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A M E N D M E N T

OFFERED IN THE HOUSE:

By: Judiciary Committee

To: _____ HOUSE BILL No. 208

SENATE BILL No. _____

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JUNEAU, ALASKA

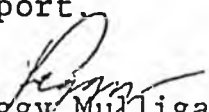
Alaska State Legislature
Senate

March 17, 1983

MEMORANDUM: Senator Ray, Chairman Judiciary

President Kerttula referred A Report on the Department of Revenue, Alcoholic Beverage Control Board, dated December 15, 1982 to the Judiciary Committee on March 8.

This report was not received in this office until this date. Please return A Special Performance Report on the Department of Health and Social Services, State Office of Alcoholism and Drug Abuse unless the Judiciary Committee is interested in retaining this report.


Peggy Mulligan
Secretary of the Senate

Encl: 1

SENATE JUDICIARY COMMITTEE MEETING

Meeting Minutes

4/4/83

The meeting was called to order at 1:10 p.m. by Senator Ray, Chairman.

All members were present except Senator Eliason, who was excused.

The first order of business was Senate Bill 208--Extending the termination date of the Alcoholic Beverage Control Board--and the Sunset review and report regarding the ABC Board, as to which Patrick L. Sharrock, the Director of the ABC Board, and Robert Sundberg, Commissioner of Public Safety, were present and participated in the ensuing discussion and deliberation

Senator Ray asked Director Sharrock a question about the auditor's conclusion, on page 5 of the 12/15/82 Sunset report, that "the ABC Board has not met its mandated enforcement responsibilities of Title 4 of the Alaska Statutes." Director Sharrock adamantly refuted this conclusion and concurred with Senator Ray's statement regarding the fact that agents of the Board are not empowered to routinely carry guns and make arrests and stated that this is pursuant to the entire scheme of applicable law requiring local participation whereby municipalities are allowed to retain licensing fees to cover the cost of enforcement. In other words, Director Sharrock stated that the auditor's conclusion was merely a statement of existing legislative intent and enforcement policy, rather than a valid finding that the Board has failed to carry out its mandated duties.

Senator Ray stated that the author of the Sunset review and report of 12/15/82 doesn't seem to have grasped the basic concept previously mentioned, and Director Sharrock fully concurred.

Commissioner Sundberg stated that he strongly recommends that the Board's tenure be extended and that no changes be made in its operation and procedures.

Senator Ray stated that the Board appears to be operating properly and the Sunset report appears to be wrong about the Board not meeting its statutory enforcement obligations.

Senator Josephson stated that, in regard to the Sunset report's comments about the Board's enforcement power, existing law already provides for agents of the Board to have police enforcement powers, such as the power to carry firearms and make arrests, subject to certain conditions, such as a prior finding by the Board and approval by the Commissioner of Public Safety, and Commissioner Sundberg fully concurred.

Senator Ray stated that it has been an established policy of past Commissioners of Public Safety not to allow ABC Board agents to carry firearms or make arrests, and Commissioner Sundberg concurred, stating that he doesn't recommend any changes in that policy.

Senator Ray again stated that the licensing fee has been used as payment to municipalities for their enforcement functions and Director Sharrock concurred, stating that this has worked out very well and there are no problems in that regard. Senator Ray then further pointed out that this is precisely where the author of the Sunset report went wrong by failing to realize that there are no problems with the existing enforcement functions and policy of the ABC Board.

Senator Pettyjohn pointed out that recommendation number 1 on page 7 of the Sunset report seems to state that criminal sanctions and prosecutions are necessary to adequately enforce existing law. Senator Pettyjohn then posed a question to Director Sharrock as to the sufficiency of existing notice of violation and administrative proceedings. Director Sharrock replied that pursuant to existing procedures, notices of violation are issued based on reported incidents and the Board prefers this approach to the filing of criminal complaints because the latter wouldn't be appropriate in the vast majority of cases. Discussion was had on this point, with Senator Josephson participating therein and pointing out that the author of the Sunset report apparently failed to understand two key practical factors in making his previously mentioned finding and recommendation:

1. The economics of a situation where a notice of violation is served on a licensee who may have a substantial economic interest at stake (for example, Director Sharrock pointed out that the fair market value of a license can be as high as \$200,000.00 to \$400,000.00); and
2. The heavy burden of proof in a criminal case which makes it very difficult and expensive to obtain a conviction after a criminal complaint is filed.

Senator Pettyjohn then concurred with the previous speakers' opinions that existing notice of violation procedures are more effective than the recommended filing of criminal complaints.

Senator Ray pointed out that, based on his extensive experience in this area, approximately 95% of licensees are honest, law-abiding and hard working whereas 5% are always in trouble.

Furthermore, Senator Ray pointed out that he is very disappointed with the Sunset report which seems to be inaccurate and raises more questions than it answers.

Director Sharrock and Commissioner Sundberg, as well as Senators Ziegler, Josephson and Pettyjohn, concurred in Senator Ray's last observation, and Senator Pettyjohn further pointed out that, at best, the Sunset report is very superficial. Commissioner Sundberg then again

stated that he strongly recommends no changes whatsoever in existing ABC Board functions and procedures.

Don Kubley of the Alaska Cabaret and Hotel Restaurant Association testified in support of Senate Bill 208 and stated that, on behalf of his organization, he recommends the rejection of the Sunset report's recommendations and he believes that the ABC Board policies and procedures are essentially firm but fair.

Senator Josephson then moved for a Do Pass with individual recommendations on Senate Bill 208. After a vote was taken, the motion passed unanimously.

The second order of business was Senate Bill 111--Relating to the use of teleconferencing under the Administrative Procedure Act--as to which Sue Plumber, Director of Teleconference Services testified in favor of the bill, stating that it clears up existing legal questions and has a potential for decreasing travel and related costs.

Extensive discussion was then had on the bill and it was unanimously agreed that a committee substitute would be drafted by Senator Pettyjohn along with Committee counsel and Billy Berrier's office, to be presented at the committee hearing on Friday, April 8, 1983.

The third order of business was a brief discussion of matters to be considered at future Committee meetings.

The fourth order of business was a new subcommittee assignment:

SB 4 Repealing the requirement that an
 applicant for a beverage dispensary
 license file a bond

Ray

There being no further business the meeting adjourned at 1:48 p.m.

A REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

December 15, 1982

Audit Control Number

04-1071-83-R

Commissioner, Department
of Revenue

Robert D. Heath

Deputy Commissioners, Department
of Revenue:

Taxation
Treasury

Joseph K. Donohue
Vacant

Members of the
Alcoholic Beverage Control Board

Chairman
Member
Member
Member
Member

William Gordon
Donald J. House
William K. Smith
Joseph W. Berberich
Chuck J. Green

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

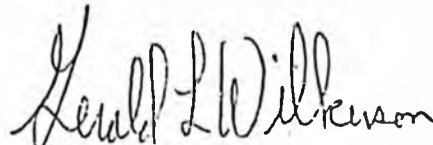
December 15, 1982

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A REPORT ON THE DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD

December 15, 1982



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.60.050 (Sunset Legislation) an examination of the Alcoholic Beverage Control Board was conducted to determine whether there is a demonstrated need to continue liquor regulation in its present form. To determine that need we reviewed Board activities for Fiscal Year 1982 to see if the Board has been operating in an efficient and effective manner.

AS 44.66.010 specifies that the Alcoholic Beverage Control Board will terminate on June 30, 1983, but will continue until June 30 of the following year for the purpose of concluding its affairs. This report should be considered during the legislative oversight function in determining whether the Board should be allowed to terminate, be reestablished in its present form or be reestablished in a modified form.

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ORGANIZATION AND FUNCTION

In 1933 the Territorial Legislature created the Board of Liquor Control with full power, authority, and control to prescribe (1) rules and regulations to govern the manufacture, barter, sale and possession of intoxicating liquors, (2) qualifications of those engaged in that business, and (3) license fees and excise taxes. The present Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959, and the same broad powers and duties conferred on the Board of Liquor Control were transferred to the new ABC Board at that time.

Members are appointed for three-year terms by the Governor and serve at his pleasure subject to confirmation by the Legislature. Membership is limited by statute to five persons (two liquor industry representatives, three non-industry representatives). A director, also appointed by the Governor, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and regulations developed by the Board.. Although he is not a member of the Board, the director may cast a tie-breaking vote.

The ABC Board is a regulatory, quasi-judicial agency, vested with the powers, duties, and responsibilities for the control of alcoholic beverages, including the power to propose and adopt regulations, and to hear appeals. The Board may order the director to issue, renew, revoke, transfer, or suspend licenses and permits.

Title 4 prescribes the type of licenses, fees, and specific activities allowed under each license classification (see schedule of license types and fees in Appendix C). Fees are payable at the time of application and are not reduced or prorated in any way for periods less than the statutory calendar year. To renew an already existing liquor license, the application must be filed (and the corresponding fees paid) on or before February 28.

The staff of the ABC Board is divided into three major functions: administration, licensing, and enforcement. A brief description of the services provided by those functions follows:

Administration. The director of the ABC Board provides all administrative support needed by the Board including overseeing all staff functions, preparing budget documents, and directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff currently consists of three full-time employees responsible for issuing and receiving application forms, maintaining records and files for all licenses, collecting fees, issuing all licenses and permits authorized by the Board, and answering inquiries from the general public on routine licensing matters.

Enforcement. The ABC Board currently employs five investigators - three operating from the Anchorage central office, one operating from the Fairbanks field office, and one operating from the Juneau field office. One Anchorage Investigator position is vacant. Services provided include (1) surveillance and inspections of licensed premises, (2) investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, (3) public appearances relating to ABC laws and regulations, and (4) assisting the licensing staff in handling inquiries from the general public.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of the policy changes can be evaluated.

Report Conclusions

Title 4 of the Alaska Statutes established the ABC Board to control the manufacture, barter, possession and sale of alcoholic beverages in the State in order to protect the public's health, safety and welfare. We believe this control should continue to exist, however, it is our opinion the ABC Board has not met its mandated enforcement responsibilities of Title 4 of the Alaska Statutes. We recommend the ABC Board reevaluate its interpretation and application of the enforcement requirements of Title 4.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Alcoholic Beverage Control Board should reevaluate its interpretation and application of the enforcement requirements of Title 4.

Alaska Statute 04.06.075 states that the director of the ABC Board shall enforce Title 4 and regulations adopted by the Board. Title 4 also provides that a person who violates a provision of the Title or adopted regulations is guilty, upon conviction, of a class A misdemeanor. To enable the Director and enforcement personnel to accomplish this task, Title 4 also provides for the exercise of peace officer powers, upon concurrence of the Commissioner of Public Safety.

Although these statutes clearly show that the ABC Board is mandated to enforce Title 4, it is ABC's opinion the primary responsibility for enforcement rests with State and local law enforcement agencies. As a result, few criminal complaints have resulted from ABC enforcement activities. During Fiscal Year 1982, only eight criminal complaints were filed, five of which were originated by ABC personnel.

The ABC Board utilizes a Notice of Violation to communicate to licensees that a violation allegedly occurred. However, Notices of Violation of and by themselves carry no penalty. Again, the ABC Board relies primarily on State and local law enforcement agencies to provide information to generate a Notice. Over 60 percent of the Notices issued during Fiscal Year 1982 were the result of work performed by local law enforcement agencies.

State and local law enforcement agencies are required to investigate and report violations of Title 4 to the ABC Board. However, this responsibility is only a small part of their total criminal enforcement responsibilities in the State of Alaska. As a matter of priority, these agencies cannot devote sufficient time to the enforcement of Title 4. Therefore, this responsibility must and does rest with the ABC Board.

It is our opinion that the ABC Board should reevaluate its interpretation of the enforcement responsibilities of Title 4 and, within staffing limitations, reconsider the direction of current ABC enforcement efforts.

Recommendation No. 2

The Office of the Governor should keep appointments to the Alcoholic Beverage Control Board current and staggered as required by AS 04.06.030.

During our review of appointments to the ABC Board we noted the following exceptions:

1. Past appointments to the Board have not been made in accordance with the provisions of AS 04.06.030(b) which requires the Governor to fill vacancies to unexpired terms within 30 days of the vacancies. Our review of appointments showed one position remained vacant for 92 days and another position was vacant for 152 days.
2. AS 04.06.030(a) requires appointments to be overlapping terms of 3 years. We found that the terms of two members will expire on January 31, 1984, and the terms of two other members will expire January 31, 1985.

We recommend the Office of the Governor appoint new members or reappoint current members to vacant ABC Board seats in a timely manner and in compliance with AS 04.06.030. We also recommend that the appointment terms be staggered as required by law.

We further recommend the Office of the Governor establish a talent pool for Board appointments. The concept of a talent pool is to have a list of persons available and desiring to serve as a Board member. Many sources exist in the State to establish such a pool. Liquor industry associations could be requested to provide a list of members who would like to serve as an industry representative on the Board.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature.

I. The extent to which the board, commission or program has operated in the public interest.

Public protection gained through licensing to control liquor manufacture and traffic has been adequately provided by the ABC Board. However, the Board is also charged with enforcement of the alcoholic beverage control laws, rules, and regulations. As previously documented in this report, it is our opinion the ABC Board has not met its statutory responsibilities in protecting public health, safety, and welfare (see Recommendation No. 1).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personal matter.

The 1980 revisions to Title 4 have, for the most part, been beneficial to the operation of the ABC Board. However, those sections which deal with suspension and revocation of licenses and permits place severe restrictions upon the ability of ABC to suspend and revoke licenses for the illegal act of licensee employees.

The Board is also restricted in meeting its statutory responsibilities in protecting the public health, safety and welfare by the size of the enforcement staff which consists of one agent in Juneau, one in Fairbanks and three, including a supervisory agent in Anchorage. Including the supervisory agent, there are only five agents with inspection and enforcement responsibilities for 1,483 licensed premises. However, one other Anchorage Investigator position is vacant.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Our review of licensing activity of the ABC Board to determine whether all statutory qualifications of licensees were being met revealed no exceptions. The Board has therefore, presented qualified applicants to serve the public.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

No discrepancies were noted during our review of the ABC Board affirmative action program.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to I and II above and to the previous section, Findings and Recommendations.

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APPENDIXES

APPENDIX A

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUE COMPARED WITH EXPENDITURES
Fiscal Years 1980, 1981 and 1982
(UNAUDITED)
(Note 1)

	<u>1980</u>	<u>1981</u>	<u>1982</u>
Revenue (See Schedule 1)	\$ 1,028,982	\$ 1,494,489	\$ 1,548,393
Expenditures	<u>(483,121)</u>	<u>(556,589)</u>	<u>(562,178)</u>
<u>Excess of Revenue Over Expenditures</u>	<u>\$ 545,861</u>	<u>\$ 937,900</u>	<u>\$ 986,215</u>

Schedule 1
Revenue Collected

<u>Types of License</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Liquor License Application	\$ 76,050	\$ 83,250	\$ 86,350
Pub	494	100	400
Beverage Dispensary	501,850	771,050	773,200
Club	24,650	39,500	39,300
Common Carrier	14,150	25,800	29,050
Restaurant	46,250	60,750	69,600
Roadhouse	3,250	-0-	-0-
Retail Store	248,350	330,700	335,400
Wholesale General	79,500	138,500	156,000
Wholesale Malt Beverage	15,300	13,200	21,600
Miscellaneous (Note 2)	<u>21,138</u>	<u>31,639</u>	<u>37,493</u>
<u>Total</u>	<u>\$ 1,028,982</u>	<u>\$ 1,494,489</u>	<u>\$ 1,548,393</u>

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and accordingly we do not express an opinion on the ABC Board Revenue Compared with Expenditures, nor the Schedule of Revenue Collected.

Note 2

Includes recreational-site licenses, caterer's, special events and conditional contractor's permits.

APPENDIX B

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NUMBER OF LICENSES BY TYPE
Fiscal Years 1980, 1981 and 1982

<u>Types of License</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Pub	1	1	1
Beverage Dispensary	607	620	634
Club	61	63	65
Common Carrier	64	72	88
Restaurant	146	182	215
Roadhouse	20	-0-	-0-
Retail Store	431	438	445
Wholesale General	16	15	16
Wholesale Malt Beverage	6	7	7
Miscellaneous (Note 1)	<u>10</u>	<u>9</u>	<u>12</u>
<u>Total</u>	<u>1362</u>	<u>1407</u>	<u>1483</u>

Note 1

Includes recreational-site licenses, caterer's, special events and conditional contractor's permits.

APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
Application Fee	For each license application.	\$ 50
Beverage Dispensary	To sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.	1,250
Restaurant or Eating Place	To sell beer and wine for consumption only on the licensed premises.	300
Club	To sell alcoholic beverages for consumption only on the licensed premises.	600
Bottling Works	To operate a bottling works where beer and wine may be bottled and sold.	250
Brewery	To operate a brewery where beer is manufactured and bottled or barreled for sale.	500
Winery	To operate a winery where wine is manufactured and bottled or barreled for sale.	250
Package Store	To sell alcoholic beverages to a person in response to a verbal solicitation for purchase received from the person present on the licensed premises or in response to a written solicitation made by a person known to the licensee for a purchase to be received by the person making the solicitation.	750

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
Retail Stock	To sell the remaining stock of a package liquor store when the owner wishes to close or terminate business. Sale may only be to licensed persons.	\$ 100
General Wholesale	To sell alcoholic beverages in the original package, and wine in bulk, in quantities of not less than five gallons to holders of licenses.	1,000 First \$100,00 of sales plus \$500 - 10,000 on additional sales
Wolesale Malt Beverage and Wine	To sell malt beverages and wine in the original packages in quantities of not less than five wine gallons to holders of licenses.	200 First \$20,000 of sales plus \$300 - 10,000 based on additional sales
Distillery	To operate a distillery where alcoholic beverages are distilled and bottled or barreled for sale.	500
Community Liquor	Authorizes a municipality to operate a beverage dispensary or a package store or both subject to the same conditions and fees applicable to beverage dispensary or package liquor store licenses.	1,250 Beverage Dispensary 750 Package Store
Common Carrier Dispensary	To sell alcoholic beverages for consumption aboard a vehicle, boat, aircraft, or railroad buffet car licensed by the State or federal agency for passenger travel.	350 Per vehicle, boat, aircraft or railroad car
Recreational Site	To sell beer and wine at a recreational site during and one hour before and after a recreational event which is not a school event, for consumption on designated areas at the site.	400

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
Pub	To sell beer and wine for consumption only at designated premises located on the campus of an accredited college or university.	\$ 400
Caterer	Authorizes the holder of a beverage dispensary license to sell or dispense alcoholic beverages at conventions, banquets, social gatherings, sporting events or similar affairs held off the holder's licensed premises.	50
Special Events	To sell or dispense beer or wine for consumption at designated premises for a specific occasion and limited period of time. Only a nonprofit organization may acquire the permit.	50 Per day
Conditional Contractor	To sell beer or wine for consumption only on designated premises for one year from the date of issuance of the permit at construction sites which are located outside a city and inside the boundaries of a military or naval reservation.	600

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

March 2, 1983

RECEIVED
MAR 02 1983
LEGISLATIVE
AUDIT

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811

Dear Mr. Wilkerson:

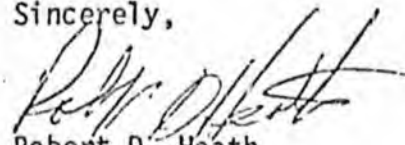
This letter is in response to your Recommendation No. 1 contained in your preliminary audit report of the Alcoholic Beverage Control Board dated December 15, 1982.

Without generating a lengthy dissertation about staff and budgetary limitations, utilization of present staff, and administrative/judicial due process, we generally believe your recommendation has merit. However, if we understand your perception of enforcement by the board to be criminally oriented, under present law heavy reliance on other state and local-law authority is required, and no single agency could fill a void which the report implies exists.

The board at each and every monthly meeting evaluates its enforcement function through granting or denying license applications, sitting in informal conference, and reviewing hearing officer decisions. The board has scheduled "workshop" sessions during its two-day April meeting in Juneau and will review law and regulations in light of your opinion.

Thank you for the opportunity to respond.

Sincerely,



Robert D. Heath
Commissioner of Revenue

cc: Patrick L. Sharrock, Director
ABC Board

ABC Board Members