

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 9, 2011

3:16 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Craig Johnson, Vice Chair
Representative Dan Saddler
Representative Paul Seaton
Representative Steve Thompson
Representative Lindsey Holmes
Representative Bob Miller

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 126

"An Act extending the termination dates of the Board of Nursing, the Board of Dental Examiners, the Board of Barbers and Hairdressers, the Regulatory Commission of Alaska, and the Alcoholic Beverage Control Board; and providing for an effective date."

- MOVED OUT OF COMMITTEE

HOUSE BILL NO. 125

"An Act moving the Alcoholic Beverage Control Board to the Department of Commerce, Community, and Economic Development and relating to duties of that department; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 126

SHORT TITLE: OMNIBUS BOARD EXTENSIONS

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

01/26/11	(H)	READ THE FIRST TIME - REFERRALS
01/26/11	(H)	L&C, FIN
02/09/11	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 125

SHORT TITLE: ALCOHOLIC BEVERAGE CONTROL BOARD

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

01/26/11 (H) READ THE FIRST TIME - REFERRALS
01/26/11 (H) L&C, FIN
02/09/11 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE MIKE HAWKER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as Chair of the LB&A committee, prime sponsor of HB 126 and HB 125 and answered questions during the discussion of the bill.

PAT DAVIDSON, Legislative Auditor

Division of Legislative Audit

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented auditor findings and answered questions on audit recommendations during the discussion of HB 126.

SHIRLEY GIFFORD, Director

Alcoholic Beverage Control Board (ABC Board)

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 125 and answered questions during the discussion of the bill.

ELLEN GANLEY, Public Member

Alcoholic Beverage Control Board (ABC Board)

Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition of HB 125.

JOHN LUCKING, Chief of Police;

President; Alaska Peace Officers Association (APOA)

Soldotna, Alaska

POSITION STATEMENT: Testified in opposition to HB 125.

KEITH MALLARD, Division Director

Alaska State Troopers

Department of Public Safety (DPS)

Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 125.

BRAD JOHNSON, Deputy Chief
Fairbanks Police Department;
Member, Alaska Association of Chiefs of Police (AACOP)
Fairbanks, Alaska
POSITION STATEMENT: Testified in opposition to HB 125.

DALE FOX, President and CEO
Alaska Cabaret, Hotel, Restaurant and Retailers Association
(CHARR)
Anchorage Alaska
POSITION STATEMENT: Testified in support of HB 125.

GARY SUPERMAN, Owner
Hunger Hut Bar, Motel, & Liquor Store
Nikiski, Alaska
POSITION STATEMENT: Testified during the discussion of HB 125.

CARMEN LUNDE, Director
Kodiak Cabaret, Hotel Restaurant and Retailers Association
(Kodiak CHARR)
Kodiak, Alaska
POSITION STATEMENT: Testified during the discussion of HB 125.

ACTION NARRATIVE

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CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:16 p.m. Representatives Olson, Thompson, Saddler, Holmes, and Miller were present at the call to order. Representatives Johnson and Seaton arrived as the meeting was in progress.

HB 126-OMNIBUS BOARD EXTENSIONS

[3:17:44 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 126, "An Act extending the termination dates of the Board of Nursing, the Board of Dental Examiners, the Board of Barbers and Hairdressers, the Regulatory Commission of Alaska, and the Alcoholic Beverage Control Board; and providing for an effective date."

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REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, stated that two bills originated in the Legislative Budget and Audit Committee (LB&A), and as Chair of the committee he is presenting the bills before this committee today. The first bill is a housekeeping matter. Many boards and commissions have sunset dates to allow the legislature to periodically consider whether programs are fulfilling their desired tasks and if it is appropriate for a specific board or commission to continue. Historically, the legislature has considered each board or commission individually. In response to Chair Olson, he agreed that this bill consolidates sunset audits into one omnibus board extension bill. He pointed out that legislators have historically separated reauthorization bills from policy bills and he cautioned the committee not to clutter HB 126 with policy changes.

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REPRESENTATIVE HAWKER explained the legislative auditor's function. The legislative auditor conducts administrative reviews of the management and operation of boards or commissions and provides a detailed report to the legislature through the Legislative Budget and Audit Committee (LB&A). The recommendations made in HB 126 reflect the recommendations made by the division via the legislative auditor, Pat Davidson. This bill would extend the following boards and commissions for eight years to June 30, 2019, as recommended by the legislative auditor: Board of Barbers and Hairdressers, the Board of Dental Examiners, the Board of Nursing, and the Regulatory Commission of Alaska. The legislative auditor also recommended the Alcoholic Beverage Control Board (ABC Board) be extended to June 30, 2015. Last year during a sunset audit review process of the ABC Board, the auditor detailed operational and administration issues for the ABC Board. The legislature extended the ABC Board for one year only to allow the ABC Board to make administrative management corrections. The legislative auditor has since reviewed the board's activities and has cleared the "to do" list from the original audit. This bill now would recommend the ABC Board be extended for an additional four years. He recapped that HB 126 reauthorizes agencies which have passed muster with the legislative auditor.

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REPRESENTATIVE HOLMES stated that she liked the new format for sunset reviews. She pointed out one discrepancy. The legislative auditor recommended the ABC Board be extended to

2014, but the bill would extend the ABC Board until June 30, 2015. She said she was unsure whether she was reviewing an old audit or if the most recent audit is in members' packets.

REPRESENTATIVE HAWKER agreed Representative Holmes has identified an anomaly in the ABC Board's audit. He explained that the original audit identified the ABC Board's problems but still recommended a four-year extension. However, the legislature decided only to extend the ABC Board for one year, tasked it with correcting any deficiencies, and the legislative auditor reported the board's progress in an update to the sunset audit. As the Chair of the LB&A Committee, he said he considered whether to extend the ABC Board for four years from this point forward or to use the auditor's updated review date as a starting point. He ultimately decided to select the extension date as four years from this point forward, he said.

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PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, said she was available to answer questions on any of the audits contained in HB 126.

REPRESENTATIVE HOLMES related that she noticed a number of concerns had been raised by the auditor. She asked for an update on the auditor's findings since the last legislative audit.

MS. DAVIDSON explained that in the FY 09 audit, which was during the last sunset review, the auditors made two recommendations to the ABC Board. The first recommendation was with respect to its enforcement policies. She related that the auditors wanted to see quantifiable and objective enforcement goals and for the board to communicate specific goals to its staff to carry out. The second recommendation contained "a bit of a laundry list" of administrative issues, she said. She reported that the administrative operations have been substantially addressed. She noted while the ABC Board has made some progress with respect to its enforcement issues, these issues were not substantially resolved. The auditors found a mix of issues in terms of establishing objective quantifiable enforcement goals. The auditors would like the public and legislature to be able to review the ABC Board's enforcement operations and be able to evaluate whether the enforcement goals were met.

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CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 126.

REPRESENTATIVE HAWKER, in response to Chair Olson, expressed his intent to limit any changes to HB 126 solely to address sunset provisions and not on policy matters. He acknowledged that members may have issues with those specific boards and commissions' policies. He urged members to address specific policy issues in separate legislation and not to make policy changes in HB 126, the omnibus bill.

REPRESENTATIVE JOHNSON moved to report HB 126 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 126 was reported from the House Labor and Commerce Standing Committee. The committee took an at-ease from 3:30 p.m. to 3:31 p.m.

HB 125-ALCOHOLIC BEVERAGE CONTROL BOARD

[3:31:15 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 125, "An Act moving the Alcoholic Beverage Control Board to the Department of Commerce, Community, and Economic Development and relating to duties of that department; and providing for an effective date."

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REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, stated he is the current Chair of the Legislative Budget and Audit (LB&A) Committee. The LB&A Committee sponsored HB 125 as a policy bill, which resulted from the LB&A Committee's work during the last legislature. He predicted the previous bill, HB 126, which would extend the ABC Board, will pass the legislature. However, some issues arose during the legislative audit process of the ABC Board, he said. During its one-year extension, the LB&A created a subcommittee to review and decide where the ABC Board should be domiciled in state government, which he said he thought of as one of the more contentious issues the LB&A Committee would consider this legislature. He provided a brief history of the ABC Board. He stated that the ABC Board was previously located in the Department of Revenue (DOR) since its primary function was viewed as a revenue collection function. He pointed out that alcohol taxes are one of the more significant revenue sources to the state. In 2003, at the request of the executive branch, the ABC Board was moved to

Department of Public Safety (DPS), where over time it is been viewed as an extension of the criminal law enforcement actions in the state. Over the course of a summer's worth of subcommittee hearings, the LB&A's subcommittee considered whether the DPS is the correct domicile based on the ABC Board's mission, he said. The committee considered whether the ABC Board's basic function should be as a law enforcement agency or if its function is more a function of the regulation of business and commerce, and if so, whether it should be housed in the Department of Commerce, Community, & Economic Development (DCCED). He remarked that agencies take on the character of their domicile. Thus, when the ABC Board was housed in the DOR, its focus was to collect revenue and to ensure alcohol taxes were paid. He offered his belief that perhaps the ABC Board's law enforcement activities were less emphasized during that time.

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REPRESENTATIVE HAWKER said that once the ABC Board was relocated to the Department of Public Safety (DPS), some people believe it has effectively become an investigation and prosecutorial activity of the state. Some also believe the ABC Board has lost sight of its primary mission as a regulator of a legitimate industry in the state. He reported the LB&A's subcommittee took testimony this past summer, reached a concurrence, and made recommendations to the LB&A. He referred to a one-page report from LB&A Committee in members packets. He emphasized that while the LB&A agrees the ABC Board needs to maintain its liaison with the law enforcement community to administer the criminal aspects of the alcohol business in the state, the hospitality industry is a legitimate and sanctioned industry in Alaska. He said it should first and foremost be part of the DCCED along with all other commerce regulating boards. He further stated the LB&A's subcommittee recommended that the industry would be best served in DCCED. He related that there were no objections by the LB&A Committee to bring forward this proposal for further legislative consideration.

REPRESENTATIVE HAWKER suggested this may be one of the most controversial bills that this committee will hear this year. Some people, including those who must contend with the ill effects of alcohol in our communities, possess a strong belief that the ABC Board's first and primary obligation is enforcement. They maintain that the ABC Board should focus on criminally related aspects. Additionally, he anticipated that the hospitality industry may view that all purveyors of alcohol

are being "cast as bad guys." Some purveyors may testify that the the ABC Board is being managed and operated by using a presumption of guilt. They may also view the industry as inherently evil, viewing every purveyor of alcohol as an inherent criminal. However, he maintained this industry is legally sanctioned by statute and is heavily regulated by the state. The "good guys," those parties who operate legitimately, want to be fairly treated and not be treated as inherently criminal parties, he stated. He said the committee will hear from both sides and will ultimately decide whether or not to move this proposal forward. He likened the process as similar to a court trial process. He said he hoped the committee will be able to point to sufficient arguments for both sides and urged members to bring HB 125 to the floor of the House for a vote.

CHAIR OLSON remarked that it will take time to hear from the parties and to take public input. He said this matter is an important one to consider.

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REPRESENTATIVE HAWKER, in closing, offered his belief that the health and social services and the law enforcement communities believe in an approach that is essentially a "cops, courts, and cages" approach. However, the hospitality industry is an industry that does not believe it is currently being well served by the ABC Board as it exists in the DPS. He commented that the industry further believes that the ABC Board has been overly zealous in its persecution of a legal industry. He acknowledged that he has frequently been viewed as "a go to guy" for law enforcement issues. Yet, he concluded that he is satisfied an overzealous approach has emerged with the ABC Board domiciled under the DPS. This industry should be able to ask questions of the board but cannot since asking for clarification on the law would be similar to a person walking into Alaska State Troopers (AST) office and admitting he/she just robbed a bank. He described growing tension within the industry since the ABC Board chooses to prosecute parties instead of offering them guidance on compliance with the state's alcohol laws.

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REPRESENTATIVE MILLER said he assumed that none of the ABC Board's laws governing administration or policies would be changed but HB 125 would merely shift the ABC Board's responsibility and jurisdiction to the DCCED.

REPRESENTATIVE HAWKER agreed. He clarified that under the bill, the ABC Board's domicile or home would be moved from DPS to DCCED. He suggested the main question is to identify the ABC Board's primary purpose and then decide whether the industry is best managed as an arm of DPS or as part of the DCCED. He reiterated that HB 125 does not make any changes in responsibilities for the sale or consumption of alcohol.

REPRESENTATIVE MILLER related he has received numerous calls advocating for each side. He described HB 125 as a short and simple bill.

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REPRESENTATIVE SADDLER asked whether a new division would be created in the DCCED under the bill and also asked for clarification on the overall structure.

REPRESENTATIVE HAWKER stated that HB 125 would move the ABC Board to the DCCED, but any changes to the DCCED's specific organization chart could better be described by the department. In further response to Representative Saddler, he said he was uncertain whether the ABC Board's physical location would change. He also acknowledged his concern over the fiscal notes. He remarked that the department's fiscal notes needed additional scrutiny and improvement.

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REPRESENTATIVE SADDLER said he had expected to see a decrement reflected in the DPS the fiscal note.

REPRESENTATIVE HAWKER agreed. He said he was disappointed in the lack of fiscal notes since HB 125 was introduced some time ago. He stated that some state agencies have not produced fiscal notes. He reiterated his concern about the DPS fiscal note.

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REPRESENTATIVE JOHNSON asked whether anything in HB 125 would prevent an enforcement officer from enforcing minor consumption laws, conducting "stings", or any other enforcement activities.

REPRESENTATIVE HAWKER answered absolutely not, noting that the LB&A's subcommittee report did not recommend any reduction in

enforcement responsibilities of the ABC Board or the DPS's support for such enforcement activities.

CHAIR OLSON reported that he has known the next witness, Shirley Gifford, for many years, noting she previously served as police chief in his community.

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SHIRLEY GIFFORD, Director, Alcoholic Beverage Control Board (ABC Board), highlighted her relevant work experience. She stated that she served on the ABC Board prior to being selected as its director. She previously owned a private training and consulting business, which has given her an understanding of the importance of succeeding in one's own business, she said. Additionally, she previously served as the chief of police for the Soldotna Police Department, as well as having served for 20 years with the Anchorage Police Department (APD), retiring as captain, she said. In 2003, the ABC Board was relocated from the DOR to DPS in order to place the ABC Board under an agency that could better oversee its alcohol and enforcement functions. She offered her belief that this was a good move. She spoke in opposition to HB 126. She detailed her service on other boards, including serving as a board member on the Strategic Prevention Framework State Incentive Grant (SPF SIG), the plan to reduce underage drinking, and the Alaska Strategic Highway Planning, with its primary emphasis on underage drinking. She reported that underage drinking has been a costly problem in the state for some time. She stressed the cost to the state is huge. In 2005, the cost associated with underage drinking was \$315.5 million. She offered her support for the ABC Board's compliance check program. She disagreed that the ABC Board is as broken as was portrayed by the LB&A committee's report. She surmised that the LB&A's committee likely heard from a small segment of the industry that is convinced the ABC Board is "too hard on them." The ABC Board has made tremendous improvements in its compliance check program and has met the audit recommendations, including developing written policy and procedures as well as an enforcement strategic plan.

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MS. GIFFORD said that the ABC Board has since identified measureable goals and is currently on track to meet them. She offered her belief that transferring responsibility to another agency would be costly, would result in inefficiencies, and would likely require substantial effort to physically move the

office. Last legislature, the ABC Board prepared written compliance check policy and procedures (P&P) in response to a request by a legislator. The P&P was submitted to the legislature and since she did not receive any feedback she took that to be positive. She noted the P&P incorporated changes suggested by the Cabaret Hotel Restaurant & Retailers Association (CHARR), including requiring random selection checks instead of performing compliance checks "bar by bar." She explained the selection process the investigators use. The ABC Board's computer program randomly selects up to 35 licensees in Alaska's larger communities for the investigator to check. In smaller communities such as Nome, the investigator would simply conduct as many compliance checks as possible. Once the establishment has been checked, another compliance check would not be performed on the licensee during the remainder of the year, unless the bar/liquor store failed the initial compliance check. In those instances, the establishment would be revisited to ensure that underage drinking was not happening, she stated. Some licensees hold several licenses, such as "Chilkoot Charlie's" in Anchorage. Some licensees complained that more than one compliance check was being conducted so the ABC Board pulled duplicate licenses from its system to help ensure that only one compliance check is performed per establishment each year. Not all licensees are checked each year, she noted. In 2010, the ABC Board only performed compliance checks on 46 percent of licensees, she reported.

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MS. GIFFORD asserted that the ABC Board's goal is to implement a fair and objective method for its compliance checks. She provided the ABC Board's goals for compliance checks, including its goal to check 75 percent of the licensees in Anchorage, 50 percent in Fairbanks and Juneau, and approximately 25 percent for any on-road and off-road establishments. The number of compliance checks for rural areas are less since fewer licensees are located in rural areas. Additionally, the investigator's travel is more costly to travel to rural areas, she said.

MS. GIFFORD related that investigators in Juneau and Fairbanks work with the Alaska State Troopers. Currently, the Juneau investigator has been working with the AST on the Aleutian Chain communities. By using the AST airplane when visiting rural Alaska communities, an investigator can cover over a dozen communities in a 13-hour shift. She remarked that some licensees commented they had not previously been subject to compliance checks. Recently the ABC Board's investigator

assisted the licensees in Tanana and McGrath with their paperwork and helped them comply with other requirements, such as signage. The investigator did not write any citations but provided training instead. When the ABC Board receives a complaint, an investigator is duty bound to investigate the complaint. She stressed that the ABC Board's investigators assist owners in complying with the alcohol laws every day.

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MS. GIFFORD asserted the ABC Board's philosophy and primary mission, is to assist owners and help applicants comply with liquor laws. She disagreed that its mission has been to create barriers and prevent issuance of liquor licenses. She highlighted beneficial changes the ABC board has made, including an assessment method to evaluate potential underage buyers. She used a panel of people to "assess" the underage buyers ages since it's important that underage buyers clearly appear to be underage. The ABC Board's Board of Director's group was comprised of five citizens, including three public members and two industry representatives. The panel tried to guess the ages of the eleven potential underage buyers and if anyone appeared to be of legal age, he/she was not used for "sting" operations. Sometimes underage buyers were used for other operations, such as for "shoulder taps," which are situations in which an underage person randomly asks someone to buy liquor for them, after telling the potential buyer that he/she is underage. If the person being solicited during a "shoulder tap" buys liquor for the underage person, the buyer would be cited.

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MS. GIFFORD added that people who purchase alcohol for underage teenagers often have lengthy criminal histories. She described other efforts the ABC Board has taken to improve its enforcement activities, such as separating out inspections from compliance checks in an effort to reduce the appearance of "trying to catch someone" who has passed their compliance check but has signage or other administrative issues. When an investigator observes signage or other issues during a compliance check, the investigator and area investigator would conduct a separate site check to help the owner correct any issues, she said. She reported that the ABC Board has four investigators and one enforcement unit supervisor to cover the entire state. Thus, the ABC Board relies on local police and the Alaska State Troopers (AST) to assist them in enforcing liquor laws under Title 4, she advised. Since license fees are returned to the

local police department, the ABC Board can request that the department not refund any license fees collected until the liquor laws are enforced. She related an incident in which it was necessary to remind a police chief to enforce the liquor laws or lose the grant monies.

MS. GIFFORD offered her belief the ABC Board's staff experiences excellent communications with police departments. The DPS also shares its proprietary information and allows the ABC Board's investigators to accompany AST on the DPS aircraft, which saves the ABC Board about \$10,000 per year in travel costs incurred. She offered his belief that the DPS charges other departments' personnel for travel costs.

MS. GIFFORD acknowledged some people have expressed dissatisfaction with compliance checks since no one likes getting cited, but the ABC Board has the responsibility to hold licensees accountable. She pointed out that frequently investigators issue a notice of violation without imposing any fine.

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REPRESENTATIVE JOHNSON recalled that in 2005, the cost for underage drinking in Alaska was \$315.5 million. He asked whether she thought the ABC Board's efforts to curb underage drinking were successful.

MS. GIFFORD answered that the figures were obtained from the Plan to Prevent Underage Drinking. In further response to Representative Johnson, she agreed that the cost is a huge cost to the state and she did not consider the cost of underage drinking as a success.

CHAIR OLSON clarified that the 2005 figures relate strictly to the costs associated with underage drinking.

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MS. GIFFORD outlined categories of problems associated with underage drinking, including youth violence, youth traffic crashes, high-risk sex ages 14-20, youth property crime, youth injury, poisonings and psychoses, fetal alcohol syndrome (FAS) among mothers ages 15 to 20, and youth alcohol treatment.

REPRESENTATIVE JOHNSON offered his belief that the state's enforcement efforts are not working.

MS. GIFFORD speculated that if the ABC Board were to "let up" on its enforcement efforts that the potential exists for the problem to escalate even more.

REPRESENTATIVE JOHNSON asked what would change besides reduced transportation costs, which the state currently absorbs through another department, for the ABC Board if it were relocated to DPS. The job responsibilities would be consistent, he remarked. He also asked what would cause the ABC Board to "let up."

MS. GIFFORD said she hoped the enforcement efforts would not "let up." She expressed concern that by relocating the ABC Board to the DCCED, the working relationship with the DPS would change. She stressed that the ABC Board has developed a close working relationship the AST and local police. She offered an example of cooperative work, noting she maintains a registration list of people not allowed to import or possess alcohol, while the AST investigates any suspected bootlegging. She expressed concern that changing the department's oversight could result in a loss of communication. She offered her belief that she also gains credibility by being housed with DPS. She recalled auditors questioned how she knew the AS alcohol statutes were being enforced and she answered that she knew the laws were being enforced because police departments have a duty to enforce laws. She was not certain whether the auditors would have accepted her answer if the ABC Board had been housed at DCCED. She recalled being invited to serve on an Alaska Crime Reporting Committee, which she felt was due to her affiliation with the DPS and the law enforcement community. "As much as people would like to say that nothing will change, I absolutely believe things will change," she said.

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REPRESENTATIVE SADDLER asked her to confirm whether license checks are randomly selected by a computer program and once checked that the licensee is aware that no additional compliance checks will occur for the remainder of the year.

MS. GIFFORD agreed, but noted one exception, such that in the event a complaint is filed that the ABC Board would take further action to investigate the complaint. In further response to Representative Saddler, she agreed the licensees are aware of the one compliance check per year.

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REPRESENTATIVE THOMPSON asked for clarification on communication changes, since the liquor laws and ABC Board's regulations would not be changed. He offered his belief that communication is pretty simple in our electronic world.

MS. GIFFORD recalled grappling with the fiscal impact since the ABC Board would need to get past the DPS's firewall in order to access information. She pointed out the DPS must protect people's names and backgrounds, which cannot be shared publically, but all of the ABC Board's work is public information. The ABC Board also uses the Alaska Public Information Network and she was unsure of how the transfer to DPS would affect access to confidential information.

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REPRESENTATIVE THOMPSON stated that having served as a mayor, he has personally observed compliance checks in Fairbanks, but has never observed the AST or local police involved with compliance officers.

MS. GIFFORD recalled during her tenure as the Soldotna Police Chief, prior to being hired by the ABC Board that the police department performed the compliance checks. She reiterated that the Juneau investigator works with the compliance officers on compliance checks. She indicated that two investigators are now armed, but prior to achieving that status the officers were accompanied by the city police or AST troopers. She noted that when officers were not available, the compliance officers often work alone. She remarked that the ABC Board investigators attend police department briefings and train at the police academies. She reiterated that four investigators cover the statewide work.

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REPRESENTATIVE SADDLER asked for clarification on the ABC Board's investigator training and certification, specifically as it relates specifically to investigators who carry weapons.

MS. GIFFORD answered that the investigators are bound by the AST's operating procedures manual. She stated that the investigators must qualify at the firing range annually, noting that those who carry weapons are those who have not been out of police work for longer than three years. She explained that one investigator previously served as a Juneau Police Department

(JPD) officer, and one transferred from the AST to the ABC Board. The ABC Board's investigators adhere to the same qualifications as an AST trooper, she said. In further response to Representative Saddler, she explained that it is not a requirement, but the ABC Board has adopted the Alaska Police Standards Council's requirements for qualification. Investigators who have not served within three years must attend a two-week police academy and those who have not actively served for ten years, must attend a full police academy, she said.

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REPRESENTATIVE SADDLER asked whether the division provides the investigators with weapons.

MS. GIFFORD answered yes. In further response to Representative Saddler, she responded that the ABC Board's investigators train at the range four times a year, and qualify once annually.

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REPRESENTATIVE MILLER asked whether statistics were available prior to 2003 that demonstrate the ABC Board functions more efficiently in one department over the other.

MS. GIFFORD answered no. She explained she revamped statistics since the compliance checks were previously compared to the number of licenses instead of to the number of checks conducted. She said she has reliable statistics for the past three years, but does not have prior statistics for the compliance program. She elaborated fees collected are directed to local police agencies to cover overtime costs, but currently grant funds to enforce underage drinking laws fund a fulltime investigator. She offered to further research the ABC Board statistics.

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REPRESENTATIVE MILLER asked her to review the basic primary enforcement activity for compliance checks when the ABC Board receives a complaint.

MS. GIFFORD responded that when a complaint is received, often from another licensee, she arranges for underage buyers to attempt to buy alcohol using their own identification. The underage buyers do not use fake identification nor does she ask the underage buyer to dress up to look older. The reason for the compliance check is to ensure that the licensee is not

selling to underage buyers. If an establishment sells to an underage buyer the investigator writes a summons. If the establishment refuses to sell to the ABC Board's underage buyer then the clerk or bartender will receive a "congratulation card". In further response to Representative Miller, she agreed that if the bartender or clerk sold to an underage person the ABC Board's investigator would cite the person selling liquor. She acknowledged that sometimes the barkeeper will call his/her manager but the investigator would not require he/she to do so since the board is not involved in the owner/manager disciplinary actions.

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REPRESENTATIVE MILLER asked for clarification of instances in which people are "carded" at the door. He assumed the person buying a drink would need to have identification checked again at bar.

MS. GIFFORD answered that if an establishment has a system to check identification at the door, the bartender does not normally recheck the client's identification unless he/she suspects the person buying alcohol is underage.

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REPRESENTATIVE SEATON asked for clarification, on whether the ABC Board would have access to public safety system if it was moved to the DCCED.

MS. GIFFORD said she is not aware that the DPS would allow other departments to use their system. In further response to Representative Seaton, she agreed to verify the policy.

4:25:09 PM

ELLEN GANLEY, Public Member, Alcoholic Beverage Control Board (ABC Board), stated that she serves as the Vice Chair of the ABC Board and previously served on the ABC board for over ten years. She explained that she was originally appointed due to her public health background. She asked to speak in opposition to HB 125, stating it would not be a good idea to move the ABC Board to DCCED. She asserted that DPS has been a good fit for the board. When she first started serving on the ABC board, it was housed in DOR and had a number of problems. When the ABC Board moved to DPS it seemed like a better fit above and beyond its basic licensing responsibilities she said. The ABC Board

relies heavily on local police and AST for enforcement of liquor laws. She further said that it has led to positive interaction between the board and DPS. She recalled at the last ABC Board meeting the new DPS Commissioner and AST Director attended in order to discuss common issues.

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MS. GANLEY said the cost to relocate, in terms of staff time and money, would result in a loss of focus in the ABC Board's role. She addressed compliance checks, stating that 98 to 99 percent of its licensees are good licensees and operate good businesses. She acknowledged that the industry has been unhappy about compliance checks, but stressed the importance of enforcement since alcohol abuse is Alaska's most pressing public health and public safety issue. She also recalled that early on the failure rate in Fairbanks for compliance checks was fairly high, ranging about 50 percent, which mean lots of underage people were being served in licensed premises. She surmised that serving minors was not due to maliciousness or for business reasons, but was simply because bartenders or servers were not checking licenses for proof of age. In recent years the ABC Board has seen rate of licensees passing compliance increase. She said people under 21 are finding it more difficult to buy alcohol in licensed premises, which she viewed as a good thing since it goes beyond DPS policy and the ABC Board's policy and translates to good public health policy. One of the cornerstones of public health is surveillance and control of disease, air, and water quality. She observed that once enforcement activities are effective and surveillance is reduced, that eventually the problems would resurface and escalate. In closing, she said that "she really would hate to see that happen."

4:30:28 PM

JOHN LUCKING, Chief of Police; President; Alaska Peace Officers Association (APOA), stated that the APOA represents over a thousand law enforcement officers, correctional officers, and probation officers in Alaska. The APOA furthers fraternizing among coworkers and provide training. He related that an APOA committee tracks legislation. The APOA's subcommittee recently met and is adamantly opposed to HB 125, which would move the ABC Board to the DCCED. He offered his belief that the move would harm the continuity of enforcement and would challenge the relationship between the ABC Board and other law enforcement agencies. He has served in Alaska as Police Chief for 12 years

and as an officer for over 26 years. During this time he has observed the ABC Board's operation under the DOR and the DPS.

CHIEF LUCKING offered his belief that the board has gained great credibility in the "eyes of law enforcement." The ABC Board has developed mutual trust, its staff participates in law enforcement training, and many of its employees have a background in law enforcement. The Soldotna Police Department partners with ABC Board investigators and work hand-in-hand on "shoulder taps." He related that he authorizes one of his officers to don plain clothes to assist the ABC Board investigator, which he said illustrates the level of trust between his agency and the ABC Board under Director Gifford and the DPS's Commissioner Masters. His agency's time, tools, resources, and assistance are also shared with the ABC Board while it operates under DPS. He characterized the relationship as a "two-way street." The ABC Board's investigators are invited to participate in the Soldotna police training because of the shared function and common goals, which is reciprocated. The ABC Board's investigators have also been "tapped" to instruct and advise law enforcement in Alaska, with respect to the statutes in AS 04.

CHIEF LUCKING remarked that voluntary compliance is much preferred to catching someone doing something wrong. He said that that the ABC Board could continue with the positive reputation under the DPS, which enhances recruitment of qualified people with good attitudes. He characterized the ABC Board's staff as confident and professional. He said, "We're happy with them." He related that the ABC Board's enforcement actions should have little effect on legitimate operators, but perhaps the [committee] is hearing from the vocal minority who have had past issues. He asserted that the ABC Board's enforcement brings accountability to violators, is a deterrent to potential violators, and represents an opportunity to address issues before problems result. He said, "I can tell you and show you laws and give you all kinds of numbers about how much police time in my community is invested because of alcohol."

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CHAIR OLSON acknowledged that the Soldotna Police Department conducts the compliance checks in Soldotna.

CHIEF LUCKING responded that his department partners with ABC Board to conduct compliance checks. He recalled a time in which

the department conducted compliance checks through grants. He said he much prefers the current situation.

4:36:37 PM

KEITH MALLARD, Division Director, Alaska State Troopers (AST), Department of Public Safety (DPS), speaking from his prior position as the Commander; Alaska Bureau of Alcohol & Drug Enforcement (ABADE), said that he has enjoyed and counted on the relationship to enforce bootlegging regulations in Western Alaska.

CHAIR OLSON expressed his interest in hearing from the law enforcement community and advised that the bill will have another public hearing.

4:38:36 PM

BRAD JOHNSON, Deputy Chief, Fairbanks Police Department; Member, Alaska Association of Chiefs of Police (AACOP), explained that the AACOP represents nearly every local, state, and federal law enforcement and corrections agency in Alaska. He referred to a letter in members' packets, and read a portion of it, as follows:

Our Board of Directors has reviewed HB 125's potential impact on public safety. Our membership is in opposition to moving the Alcoholic Beverage Control Board from under the Department of Public Safety and placing them under the Department of Commerce, Community and Economic Development. We request that you oppose this legislation and stop it from further consideration within the House of Representatives.

CHIEF JOHNSON advised that AACOP feels this proposal is driven by the alcohol industry which seeks to lessen the impact of effective law enforcement on their activities. In our communities we work closely with members of the alcohol service industry and appreciate that the majority of them make every effort to comply with regulation and law. Unfortunately, a few have been less conscientious in these efforts and, as a result, have been subject to legal action in the past. We suspect that this latter group is largely behind this effort to weaken the enforcement activities of the ABC Board by moving it to an administrative division of the state government.

CHIEF JOHNSON related that public safety officers and executives recognize the significant contribution the ABC Board makes to the effort of reducing and preventing underage drinking when alcohol continues to be purchased directly from licensed premises by underage persons. Of all alcoholic beverage control agencies across the nation the majority are either under public safety or are independent departments or commissions.

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CHIEF JOHNSON continued by reading:

Municipalities must enforce Title 4 laws in order to obtain the refunds of license fees in their municipalities. The ABC Board, as part of DPS, is actively participating in a joint effort to improve local law enforcement's ability to report their enforcement activity and document their efforts. He said the ABC Board relies on local police and state troopers in the enforcement of Title 4 and 13 AAC regulations. With only four investigators to handle all inspections, compliance checks, shoulder taps, and investigations that arise out of violations, the ABC Board depends on other law enforcement agencies for enforcement. Although one could say this should not change, it would. The structure has provided for good communications and recognition that the ABC Board is an important part of public safety. The credibility of the ABC Board investigators comes with being employees of DPS.

CHIEF JOHNSON concluded by reading:

For the safety of our communities and the continued, uninterrupted, collaboration between the Alaska Alcoholic Beverage Control Board and our respective law enforcement agencies, we would appreciate your support in assuring this bill does not pass. Thank you for your consideration.

[4:42:32 PM](#)

DALE FOX, President and CEO, Alaska Cabaret, Hotel Restaurant and Retailers Association (CHARR), thanked the Legislative Budget and Audit Committee (LB&A) for spending countless hours this summer on this issue. The LB&A concluded that moving the ABC Board to the DCCED was a "smart move." He asked to address

two issues some of his opponents have raised. One is how to address licensees as it relates to underage drinking, and whether this proposed move would impact enforcement. He pointed out underage drinking poses challenges for the industry and the ABC Board, including how to educate and communicate with over 20,000 industry employees. He said that education combined with enforcement is the answer. A few educational activities developed by the industry include alcohol server training for everyone involved in the service and sale of alcohol. Alaska is only one of six states that has 100 percent alcohol server training. He recommended "born on" calendars and stickers to assist servers in doing the math to determine a buyer's age and to use identification flip cards and point of sale materials in multiple languages, which he asserted all work. A survey conducted by the substance abuse and mental health services administration showed that Alaska retailers are the best in nation in refusing underage minors. He agreed that Alaska has an underage drinking problem but that it does not stem from retailers. Even though Alaska's retailers are among the best in the nation, the industry wants to work with the state on improvements and to take advantage of new opportunities to help licensees to become even better by using educational tools.

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MR. FOX asserted that the ABC Board and AST's primary interest has been in issuing citations but he has not seen any evidence of any interest in efforts to educate or communicate. He said that CHARR has approached the ABC Board with its ideas but has not received any response to any suggestions. He further said the industry believes that the DCCED would provide business friendly educational tools to help the 20,000 industry members do an even better job. He suggested the agency consider conducting seminars to assist licensees understand the complex AS 04, and to develop multi-lingual tools to help thousands of industry employees and licensees who use English as a second language. Additionally, the department could work with CHARR in distributing existing and effective tools such as the "Born On" calendars, and could identify new tools and areas in which licensees and their employees need assistance. Alaska retailers are the best in nation in refusing service to minors but "we want to do better," he said. He concluded that the most effective way to accomplish this goal is through education. He offered his belief that by working with the DCCED the industry could perform even better.

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MR. FOX then switched gears to "enforcement" efforts. He reported that for over 40 years the DOR administered the ABC Board. He attested that throughout those years substantial cooperation existed between the ABC Board, the AST, and local police. This proposed move would not impact enforcement in any way. He said the LB&A considered that issue in-depth and concluded, quoting from Representative Hawker's sponsor statement, "HB 125 does not restrict or change the enforcement responsibilities of the board or the Department of Public Safety." Additionally, he commented that the ABC Board's top three positions are occupied by two former police chiefs and a former AST trooper. Thus, it is "not even conceivable that enforcement will be diminished under this administration," he said. Further, the grants for compliance checks do not allow the ABC Board to spend funds for other projects so he predicted that stings will continue at a robust rate. He recapped the ABC Board's history under DOR, reiterating that enforcement would continue under the proposed move. He further offered his belief that the ABC Board and DPS have not been open to education and training, which he deemed as a critical component to reduce underage drinking. He further said the industry believes that the DCCED, who specialize in helping businesses, will be more open to education and training.

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GARY SUPERMAN, Owner, Hunger Hut Bar, Motel, & Liquor Store, said that as an owner that he resents the idea the industry is a criminal element. He related a scenario in which an AST trooper entered his premises just before closing. The bar held three patrons, including a taxi cab driver and two other customers. The AST trooper alerted the bartender that the bar was being watched, that she would be held liable and would be arrested for anything that happened. He pointed out that this was "right out of the blue." He surmised the AST trooper had no reason to come in since no one reported any problem. He said, "To me it underscores a, I think, a kind of harassment element that a lot of us folks are having to deal with today and I resent it." I'm not against enforcement. I think a lot of the arguments that have been put forward here by some of the law enforcement community are specious at best if the committee looks at the net effect of this legislation." He reiterated that he is not against enforcement. He related that most of the industry members he knows are active in their communities. He offered that he served 12 years on the Kenai-Peninsula Borough Assembly. He remarked that he even "floated a ballot proposition" to

initiate a sheriff's department about five years ago, which helps confirm that he is not against law enforcement. He concluded that an unhealthy symbiotic relationship has emerged between licensees and the ABC Board. He disagreed that the ABC Board is working well. He briefly discussed changes in societal attitudes towards alcohol, and then expressed his interest in a fair hearing on the enforcement issues.

4:53:49 PM

CARMEN LUNDE, Director, Kodiak Cabaret, Hotel Restaurant and Retailers Association (Kodiak CHARR), stated that she represented Kodiak CHARR's 26 licensees. She related she has served in the hospitality industry for more than 40 years, as a waitress, bartender, management, and as a bar owner. She said she has successfully worked with the ABC Board, the police department, and AST. However, she said that since the ABC Board has moved to DPS, "we don't feel we've had that successful working relationship." She recalled the history of the ABC Board when it was under the DOR and said she believes it operates better under an agency whose primary goal is not enforcement, but whose goal is to help reduce problems, such as the drunk driving, underage drinking, and other issues that need to be solved. She said she thought that moving the ABC Board to DCCED would create a better atmosphere "all around." The majority of the ABC Board's work is administrative, such as processing license renewals and fielding questions on state regulations and laws. The police could still be called on to enforce compliance checks in licensed premises. She also said, "We are hard-working taxpaying businessmen and women not criminals and feel the ABC Board belongs under the Department of Commerce, Community, and Economic Development." She related a scenario highlighting a "sting" operation in Kodiak, during which an employee was cited, after checking a patron's identification twice, although the employee "still read it wrong." She clarified did not wish to make an excuse for the bartender. However, the officer who cited the bartender came into the bar and said, "We are going to slam this place and we're going to hang you out to dry." She expressed her outrage at this incident and further stated that it is not the first time this type of activity has happened in Kodiak.

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REPRESENTATIVE JOHNSON recalled previous testimony that suggested this proposal was being brought up by small number of owners who are trying to "skirt" the system. He asked whether

she thought this proposal was being brought forth by a small number of owners or if it is being forwarded by a "small group of miscreants."

MS. LUNDE answered that she believed the impetus was universal. She said that almost everyone she has discussed this with is unhappy about the situation. She said, "In Kodiak, for these 26 licenses - I do know that they are all in agreement."

[HB 125 was held over.]

[4:58:10 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:58 p.m.