

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT ALCOHOLIC BEVERAGE CONTROL BOARD

September 10, 2021

Audit Control Number
08-20127-21

The audit was conducted as required by AS 44.66.050(a). Further, the audit reviews the board's application decision timeline, identifies the cause of delays, and makes recommendations for improving the application process. Per AS 44.66.010(a)(1), the board is scheduled to terminate on June 30, 2022. We recommend that the legislature extend the board's termination date to June 30, 2026.

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

A handwritten signature in black ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

AAC	Alaska Administrative Code
ABC	Alcoholic Beverage Control Board
ACN	Audit Control Number
AMCO	Alcohol and Marijuana Control Office
APSIN	Alaska Public Safety Information Network
ARMS	Alaska Records Management System
AS	Alaska Statute
CISA	Certified Information System Auditor
CPA	Certified Public Accountant
DCCED	Department of Commerce, Community, and Economic Development
DLA	Division of Legislative Audit
DPS	Department of Public Safety
FY	Fiscal Year
HB	House Bill
SB	Senate Bill

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ORGANIZATION AND FUNCTION

Alcoholic Beverage Control Board

The Alcoholic Beverage Control Board (board) is a regulatory and quasi-judicial board consisting of five members appointed by the governor, created for the purpose of controlling the manufacture, barter, possession, and sale of alcoholic beverages in the state. The board consists of one member actively engaged in the public safety sector, one from the general public, one who has resided in a rural area within the last five years, and two actively engaged in the alcoholic beverage industry¹ (see Exhibit 1). The non-industry board members, and the members' immediate family, may not have a financial interest in the alcoholic beverage industry. Board members serve overlapping three-year terms. A member who has served all or part of three successive terms on the board may not be reappointed to the board unless three years have elapsed since the person last served on the board.

Exhibit 1

Alcoholic Beverage Control Board Members as of February 28, 2021

Glenn Brady, Chair
Industry

Charlie Cross
Rural

Sara Erickson
Public

Vacant
Public Safety

Dana Walukiewicz
Industry

Source: Office of the Governor, Boards and Commissions website.

Alaska Statute 04.06.090 establishes the board's powers and duties, including the power to propose and adopt regulations and hear appeals from actions of the director, officers, and employees charged with enforcing alcoholic beverage control laws and board regulations. Statutes state the board shall:

- Review all license applications and may order the director to issue, renew, revoke, transfer, or suspend licenses and permits authorized under AS 04.06;
- Promptly notify all licensees and municipalities of major changes to statutes and regulations;

¹ Alcoholic beverage industry board members may not be wholesalers.

**Department
of Commerce,
Community, and
Economic Development
(DCCED), Alcohol
and Marijuana Control
Office (AMCO)**

- Maintain a statewide database that 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; and
- Adopt regulations necessary to carry out the purpose of AS 04.06 in a manner that will protect public health, safety, and welfare.

AMCO provides assistance to the board in administering, licensing, and enforcing alcoholic beverage control statutes and regulations. AMCO staff provide similar support to the Marijuana Control Board. AMCO is led by a director appointed by the governor, who also serves as the board's executive officer. During FY 21, AMCO had 22 authorized permanent full-time employee positions. Positions include the director, a program coordinator, eight investigators, one criminal justice technician, three administrative positions, five licensing examiners, a licensing supervisor, a regulations specialist, and a local government specialist.

AMCO staff receive and process license applications, collect fees, maintain licensing records and files, publish notices of board meetings, prepare board member meeting packets, and draft board meeting minutes. AMCO staff also perform other administrative duties, such as tracking revenues and expenditures, and assisting with board regulatory projects.

AMCO investigators conduct inspections of licensed premises, investigate complaints, and issue notices of violation to establishments found to be in violation of alcoholic beverage control statutes, regulations, or conditions or restrictions imposed by the board.

BACKGROUND INFORMATION

Licensing Requirements and the Application Process

A person that wants to apply for a new license, relocate or transfer ownership of an existing license, or renew a license, must submit an application in writing to the Alcoholic Beverage Control Board (board) at its main office. Applications must contain specific information required by statutes and regulations. According to regulation, applications that are incomplete or not accompanied by the required fees will be returned to the applicant.²

Alaska Statute 04.11.520 requires the board to transmit written notice to the local governing body within 10 days of receipt of an application from within (1) an established village, (2) an incorporated city, (3) an organized borough, or (4) a unified municipality, to allow the local governing body time to protest. Per AS 04.11.480, a local governing body may protest a license issuance, renewal, relocation, or transfer to another person by sending the board and the applicant a written protest and the reasons for the protest within 60 days of receipt of the board's notice. The board must deny the application or continued operation unless the board finds that the protest is arbitrary, capricious, and unreasonable.

Receipt, review, and approval of applications are tracked by Alcohol and Marijuana Control Office (AMCO) staff using various spreadsheets. Separate spreadsheets are maintained for tracking new, transfer, and renewal applications, as well as supplemental forms. Upon receipt of an application and required fees, AMCO staff records the application in the appropriate tracking spreadsheet, noting the received date and the name of the assigned AMCO staff.

Applications are reviewed by a licensing examiner with the aid of a master checklist to ensure applications include the information required by statutes and regulations. If an application is determined complete, AMCO staff send a written notice to the local governing body and community council, if any, informing them of the right to protest. AMCO staff also notify the applicant that the application is complete and the date it is scheduled

² License application requirements are defined by 3 AAC 304.105.

for a board decision.³ AMCO staff update the tracking spreadsheet with the relevant dates, such as the completed date, local governing body notice date, and board meeting date, and create the application packet for board review.

If an application is determined to be incomplete or inaccurate, AMCO staff send a letter to the applicant outlining any errors found on the application that must be corrected and/or missing information or documents that must be provided in order to move forward. Typically, applicants will be given 30 days to provide the information and/or submit a corrected application. AMCO staff update the tracking spreadsheet with the applicable return date and subsequent received date(s). An application will not be scheduled for decision at a board meeting until it is determined to be complete.

Alaska Statute 04.11.510(a) requires the board to decide whether to grant or deny an application within 90 days of receipt of the application; however, the decision may not be made before the time allowed for protest under AS 04.11.480 has elapsed, unless waived by the municipality. The 90-day requirement is evaluated from the date the application is determined to be complete by AMCO staff. Applications that have been determined complete are forwarded to the board for review, even though AMCO staff may be awaiting response from governing bodies regarding the right to protest.

The board meeting agenda separately identifies applications based on the applications' status. Applications that are waiting for the protest period to expire or are waiting for other agencies' responses are grouped under the board's "delegated consent agenda." The board may vote to approve the applications by delegating consent

³ Statutes require licensees to comply with state public health, fire, or safety laws and regulations. Additionally, applicants may not be delinquent in the payment of business taxes or liabilities. As determined necessary, AMCO staff sends notices requesting confirmation of the applicant's compliance to the Alaska Department of Environmental Conservation, Food Safety and Sanitation Program; the Alaska Department of Public Safety, State Fire Marshal; Alaska Department of Revenue, Tax Division; and Department of Labor, Employment Security and Workers' Compensation. Written notices are also sent to a licensee's creditors, if any, for transfer applications.

to the director to issue licenses upon expiration of the protest periods and/or receipt of necessary public health and public safety approvals. The applications may go back to the board for another decision if a protest is received or if other issues are identified. Applications that have met all requirements are grouped under the board's "consent agenda." These include cases wherein applicants do not fall under a local governing body or municipality; the local governing body has sent a written response waiving the right to the 60-day protest period; or other governing bodies have sent in responses confirming the applicant is compliant with the relevant state laws and regulations.

Once the board votes to approve a license and all requirements are met, the license is ready to be printed and issued. AMCO staff update the tracking spreadsheet for the issue date (printed date). New and transfer licenses are forwarded to AMCO's enforcement section, which determines whether an inspection is required prior to issuance. In cases where an inspection is required (i.e., new licenses), AMCO investigators will conduct an inspection and physically deliver the license upon completion of a successful inspection or after deficiencies identified are corrected. Renewed licenses and transfer licenses that do not require an inspection are mailed to the licensees. A board license flowchart is shown in Appendix D.

Notices of Violation and Advisory Notices

Statutes authorize the board to employ the agents and staff it considers necessary to enforce alcoholic beverage control statutes and regulations. Alaska Statute 04.11.370(a) requires a license to be suspended or revoked if the board finds a licensee violated an alcoholic beverage statute or regulation, a condition or restriction imposed by the board, or a municipal ordinance. Statutes also state that a license should be suspended or revoked if the board finds the licensee failed to correct a defect that constitutes a violation after receipt of notice issued by the board or its enforcement agents.

AMCO investigators conduct inspections and walkthroughs of licensed premises as part of enforcement efforts. Investigations are conducted upon receipt of complaints, which may be brought by citizens, licensees, board members, other law enforcement agencies, or initiated by an investigator. Investigators may identify a violation in the course of conducting inspections, walkthroughs, or investigations. Depending on the severity of the infraction, investigators issue a notice of violation or a warning in the form of an advisory notice.

Notices of violation and advisory notices are defined in regulation. Per 3 AAC 304.525,

- Investigative personnel may issue a notice of violation to a licensee whenever a violation of alcoholic beverage laws is found to exist. Regulations require licensees to respond, either orally or in writing, to the notice of violation. A notice of violation and the licensee's response will, at the board's discretion, be reviewed when considering whether to suspend, revoke, or renew a license, but does not alone constitute grounds for suspension, revocation, or refusal to renew, unless proven by evidence at a hearing.
- An advisory notice may be issued by investigative personnel to a licensee when an incident occurs or a defect is identified that could result in a violation of a statute, regulation, or municipal ordinance.

Notices of violation issued by investigators and licensees' responses are presented to the board by AMCO's enforcement supervisor during board meetings. Advisory notices are not presented to the board.

Statewide Database of Written Orders

Alaska Statute 04.06.095 requires the board to create and maintain a statewide database that contains a monthly record of the alcohol purchased by, and shipped to, a person who resides in a restricted

area.⁴ The law requires package store licensees to consult the database before selling and shipping alcoholic beverages to purchasers in restricted areas and immediately record every sale made therein. Persons residing in the restricted area who request alcoholic beverages be shipped to the area do so by submitting written orders to package stores. Package store licensees may not ship an amount of alcoholic beverages to a purchaser in a restricted area that, when added to the amount already shipped, exceeds the monthly amounts authorized in statute.⁵

Further, 3 AAC 304.645 requires the board to maintain a list of persons convicted of a violation of AS 04.11.010⁶ and provide the listing of the restricted purchasers to package store licensees. The board provides the listing through the statewide database. Package store licensees are prohibited from selling alcoholic beverages to a person who is identified as a restricted purchaser in the statewide database.

⁴ A restricted area is a municipality or an established village that has adopted a local option under AS 04.11.491 through an election process to control and impose certain limits on the availability of alcoholic beverages in the community.

⁵ A package store licensee may not ship to a purchaser more than 10.5 liters of distilled spirits or 24 liters or more of wine, or either a half-keg of malt beverages or 12 gallons or more of malt beverages in individual containers in a calendar month, or a lower amount of distilled spirits, wine, or malt beverages if the municipality or established village has adopted the lower amount by local option.

⁶ Alaska Statute 04.11.010 prohibits persons from manufacturing, selling, offering for sale, possessing for sale or barter, trafficking in, or bartering alcoholic beverages unless licensed by the board.

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REPORT

CONCLUSIONS

In developing our conclusion regarding whether the Alcoholic Beverage Control Board's (board) termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A of this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continued operations. The sunset review was conducted in conjunction with a special audit of the board's license approval process. This report summarizes conclusions from both the sunset review and the special audit of the board's licensing process.

Overall, the audit found that board meetings were conducted effectively, regulations were adopted to implement statutory changes, and investigations were conducted in a timely manner. The audit also concluded that the Alcohol and Marijuana Control Office (AMCO) operations were impeded by the lack of an automated application process and significant vacancies. Further, deficiencies in controls over processing licensee fee refunds were identified.

A review of the board's license process identified that 76 percent of new license applications and 85 percent of transfer applications received during FY 19 and FY 20 were issued within six months. A backlog of renewal applications caused by unfilled vacancies led AMCO staff to issue approximately 300 temporary licenses in February 2021, which allowed licensees to continue operating pending application review. The audit identified the following opportunities for gaining licensing efficiencies:

1. Improving the completeness and accuracy of initial applications.
2. Reducing delays associated with waiting for compliance information.
3. Issuing licenses timely once all information has been received.

Automating the application process and filling vacancies in a timely manner are key to improving efficiency.

In accordance with AS 44.66.010(a)(1), the board is scheduled to terminate on June 30, 2022. We recommend the legislature extend the board’s termination date to June 30, 2026, which is four years less than the maximum allowed in statute. The reduced extension reflects the need for more timely oversight to evaluate the board’s progress in addressing licensing inefficiencies and filling vacancies.

The board effectively conducted its meetings.

The audit found that from July 2017 through February 2021 the board held 35 meetings. Meetings were held in each judicial district of the state through calendar year 2019 as required by statute. The board transitioned to telephonic and virtual board meetings beginning March 2020 after the governor declared a public health emergency due to the spread of COVID-19. Board meetings were adequately public noticed, generally allowed time for public comment, and quorum was consistently met.

The board actively amended regulations and does not duplicate the efforts of other entities.

The board operated in the public interest by issuing and amending regulations, which, in part:

- enacted and extended emergency regulations to allow the curbside pickup of alcohol and home delivery of beer and wine with food in response to the governor’s suspension of Title IV provisions due to the public health emergency. The regulations allowed certain licensees to continue to operate, which helped mitigate the financial impact of the pandemic (3 AAC 304.920, 3 AAC 304.925);
- increased fees for new, transfer, relocation of premises, and renewal applications, and added new fees for board review of new and existing alcohol server education courses. These changes increased funds to help cover the cost of licensing (3 AAC 304.105, 3 AAC 304.185, 3 AAC 304.465);
- set requirements for individuals ages 16 through 20 to remain within a licensed premises of a common carrier in the course of employment. The change was intended to allow the employment

of underage individuals while limiting their exposure to alcoholic beverages (3 AAC 304.340);

- allowed a licensee to request that a portion of its licensed premises alternate as licensed or unlicensed on a seasonal basis if certain conditions are met, allowed recreational site and destination resort licenses to have multiple separate licensed premises with approval of the board, and added beverage dispensary licenses to the license types that may have a portion of its premises alternate as licensed or unlicensed under certain conditions. These changes provided licensees with greater flexibility in conducting business (3 AAC 304.185, 3 AAC 304.225);
- extended the time in which an application for the transfer of a liquor license must be submitted without an application for renewal by one month, and allowed new licenses issued within the last 40 days of the year to be exempt from filing a waiver of annual operating requirement for that year. These changes improved licensing efficiency (3 AAC 304.175, 3 AAC 304.170);
- clarified requirements for a bona fide restaurant or eating place (3 AAC 304.910);
- clarified the process, criteria, and documents required for security interest transfers and the compelled transfer of a license (3 AAC 304.106–.107); and
- clarified factors the board may consider in determining whether it is in the public interest to deny, revoke, suspend, or refuse to renew or transfer a license (3 AAC 304.180).

Regulatory changes during the audit period were public noticed according to the Administrative Procedures Act.

Three board-related bills were passed during the audit period:

- HB 299 (effective September 27, 2018) required board members who have served three successive terms to wait three years before reappointment, prohibited the director from voting on a matter before the board, and required the application of precedence to board decisions. The board opposed the change requiring application of precedence on the basis that it limited the board's authority. Specifically, the board wanted to be able to determine whether a license issuance is in the best interest of the public based on facts and particular circumstances in each case without being bound by how the board treated a similar case in the past.
- SB 45 (effective October 11, 2018) amended statutes to include a provision that prohibits the board from denying an application for renewal or transfer of a beverage dispensary or eating place license issued to encourage tourism on the basis that the licensee or prospective transferee do not meet the qualifications in AS 04.11.400(d)(1). The changes effectively "grandfathered" beverage dispensary licenses that did not meet statutory requirements. The bill also allowed a holder of a distillery license to combine the distillery's products with other ingredients. No board resolutions, letters of support, or testimonies indicating board support were noted for SB 45.
- SB 16 (effective May 15, 2019)⁷ amended statutes to prohibit the board from denying the renewal or transfer of a recreational site license solely because the board determines the licensed premises do not meet the statutory definition of a recreational site, if the applicant held or received a transfer license that was valid between January 1, 2018, and March 31, 2019, and operated the license under the same conditions required at the time of the initial licensure. Similarly, the board cannot deny an application for a new license solely because the board determines the licensed premises do not meet the statutory definition of a recreational site, if the applicant

⁷ Additionally, some sections of the bill were effective January 1, 2018, and some sections were effective October 1, 2018.

filed for an application between October 1, 2018, and the bill's effective date. The changes allowed the board to approve certain recreational site licenses that did not meet the statutory definition. No board resolutions, letters of support, or testimonies indicating board support were noted for SB 16.

Additionally, SB 9 was introduced to the legislature on January 22, 2021. According to the bill's sponsor statement, the bill reorganizes AS 04 to define the rights and obligations of licensees, restructures penalties for offenses, and outlines the statutes in a logical manner. The board voted to support SB 9 during its February 2021 meeting.

The audit also determined that the board is the only entity in the state that regulates the sale of alcohol. As such, it does not duplicate the efforts of another agency.

Except for complying with mandatory timelines, the board licensed establishments according to statutes and regulations.

A sample of 40 new, transferred, or renewed licenses during the audit period was tested by auditors, and all were found to be issued in accordance with statutes and regulations, with the following exceptions: (See Recommendation 1)

- The board did not make a decision within 90 days as required by statute for two applications (five percent). One was delayed two days and the other was delayed seven days.
- For five applications, the board decision was made within 90 days and all requirements were met, but license issuance was significantly delayed. The delays ranged from 11 to 38 days.
- Notices to local governing bodies were not sent within 10 days as required by statute for four applications (10 percent). The delays ranged from two to 63 days. In one of the four applications the notice was sent after the board decision was made, which delayed the application process by 63 days.

A backlog of applications caused by extensive vacancies resulted in the issuance of approximately 300 temporary licenses.

Based on data provided by Department of Commerce, Community, and Economic Development (DCCED) staff, the board issued 1,177 catering and special event permits from July 1, 2019, through February 28, 2021. Testing of a sample of 25 permits found all were issued according to statutes.

As shown in Exhibit 2, there were 1,867 active licenses as of February 28, 2021.

In February 2021, AMCO staff issued approximately 300 temporary licenses for the license period ending December 31, 2020,⁸ due to an application backlog that was the result of limited staff resources. The temporary licenses allowed licensees to continue operating pending review of the renewal applications. (See Recommendation 2)

Exhibit 2

Alcoholic Beverage Control Board License Count by Type as of February 28, 2021

Beverage Dispensary	649
Bottling Works	1
Brewery	44
Brewpub	14
Club	77
Common Carrier	193
Conditional Contractor’s Permit	0
Destination Resort	2
Distillery	14
Golf Course	9
Package Store	381
Outdoor Recreation Lodge	37
Pub	1
Recreational Site	24
Restaurant or Eating Place	372
Theater	2
Wholesale	30
Winery	17
Total	1,867

Source: Compiled from AMCO’s licensing database.

⁸ Alaska Statute 04.11.540 states that an application for license renewal issued for the two calendar years ending December 31 may be submitted up until the next February 28. If a complete application for renewal has not been filed by February 28 or the required fees and the penalty fees have not been paid by that date, the license expires at 12:00 midnight February 28.

Auditors reviewed AMCO’s staffing during the audit period and found extensive vacancies. Exhibit 3 displays staffing vacancies that exceeded two months during the audit period.

AMCO management reported going through the recruitment process for the program coordinator and local government specialist positions and selecting candidates, but DCCED management would not approve hiring for the positions. According to the DCCED commissioner, the hiring of the two positions was not approved due to “the substantial uncertainty surrounding an earlier proposal

Exhibit 3

**Alcohol and Marijuana Control Office
Staff Vacancies Over Two Months
FY 18 through February 28, 2021**

	Months Vacant
Program Coordinator	27
Local Government Specialist I	17
Occupational Licensing Examiner	4
Occupational Licensing Examiner	5
Regulations Specialist	11
Administrative Assistant	16
Special Investigator	12
Total	92

Source: AMCO management and Alaska payroll system.

to merge AMCO into DCCED’s Division of Corporations, Business and Professional Licensing. The impact of the COVID-19 pandemic to the alcoholic beverage and marijuana industries was also unknown, and these two positions were not materially involved in licensing functions.” According to AMCO staff, the two positions were involved in education of, and outreach to, licensees, which supported licensing functions.

Delays in hiring the two occupational licensing examiners were due to inefficiencies inherent in the routine hiring procedures. AMCO management made a decision not to hire an administrative assistant

Five main sources of delay highlight ways in which the license process may become more efficient.

amidst the public health disaster emergency period and reported difficulty with finding workspace for the special investigator position, which was moved from Fairbanks to the Matanuska-Susitna Borough. AMCO management did not provide a reason for the delay in filling the regulations specialist position.

The audit examined the length of time it took to make application decisions and determined the cause of delays. As shown in Exhibit 4, 216 new applications and 289 transfer applications were received by AMCO during FY 19 through FY 20. Of those applications received, 160 new and 233 transfer licenses were issued as of February 28, 2021.

Exhibit 4

Alcoholic Beverage Control Board License Applications Received FY 19 through FY 20 Status as of February 28, 2021		
	New Applications	Transfer Applications
Returned and Did Not Move Forward in the Application Process	33	39
Not Approved	9	11
Pending or Not Issued as of February 2021	14	6
Issued	160	233
Total Applications Received	216	289

Source: Based on data from AMCO tracking spreadsheets.

Exhibit 5 provides a schedule of licenses issued in terms of the number of months from application receipt to issue date. The exhibit shows that 76 percent of new licenses and 85 percent of transfer applications were issued or finalized within six months of receipt.

Exhibit 5

Alcoholic Beverage Control Board Applications Received and Issued FY 19 through FY 20 Number of Months From Receipt to Issue

	New Applications		Transfer Applications	
	Number	Percent	Number	Percent
0 – 3 months	30	19%	77	33%
4 – 6 months	91	57%	120	52%
7 – 9 months	26	16%	26	11%
9 – 12 months	8	5%	8	4%
13 – 15 months	3	2%	1	-
16 – 18 months	1	.5%	1	-
19 – 21 months	-	-	-	-
22 – 24 months	1	.5%	-	-
Total Applications Issued	160	100%	233	100%
Average Days From Receipt Date to Issue Date	153		131	

Source: Based on data from AMCO tracking spreadsheets.

Five main aspects of the application process were found to delay or potentially delay license review, approval, and/or issuance.

1. **Application completeness and accuracy:** License requirements are complex, making the application process complicated and inherently subject to error. Further, the applications must be submitted manually. As such, the applications are not subject to online edits designed to help limit errors. Analysis of the 505 applications received during the audit period found applications were incomplete and/or inaccurate at a rate of 96 percent for new applications and 97 percent for transfer applications. Once determined

deficient, the applications are sent back to the applicants for correction. Returning applications added, on average, 20 days to AMCO's review process.

2. **AMCO staff review of applications:** The audit concluded that AMCO staff generally reviewed applications in a timely manner. Staff reviewed new applications within an average of 23 days from the date received and transfer applications within an average of 20 days from the date received. Due to the high rate of applications returned to applicants, new applications took an average of 43 days and transfer applications took an average of 40 days to be deemed complete by AMCO staff.
3. **Board review of applications:** Testing found AMCO staff generally scheduled applications for the earliest possible board meeting and the board generally decided whether to approve applications within the 90-day statutory deadline. New and transfer applications took an average of 45 and 44 days, respectively, to be reviewed by the board after applications were deemed complete.
4. **Submittal of compliance information by applicable entities:** Approval of 48 percent of new applications and 55 percent of transfer applications was delayed due to protest by a local governing body or due to waiting for receipt of compliance information (i.e., state fire marshal approval; building, zoning, or food safety permits; or notice from creditors). Delays associated with waiting for receipt of required information added an average of 88 days for new licenses and 35 days for transfer licenses.
5. **Issuance of licenses by AMCO staff:** The audit found that AMCO staff issued new and transfer licenses an average of 23 days and 28 days, respectively, after all outstanding requirements were met.

AMCO’s tracking of license applications was cumbersome and prone to error.

Based on the evidence obtained, the completeness and accuracy of initial applications, the receipt of compliance information, and the final issuance of licenses by AMCO staff present the greatest opportunities for gaining efficiencies in the license process. (See Recommendation 2)

As discussed in more detail in the Background Information section of this report, AMCO uses spreadsheets to manage its license process. Staff record receipt of an application in a spreadsheet, noting the received date and the name of the assigned staff. As the process progresses, staff update the tracking spreadsheet with the relevant dates such as the completed date, local governing body notice date, and board meeting date. All data must be manually entered into the spreadsheets.

Auditors identified data errors and/or omissions of relevant dates in 45 percent of entries for new applications and 19 percent of entries for transfer applications. Additional analysis was performed by auditors to identify the correct dates in order to perform the analyses discussed in the report. (See Recommendation 2)

The board and AMCO staff established an enforcement plan.

The prior 2017 sunset audit⁹ identified that AMCO’s enforcement section was operating without a formally established enforcement plan. Consequently, the enforcement section lacked guidance for prioritizing its limited resources, which increased the risk of not adequately protecting the public. In response to the prior audit, the board and AMCO staff worked to establish enforcement priorities for both alcoholic beverage and marijuana control, which were approved by the board in October 2018, but later determined to be insufficient by the board and AMCO management. Subsequently, the board and AMCO management created written policies and procedures for investigations and other enforcement activity, and established more detailed enforcement priorities in February 2021. The board and AMCO management expect the priorities will help

⁹ ACN 08-20099-17.

ensure the effective allocation of enforcement resources for both alcoholic beverage and marijuana control.

Enforcement activity increased during the audit period when compared to the prior audit. The 2017 sunset audit reported that AMCO's enforcement section issued 53 notices of violation from July 2014 through April 2017. During FY 18 and FY 19, a total of 284 notices of violation were issued. Enforcement activity greatly decreased during FY 20 through February 2021 due to the COVID-19 pandemic. Exhibit 6 summarizes enforcement activity for FY 18 through February 2021.

Preventing and reducing the sale and furnishing of alcoholic beverages to minors and underage persons is the board's top enforcement priority. AMCO management stated that conducting compliance checks is integral to achieving this goal; however, AMCO investigators stopped conducting compliance checks as of April 2015 due to the termination of federal grant funding. This audit noted no progress was made during the audit period to reinstate compliance checks.

As discussed in the Background Information section of this report, the board enforces limits on alcoholic beverages purchased from package stores and delivered to communities designated as restricted areas. The prior sunset audit found the board and AMCO staff had not maintained the list of restricted purchasers within the statewide database of written orders in accordance with regulation. This audit found that written procedures were created to ensure the database was updated, but the procedures were insufficient to ensure the necessary reports were received from the court system. (See Recommendation 3)

Deficiencies were noted over processing refunds to municipalities.

Biennial license fees are set in statute and amounts have not changed since the fees were instituted in 1980, aside from a statutory change to convert the fees from annual to biennial. Application and

Exhibit 6

Alcoholic Beverage Control Board Enforcement Activity FY 18 through February 28, 2021

	FY 18	FY 19	FY 20	July 2020 - February 2021
Notices of Violation	163	121	59	13
Advisory Notices	45	34	14	18
Inspections	395	515	292	59
Walkthroughs	211	294	307	149

Source: Compiled from Alaska Records Management System (ARMS) and AMCO tracking spreadsheets.

administrative fees are set in regulation. Fee amounts are listed in Appendices B (license fees) and C (administrative fees).

Statutes require that biennial licensing fees be refunded to the municipalities in which licensees operate.¹⁰ Refunds are processed on a semi-annual basis on the condition that local law enforcement actively enforce the laws relating to manufacture and sale of alcoholic beverages and report violations to the board. Regulations require municipalities report violations on a quarterly basis. The prior sunset audit found the licensing fees were refunded to municipalities even though violation reports were not filed. This audit found quarterly reports were submitted by municipalities; however, the reports were not reviewed by the board or AMCO staff. (See Recommendation 4) Additionally, the refund amounts calculated by AMCO staff were not separately reviewed for accuracy. (See Recommendation 5)

¹⁰ This requirement excludes wholesale license fees.

Board enforcement staff conducted investigations in a timely manner.

Based on the data in ARMS and AMCO's tracking spreadsheets, AMCO investigators issued 356 notices of violation and 111 advisory notices during the audit period. The audit tested a sample of 23 notices of violation, two advisory notices, and five complaints that did not result in a notice of violation or advisory notice. Testing found all were investigated timely with no unjustified periods of inactivity.

The audit also found that no board action was taken in response to any of the 23 notices of violations tested. These violations were commonly related to: lack of alcohol server education, licensees not reporting changes in ownership interest or officers, and pricing and marketing violations. According to the board chair, the violations were reviewed by the board and determined to be minor, quickly corrected by the licensee, and warranted no further action.

During the February 2019 board meeting, board members discussed that statutes did not appear to allow the board to impose civil fines for violations without an accusation under AS 04.11.510(c)¹¹ or if a licensee has been convicted of a violation of statutes, regulations, or local ordinances. The board decided to table the discussion of fines until pending legislation that substantially changed board statutes was passed or denied. According to the board chair, the board has begun drafting regulations to create a framework for imposing fines based on the severity of a violation.

The Department of Public Safety (DPS) terminated AMCO investigative staff access to enforcement information.

Although the board was organizationally relocated from DPS to DCCED during FY 13, investigative staff maintained access to DPS's records system (ARMS) and the Alaska Public Safety Information Network (APSIN) until November 2018. Access was maintained based on regulations that state DPS may grant criminal justice agencies direct access to criminal justice information.

In November 2018 DPS management decided that AMCO did not meet the definition of a criminal justice agency and terminated

¹¹ Board proceedings to suspend or revoke a license are required to be conducted in accordance with the Administrative Procedures Act.

AMCO investigative staff's direct access to both ARMS and APSIN. DPS management stated AMCO did not meet the definition of a criminal justice agency because AMCO's budget was not substantially allocated to criminal justice activity, as most of the enforcement activity over alcohol laws was regulatory in nature. Although direct access was terminated, AMCO was permitted to request ARMS and/or APSIN information as needed. Requests were evaluated by DPS staff on a case-by-case basis.

According to AMCO management, the removal of direct system access reduced AMCO's ability to perform thorough investigations, limited collaboration, and increased the safety risk for AMCO investigators. It also hindered the filing of criminal charges and the processing of arrests, criminal complaints, and citations. After access to ARMS and APSIN was removed, AMCO staff began tracking enforcement activity in spreadsheets, which proved cumbersome and inefficient.

According to AMCO's director, AMCO is in the process of implementing more robust policies and procedures over enforcement and records management, and is considering the purchase of a database to track regulatory enforcement activity. A new database is estimated to cost between \$50,000 and \$100,000. AMCO enforcement staff believe that direct access to criminal justice information will still be needed, even if a new database is purchased, in order to facilitate criminal investigations.

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FINDINGS AND RECOMMENDATIONS

The prior 2017 sunset audit made eight recommendations:

1. The authority to renew licenses should be limited to the Alcoholic Beverage Control Board (board).
2. The board should issue recreational site licenses in accordance with statutory requirements.
3. The board should issue beverage dispensary licenses in accordance with statutory requirements.
4. The board, Alcohol and Marijuana Control Office (AMCO) director, and enforcement supervisor should work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources.
5. The board and AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow-up action and investigated in a timely manner.
6. The board and AMCO director should develop written procedures for updating the statewide database with restricted purchasers.
7. The board and AMCO director should improve procedures to ensure municipalities report violations of alcoholic beverage laws.
8. The AMCO director should develop and implement procedures to ensure refunds to municipalities are appropriately reviewed.

Prior year Recommendation No. 1 regarding limiting the authority to renew licenses to the board was resolved. All 34 renewal licenses tested were approved by the board. Prior year Recommendation Nos. 2 and 3 regarding issuing licenses in accordance with statutory requirements were resolved through statutory changes that authorized certain beverage dispensary licenses and recreational

site licenses. Prior year Recommendation Nos. 4 and 5 regarding establishing an enforcement plan and implementing a process to monitor and track complaints were resolved. The audit found the board established enforcement priorities and written policies and procedures that materially addressed the finding. Further, AMCO staff implemented a process to track all complaints, even if complaints did not result in an inspection or investigation.

Prior year Recommendation Nos. 6 and 8 regarding implementing procedures for 1) updating the statewide database of written orders with restricted purchasers, and 2) reviewing refunds to municipalities, were not resolved and are reiterated as Recommendation Nos. 3 and 4 below.

Prior year Recommendation No. 7 regarding improving procedures to ensure municipalities report violations of alcoholic beverages was resolved. The audit noted the board implemented procedures to ensure municipalities submitted quarterly reports prior to issuing refunds. However, this audit found quarterly reports of violations were not reviewed by the board or AMCO staff. This deficiency is addressed in Recommendation 5 below.

In addition to reiterating three prior recommendations, the audit makes two new recommendations.

Recommendation No. 1: Testing a sample of 40 active licenses found the following deficiencies:

The Department of Commerce, Community, and Economic Development (DCCED) commissioner should ensure AMCO staff vacancies are filled in a timely manner and the AMCO director should implement written licensing procedures.

- The board did not make a decision within 90 days as required by statute for two applications (five percent). One was delayed two days and the other was delayed seven days.
- For five applications, the board made the decision within 90 days and all requirements were met, but the issuance of the licenses was delayed for several days. The delays ranged from 11 to 38 days.
- Notices to local governing bodies were not sent within 10 days as required by statute for four applications (10 percent). The delays ranged from two to 63 days. In one of the four applications, the notice was sent after the board decision was made, which delayed the application process by 63 days.

Alaska Statute 04.11.510 requires that, unless a legal action relating to the license, applicant, or premises to be licensed is pending, the board shall decide whether to grant or deny an application within 90 days of receipt of the application. However, the decision may not be made before the time allowed for protest under AS 04.11.480 has elapsed, unless waived by the municipality.

Alaska Statute 04.11.520 requires the board to transmit written notice to the local governing body within 10 days of receipt of an application from within (1) an established village, (2) an incorporated city, (3) an organized borough, or (4) a unified municipality, so that the local governing body may protest under AS 04.11.480.

The deficiencies were caused by human error. Further, AMCO staff stated that vacancies in the program coordinator, local government specialist, and two occupational licensing examiner positions negatively impacted licensing functions. Auditors also noted that AMCO lacked written procedures to guide the new and transfer application process. Delays in issuing licenses may negatively impact licensees' ability to operate.

We recommend the DCCED commissioner ensure AMCO staff vacancies are filled in a timely manner and the AMCO director implement written procedures to guide the licensing process.

Recommendation No. 2: The audit found several inefficiencies associated with the receipt, review, and issuance of license applications.

The board should significantly enhance or replace its licensing database and automate the application process where possible.

1. AMCO staff maintain several tracking spreadsheets along with master checklists to assist with the review of license applications. Maintaining the spreadsheets is time consuming and prone to error. Analysis of tracking sheets found data errors or omissions of relevant dates in 45 percent of entries related to new applications and 19 percent of entries for transfer applications.
2. FY 19 and FY 20 applications for new and transfer licenses were returned to the applicant for being incomplete and/or inaccurate at a rate of 96 percent for new applications and 97 percent for transfer applications. This extended the review process by an average of 20 days.
3. AMCO staff issued new and transfer licenses an average of 23 days and 28 days, respectively, after all outstanding requirements were met.
4. A backlog of renewal applications existed as of February 2021 and AMCO did not have the resources available to review the applications.

AMCO's existing licensing database is limited in the information it collects and does not store or easily display the license history, status of pending requirements, and relevant dates, creating the need for multiple tracking spreadsheets. License requirements are complex and the application process is manual, making the process inherently complicated, which increases the likelihood of incomplete or incorrect applications. Applicants submit hard copy applications, which are not subject to online edits designed

to limit errors. Further, extended vacancies limited staff resources and contributed to the backlog of renewal applications.

Per AS 04.06.090(a), the board shall control the manufacture, barter, possession, and sale of alcoholic beverages in the state.

Inefficiencies in the licensing process strain staff resources and increase the potential for delays, which negatively impacts licensed operations. Extended vacancies led the AMCO director to issue approximately 300 temporary licenses that allowed businesses to operate without verification that licensees met requirements, thereby increasing the risk to public safety.

To reduce the rate of incomplete or inaccurate applications and the need for additional tracking tools, we recommend the board significantly enhance or replace the alcohol licensing database and automate the application process where possible. As discussed in Recommendation No. 1, we also recommend the DCCED commissioner ensure AMCO staff vacancies are filled in a timely manner.

Recommendation No. 3: The board failed to maintain the statewide database of written orders according to statutes and regulations. Twenty-seven individuals convicted of AS 04.11.010 violations during the audit period were either not entered in the statewide database or entered, but not marked as restricted purchasers. Auditors found no indication that the individuals purchased alcohol after the conviction dates.

The board and AMCO director should strengthen procedures for entering restricted purchasers in the statewide database of written orders.

Regulation 3 AAC 304.645(l) states that:

The board will, in its discretion, maintain a list of persons who, under AS 04.16.200, are convicted after 10/24/87 of a violation of AS 04.11.010, and will, in its discretion, provide this list to package store licensees. A licensee who receives the list may not sell alcoholic beverages by written order to a person whose name appears on it until

the board gives written notice to the licensee that such sales are no longer prohibited.

The board's procedures were insufficient to ensure the necessary reports were received and that restricted purchasers were entered in the statewide database of written orders. Additionally, due to miscommunication and turnover of key agency staff, reports of convictions of AS 04.11.010 violations were not consistently provided by the court system. By not updating the statewide database with restricted purchasers, the board increases the risk that individuals who have been convicted of illegally selling alcoholic beverages are allowed to continue purchasing alcoholic beverages via written order, putting the public's health and safety at risk.

We recommend the board and AMCO director strengthen procedures for ensuring reports of violations are received from the court system and restricted purchasers are entered in the statewide database of written orders.

Recommendation No. 4:
The board and AMCO director should implement procedures to ensure municipalities receiving refunds of biennial license fees are actively enforcing alcoholic beverage laws.

The audit found neither the board nor AMCO staff were ensuring municipalities receiving refunds were actively enforcing alcoholic beverage control laws. Alaska Statute 04.11.610 requires biennial licensing fees to be refunded to municipalities, and states that if the officers of a municipality fail to actively enforce laws related to the manufacture and sale of alcoholic beverages in the state, the DCCED commissioner may deny the refund. Regulation 3 AAC 304.610 requires quarterly reports of violations be submitted by municipalities. The audit found the reports were not reviewed by the board or AMCO staff.

The board and AMCO do not have procedures for review and approval of quarterly reports submitted by municipalities and there is no clear policy on how quarterly reports will be used to ensure active enforcement of alcoholic beverage laws. AMCO staff also stated an extended vacancy of the local government specialist position contributed to the finding. By not reviewing quarterly

reports submitted by municipalities, AMCO staff were unable to determine whether municipalities actively enforced alcoholic beverage laws and may have inappropriately refunded license fees.

We recommend the board and AMCO director implement procedures to ensure municipalities receiving refunds of biennial license fees are actively enforcing alcoholic beverage laws.

Recommendation No. 5:

The AMCO director should improve procedures and fill vacancies in a timely manner to ensure refunds to municipalities are appropriately reviewed.

The audit found one AMCO employee was responsible for calculating the amounts to be refunded to municipalities and the calculation was not reviewed prior to processing the refund. Written procedures were insufficient to ensure a segregation of duties occurred, and that review and approval were documented. In addition, an extended vacancy in AMCO's administrative assistant position did not allow for adequate segregation of duties. During FY 20, \$788,700 in fees were refunded to municipalities.

Alaska Statute 04.11.610(a) requires the board to refund biennial license fees, excluding wholesale fees, collected within a municipality, to the municipality on a semi-annual basis. AMCO management is responsible for ensuring refunds are accurate and complete. By not having procedures that require a separate review, the risk that refunds are inaccurate is increased.

We recommend the AMCO director improve procedures and fill vacancies in a timely manner to ensure refunds to municipalities are appropriately reviewed.

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Alcoholic Beverage Control Board (board) to determine if there is a demonstrated public need for its continued existence. In accordance with a special request by the Legislative Budget and Audit Committee, we also conducted a special audit of the licensing application process.

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. Under AS 44.66.010(a)(1), the board will terminate on June 30, 2022, and will have one year from that date to conclude its administrative operations.

Objectives

The audit objectives were to:

1. Determine if the termination date of the board should be extended.
2. Determine if the board is operating in the public interest.
3. Determine the status of recommendations made in the prior sunset audit.
4. Identify and examine the time it takes the board to make application decisions.
5. Determine the cause of application decision delays and recommend improvements.

Scope

The assessment of board operations and performance was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board. We reviewed the board's activities from July 2017 through February 2021.

Methodology

During the course of our audit, we reviewed and evaluated the following:

- The prior sunset audit report (ACN 08-20099-17) to identify issues affecting the board and the prior sunset audit recommendations.
- Applicable statutes and regulations to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.
- Board meeting minutes to gain an understanding of board proceedings and activities, goals and objectives, the nature and extent of public input, and whether a quorum was maintained.
- The State's Online Public Notices System to verify that board meetings and regulatory changes were adequately public noticed.
- Various news related and other websites to identify complaints against the board, other board related concerns, or potential duplication of board activities.
- Public comments presented at board meetings to gain an understanding of concerns and to help evaluate the board's consideration of the public comments.
- Board licensing data for new and transfer applications received July 2018 through June 2020, related tracking spreadsheets, and licensing files to assess accuracy of tracking spreadsheets and calculate timeliness of application processing. The evaluation focused on new and transfer applications because of the potential economic impact of delays.
- State payroll system data to examine Alcohol and Marijuana Control Office (AMCO) staff vacancies.
- Internal controls over the licensing database and enforcement records management system to determine if controls were properly designed and implemented.

To identify and evaluate board activities, we conducted interviews with AMCO staff and board members. Specific issues of inquiry included board operations, license review and approval processes, regulations, duplication of effort, and complaints against the board.

During the course of the audit, the following samples were selected and tested:

- A random sample of 40 of 1,867 licenses active as of February 2021 were assessed for statutory and regulatory compliance. The sample size was selected based on low control risk, low/moderate inherent risk, and low/moderate audit risk. Results were not projected to the population.
- A random sample of 25 of 1,177 catering and special events permits applied for between July 2019 and February 2021 were assessed for statutory compliance. The sample size was selected based on low control risk, low inherent risk, and low/moderate audit risk. Results were not projected to the population.
- A random sample of 25 of 467 notices of violation and advisory notices issued from July 2017 through February 2021 were assessed for regulatory compliance. The sample size was selected based on low control risk, low/moderate inherent risk, and low/moderate audit risk. Results were not projected to the population.
- A random sample of five of 42 complaints that did not result in a notice of violation or advisory notice received between December 2018 and February 2021 were assessed for regulatory compliance. The sample size was selected based on low control risk, low/moderate inherent risk, and low/moderate audit risk. Results were not projected to the population.

Reports of AS 04.11.010 convictions were obtained from the Alaska Court System and compared to the list of purchasers in the statewide database of written orders to determine regulatory compliance.

Inquiries regarding board related complaints were made of the following organizations:

- Office of the Ombudsman;
- United States Equal Employment Opportunity Commission;
- Department of Administration's Division of Personnel and Labor Relations; and
- Governor's Office of Boards and Commissions.

APPENDICES

SUMMARY

Appendix A provides the sunset criteria used in developing the conclusion regarding whether the Alcoholic Beverage Control Board's (board) termination date should be extended

Appendix B provides a listing of board license and other fees for the period FY 18 through FY 21

Appendix C provides a listing of board application and other administrative fees for the period FY 18 through FY 21

Appendix D provides a flow chart of the board's license process

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APPENDIX A

Analysis of Public Need Criteria AS 44.66.050(c)

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

1. the extent to which the board or commission has operated in the public interest;
2. the extent to which the operation of the board or commission has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;
3. the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
4. the extent to which the board or commission 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;
5. the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
6. the efficiency with which public inquiries or complaints regarding the activities of the board or commission 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;
7. the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

APPENDIX A (Continued)

8. the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or commission to its own activities and the area of activity or interest;
9. the extent to which statutory, regulatory, budgetary, or other changes are necessary to enable the board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;
10. the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and
11. the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

APPENDIX B

Alcoholic Beverage Control Board License and Other Related Fee Types FY 18 through FY 21

License Type	Biennial Fee Amount
Beverage Dispensary	\$2,500
Brewery	1,000
Brewpub	500
Bottling Works	500
Club	1,200
Common Carrier – Vessel	1,000
Common Carrier – Community	2,000
Conditional Contractor’s Permit	1,200
Destination Resort	1,250
Distillery	1,000
Golf Course	400
Outdoor Recreation Lodge	1,250
Package Store	1,500
Pub	800
Recreational Site	800
Restaurant or Eating Place	600
Theatre	600
Wholesale – General	2,000
Wholesale – Malt Beverage and Wine	400
Winery	500
Other Fees	Fee Amount
Wholesalers Sales of Alcoholic Beverages	500 - 10,000
Wholesalers Sales of Malt Beverages and Wine	300 - 10,000
Wholesalers Suppliers	500 - 2,000
Retail Stock Sale License	100
Special Events Permit	50
Caterer’s Permit	50

Source: AS 04, except for theatre license fee, which is set in 3 AAC 304.695.

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APPENDIX C

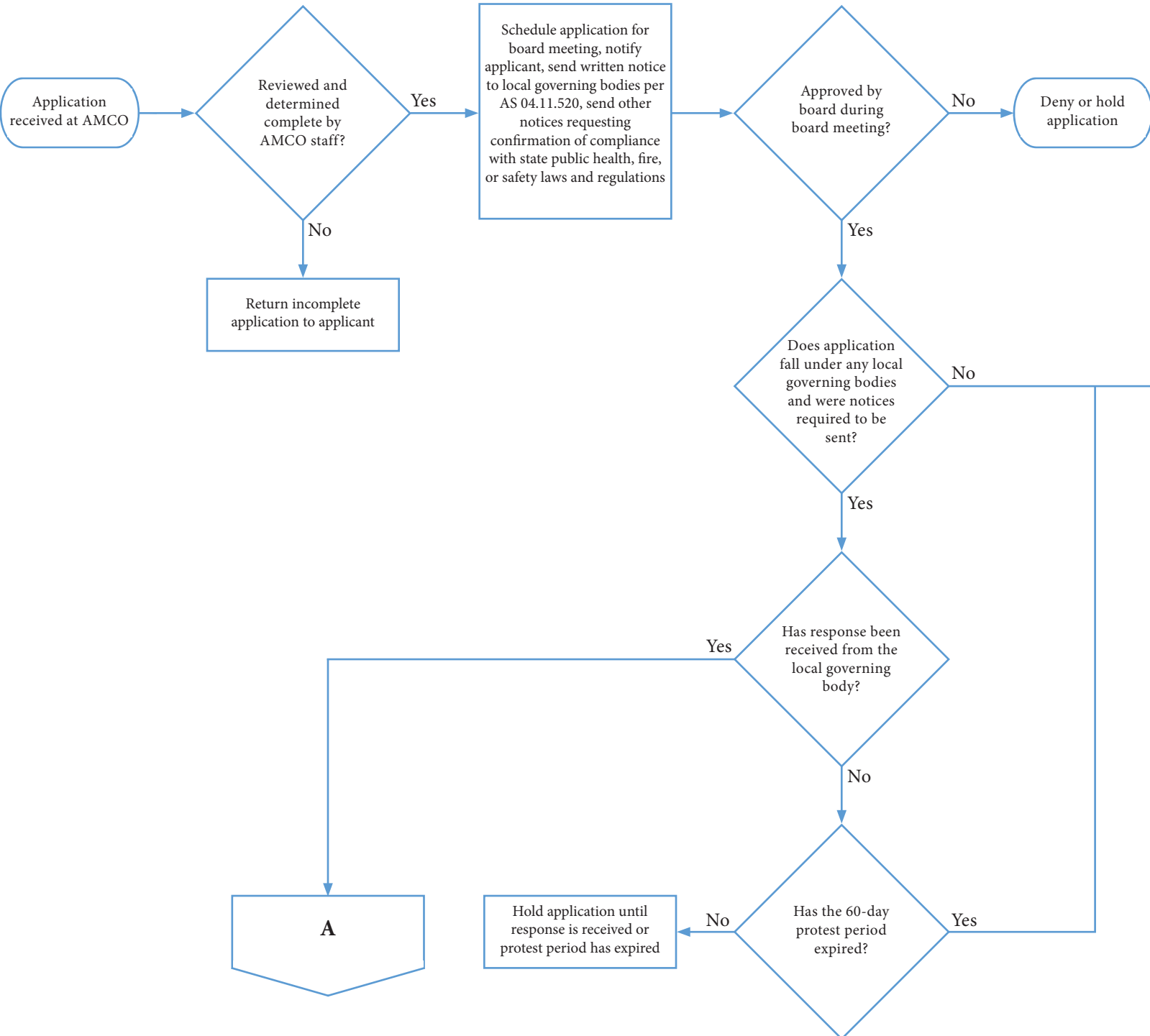
Alcoholic Beverage Control Board Application and Other Administrative Fees FY 18 through FY 21

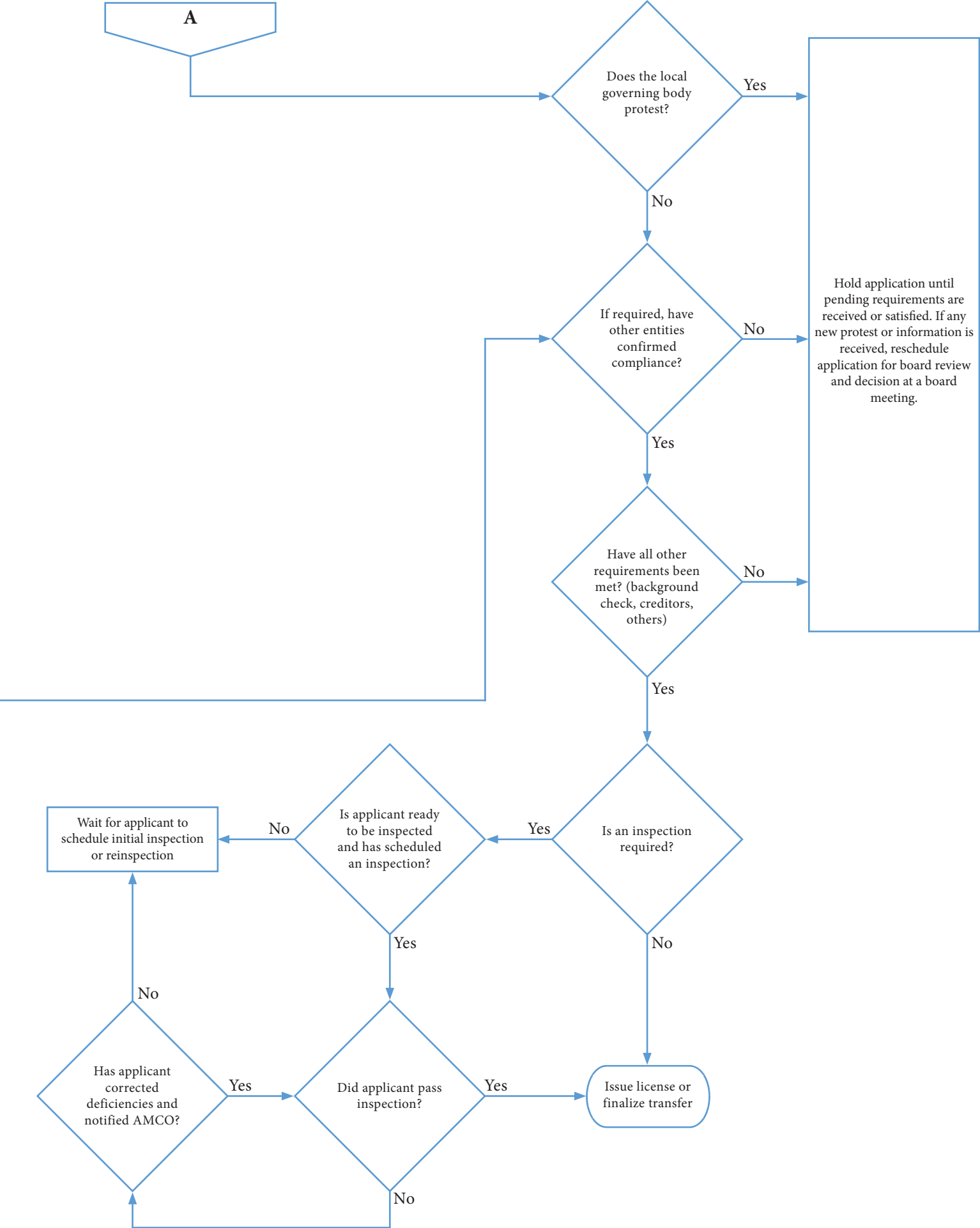
	FY 18	FY 19	FY 20 – FY 21
New Application	\$100	\$500	\$500
Transfer Application	100	500	500
Renewal Application	200	300	300
Fingerprint	47	48.25	48.25
Restaurant Designation	50	50	50
Business Name Change	250	250	250
License Premises Diagram Change	250	250	250
Seasonal Alternating Premises Request	-	250	250
Relocation of Premises	100	500	500
Reinstatement	-	1,000	1,000
Waiver Application	Varies	Varies	Varies
Waiver Late	1,000	1,000	1,000
Server Education Course Provider	-	-	800
Server Education Course Provider Renewal	-	-	250

Source: Division of Corporations, Business and Professional Licensing regulations, except for fingerprint fee, which is set by the Department of Public Safety.

APPENDIX D

Alcoholic Beverage Control Board License Application Process Flowchart





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Agency Response from the Department of Commerce, Community, and Economic Development



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community, and Economic Development

OFFICE OF THE COMMISSIONER
Anchorage Office

550 West Seventh Avenue, Suite 1535
Anchorage, Alaska 99501
Main: 907.269.8100
Fax: 907.269.8125

December 2, 2021

Kris Curtis, CPA, CISA
Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811

RECEIVED

DEC 02 2021

LEGISLATIVE AUDIT

Dear Ms. Curtis,

Based upon the Confidential Preliminary ABC Audit Sunset Review and Special Review of the Alcohol Beverage Control Board, the following is provided in response to the report recommendations.

AUDIT FINDINGS AND RECOMMENDATIONS

Recommendation No. 1:

The DCCED commissioner should ensure AMCO staff vacancies are filled in a timely manner, and the AMCO director should implement written licensing procedures

Response:

We concur with the audit recommendation and DCCED has already assisted in hiring all unfilled positions for the first time in several years.

Recommendation No. 2:

The board should significantly enhance or replace its licensing database and automate the application process where possible.

Response:

We concur with the audit recommendation and have begun the process of scoping such online systems as well as developing a needs assessment for such an automated database system including automating alcohol license renewals online.

Recommendation No. 3:

The board and the AMCO director should strengthen procedures for ensuring reports of violations are received from the court system and restricted purchasers are entered in the statewide database of written orders.

Response:

AMCO Enforcement Unit has already worked with the court system to receive all of the proper information forwarded to enforcement in a timely manner. Additionally, an AMCO procedure was created and instituted to ensure the proper information is being received from the court system and entered into the written order database.

Recommendation No. 4:

The board and the AMCO director should implement procedures to ensure municipalities receiving funds of biennial license fees are actively enforcing alcoholic beverage laws.

Response:

We concur with the audit recommendation and the newly hired Program Coordinator has begun a complete review of the current biennial license fee procedures and will be implementing a more robust and effective method of ensuring local law enforcement is actively enforcing the alcoholic beverage laws as required by law.

Recommendation No. 5:

The board and the AMCO director should improve procedures and fill vacancies in a timely manner to ensure refunds to municipalities are appropriately reviewed.

Response:

We concur with the recommendation that vacancies should be filled in a timely manner to ensure that refunds to municipalities are appropriately reviewed. At the time of this writing, the Alcoholic Beverage Control Office is, for the first time in many years, fully staffed and DCCED will continue to facilitate the hiring of any future positions, including those involved in the refunds of monies to these municipalities. Additionally, procedures are being developed to help the process of reviewing and processing these municipal refunds.

Summary

We appreciate the hard work of the Legislative Auditors. The audit staff has been professional, thorough, and they provided excellent communication throughout this process. We appreciate the opportunity to review and respond to the PRELIMINARY REPORT of Sunset Review & Special Review for the Alcoholic Beverage Control Board (ABC).

Sincerely,



Julie Anderson
Commissioner

Agency Response from the Alcoholic Beverage Control Board

November 30, 2021

Kris Curtis, CPA, CISA
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED
NOV 30 2021
LEGISLATIVE AUDIT

Dear Ms. Curtis,

As Alcoholic Beverage Control Board (Board) Chair and a licensed Certified Public Accountant (CPA) in the State of Alaska, I do not agree with the conclusion drawn by the Legislative Auditor in their report dated October 5, 2021. Specifically, I disagree with the overall recommendation that legislature reduce the statute-defined eight-year term of the Board.

As a licensed CPA with over twenty years of experience, I fail to see sufficient evidence presented by the Legislative Audit that warrants a reduction in the Board's term. Rather the proposed Auditor's recommendations are limited to areas of process improvement to improve efficiencies. There are eleven criteria to be analyzed to determine as to whether a board or commission has demonstrated a public need for its continued existence as defined in AS 44.66.050(c). None of the findings outlined in the Auditor's report raise to the level that any of the criteria are at risk of failing to be met.

As Board chair, I am concerned with the uncertainty and anxiety in the industry and the public who have come to rely on public participation in the licensing and regulatory process which have served the public interest for decades. An early sunset would jeopardize the public's trust and undermine their confidence in the public process. While both the Alcohol and Marijuana Control Office (AMCO) and I agree with the individual process recommendations, many of which are in process of being corrected or have already been corrected, none of them risk the mission of the Board in serving the public interest.

I would like to highlight two recurring items in the findings; the lack of timely hiring of staff and the lack of automated systems to support AMCO. I, nor AMCO, dispute these findings. Rather, the open positions identified have been filled and AMCO is working expeditiously to ensure all functions are being fulfilled. However, the ultimate authority for posting vacancies resides within the Department of Commerce, Community and Economic Development, of which the Board has no authority over and, as such, an early sunset would do nothing to ensure future vacancies are fulfilled. Secondly, the Board has already identified the lack of automated systems as an issue that slows (but does not stop) the operation of AMCO or the completion of the Board's mission. The Board has already directed the AMCO Director to perform a needs assessment and scope an information technology project for the implementation of automated application processing. Resources for this project may exceed the capacity or capability within AMCO and it is likely that the Board and AMCO will be seeking resources through other State agencies or legislative authorization. Sunsetting the Board will do nothing to advance either the operations of AMCO or the information technology project on this matter.

In summary the conclusion reached by the Auditor to reduce the statute-defined eight-year term of the Alcoholic Beverage Control Board, however well intentioned, is misguided. On the contrary, I recommend

the Legislature renew the Board for the full eight-year term as a vote of confidence and support for the future endeavors of the Board. A recommendation of providing additional support and resources to the Board/AMCO would be a more constructive and appropriate conclusion. The Board and AMCO welcomes future audits to affirm its progress toward these process improvements and correcting the minor deficiencies noted.

Respectfully,

A handwritten signature in blue ink, appearing to read "Dana Walukiewicz".

Dana Walukiewicz, CPA

Chair

Alcoholic Beverage Control Board

Legislative Auditor's Additional Comments

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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December 3, 2021

Members of the Legislative Budget
and Audit Committee

I have reviewed management's responses to this audit. Nothing contained in the responses causes me to revise or reconsider the report conclusions or recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor