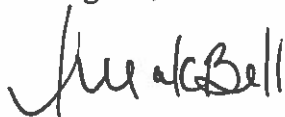
The Department concurs with this recommendation. A spreadsheet was implemented in May, 2014 and is available for all enforcement staff to document complaints, complaint status, and to ensure there has been follow up. The Enforcement Supervisor requires that all enforcement staff track complaints about licensees in this spreadsheet. In October, 2014, the new Director instructed the Licensing Supervisor to create a similar spreadsheet to track complaints about licensing procedures

and decisions. The Licensing Supervisor then instructed licensing staff to keep the spreadsheet updated. The Director created a third spreadsheet to track general complaints and inquiries regarding non-licensing and non-enforcement specific matters in October, 2014. On November 5, 2014, a fourth spreadsheet was created to track complaints and inquiries regarding the marijuana initiative passed during the general election (Proposition 2).

The Department concurs with this recommendation and has taken measures to ensure all complaints are monitored and resolved in a timely manner.

Again, thank you for the opportunity to respond to the five recommendations. If you should have any additional questions, please feel free to contact me at 465-2500.

Regards,

A handwritten signature in black ink, appearing to read "Susan K. Bell". The signature is fluid and cursive, with the first name "Susan" and last name "Bell" clearly distinguishable.

Susan K. Bell
Commissioner

cc: Jeanne Mungle, Administrative Services Director
Cynthia Franklin, ABC Board Executive Director

Robert Klein, Chair
Alcoholic Beverage Control Board
6560 Lakeway Drive,
Anchorage, AK 99502

November 18, 2014

Kris Curtis, CPA, CISA
Legislative Auditor
Legislative Budget and Audit Committee
Alaska State Legislature
PO Box 113300
Juneau, AK 99811-3300

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Dear Kris,

Thank you for the opportunity to respond to the recommendations contained in the 2014 Audit Report of the Alcoholic Beverage Control Board. The responses below are the result of conferring with members of the Board and with Staff.

Recommendation 1

The board's director should ensure that all board meetings are properly published on the State's Online Public Notice System.

The Board agrees with this recommendation and has reviewed the changes made by the Director and Staff to the timing and manner in which meeting notices are published. The Board establishes the date and city of the next meeting at the close of each Board Meeting. Within 2 weeks Staff has selected a site and that information is on our website. We have added the additional steps to insure that, at least 30 days prior to our Meeting, notice appears in the State's Online Public Notice System.

Recommendation 2

The board should notify local governing bodies of applications for new and transfer licenses within 10 days of receipt.

The Board agrees with this recommendation and has reviewed the changes made by the Director and Staff. We discovered that prior staff had been holding notices and sending them out in batches. Procedures have been changed and as of May 2014 notices are sent within the 10 day deadline.

Recommendation 3

The board should issue catering permits in accordance with statutory requirements.

The Board agrees with this recommendation. At our February 11, 2014 Board Meeting, the Board reviewed the process by which catering permits were being issued. This is a delegated function, where the Director and staff act in behalf of the Board. The Board gave the Director clear instructions and definitions to guide the issuance of the permits. The current process has both the Director and the Chief of Enforcement reviewing each permit request to assure compliance.

Recommendation 4

The board should issue recreational site licenses in accordance with statutory requirements.

The Board agrees with this recommendation. The Board had been relying on advice from Attorneys' General as to the latitude that could be used in granting recreational site licenses. On July 23, 2013, the Board devoted a portion of the meeting to the use and issuance of these licenses. After taking public testimony and a healthy debate, the Board decided to return to strict adherence to the Title IV definition of the rec site license. The Board now carefully reviews each application and issues only those licenses which adhere to the statute.

Recommendation 5

The board should implement a process to monitor and track all complaints to ensure that they are resolved in a timely manner.

The Board agrees with this recommendation. Staff has implemented a series of spreadsheets to record and track complaints. Each section of the department is recording complaints and responses in it's area, so we now have spreadsheets for Enforcement complaints, licensing procedures and decisions, general complaints and inquiries, and, most recently, inquiries and complaints regarding marijuana. The

Director will periodically review these with the Chair, and trends or items requiring Board review will be added to the Board Meeting Agenda.

We'd like to take this opportunity to thank you and your staff for the efforts in performing our audit. Their thoroughness and professionalism, as well as their constructive suggestions are all greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Klein', with a long horizontal stroke extending to the right.

Robert Klein

Board Chair