

HOUSE FINANCE COMMITTEE  
February 20, 2018  
1:35 p.m.

1:35:39 PM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:35 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair  
Representative Paul Seaton, Co-Chair  
Representative Les Gara, Vice-Chair  
Representative Jason Grenn  
Representative David Guttenberg  
Representative Scott Kawasaki  
Representative Dan Ortiz  
Representative Lance Pruitt  
Representative Steve Thompson  
Representative Cathy Tilton  
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Erika McConnell, Director, Alcohol and Marijuana Control Office; Hannah Lager, Budget Analyst III, Division Of Administrative Services, Department of Commerce, Community and Economic Development; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Sara Chambers, Acting Director, Alcohol and Marijuana Control Office, Department of Commerce, Community and Economic Development; Janie McCullough, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development; Representative Adam Wool, Sponsor; Laura Stidolph, Staff, Representative Adam Wool.

PRESENT VIA TELECONFERENCE

Debbie Cary, self, Ninilchik; Nancy Trump, Latitude 62 Lodge, Matanuska Susitna Borough; Allen Choy, Al's Alaskan Inn, Anchorage; Pete Hanson, Alaska CHARR, Anchorage;

SUMMARY

HB 273 EXTEND: MARIJUANA CONTROL BOARD

HB 273 was HEARD and HELD in committee for further consideration.

HB 299 EXTEND: ALCOHOLIC BEVERAGE CONTROL BOARD

HB 273 was HEARD and HELD in committee for further consideration.

HB 301 ALCOHOL LIC.: BEV DISPENSARY/RESTAURANT

HB 301 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the day.

#hb273

HOUSE BILL NO. 273

"An Act extending the termination date of the Marijuana Control Board; and providing for an effective date."

[1:37:16 PM](#)

ERIKA MCCONNELL, DIRECTOR, ALCOHOL AND MARIJUANA CONTROL OFFICE, introduced the PowerPoint presentation: "Alcohol and Marijuana Control Office." She turned to Slide 2: "Agency and Board Structure:"

Alcohol and Marijuana Control Office

- Alcoholic Beverage Control Board
- Marijuana Control Board

The Alcohol and Marijuana Control Office serves both the Alcoholic Beverage Control Board and the Marijuana Control Board. The boards were two separate entities.

Ms. McConnell reviewed slide 3: "Marijuana Control Board Accomplishments":

- In nine months, developed and adopted the regulatory structure for marijuana licensure through a robust public process
- Between being constituted in July 2015 and present, met over 24 times, including in each judicial district each year as required by statute
- Between June 2016 and present, approved 278 license applications, denied 8 applications, and revoked 2 licenses
- Opened 45 regulations projects, of which 8 are in effect, and an additional 11 are adopted

Representative Ortiz asked about slide 3. He referenced the third bullet point and asked how the application approval process worked. Ms. McConnell responded that on occasion the board tabled an application that was deficient or incorrectly done. The applicant was given an opportunity to correctly complete the application and once approved was included in the 278 number. She estimated that between 6 and 12 approved applications had been temporarily tabled. Representative Ortiz asked whether there were currently any applications in an indeterminate state. She recollected that one or two applications were tabled during the last board meeting.

[1:41:32 PM](#)

Representative Tilton asked for a general idea of how many applications were considered in one board meeting. Ms. McConnell replied that the board reviewed 20 to 30 applications in one meeting. Representative Tilton asked how many applications were currently pending for the next meeting. Ms. McConnell answered that the application process went through certain phases. Once the applications were reviewed and deemed complete by staff they were reviewed at the next board meeting. She was aware of 62 applications awaiting board review but was uncertain how many were in the initial phase.

Representative Kawasaki had questions regarding the licensing portion. He referred to a sunset review from July 2016. The audit mentioned 122 issued licenses. He wondered whether approximately 150 licenses were issued since the audit. Ms. McConnell answered in the affirmative.

Representative Kawasaki asked if each type of licenses took a different amount of time to review. Ms. McConnell replied that each license application was "extensive" and certain license types took a significant amount of time to review. She relayed that product manufacturers licenses had to obtain approval for each product they produced. One licensee had 91 products that needed approval, so the staff had to review each one for compliance with the regulations. Representative Kawasaki asked about an average wait time from the time the applicant submitted the application until it was reviewed by the board. He shared that he heard from potential licensees waiting for the regulatory approval process. He remarked that more license examiners were not yet hired, and the license application process was backed up. He wanted to better understand where the delays were to help expedite the process.

[1:46:12 PM](#)

Ms. McConnell referred to a Flow Chart from February 2017 from the control office (copy on file) and explained that the entire process took approximately 6 to 7 months. She elucidated that the primary reason for the lengthy process was staff turnover. As of November 2017, the office only had three license examiners and were granted two more positions in FY 2018 that were hired after November 2017. However, the office had received 950 alcohol renewal applications and the new staff was limited to processing the renewals. Recently, one of the three examiners resigned. The office attempted to keep the application process moving forward. Additionally, the board was very aware of the need to keep the process moving and scheduled an extra meeting to accommodate the review of applicants. The office was arduously working to hire and train examiners.

Representative Kawasaki asked how Alcohol and Marijuana Control Office (AMCO) decided what the examiners focused on between alcohol and marijuana. Ms. McConnell replied that ideally every examiner would be able to handle both types of applications. However, examiners relayed challenges when switching between processing for both substances. The office tended to allow specialization. She determined that the best structure was two examiners assigned to alcohol, two examiners assigned for marijuana, and one that floated between the two depending on marijuana license renewal or alcohol license renewal periods.

1:49:36 PM

Representative Kawasaki asked about what the legislature could do to ease the process. Ms. McConnell was not sure there was anything currently necessary. The staff should be adequately trained, and the backlog reduced in the time it would take to hire and train new staff.

Representative Grenn complimented Ms. McConnell and felt that AMCO had accomplished a lot in a short time period. He inquired about sensitive business information that was required by applicants. He asked whether the board acted to protect the information or change the process. Ms. McConnell responded that several break-ins had occurred at various marijuana facilities. There was a suspicion with one burglary that occurred in December 2017, that the thieves accessed the floor plans from the application proposal. In response, AMCO took two steps to mitigate the problem. One action revised the application form and eliminated the requirement to show the location of security cameras and devices on the floor plan. The second step was that once an application was considered by the board the floor plan diagram was removed from the website. The application was included online for the public to provide input during the application process.

Representative Ortiz asked whether the staff recommended approval or denial after the initial reviewing process. Ms. McConnell responded that the staff completed a cover memo that highlighted dates and included opportunities to raise issues. The staff did not engage in the approval or denial process but might urge the board to take a particular look at something specific in an application. Representative Ortiz asked whether there was a "commonality" in board rejections. Ms. McConnell answered in the negative.

Representative Tilton asked whether the staff spent a significant portion of time reviewing initial applications and requesting more or corrected information from the applicants. She wondered whether the licensing process could be streamlined in any way. Ms. McConnell indicated the staff had not seen a "perfect" application when initially submitted. When staff discovered errors a list of what was needed was sent to the applicant. The office recently revised its forms, resulting from what was learned and experienced through the application process to date. She recommended that applicants should listen to or attend

board meetings prior to submitting their application and felt that the applicants had a certain level of responsibility for a correct application.

[1:56:22 PM](#)

Vice-Chair Gara pointed out that the cost of labor or commodities did not change from 2019 to 2023 according to the fiscal note. He wondered whether the board would increase license fees as wages and costs increased. Ms. McConnell replied that she was not certain of future needs and therefore left the numbers the same in the out years considering the board's authority to alter fees as necessary.

Co-Chair Foster asked members to hold their questions until the end of the presentation.

Ms. McConnell turned to slide 4: "Alcohol and Marijuana Control Office: Current Organization." She explained that the organizational structure included 3 sections: Enforcement, Administration, and Licensing and Education. The enforcement section included one Special Investigator, five Special Investigators, and one Criminal Justice Technician based in Anchorage, two of the special investigators were based in Fairbanks and one in Juneau. The licensing and education section included a Local Government Specialist that performed community outreach for both alcohol and marijuana programs that was added in FY 17. The remaining positions were comprised of Occupational Licensing Examiners and one administrative assistant.

Ms. McConnell continued to slide 5: "Marijuana Regulation History":

- November 2014: Voter initiative to regulate marijuana like alcohol passes
- April 2015: HB123 establishes the Marijuana Control Board (Sec. 2 Ch. 4 SLA 2015, primarily changes AS 17.38)
- February 2016: Marijuana Control Board establishes regulations, including fees for marijuana businesses (enacted as 3 AAC 306)

- February 2016: Marijuana licensing begins (applications are accepted)
- July 2016: Commercial marijuana operations begin
- October 2016: First retail marijuana store opens
- June 2017: First renewal period for all marijuana licenses

[1:59:52 PM](#)

Ms. McConnell read from slide 6: "Marijuana Budget History":

- November 2014: Voter initiative to regulate marijuana like alcohol passes
- Spring 2015: UGF funding appropriated for FY2015 and FY2016 for program implementation (\$2,360.1 UGF, supplemental multi-year appropriation for FY2015-FY2016)
- Spring 2016: UGF and GFPR funding appropriated for FY2017 for continued program operations (\$1,470.7 UGF, \$100.0 GFPR) Component retitled from Alcoholic Beverage Control Board (ABCB) to Alcohol and Marijuana Control Office (AMCO)
- Spring 2017: UGF and GFPR funding appropriated for FY2018 (\$1,052.5 UGF, \$756.6 GFPR)  
Intent language in the budget regarding marijuana fees
- Spring 2018: UGF and GFPR funding requested for FY2019 (\$532.8 UGF, \$1,282.6 GFPR)  
HB273 introduced to extend the Marijuana Control Board  
HB299 introduced to extend the Alcoholic Beverage Control Board

Ms. McConnell reported that AMCO expected to be fully supported by program receipts and carry forward funds by FY 2020.

Ms. McConnell read from slide 7: "Marijuana Fees":

- License and application fees are set by the Marijuana Control Board in regulation (3 AAC 320)
- Fees were last set in February 2016
- Annual fees for marijuana licenses are \$1,000 for limited cultivation, concentrate manufacturing, or testing licenses, and \$5,000 for retail, unlimited cultivation, and product manufacturing licenses
- Application fees are \$1,000 for new and transfer applications and \$600 for renewal applications
- Half of each application fee is transferred from AMCO to the appropriate local government
  - This is different than alcohol licensing revenue transfers, which are transferred from the Department of Revenue's tax
- collections to the appropriate local government
- Intent language in the FY2017 budget
- The board will likely revisit fees in FY2019 or FY2020

Ms. McConnell advanced to slide 8: "Alcohol Fees":

- License fees are set by statute for all license types in statute; licenses created by regulation have license fees set by regulation
- Application fees are set by regulation
- Application fees were raised for the first time in at least 20 years, to take effect 7/1/18
- Biennial fees for alcohol licenses range from \$400 (golf course license; wholesale-malt beverage and wine license) to \$2,500 (beverage dispensary license)
- Application fees are \$100 for new and transfer applications and \$200 for renewal applications; these are increased to \$500 for new and transfer applications and \$300 for renewal applications, beginning 7/1/18
- License fees are transferred to the appropriate local government from the Department of Revenue's tax collections upon showing of local enforcement of applicable laws

[2:04:55 PM](#)

Ms. McConnell highlighted the intent language on slide 9: "2017 Legislative Intent Language":

Development, Alcohol and Marijuana Control Office

Operating Budget (CCS HB 256)

It is the intent of the legislature that the Department of Commerce, Community and Economic Development, Alcohol and Marijuana Control Office, set marijuana application and licensing fees to cover the cost of regulation and recover unrestricted general fund appropriations made in prior fiscal years while the program was being established.

Ms. McConnell moved to slide 10: "AMCO Budget History and Projection." She highlighted that in both FY 2016 and FY 2017 expenditures were less than revenues and some funds were returned to the general fund (GF) for alcohol operations.

[2:05:43 PM](#)

Ms. McConnell indicated that slide 11 "Alcohol and Marijuana Control Office: Current Organization" was a duplicate slide from earlier in the presentation. She turned to slide 12: "Alcohol and Marijuana Control Office: Organization to Support One Regulated Substance." She offered that slide 12 was the same duplicate denoting the positions that would be eliminated if one of the boards were not extended. She detailed that three special investigators and the criminal justice technician would be eliminated from the enforcement section, two occupational licensing examiners and one supervisor from the licensing and education section, and the administrative assistant from the director's office would all be eliminated.

Representative Kawasaki cited the fee structure on slide 10. He asked why license fees for alcohol were set by statute and the marijuana licensing fees were set by regulation. Ms. McConnell was unable to answer the question regarding alcohol licensing. She explained that the marijuana statutes were initially adopted from the voter's initiative and were limited. Some of the statutes were further developed by the legislature in 2016. Many of the rules relating to the marijuana program were in regulation unlike alcohol, where most were in statute. Representative Kawasaki asked whether the alcohol program had the same rules when setting fees. Ms. McConnell explained that the alcohol program was required to be self-supporting like the

marijuana program. Representative Kawasaki asked if the alcohol fee structure was in statute. Ms. McConnell was uncertain and would follow up. Representative Kawasaki reported that the marijuana program was required to repay the initial general fund expenditures. He asked how repayment would be accomplished through the fee structure. Ms. McConnell replied that essentially the office had one year of data with all the licenses renewing. However, she was uncertain how the licensure would settle out; how many licenses would remain viable and supported by the public. She needed a few more years of data to be able to project expenses and revenues and set fees that would recover the funding. Representative Kawasaki asked if the board would set the fees to meet the goals and requirements of the repayment mandate. Ms. McConnell responded in the affirmative.

[2:09:58 PM](#)

Representative Wilson asked whether the Department of Commerce, Community and Economic Development (DCCED) was planning to submit a new fiscal note that reported the \$1.5 million in GF expense that would eventually be repaid to the general fund. Ms. McConnell explained that because the office was still requesting GF to support the program. The office was proposing to delay repayment until the program was self-sufficient.

[2:11:21 PM](#)

Representative Wilson suggested a current fee adjustment in anticipation of repayment might be necessary. She reiterated that the fiscal note did not reflect the GF obligation. She wanted the board to become self-sufficient sooner rather than later. Representative Wilson inquired about the exorbitant cost of an alcohol permit. Ms. McConnell responded that alcohol licenses were capped based on population. She explained that certain types of alcohol licenses; beverage dispensary licenses (bar licenses) and package store licenses were limited by population. The situation created a secondary market for the licenses and was a private transaction between two individuals; the money was not part of the licensing program. Representative Wilson wondered whether the board tracked active licenses and licenses that were not being utilized. Ms. McConnell indicated that minimum operation requirements were established that mandated operating a certain number of

hours each year or a waiver was necessary. The board only issued a limited number of waivers via regulation. The licenses could not be hoarded.

[2:15:38 PM](#)

Vice-Chair Gara asked how the boards attempted to be cost neutral through its fee structure. Ms. McConnell replied that for the alcohol program the refund to the local government came from taxes and did not affect the board's budget. She elaborated that the marijuana program collected 2 fees; a licensing fee and an application fee. The license fee was higher than the application fee. The licensure fees were retained entirely, which could be adjusted to help the program become self-sufficient. Vice-Chair Gara asked for clarification. He inquired about remittances to local governments. Ms. McConnell clarified that on the alcohol side, local government assessed and collected taxes and was a function of the Department of Revenue (DOR). She clarified that on the marijuana side the money came from the application fees and half of the amount collected was refunded to the local government. The state retained the other half of the fees. Vice-Chair Gara referenced the same issue as the inquiry made by Representative Grenn regarding floor schematics as part of the marijuana licensure. Ms. McConnell reiterated that the marijuana application was placed online for the benefit of the public and the regulation deeming application documents public records was set in statute. She reminded that the licensees premise was part of the application but once the board ruled on an application AMCO removed the diagram online and was only made available via a public records request. Vice-Chair Gara asked why a floor plan had to be posted. Ms. McConnell replied that the internet was the easiest way to provide access to the public and the regulations provided for a thorough public process that included viewing the entire application.

[2:19:53 PM](#)

Representative Ortiz asked whether the use of marijuana on site was not allowed anywhere in the state. Ms. McConnell answered that the prohibition for onsite use covered the entire state. Representative Ortiz asked about the reasoning behind the on-site consumption ban and if the board considered the revenues gained through elimination of the prohibition. Ms. McConnell answered in the negative.

She related that the provision in statute contemplated onsite consumption as part of a retail outlet but was subject to development of the regulations. The board embarked on a regulation development project in February 2016 that was open to public comment and voted against adopting the regulations. In March 2017, the board reopened a new regulatory project on onsite consumption that was in progress. Representative Ortiz asked if the number of alcohol licenses was capped. Ms. McConnell responded in the affirmative. Representative Ortiz questioned whether the marijuana licenses would be capped. Ms. McConnell responded that she was uncertain whether a limit would ever be established.

Representative Thompson cautioned that a bill [SB 63 Regulation of Smoking - Adopted 5/12/2018] that prohibited smoking in public buildings was moving through the legislature. He asked how a smoking prohibition would be affected by adoption of onsite marijuana consumption. Ms. McConnell understood that the bill contained a "carve out" provision that allowed for marijuana consumption in a stand-alone marijuana retail store. However, smoking marijuana in a marijuana store that was not "discrete" would be prohibited. She reminded committee members that other methods of marijuana consumption existed and might be universally legal in marijuana retail stores. Representative Thompson asked about common walls and the exclusion. Ms. McConnell understood that the retail store was supposed to be an entirely separate and standalone building.

[2:24:17 PM](#)

Representative Ortiz asked how often the board met to review licenses. Ms. McConnell responded that once an application was deemed complete the board had 90 days to offer a ruling. She added that the board met approximately every two and one-half months. Representative Ortiz asked whether the board could meet more often to clear a backlog of applications. Ms. McConnell observed that currently the backlog was produced at the staff level and she was not sure if adding board meetings was an effective way to address a backlog if the applications were not ready for board review. The board typically still met if the number of applications was lower than what was usually addressed in one meeting.

[2:26:30 PM](#)

AT EASE

[2:27:53 PM](#)

RECONVENED

Vice-Chair Gara noted that the committee had heard public testimony on HB 273.

HB 273 was HEARD and HELD in committee for further consideration.

#hb299

HOUSE BILL NO. 299

"An Act extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

[2:28:48 PM](#)

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, referenced the audit report pertaining to the Alcoholic Beverage Control Board (ABC) dated November 17, 2017 [Sunset Review Audit Control Number 08-20099-17] (copy on file). She read the report conclusions:

In all areas except licensing, the audit found the board was operating in the public's interest. Meetings were conducted effectively, investigations were processed timely, and the board developed and adopted regulations necessary to implement statutes. The audit concluded the board should improve its procedures for issuing renewals, recreational site licenses, and beverage dispensary licenses that encourage tourism. Testing found these licenses were not consistently issued in accordance with statutes. Additionally, operational improvements are needed in enforcing laws, monitoring board-related local law enforcement activity, and processing refunds to municipalities. In accordance with AS 44.66.010(a)(1), the board is scheduled to terminate on June 30, 2018. We recommend the legislature extend the board's termination date to June 30, 2022

Ms. Curtis cited page 8 of the audit and reported further on the conclusions. She announced the boards "enforcement

efforts had declined, and operational improvements were needed." She read the following:

The board, through AMCO investigators, has historically conducted compliance checks where investigators employ underage individuals who attempt to purchase alcoholic beverages. Licensees who fail a compliance check receive criminal summons or citations. According to management, the federal grant funding for this program was terminated at the end of 2012, and the board received supplemental funds to keep the program going through June 2014. AMCO's enforcement section continued to conduct compliance checks funded by program receipts until April 2015. Although there is no statutory or regulatory requirement to conduct compliance checks, AMCO management reported it is an integral part of the enforcement of alcoholic beverage laws and is evaluating alternative means for providing the enforcement through shared services with other agencies. The audit noted the board and AMCO management have not established a written enforcement plan to direct its limited enforcement resources. (Recommendation 4) For example, the board has not formally established how often licensed premises should be inspected. Furthermore, the control office does not monitor and track all complaints to ensure complaints are assessed for follow up action and investigated in a timely manner. (Recommendation 5)

Ms. Curtis turned to page 9 and read:

As discussed in the Background Information, for communities designated as a restricted area for controlling the availability of alcoholic beverages, the board enforces limits on alcoholic beverages purchased from package stores. However, the audit found the board and control office staff have not maintained the list of restricted purchasers within the statewide database of written orders in accordance with regulation, potentially allowing persons convicted of illegally selling alcoholic beverages to continue purchasing alcohol via written order. (Recommendation 6)

Ms. Curtis indicated that the audit contained 8 recommendations for improvements that began on page 12.

2:30:47 PM

Vice-Chair Gara handed Co-Chair Foster the gavel.

Ms. Curtis continued to provide details about the audit report. She addressed the first recommendation. "The authority to renew licenses should be limited to the board." She read the following from page 12:

Per AS 04.11.070, only the board may issue, renew, transfer, relocate, suspend, or revoke a license under AS 04. Alaska Statute 04.06.080 states that notwithstanding AS 04.11.070, the board may delegate authority to the director to temporarily grant or deny the issuance, renewal, or transfer of licenses and permits. In a past board meeting, the board voted to delegate its authority to renew licenses to the director under the incorrect understanding that such delegation was legal. The AMCO director, in turn, assigned the function to license examiners.

Ms. Curtis highlighted the second recommendation: "The board should issue recreational site licenses in accordance with statutory requirements." She reported the following findings:

Ten of 29 recreational site licenses active during the audit period were judgmentally selected for testing. All 10 did not meet the statutory definition of a recreational site... This same finding was reported in the prior 2014 sunset audit. Alaska Statute 04.11.210(c) defines recreational sites as locations where baseball games, car races, hockey games, dog sled racing events, or curling matches are regularly held during a season. The 10 noncompliant licensees noted above included travel tour companies, bowling alleys, an art council, a pool hall, movie theater, and a spa...

Review of board meeting minutes revealed that board members understood these businesses did not meet the definition of a recreational site license yet believed it to be in the public interest to issue them. Furthermore, board members anticipated the criteria for recreational site licenses would be addressed in a future rewrite of AS 04.06. The issuance of these

licenses expanded the number of establishments licensed to sell alcohol over the number allowed by statute.

Ms. Curtis summarized recommendation 3: "The board should issue beverage dispensary licenses in accordance with statutory requirements." She read:

In a sample of 169 of 126 beverage dispensary licenses issued to encourage tourism, the audit found five licenses were transferred and six were renewed despite not meeting statutory requirements. Alaska Statute 04.11.400(d) states the board may approve the issuance or transfer of ownership of a beverage dispensary license without regard to statutory population limits if it appears that the issuance or transfer will encourage tourism. Statutes provide for the minimum number of rental rooms that must be met by a business to encourage the tourist trade. Alaska Statute 04.11.330(a)(4) states the renewal of a license shall be denied if the board finds the issuance of an existing license under AS 04.11.400(d) has not encouraged the tourist trade. The board believed it was appropriate to approve the licenses, as the original licenses were issued before June 1985;10 however, there was no statutory provision to "grandfather" the licenses. The issuance of the licenses expanded the number of establishments licensed to sell alcohol over the number allowed by statute.

Ms. Curtis reviewed Recommendation 4: "The board, AMCO director, and enforcement supervisor should work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources." She noted that the same recommendation along with recommendation 5 were included in the Marijuana Control Board audit. She moved to Recommendation 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." Ms. Curtis underlined Recommendation 6: "The board and AMCO director should develop written procedures for updating the statewide database with restricted purchasers." She cited the Background Information section of the audit and explained that the section described the Statewide Database of Written Orders. She explained that the database was used to

control and monitor the sale of alcohol to restricted areas of the state. Furthermore, regulation 3 AAC 304.645 requires the board to maintain a list of persons convicted of a violation of AS 04.11.0103 [illegal sale or manufacture of alcohol] and provide the listing of these restricted purchasers to package store licensees. Package store licensees were prohibited from selling alcoholic beverages to a person who is identified as a restricted purchaser in the statewide database. She noted that restricted purchasers were not entered in the statewide database, and reports of convictions were not routinely forwarded to the office from the Court System.

Ms. Curtis pointed to Recommendation 7: "The board and AMCO director should improve procedures to ensure municipalities report violations of alcoholic beverage laws." She reported that municipalities must report the information as a condition to receive half of the biannual license fees. The audit discovered that only four of 40 locations submitted reports in FY 17 regarding enforcement efforts by municipalities, yet the fees were routinely funded.

[2:36:28 PM](#)

She summarized Recommendation 8: "The AMCO director should develop and implement procedures to ensure refunds to municipalities are appropriately reviewed." She indicated that the audit found one employee in the control office was responsible for calculating the amounts to be refunded to municipalities, and the calculation was not reviewed prior to processing the refund. By not having procedures that require a separate review, the risk that refunds were inaccurate was increased.

Ms. Curtis highlighted the Agency Response from the Office of the Governor on page 27, of the audit report. She relayed that the administration agreed that the board sunset should be extended. She pointed out that the department's response was found on page 29. She indicated that the agency concurred with all the audit's finding except Recommendation 1. The commissioner [Mike Navarre] believed that an alternative interpretation of statute existed but agreed to move forward with corrective action. She mentioned that the board's response was found on page 33. The board concurred with all recommendations except Recommendation 3 that related to issuing beverage dispensary licenses to encourage tourism. The board chair

felt that grandfathering the licenses issued before June 1985 was appropriate. In response to the board's conclusions regarding recommendation 3, the division of audit wrote a letter found on page 35, that reaffirmed the audit's conclusion and recommendation. She noted that the board chair provided no legal basis for his disagreement.

[2:38:26 PM](#)

Representative Wilson asked if the last audit was performed in 2014. Ms. Curtis answered in the affirmative. Representative Wilson thought the audit had several recommendations that were very serious. She asked when a board "could finally get shut down" due to repeatedly ignoring findings and recommendations. Ms. Curtis qualified her earlier statement. She revealed that the audit originally granted the board a conditional 6-year extension that was reduced to 3 years if the marijuana initiative passed. She interpreted Representative Wilson's question to mean how bad findings would have to be to reduce the extension to one year. She specified that a bad audit would never receive less than a two-year extension due to the time it took to perform an audit. She referred to the list of "License Count by Type" on page 7. She noted that there were only 27 recreational site licenses out of a total of 1,800 licenses. She indicated that "materiality" was factored into the audit conclusions. The issues regarding enforcement plans and complaint tracking was a symptom of the two boards lack of resources, sharing staff, and defining their organizational structure. She wanted to give at least 4 years to allow time to establish a working structure between the two boards and allow the Marijuana Control Board to become functional. She was very concerned about the decrease in enforcement activities and how the issue factored into the public's interest. Representative Wilson responded that if there was not enough money for enforcement then the fees needed to be adjusted. She related that the lack of enforcement was her largest concern. She wondered whether money was the issue.

[2:42:59 PM](#)

Representative Kawasaki contended that the audit was not "clean" and wanted the bill held over. He repeated some of the findings. He commented that in Recommendation 3 the auditor sampled 16 of 126 beverage dispensary licenses and discovered that 11 did not meet statutory requirements. In

Recommendation 1, 36 out of 40 licenses were renewed by AMCO license examiners without board approval, contrary to statute. All 10 of 10 recreational sites tested in Recommendation 2 did not meet statutory definition. He believed the audit was "bad." He wondered whether the issues were related to AMCO and the consolidation of the functions between both boards. He discerned that merging two boards under one administrative organization was problematic. He questioned how AMCO was functioning. Ms. Curtis responded that she did not routinely hear that AMCO was "the cause of findings."

Vice-Chair Gara apologized for not allowing the sponsor to present his bill before Ms. Curtis testified.

[2:45:32 PM](#)

LAURA STIDOLPH, STAFF, REPRESENTATIVE ADAM WOOL, thought that the members had already heard a significant amount about how the ABC Board functioned. She reiterated some of the findings. She related that the sponsor felt the ABC Board served an important function in public safety and appreciated the support of the committee.

Vice-Chair Gara mentioned the testimony that the marijuana board set its license fees for marijuana through regulation and the ABC board fees were set through statute. He mentioned a change in the ABC board's fees and asked whether the fees were changing.

REPRESENTATIVE ADAM WOOL, SPONSOR, remarked that renewal fees remained the same and acknowledged that other fees were increasing but did not have access to the information.

Representative Pruitt opined that there were 2 policy calls beyond an extension. He asked why the director was not a member of the board and what regulation the board was annulling. Representative Wool responded to his question as to why the director was no longer able to cast a tie-breaking vote nor a voting member. The related statute had been repealed, but the regulation remained. He wanted regulations to remain consistent with statute. He indicated that the board hired the director and he thought the director's tie-breaking vote was a conflict of interest. He deferred to Ms. Stidolph to answer his second question.

Ms. Stidolph cited the Administrative Code, AAC 304.025 "Conduct of Board Meetings" Section C and read the following:

For the purposes of AS.04.06060 the whole membership is all persons appointed in serving as members of the board if necessary the director shall cast a tiebreaking vote with consent of the board executed at the beginning of the meeting.

Ms. Stidolph identified the regulation as the one that was annulled.

[2:50:44 PM](#)

Representative Guttenberg asked for Representative Wool's perspective on the audit based on his own personal experience from the industries' perspective. Representative Wool remarked that he agreed with the staff's handling of the renewal process due to the high volume of renewals. He had been satisfied with the answer from the board chairman and director regarding the issue. Overall, even though there were administrative issues with the board and AMCO, he believed the entities were working through the initial growth stage of the new organizational structure. He thought it was a heavy lift to combine the two boards and previously shared some of Representative Kawasaki's concerns but believed that things were leveling out.

^PUBLIC TESTIMONY

[2:53:04 PM](#)

Co-Chair Foster OPENED Public Testimony.

Co-Chair Foster CLOSED Public Testimony.

[2:53:34 PM](#)

AT EASE

[2:53:58 PM](#)

RECONVENED

Representative Wool had an additional response to Representative Guttenberg's question. He referred to the questions regarding enforcement and whether the board had adequate resources to carry out the function properly. He

surmised that considering its limited resources the board should prioritize enforcement of more serious violations.

Representative Wilson declared that the board had the authority to raise fees. She was concerned that ABC was not enforcing serious violations like underage drinking. She asked whether he discussed the matter with the board. She wondered what it would take to change the fees to maintain sufficient staff to carry out adequate enforcement. Representative Wool replied that he did not engage in discussions over the issue and was uncertain how much fees needed to increase. He related his personal experience paying licensing fees and would not advocate for the amount to increase. He knew that some of the fees were increasing and was uncertain whether the increases were sufficient to provide adequate enforcement. Representative Wilson knew that licensees would not want fees increased. She imagined that a budget would be proposed by the board that enabled them to carry out its statutory duties and generate the fees from the bottom line. She wanted to know how much would be needed to comply and fix the concerns. She requested budgetary information and reiterated her concern over lack of enforcement. Representative Wool understood her request.

[2:58:29 PM](#)

Representative Guttenberg ascertained that currently the board's resources were spread across both boards causing the loss of priorities by the ABC. He guessed that the problem was created by combing the two boards since the ABC was self-sustaining when it operated as a single entity. As a license holder, he wondered whether Representative Wool thought things were in a state of flux until the marijuana board's costs were determined and if ABC was "suffering" under the combined organization and newness of the marijuana board. Representative Wool had not heard any concerns from the alcohol industry consistent with Representative Guttenberg's supposition. He referred to "sting operations" to determine whether underage youth was being served alcohol. He understood that a large federal grant previously supported sting operations and had been eliminated, which affected the frequency of current sting operations. He did not feel that his industry lacked proper enforcement and oversight and believed the industry "had done a good job" carrying out enforcement. He was uncertain whether the limited resources were due to the inception of

the marijuana board. He related that most ABC revenues collected were from license renewals and that marijuana licenses were new and there were more revenue streams for its board. He suggested that an examination of whether less revenue from some of the ABC fees could be directed from municipalities and more redirected to the state. He believed that the issue of limited resources should not fall directly on the alcohol industry to raise fees.

[3:03:22 PM](#)

Co-Chair Seaton referred to the analysis on page 2 of the fiscal note that stated the license fee were mostly set in statute. He wondered whether the issue was related to the statutory fee structure and if he thought it was necessary for a fee structure change in statute. Representative Wool deferred to the AMCO director for the answer.

Ms. McConnell reported that the fiscal note was almost identical to that of HB 273. She reiterated that 8 positions would be eliminated if one board was not reauthorized and noted that the positions were detailed in the fiscal note analysis as well as the portion of travel, services and commodities that would not be expended. She reported that the ABC was fully supported through license and application fees and if the board was not extended the revenue loss would total of roughly \$1.6 million. Co-Chair Seaton inquired whether "it was a characteristic of the board that it did not set the fees to actually fund the enforcement by the department." Ms. McConnell clarified that the license fees for alcohol were set mostly by statute and the application fees were set by regulation. She was uncertain of when the last statutory fee increase occurred. She explained that ABC recently increased its application fees for FY 2019. She listed the fee increases from \$200 to \$300 totaling \$570 thousand for 1,900 applications. She informed the committee that SB 76 (Alcoholic Beverage Control; Alcohol Reg) was a "re-write of Title 4" statutes that included a reexamining of alcohol license fees, but she was uncertain whether the fees increased. Prior to the inclusion of the marijuana board, ABC had 5 enforcement officers that had "clear" priorities. Currently, AMCO had 8 enforcement officers. She shared Representative Wilson's concerns about enforcement and agreed with the audit's findings on the need to establish priorities on how resources would be distributed. She thought 8 enforcement officers based on the number of

licenses in the state might be inadequate but deferred to the legislature to make the determination. She commented that marijuana licenses were generally on the road system due to challenges related to transporting the substance that was still illegal on the federal level. The alcohol licenses were much more distributed around the state including many rural areas and travel costs related to enforcement was higher. She indicated that the matters she just mentioned were the types of issues needed to be worked out in terms of setting priorities as directed by the audit.

[3:10:42 PM](#)

Co-Chair Seaton asked whether the extra \$570,000 in increased revenue was sufficient enough to fulfill the recommendations listed in the audit. Ms. McConnell apologized for the mix-up and clarified that the \$570,000 was the total revenue over a two-year period. Currently, AMCO collected \$280,000 in renewal fees and the increase amounted to approximately \$310,000. The board had two programs and 8 enforcement officers and believed that there was only a certain amount the board could do to mitigate the situation, since some of its fees were set through statute. Co-Chair Seaton inquired whether the \$310,000 was sufficient to address the audit recommendations. Ms. McConnell determined that the additional funds would help. She could not speak to the decisions that would be made by the board.

[3:13:13 PM](#)

Representative Kawasaki compared the two board's fiscal notes and highlighted that both boards showed each had 8 full-time positions. He referenced slide 12 from the previous bill and asked what the yellow lines through certain position titles denoted. Ms. McConnell answered that the yellow "X" represented those positions that would be eliminated if one board was not extended.

Co-Chair Foster relayed that amendments were due on Thursday, February 22, 2018.

HB 299 was HEARD and HELD in committee for further consideration.

Representative Wilson wondered whether the policy to combine the two boards was appropriate. She believed the question was over sufficient resources and understood it was difficult to determine given the newness of the marijuana board. She wanted to ensure that one board was not being disadvantaged due to the other board's inclusion. She requested further information regarding whether combining the board's administration and sharing enforcement was the reason for the lack of enforcement. She did not want to "stifle" either industry.

Co-Chair Foster agreed with getting things right the first time and wanted the committee to take deliberate action.

[3:16:29 PM](#)

AT EASE

[3:17:14 PM](#)

RECONVENED

#hb301

HOUSE BILL NO. 301

"An Act relating to the renewal and transfer of ownership of a beverage dispensary license or restaurant or eating place license."

[3:17:20 PM](#)

Co-Chair Seaton MOVED to ADOPT proposed committee substitute for HB 301, Work Draft 30-LS1217\E (Bruce, 2/16/18).

Representative Wilson OBJECTED for discussion.

LAURA STIDOLPH, STAFF, REPRESENTATIVE ADAM WOOL, indicated that the changes were recommended by DCCED. She reviewed the changes in the committee substitute (CS):

Section 3

Page 3, Line 27, remove "established village"

Removes the phrase established village from the room rental requirement calculations. This is consistent with how the statute has been applied in the past, and removing it maintains the status quo rather than requiring the recalculation of populations and room

requirements, further disrupting the industry and current licensees.

Page 4, Line 16, remove "on the licensed premises," after "holder of the license"

This was removed to ensure that the entire establishment wasn't considered the licensed premises, otherwise it is possible that a cottage or hotel room

Representative Wilson did not understand why the language "established village" was removed.

Ms. Stidolph deferred to Ms. McConnell.

[3:20:12 PM](#)

Ms. McConnell clarified that an established village was defined in statute as "to include an unincorporated community and organized borough that has 25 or more permanent residents and is either on or off the road system depending on its distance to a unified municipality." She explained that her research determined that the concept of an established village was included in the calculation of population for the application of license limits and the number of rooms for a beverage dispensary tourism license but had never been implemented. Including the language had a significant effect on the location and transfer of licenses and would cause momentous disruption.

Representative Guttenberg had recently heard that if there was a 10-room hotel a person would be eligible for a license to serve alcohol. He wondered whether the matter was related to the deleted language. Ms. McConnell explained that the Beverage Dispensary Tourism license cited in AS.04.11.400d was an exemption to the population licenses if certain requirements were met including the number of rooms a hotel, motel, or resort had available predicated on the location of the hotel. The larger the community the more rooms were required. She understood that in 1985, the number of rooms changed to more rooms per larger community to halt the increase in alcohol licenses in large communities like Anchorage. Representative Guttenberg asked what effect eliminating established village had on licensing. Ms. McConnell answered that it did not affect how Title 4 was implemented since 1980. She delineated that it appeared that unincorporated communities

like Talkeetna and Nikiski inside a borough would have a population limit applied to them that did not apply prior to the addition of the language.

[3:24:29 PM](#)

Co-Chair Seaton asked whether the definition of the population area established under (a) of this section [in the bill] was the same as the definition DCCED used for community assistance and whether the list was inclusive. Ms. McConnell suggested he was referring to statute concerning established villages as it related to refunds to municipalities. Co-Chair Seaton clarified that he was referring to page 3 of the bill and referred to the definition Ms. McConnell read for established village and thought it sounded like the definition of "a community" that was used to determine DCCED's Community Assistance Program. He wondered whether the same population parameters applied. Ms. McConnell was not familiar with the Community Assistance Program but offered to provide the information.

Representative Wilson WITHDREW her OBJECTION.

CSHB 301 (FIN) was adopted as the working draft.

[3:27:14 PM](#)

Representative Wool explained the bill. He reiterated that under the tourism dispensary license an establishment in any size community could provide a facility with 10 rooms and obtain a liquor license and the number of bars proliferated. As a result, the population determinates were added to statute. He detailed that the limit in Anchorage and Fairbanks was 50 rooms; the number of rooms required depended on the size of the municipality. He qualified that 34 establishments obtained their tourism dispensary license prior to 1985. He communicated that when the room law was rewritten the 34 establishments were not grandfathered in, were in areas such as Fairbanks and other locations in the state. Allowing the establishments to continue to operate was challenged and the ability for the them to renew their licenses was in question. House Bill 301 would grandfather hospitality businesses that have been operating prior to 1985 except for a "couple" business that obtained licenses in 1986 with an inadequate number of rooms that were included in the bill. He reported that many businesses had been operating for over thirty years and he wanted them to

remain in business. The legislation primarily grandfathered in the 34 businesses. In addition, current statute mandated that alcohol licensed businesses remain open for 30 8-hour days per year. He noted that some businesses were only open on weekends, and one was being fined for not operating under the 8-hour day requirement. The bill changed the statute to state that the business had to operate for 240 hours per year. Finally, a provision added "outdoor recreation lodge licenses" to the list of establishments that could be voter approved. He noted the its omission from statute was an oversight and the outdoor lodges had been issued licenses.

Representative Thompson asked whether the grandfathered licenses were eligible to be sold. Representative Wool answered in the affirmative and added that the establishment must remain in the location and operate in the same manner.

[3:33:33 PM](#)

Representative Pruitt wanted further clarification. He wondered whether the businesses would operate under the previous provisions in place at the time they were licensed. Representative Wool replied in the affirmative.

Ms. Stidolph interjected that section 3, lines 8 through 10 of the bill specifically addressed the issue. She read the following:

...however, an application may not be denied because a prospective transferee under AS 04.11.400(d)(2) does not have the qualifications required under AS 04.11.400(d)(1);

Representative Pruitt asked if a grandfathered establishment could sell to a newly built lodge in another location meeting the requirements of the grandfathered license. Representative Wool responded in the negative.

Representative Pruitt asked for the definition of an outdoor recreation lodge. Ms. Stidolph read the definition from statute:

Sec. 04.11.225. Outdoor recreation lodge license.  
(a) An outdoor recreation lodge license authorizes the holder to sell alcoholic beverages to a

registered overnight guest or off-duty staff of the lodge for consumption on the licensed premises or in conjunction with purchased outdoor recreation activities provided by the licensee. An outdoor recreation lodge license may not be transferred.

(b) The biennial fee for an outdoor recreation lodge license is \$1,250.

(c) In this section, "outdoor recreation lodge" means a licensed business that provides overnight accommodations and meals, is primarily involved in offering opportunities for persons to engage in outdoor recreation activities and has a minimum of two guest rooms.

Representative Kawasaki asked about the value of the licenses. Representative Wool clarified that the licenses were not separate from beverage dispensary licenses, and if the business was sold the license would have to remain at the same address. He was uncertain of the sale price. Representative Kawasaki was confused because of the number of different types of licenses. He asked if all were considered beverage dispensary licenses and whether the tourism dispensary license was not limited to caps that were currently assessed per community for other beverage dispensary licenses. Representative Wool replied in the affirmative. He affirmed that there were many kinds of beverage dispensary licenses and agreed it was confusing.

^PUBLIC TESTIMONY

[3:39:11 PM](#)

DEBBIE CARY, SELF, NINILCHIK (via teleconference), supported the legislation. She owned one of the licenses in question. She was a bar owner and operated her establishment for 28 years; the license was originally issued in 1963. She argued that the 40-room update was not possible on the Kenai Peninsula due to lack of supporting infrastructure such as wells and septic systems. She related that her business served her community by providing a meeting place, hosting weddings and funerals. She had personally provided her services for fund raisers as a way of "giving back" to the community.

[3:41:17 PM](#)

NANCY TRUMP, LATITUDE 62 LODGE, MATANUSKA SUSITNA BOROUGH (via teleconference), had owned her establishment since May 1986. She was not just a bar but a full-service motel, restaurant, and bar. She characterized her business as a "town meeting place" and hosted weddings, birthday parties, baby showers, and much more. The location was near an elementary school, which enabled the lodge to be listed as a safe place for school evacuation. She operated year around and employed 15 to 20 people. She maintained that it would be difficult to stay in business without the grandfathered license. She thanked members for their support.

[3:43:12 PM](#)

ALLEN CHOY, AL'S ALASKAN INN, ANCHORAGE (via teleconference), spoke in favor of the legislation and provided a history of his business. He explained that his father moved to Anchorage in 1956 and at the time there was a severe lack of housing. Anchorage had no hotels south of 13th Avenue. He believed the tourism dispensary license was provided as an incentive. His father opened the business in 1964 then called the Candle Inn. He spoke to the 10-room requirement and explained how it was changed based on population after Atlantic Richfield Company discovered oil on the North Slope in 1968. He agreed with the change and did not want a "bar on every corner." He indicated that the intent of the legislature in 1985 was to grandfather in the prior tourism licensees. He believed that the ABC board "misinterpreted" the intent of the law by deciding that the pre-1985 license holders were currently non-compliant. He argued that it was not economically feasible to add the rooms in Anchorage. Currently in Anchorage there were hotels on every corner. He emphasized that the legislature's intent in 1985 was for the pre-1985 licensees to be grandfathered in.

[3:50:17 PM](#)

PETE HANSON, ALASKA CHARR, ANCHORAGE (via teleconference), favored HB 301. He noted that the bill supported long-standing business. He believed that the intent of the legislature wanted grandfathered protection for the existing business and "the unintended ambiguity" existed in the law. He thanks the legislature for it consideration.

[3:51:18 PM](#)

Co-Chair Seaton CLOSED Public Testimony.

He reviewed the agenda for the following day. He also indicated that amendments for HB 301 were due to Co-Chair Foster's office by Friday, February 22 at 5:00 P.M.

#

ADJOURNMENT

[3:52:26 PM](#)

The meeting was adjourned at 3:52 p.m.