

HB

69

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 8, 1999

FURTHER REFERRALS:

Date of Committee Action: 3/20/99

The FINANCE Committee considered:

HB 69

HOUSE BILL NO. 69

ALCOHOLIC BEVERAGE CONTROL BOARD

"An Act relating to the Alcoholic Beverage Control Board; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 69 (FIN) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) DOR 3/8/99

zero fiscal note(s) _____

zero fiscal note(s) DOR 3/8/99

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault	<input checked="" type="checkbox"/>			
<i>John Mulder</i>	Mulder	<input checked="" type="checkbox"/>			
<i>Van Buren</i>	Bunde	<input checked="" type="checkbox"/>			
<i>John N. Davis</i>	J. Davis				<input checked="" type="checkbox"/>
<i>Ben Grissenden</i>	Grissenden				<input checked="" type="checkbox"/>
<i>John Foster</i>	Foster	<input checked="" type="checkbox"/>			
<i>Carl E. Miles</i>	Miles			<input checked="" type="checkbox"/>	

CO CHAIR'S SIGNATURE

Gene Theriault *John Mulder*
Theriault Mulder

FISCAL NOTE

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. HB 69

Revision Date/Time (Note if correction) _____	Dept. Affected <u> </u>	Revenue <u> </u>
Title <u> An act relating to the Alcoholic Beverage</u>	BRU <u> </u>	ABC Board <u> </u>
<u> Control Board</u>	Component <u> </u>	ABC Board <u> </u>
Sponsor <u> Rep. Rokeberg</u>	_____	
Requester <u> House Labor & Commerce</u>	Component Serial No. _____	

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

No fiscal impact directly from extension of ABC Board for three years. ABC Board is funded entirely from program receipts.

Prepared by	Dorg Griffin, Director	Phone <u>465-2301</u>
Division	ABC Board	Date/Time <u>February 22, 1999 10:15 AM</u>
Approved by		Date <u>2/22/99</u>
Commissioner	Wilson L. Condon	
Agency	Department of Revenue	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

4-4
Failed

(1)

A M E N D M E N T

OFFERED IN ~~THE~~ HOUSE FINANCE
TO: CSHB 69(L&C)

BY REPRESENTATIVE ~~COPE~~ DAVIES

1 Page 1, line 4, following "package store licenses;"

2 Insert "relating to alcoholic beverage license protest procedures;"

3 Page 6, following line 23:

4 Insert a new bill section to read:

5 "* Sec. 12. AS 04.11.480(a) is amended to read:

6 (a) A local governing body may protest the issuance, renewal, relocation, or
7 transfer to another person of a license by sending the board and the applicant a protest
8 and the reasons for the protest within 60 days of receipt from the board of notice of
9 filing of the application. A protest received after the 60-day period may not be
10 accepted by the board, and in no event may a protest cause the board to reconsider
11 an approved renewal, relocation, or transfer. The local governing body may protest
12 the continued operation of a license during the second year of the biennial license
13 period by sending the board and the licensee a protest and the reasons for the protest
14 by January 31 of the second year of the license. The procedures for action on a
15 protest of continued operation of a license are the same as the procedures for action
16 on a protest of a renewal application. A local governing body may recommend that
17 a license be issued, renewed, relocated, or transferred with conditions. The board
18 shall consider recommended conditions or a protest and testimony received at a
19 hearing conducted under AS 04.11.510(b)(2) or (4) when it considers the application
20 or continued operation, and the recommended conditions, the protest, and the record
21 of the hearing conducted under AS 04.11.510(b)(2) or (4) shall be kept as part of the
22 board's permanent record of its review. If an application or continued operation is
23 protested or the local governing body recommends conditions, the board shall deny
24 the application or continued operation or impose the recommended conditions unless

1 the board finds that the protest or the recommended conditions are [IS] arbitrary,
2 capricious, and unreasonable."

3 Renumber the following bill sections accordingly.

4 Page 7, line 22:

5 Delete "15"

6 Insert "16"

7 Page 7, line 23:

8 Delete "16"

9 Insert "17"

#2

Failed 3-5

AMENDMENT

OFFERED IN ~~THE~~ HOUSE FINANCE
TO: CSHB 69(L&C)

BY REPRESENTATIVE ~~GRANT~~ DAVIS

1 Page 1, line 6, following "license;":

2 Insert "relating to notice of arrests on premises licensed for alcoholic beverages
3 operations;"

4 Page 7, following line 18:

5 Insert a new bill section to read:

6 "** Sec. 15. AS 12.25 is amended by adding a new section to read:

7 **Sec. 12.25.075. Notice of arrest on premises licensed for alcoholic**
8 **beverages operations.** (a) If a peace officer makes an arrest on licensed premises,
9 the law enforcement agency that employs the peace officer shall, within 60 days of
10 the arrest, provide notice of the arrest, including a description of the location and
11 circumstances of the arrest, to the Alcoholic Beverage Control Board.

12 (b) In this section. "licensed premises" has the meaning given in
13 AS 04.21.080(b)."

14 Renumber the following bill sections accordingly.

15 Page 7, line 22:

16 Delete "15"

17 Insert "16"

18 Page 7, line 23:

19 Delete "16"

20 Insert "17"

passed
6-2

#3

A M E N D M E N T

OFFERED IN ~~THE~~ HOUSE *FINANCE*
TO: CSHB 69(L&C)

Rep. DAVIES

1 Page 1, line 2, following "organizations;":
2 Insert "relating to peace officer powers of employees of the Alcoholic Beverage
3 **Control Board;**"

4 Page 3, following line 3:
5 Insert a new bill section to read:

6 ** Sec. 2. AS 04.06.110 is amended to read:

7 **Sec. 04.06.110. Peace officer powers.** The director and the persons
8 employed for the administration and enforcement of this title may, with the
9 concurrence of the commissioner of public safety, exercise the powers of peace
10 officers when those powers are specifically granted by the board. Powers granted by
11 the board under this section may be exercised only when necessary for the
12 enforcement of the criminally punishable provisions of this title, regulations of the
13 board, and other criminally punishable laws and regulations, including enforcement
14 of laws against prostitution and promoting prostitution described in AS 11.66.100
15 - 11.66.130 and laws against gambling, promoting gambling, and related offenses
16 described in AS 11.66.200 - 11.66.280 [GOVERNING THE MANUFACTURE,
17 BARTER, SALE, CONSUMPTION, AND POSSESSION OF ALCOHOLIC
18 BEVERAGES IN THE STATE]."

investigati
of violation

19 Renumber the following bill sections accordingly.

20 Page 7, line 22:

21 Delete "15"

22 Insert "16"

- 1 Page 7, line 23:
- 2 Delete "16"
- 3 Insert "17"

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 69

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue
 Title An act relating to the Alcoholic Beverage BRU ABC Board
Control Board Component ABC Board
 Sponsor Rep. Rokeberg
 Requester House Labor & Commerce Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact directly from extension of ABC Board for three years. ABC Board is funded entirely from program receipts.

Prepared by Dorg Griffin, Director
 Division ABC Board
 Approved by Wilson L. Condon
 Commissioner
 Agency Department of Revenue

Phone 465-2301
 Date/Time February 22, 1999 10:15 AM
 Date 2/22/99

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

STATE OF ALASKA
DEPARTMENT OF REVENUE
Alcoholic Beverage Control Board

TONY KNOWLES, GOVERNOR
550 W. 7TH AVENUE, SUITE 350
Anchorage, Alaska 99501 - 6678
Phone: 907-269-0350
FAX: 907-272-9412

March 18, 1999

Representative Gene Therriault, Co-Chair
House Finance Committee
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801-1182

RE: Community Council Resolution on ABC Board

Dear Representative Therriault:

I am aware of issues being raised by Senator Dave Donley and being circulated to various Community Councils within the Municipality of Anchorage regarding changes to the Alcoholic Beverage Control (ABC) Board. These changes involve amendments to the membership, duties, and procedures of the ABC Board. I would like to respond to the four changes being proposed.

First, Senator Donley calls for replacing one of two alcohol industry members of the ABC Board with an additional public member. This would change the overall make-up of the Board from three public members and two industry members to four public seats and only one industry seat. This change stems in part from statements regarding voting patterns in the September 1997 legislative audit of the ABC Board, which are not supported by research, analysis, or fact. The basis of the assertion by legislative auditors that industry members of the ABC Board are generally softer on the liquor licensees in fulfilling their regulatory and quasi-judicial duties is, in fact, attributed to interviews with me. I recall discussing with auditors the public perception of this assertion, but I felt that this assumption merited review with regard to the present ABC Board. I disagree with how my comments were portrayed and used by Legislative Audit and I am very concerned that now this faulty conclusion is fueling an effort to change in state law the make-up of the ABC Board. The ABC Board is already set up to protect the public with three public members and only two industry members. Governor Knowles has further appointed a representative of the law enforcement community to one of the public seats. The Governor has also appointed industry members who are sensitive to community concerns and hold liquor licensees to high standards in the conduct of their businesses. There is further protection in state law giving the Director of the ABC Board the authority to break a tie vote. Changing the membership would alienate the beverage service industry and create a more adversarial environment in alcoholic beverage regulation. This will have the result of making alcohol beverage law enforcement more difficult, emotional, and expensive. For these reasons, the ABC Board opposes this change.

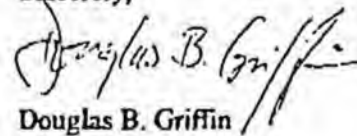
Second, Senator Donley, citing the 1997 audit, calls for "peace officers to notify the ABC Board of arrests at licensed establishments." This recommendation has merit. The ABC Board is now in the process of drafting regulations to require timely and complete reporting of alcoholic beverage license violations from local law enforcement before semi-annual license fee collections are returned to municipalities that enforce liquor laws.

Third, there is a proposal to "allow ABC Board Enforcement Officers to make arrests for prostitution and gambling at liquor licensed facilities." Presently, ABC Investigators have special commissions from Public Safety Commissioner Ron Otto to conduct investigations of prostitution and gambling on liquor licensed premises only. The 1997 audit disputed the legality of this special commission (AS 04.06.110) because it gives ABC personnel the authority to investigate crimes related to, but not strictly part of, Title 4. The ABC Board believes this special commission is legal and sufficient to address the concern. The special commission simply tries to improve government efficiency and responsiveness by allowing the ABC enforcement staff, in the course of monitoring liquor licensees, to also investigate these related illegal activities. A change in the statute giving ABC staff arrest powers has significant legal ramifications. It exceeds the scope of authority the ABC Board believes is warranted for its investigators to carry out their statutory duties. The present ability of enforcement personnel to conduct investigations and issue citations provides significant public protection and is a more legally appropriate level of authority for the task of enforcing alcoholic beverage laws and prostitution and gambling on licensed premises. The ABC Board does not oppose statutory clarification to allow the investigation of gambling and prostitution on liquor licensed premises by ABC personnel.

Finally, Senator Donley wishes to require a two-thirds vote of the ABC Board to take action regarding a liquor license opposed by a local community council or local government body. I believe that this provision raises significant legal issues because it gives a community council authority beyond its capacity as an advisory body. Community councils are not elected officials and conferring power to these informal associations raises concerns of valid representation of the governed and the legal basis for the exercise of this authority. Community councils can provide insight, information, and advice to policy-making groups, but I do not believe they have the authority to make policy on their own. There is not the same legal concern for the requirement of a two-thirds vote of the ABC Board to overrule a municipal protest. This proposal may merit discussion and debate as a policy choice. The law already sets a high standard for the ABC Board to overrule local government protests of transfer, renewal, or continued operation of liquor licenses. The ABC Board must find a municipal protest to be "arbitrary, capricious, and unreasonable" to reject it. While the law does not afford the same protection to community council protests, as a practical matter this ABC Board does give great weight to neighborhood concerns. In my letter of response to the 1997 audit I cited several instances where the ABC Board denied or modified liquor license actions based on reasonable neighborhood concerns. For these reasons, I do not believe that this change merits enactment.

I have responded to these proposals as concisely as possible. I will be happy to provide you with additional information regarding these proposals if it is desired.

Sincerely,



Douglas B. Griffin
Director

cc: Senator David Donley

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 69

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue
 Title An act relating to the Alcoholic Beverage BRU ABC Board
Control Board Component ABC Board
 Sponsor Rep. Rokeberg
 Requester House Labor & Commerce Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact directly from extension of ABC Board for three years. ABC Board is funded entirely from program receipts.

Prepared by Dorg Griffin, Director
 Division ABC Board
 Approved by Wilson L. Condon
 Commissioner
 Agency Department of Revenue

Phone 465-2301
 Date/Time February 22, 1999 10:15 AM
 Date 2/22/99

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office



*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*

3400 Spruce Road, Suite 9 - Anchorage, Alaska 99503
(907) 278 8133 • Fax: (907) 278 8640
Toll Free In Alaska: (800) 478-2427

17 March 1999

Representative Norman Rokeberg
Chairman, House Labor & Commerce Committee
Alaska State Legislature
State Capitol
Juneau Alaska 99801-1182


Honorable Representative Rokeberg

Thank you for moving CSHB No.69 (L&C) from your committee to the House Finance Committee. Your support and dedication toward this particular piece of legislation is recognized and appreciated.

I understand sections of CSHB No.69 (L&C) dealing with brewpubs clarify specific issues and that additional input by all brewpub licensee's will be provided during each step of the process to pass this legislation.

Extending the Alcohol Beverage Control Board to the year 2003 in this bill is necessary and critical to the licensed beverage industry and enforcement of Title IV statutes. Thank you, again, for your concern and support of this issue.

I remain at your service,


Larry J. "Hack" Hackenmiller
President, CHARR

MAR 18 1999

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us



INTERIM
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

HISTORICAL INFORMATION REGARDING CERTAIN ABC LICENSE CHANGES:

By: Rep. Norman Rokeberg

03/16/99

04.11.130 = Brewery License. First put in statute in 1980.

04.11.135 = Brewpub License. First put in statute in 1988. This license is not transferable. Requires licensee to also hold a beverage dispensary license.

04.11.450 = Prohibited Financial Interest. First put in statute in 1980.

CSSB 276 (FIN), Chapter 111, SLA 1988, "An Act relating to brewpub, brewery, and beverage dispensary liquor licenses; and to prohibited financial interests in a licensed liquor business; and providing for an effective date."

Added AS 04.11.135 adds new section (brewpub license).

HCS CSSB 87 (JUD), Chapter 101, SLA 1995, "Relating to the membership of the Alcoholic Beverage Control Board; relating to community local options for control of alcoholic beverages; relating to the control of alcoholic beverages; prohibiting persons from being on premises involving alcoholic beverages under certain circumstances; relating to the definition of 'alcoholic beverage'; relating to purchase and sale of alcoholic beverages; relating to alcohol server education courses; and providing for an effective date."

Changed AS 04.11.100: Added new subsection: Exempt license provision reduced the menu and percentage of sales restriction in this category of license thereby creating a "tavern" license.

Changed 04.11.135(a) concerning a brewpub license to authorize the holder of a beverage dispensary license to manufacture 75,000 gallons of beer in a calendar year (previous amount was 16,000 gallons). (Section 6)

SCS CSHB 372 (JUD) am S, Chapter 136, SLA 1996, effective October 1, 1996.

Changed 04.11.100(f) to grandfather in exempt licenses (Moose's Tooth Letter). (Section 1)

Changed AS 04.11.135(a) to add two new subsections (3) and (4) concerning sale of licensee's manufactured beer in quantities of not more than 5 gallons per day to individual present on premises; and provide small sample free of charge. (Section 3).

Changed 04.11.450(b) [prohibited financial interest]. Inserted "a restaurant or eating place license" in this subsection which then prevented anyone who was a representative or owner of a wholesale business, brewery, winery, bottling works or distillery for getting a beverage dispensary license package store license, or a restaurant or eating place license. Grandfathered in those who already had a combination of licenses. (Section 4).

CSHB 69 (L&C) - "An Act requiring certain reports or information from: alcoholic beverage licensees that are also limited liability organizations; relating to regulation of alcoholic beverage licenses issued to limited liability organizations; relating to brewpub licenses; relating to package store licenses; relating to consumption of alcoholic beverage on licensed premises; relating to the liability of a member of a limited liability organization who also holds an alcoholic beverage license; extending the termination date of the Alcoholic Beverage Control Board to June 30, 2003; and providing for an effective date."

Section 4, page 3, line 23: Amends AS 04.11.135(a): Allows sale of licensee's manufactured beer on *other licensed premises* of licensee.

Section 4, page 3, line 29: Amends AS 04.11.135 (a): Allows sale of licensee's manufactured beer to wholesale.

Section 5, page 4, lines 1-16: Adds new subsection to AS 04.11.135(d) to exempt from (a) the holder of a brewpub license who under (b) formerly held a brewery license and a restaurant or eating place "exempt" license and who, under the former brewery license, manufactured beer at a location other than the premises licensed under the former restaurant or eating place license may (1) manufacture up to 75,000 gallons of beer in calendar year on *premises other than premises licensed under beverage dispensary license*; provide small sample free of charge; sell beer on premises licensed or other licensed premises, to wholesaler, or to individual present on premises in amount of not more than five gallons per day.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 16, 1999

SUBJECT: Sectional Summary of CSHB 69(L&C).

TO: Representative Norman Rokeberg
Attn: Janet

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Allows the A.B.C. board to adopt regulations regarding reports from limited liability organizations licensed under Title 4.

Section 2. Provides that a person cannot receive or transfer controlling interest in a license issued to a limited liability organization, except with approval of the A.B.C. Board.

Section 3. Requires a limited liability organization to report to the board when 10 percent or more of the ownership of the organization is transferred.

Section 4. Makes changes to the authority of a holder of a brewpub license, regarding sale of manufactured beer.

Section 5. Allows certain brewpub licensees to manufacture beer on premises other than the premises licensed under the beverage dispensary license.

Section 6. Technical amendment.

Section 7. Authorizes a package store licensee to deliver wine or champagne to a cruise ship or hotel guest. Allows a florist or gift basket establishment to purchase wine or champagne for delivery to a cruise ship passenger or a hotel guest. Imposes certain record keeping, delivery, and permit requirements. Allows a package store licensee to deliver alcoholic beverages to a responsible adult at a wedding or wedding reception or other social event defined by regulation of the board.

Representative Norman Rokeberg
March 16, 1999
Page 2

Section 8. Requires a limited liability organization to report certain ownership information to the board.

Section 9. Imposes limitations on issuing a beverage dispensary or package store license to a limited liability organization.

Section 10. Imposes requirements when issuing a liquor license to a limited liability organization.

Section 11. Prohibits leasing a liquor license to a limited liability organization.

Section 12. Allows a person to bring their own wine to a restaurant, with the permission of the licensee. Allows the licensee to charge a corkage fee.

Section 13. Provides that a license held by a limited liability organization does not relieve the licensee of obligations or liability imposed under Title 4, solely because the license is held by a limited liability organization.

Section 14. Definitions.

Section 15. Extends the sunset date of the A.B.C. Board to June 30, 2003.

Section 16. Effective date for sec. 15.

Section 17. Effective date for all sections but sec. 15.

MFF:jdr:glc
99-121.jdr

Moose's Tooth Brewing Co

Phone: 278-4999

Fax: 258-4999

Email: mtbrewco@aol.com

MAR 12 1999

Plant address:
2021 Spar Ave.
Anchorage, AK 99501

Mailing address:
PO Box 202549
Anchorage, AK 99520

March 12, 1999

To Whom It May Concern:

In 1995, we began planning to open a brewpub in Anchorage and applied for a brewery license and a restaurant and eating place license. We were granted these licenses in June and July of 1996 and on October 1, 1996 AS 04.11.450(b) was amended to prohibit the ownership of both a restaurant and eating place license and a brewery license. Although our licenses are currently protected by grandfather rights we are interested in opening a second location but cannot.

Recently Chris Anderson of the Glacier Brewhouse proposed amendments to AS 04.11.135(a) that would allow the original five restaurant/brewery licensees to convert their restaurant and brewery licenses into a brewpub license by purchasing a beverage dispensary license. Although it can be financially difficult for brewpubs that serve only beer and wine to afford a beverage dispensary license we understand the need to address the concerns of CHARR/ARBA, alcohol wholesalers and other beverage dispensary license owners.

Additionally, Section 5 was added to the proposed amendment to insure that all of the five original restaurant/brewery licensees were given equal opportunity to become brewpubs. Unlike the other four restaurant/brewery combinations, the Moose's Tooth Pub and Pizzeria and the Moose's Tooth Brewing Company are not co-located in the same building. The existing language of AS 04.11.135(a) only allows a brewpub to manufacture beer on the premises licensed under the beverage dispensary license. In other words the brewing and dining areas of the brewpub must be adjacent to one another. Section 5 treats all brewery/restaurant combinations licenses before October 1, 1996 alike, whether or not they are co-located and gives all five of the brewery/restaurant licensees the option to become a brewpub.

At present, a grandfathered brewery restaurant license (G.B.R.) can:

- 1) produce an unlimited amount of beer
- 2) sell this beer at the licensee's own restaurant or to other license holders
- 3) never open a second location
- 4) never sell its license because of its grandfathered status

If House Bill 69 passes, a G.B.R. can:


- 1) elect to remain as a G.B.R. and continue to abide by #s 1-4 above, OR
- 2) elect to purchase a beverage dispensary license (market price is currently \$125-150K) and with the purchase of a brewpub license to become a brewpub (which requires the G.B.R. holder to permanently relinquish their brewery license)

If House Bill 69 passes and a G.B.R. elects to become a brewpub, the brewpub licensee can

- 1) produce a limited quantity of beer per year (4838.7 kegs per year)
- 2) purchase other restaurant and eating place licenses in order to open additional locations
- 3) distribute its own beer to other licenses owned by the licensee
- 4) (must) use a wholesaler (a.k.a. a distributor) to sell any beer beyond that consumed at its own locations
- 5) sell its license

Although this bill is not a perfect solution to this problem, we believe that it is the most realistic solution. House Bill 69 allows a G.B.R. to elect to expand (or to remain a G.B.R.) while addressing the concerns of CHARR/ARBA, local wholesalers and existing beverage dispensary licensees.

Sincerely,


Matt Jones

SUMMARY:

A grandfathered restaurant/brewery (G.B.R.) combination can:

Present

- no beer production cap
- sell beer at own restaurant
- sell beer to other licenses
other than its own
- use distributor or self-distribute
- never open a second location
- never sell license as package b/c of grandfather status

After House Bill 69

- G.B.R. can continue & operate as at present OR
- elect to purchase beverage dispensary license & become brewpub

If after House Bill 69, G.B.R. elects to become brewpub

- must relinquish brewery license
- accept 4838.7 keg/year production cap
- can purchase other restaurant licenses & open subsequent locations
- can self-distribute to other license owned by beverage dispensary owner
- must use a distributor to distribute product to any license not owned by bev dispensary owner
- can sell its license as package

DeWitt@legis.state., 08:35 AM 3/17/99 , CSHB 69

To: DeWitt@legis.state.ak.us
From: Dan Coffey <dcoffey@alaska.net>
Subject: CSHB 69
Cc:
Bcc:
Attached:

DENNY: THIS E MAIL IS WRITTEN IN SUPPORT OF CSHB 69, PARTICULARLY AS RELATES TO THE BREW PUB PROVISIONS. AS YOU KNOW, I AM THE ATTORNEY FOR GLACIER BREWHOUSE. MY CLIENT IS ONE OF THE STRONGEST SUPPORTS OF THIS BILL AND ASK THAT I WRITE THIS MEMO.

THE SALIENT POINTS OF THE BILL ARE AS FOLLOWS:

- 1) CHRIS ANDERSON, OF GLACIER BREWHOUSE, HAS WORKED ON THIS BILL AND ITS PREDECESSORS FOR THREE (3) YEARS. WHILE THE PRESENT BILL MAY NOT BE A PERFECT SOLUTION, IT IS A COMPROMISE SOLUTION WHICH IS ACCEPTABLE TO THE VAST MAJORITY OF PEOPLE WHO ARE INTERESTED IN THIS BILL.

- 2) THE BILL ALLOWS THOSE INDIVIDUALS WHO LAWFULLY ENTERED INTO THE RESTAURANT AND BREWERY BUSINESS OVER THREE (3) YEARS AGO AND WHO WERE DENIED THE RIGHT/OPPORTUNITY TO EXPAND THEIR BUSINESSES TO NOW EXPAND THEIR BUSINESSES, BUT IN ORDER TO DO SO, THEY MUST ACQUIRE A BEVERAGE DISPENSARY LIQUOR LICENSE. THE REQUIREMENT OF A BEVERAGE DISPENSARY LIQUOR LICENSE SATISFIES THE CONCERNS OF THOSE IN THE INDUSTRY WHO SUPPORTED THE 1996 AMENDMENT TO AS 04.11.450 (b). THUS, THIS BILL CONTAINS LANGUAGE WHICH ANSWERS THE CONCERNS OF ALL OF THE INTERESTED PARTIES. AS SUCH, IT IS NOT COMPLETELY SATISFACTORY TO EVERYBODY, BUT EVERYBODY SUPPORTS THE BILL BECAUSE THEY HAVE

DeWitt@legis.state., 08:35 AM 3/17/99 , CSHB 69

REACHED THESE COMPROMISES. RESTAURANT/BREWERS CAN EXPAND, BUT THEY HAVE TO BUY A BEVERAGE DISPENSARY LICENSE. THIS PUTS THEM IN THE SAME "FINANCIAL FIELD" AS THOSE WHO OWN A BEV DISP LIC. THE RESTAURANT/BREWERS CAN CONTINUE TO SELL TO THE PUBLIC, BUT THEY MUST GO THRU THE DISTRIBUTOR SYSTEM. THIS KEEPS THE DISTRIBUTORS IN THE GAME.

3) AS NOTED, THE DISTRIBUTORS ARE IN SUPPORT OF THE BILL BECAUSE OF THE PROVISIONS FOUND IN PROPOSED AS 04.11.045 WHICH REQUIRE ANY OFF PREMISES SALE OF BEER CAN ONLY BE MADE THRU A LICENSED DISTRIBUTOR. THIS PROVISION KEEPS A CONTROL ON THE UNFETTERED EXPANSION OF A NEW DISTRIBUTION SYSTEM OUTSIDE OF THE EXISTING SYSTEM. THIS REQUIREMENT WILL ALSO HELP PROTECT THE TAX/REVENUE BASE FOR THE STATE.

4) THE ADDITION OF SECTION 5 TO PROPOSED AS 04.11.135 IS INTENDED TO MAKE SURE THAT THE MOOSE'S TOOTH WILL BE ABLE TO PARTICIPATE UNDER THE NEW PROPOSED LEGISLATION. THEIR OPERATION, PRIOR TO THE NEW LAW IN 1996, CONSISTED OF A PREMISES ON WHICH FOOD WAS SERVED WHICH HELD A RESTAURANT AND EATING PLACE LICENSE TO SELL BEER AND WINE AND AN OFF PREMISES BREWERY LICENSE. THIS PROPOSED SECTION WILL RECOGNIZE THAT FACT AND ALLOW THEM TO BREW BEER FOR THEIR PREMISES AND ANY OTHER PREMISES THEY MAY OPEN JUST AS THOSE THAT HAVE THEIR BREWERY FACILITY ON THE SAME PREMISES.

5) THE ONLY OPPOSITION TO THESE PROVISIONS COME FROM A FEW INDIVIDUALS WHO SIMPLY WANT THE PROVISIONS OF THE 1996 LAW REPEALED. THESE PEOPLE ARE NOT OPPOSED TO THE COMPROMISE LANGUAGE FOUND IN CSHB 69, BUT SIMPLY DON'T SEE THIS LANGUAGE AS THE "RIGHT" ANSWER TO THE PROBLEM. IN THIS REGARD, I AM REFERRING TO THE LANGUAGE

DeWitt@legis.state., 08:35 AM 3/17/99 , CSHB 69

WHICH ADDED "A RESTAURANT OR EATING PLACE LICENSE" TO THE PROVISION OF AS 04.11.450 (b). THE PROBLEM WITH THIS POSITION IS THAT THERE ARE MANY IN THE INDUSTRY WHO ARE NOT IN FAVOR OF ANY REPEAL. THUS, REPEALING THIS PROVISION IS NOT POSSIBLE. THIS BRINGS ME BACK TO MY FIRST POINT. THIS BILL IS A COMPROMISE WORKED OUT BETWEEN ALL INTERESTED PARTIES (CHARR/ARBA. MY CLIENT. OTHER'S IN THE RESTAURANT/BREWERY BUSINESS/BREW PUB OWNERS/DISTRIBUTORS. ETC., ETC. A LOT OF WORK BY THE INDUSTRY HAS GONE INTO THIS BILL AND IT SHOULD BE SUPPORTED FOR WHAT IT IS, A COMPROMISE THAT EVERYONE CAN LIVE WITH.

WE WILL BE AVAILABLE AT THE COMMITTEE HEARING TODAY AT 1:30 P.M. TO TESTIFY IF NECESSARY. THANKS TO YOU AND TO ELDON FOR YOUR CONSIDERATION OF THIS MEMO.

REGARDS, DAN

STATE OF ALASKA
Boards and Commissions

ALCOHOLIC BEVERAGE CONTROL

BOARD: Alcoholic Beverage Control Board

BOARD IDENTIFICATION NUMBER: 003

DEPARTMENT: DEPARTMENT OF REVENUE

AUTHORITY: AS 04.06.010

STATUS: Active

SUNSET DATE: June 30, 1998

REQUIREMENTS: Legislative Confirmation, Financial Disclosure

PROHIBITIONS: No member may hold any other state or federal office, either elective or appointive. No 3 members may be engaged in the same business, occupation, or profession.

TERM: 3 years

DESCRIPTION: 5 members appointed by Governor: 2 from alcoholic beverage industry, but not wholesalers; no three members may be engaged in the same business, occupation or profession; board selects chair; serve at pleasure of Governor; vacancies to be filled within 30 days; Governor also appoints Director.

FUNCTION: Controls manufacture, barter, possession, and sale of alcoholic beverages in the state.

CHAIR: Board selects chair.

SPECIAL FACTS: Quorum - 3 members (majority of whole membership must approve applications, renewals, transfers, etc.); Regulatory/quasi-judicial agency. Serve at the pleasure of the Governor.

COMPENSATION: Standard Travel and Per Diem. No additional compensation.

MEETINGS: 6-10 meetings/year-11-14 days maximum; at least once/year in each judicial district. Call of chair.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas B. Griffin, Director, Alcoholic Beverage Control Board, DOR, 550 West Seventh Avenue, Suite 350 M/S 0400, Anchorage, AK, 99501, Phone: 907-269-0350, Fax: 907-272-9412.

STATE OF ALASKA
Boards and Commissions

Membership Roster
ALCOHOLIC BEVERAGE CONTROL (003)

Member	Appointed	Reappointed	Term Exp.
Ellen L. Ganley Public 4454 Chena Hot Springs Road Fairbanks, AK 99712	06/29/95	01/31/96	01/31/99
Toni La Jackson Public P.O. Box 165 Copper Center, AK 99573	08/27/97		01/31/00
Robert J. Klein Industry 10381 Treetop Lane Anchorage, AK 99516	05/31/95	01/02/97	01/31/00
Joseph J. Thomas, Jr. Industry P.O. Box 20977 Juneau, AK 99802	02/14/96		01/31/99
Thomas C. Walker Public Chief of Police City of Seward P.O. Box 167 Seward, AK 99664	06/02/98		01/31/01

Audit Report

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

September 8, 1997



Audit Control Number:

04-1452-97

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

BUDGET AND AUDIT COMMITTEE

Senator Randy Phillips, Chairman
Senator Al Adams
Senator Dave Donley
Senator Rick Halford
Senator Drue Pearce
Senator John Torgerson (alternate)

Representative Terry Martin, Vice Chair
Representative Con Bunde
Representative Eric Croft
Representative Jeanette James
Representative Gene Therriault
Representative Mark Hanley (alternate)

DIVISION OF LEGISLATIVE AUDIT

Randy S. Welker, CPA
Legislative Auditor
Merle R. Jenson, CPA
Deputy Legislative Auditor

P.O. Box 113300
Juneau, Alaska 99811-3300

(907) 465-3830, Juneau
(907) 561-1445, Anchorage
(907) 465-2347, Juneau FAX

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830

September 8, 1997

FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

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.

DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD

September 8, 1997

Audit Control Number

04-1452-97

This review examines the activities of the Alcoholic Beverage Control Board (ABC Board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. Alaska Statute 44.66.010 specifies that the ABC Board will terminate on June 30, 1998 and provides it with one year to conclude its affairs. We recommend that the legislature extend the ABC Board's termination date until June 30, 2002.

The audit was conducted in accordance with generally accepted government auditing standards. Field work procedures utilized in the course of developing the findings and discussion presented in this report are outlined in the Objectives, Scope, and Methodology section. Audit results may be found in the Report Conclusions, Findings and Recommendations, and Analysis of Public Need sections of the report.

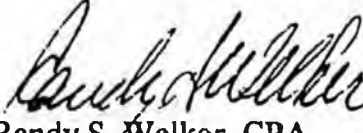

Randy S. Welker, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function.....	3
Report Conclusions.....	5
Findings and Recommendations	7
Analysis of Public Need.....	11
Auditor's Comments... ..	17
 Appendices:	
A. Summary of Revenues and Expenditures	23
B. Number of Licenses by Category	25
C. Licenses, Permits, and Fees	27
D. Summary of Questionnaires Sent to Municipalities	29
E. Summary of Questionnaires Sent to Law Enforcement Agencies	33
F. Summary of Questionnaires Sent to Licensees.....	37
 Agency Response:	
Department of Revenue.....	39
Alcoholic Beverage Control Board	45
Legislative Auditor's Additional Comments	51

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Alcoholic Beverage Control Board (ABC Board or the board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by legislative intent, this report shall be considered during the legislative oversight process in determining whether the ABC Board should be reestablished. The law currently specifies that the board will terminate on June 30, 1998. At that time, it will be given one year to conclude its affairs unless its termination date is extended.

Objectives

The ABC Board was created to regulate the manufacture, sale, barter, and possession of alcoholic beverages in order to protect the public health, safety, and welfare of citizens in the State. To this end, our primary objective in this audit was to determine whether there is a public need for the board and if it should continue to exist.

The secondary objective was to review the board's major functions of licensing, inspections, and investigations for effectiveness in meeting public need and for efficiency of operation.

Our report conclusions, findings and recommendations, and analysis of public need have been summarized in the appropriate sections of this report.

Scope

We reviewed ABC Board activity that occurred subsequent to the last sunset audit which was performed in 1993. The activity was evaluated to determine whether or not it has been in the public interest. We also reviewed the proceedings of the board to ensure that it complies with Alaska Statutes and regulations.

Methodology

We reviewed and evaluated the following during the course of our examination:

- Title 4 and other applicable Alaska Statutes.
- Title 15, Chapter 104 of the Alaska Administrative Code.
- ABC Board licensing files.

- ABC Board reading files.
- ABC Board operating budgets.
- Questionnaires sent out by us to municipalities, law enforcement agencies, and licensees.

In addition, we attended a board meeting via teleconference and listened to tapes of board meetings. We interviewed ABC Board staff and the executive director of the Cabaret, Hotel, Restaurant, and Retailers Association. We also contacted the state ombudsman, the Attorney General's office, the Division of Equal Employment Opportunity, and the Human Rights Commission.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (ABC Board or the board) was established in 1959 by Title 4 of the Alaska Statutes as a quasi-judicial agency. For administrative purposes the ABC Board is assigned to the Department of Revenue. The purpose of the board is to regulate the manufacture, barter, possession, and sale of alcoholic beverages in the State. Control is exercised through board review and consideration of liquor license applications for original issuance, renewal, and transfer, and also through revocation and suspension of licenses. The board's investigators also issue citations for Title 4 violations. In addition, the board has the power to propose and adopt regulations and to hear appeals concerning actions of ABC Board personnel.

The board is composed of five members appointed by the governor and confirmed by the legislature. Traditionally, appointed members represent all geographic areas of the State. Two of the members are required by statute to be representatives of the alcoholic beverage industry while the other three are public members. Board members are appointed for overlapping three-year terms. A director, appointed by the governor, serves as the executive officer and is responsible for enforcing Title 4 and regulations adopted by the board.

Title 4 specifies the type of licenses, licensing fees, and the activities allowed under each class of license issued by the board. Title 4 also establishes procedures for the issuance of new and renewal licenses.

ABC Board employees are charged with ensuring compliance with alcoholic beverage statutes by over 1,800 licensees. Employees provide three functions that include administration, licensing, and enforcement. These services are briefly described below.

Administration: The ABC Board director has a wide variety of administrative duties which provide support for the board. Responsibilities include oversight of staff, preparation of budget documents, and direction of special enforcement investigations and public hearings. The director and a secretary comprise the administrative staff.

Licensing: The three-member licensing staff is responsible for processing license applications, maintaining licensing records and files, collecting licensing fees, and answering licensing questions asked by the public.

Enforcement: The ABC Board currently has four investigators. Three are based in Anchorage, and one in Fairbanks. Investigators perform various duties that include

Alcoholic Beverage Control Board Members

Bob Klien, Chairman
Anchorage, Industry Member
Term expires January 31, 2000

Joe Thomas
Juneau, Industry Member
Term expires January 31, 1999

Bert Cottle
Valdez, Public Member
Term expires January 31, 1998

Ellen Ganley
Fairbanks, Public Member
Term expires January 31, 1999

Vacant since January 31, 1997
Public Member Seat

inspecting licensed premises, investigating complaints of suspected licensing violations, and responding to questions from licensees and the public. Investigators also monitor server training courses, and perform background checks on applicants. On occasion, they also give lectures relating to alcoholic beverage control laws and regulations on behalf of the board.

The ABC Board office is located in Anchorage. In FY 97, the board had an operating budget of \$642,500 for its activities and the nine staff positions.

REPORT CONCLUSIONS

In our opinion, the Alcoholic Beverage Control Board (ABC Board or the board) is operating in an efficient and effective manner and should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages in Alaska in order to protect the public's health, safety, and welfare. The board has provided protection through the issuance, renewal, revocation, and suspension of licenses. Protection has also been provided through active investigation of suspected licensing violations and enforcement of the State's alcoholic beverage control laws and regulations.

As indicated in the Analysis of Public Need section of this report, in our opinion the ABC Board has met the various statutory sunset criteria. With the exceptions noted in the Findings and Recommendations section of this report, we believe that the board is effectively meeting its statutory responsibilities.

We have reviewed the activities of the ABC Board since the last sunset review and, in our view, it is operating in the public interest. We recommend that Alaska Statute 44.66.010(a)(1) be amended to extend the life of the ABC Board to June 30, 2002.

Status of Prior Audit Recommendations

The previous sunset audit, dated December 3, 1993, made two recommendations to the Department of Revenue and the ABC Board. Only one of these recommendations is of continuing significance. In response to that recommendation, the board has implemented additional controls to ensure that the liquor license fee sharing program complies with AS 04.11.610. Current Recommendation No. 2 addresses the remaining problems in this area.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Alcoholic Beverage Control Board (ABC Board or the board) should take steps to ensure that objections from affected neighborhoods are considered prior to the issuance, transfer, or renewal of a license.

The board considers two types of protests when determining whether to issue, renew, or allow the transfer of a license, those from individual citizens and those from local governing bodies. The first type of protest is allowed under AS 04.11.470, as follows:

A person may object to an application for issuance, renewal, transfer of location, or transfer to another person of a license, or for issuance of a permit, by serving upon the applicant and the board the reason for the objection.

The board may decide to hold a public meeting to hear testimony on the license in question based upon the objection, but regardless of whether a public hearing is held, the board is required to consider the objections it has received when deciding whether to grant licensure.

The second type of protest is allowed under AS 04.11.480, as follows:

A local governing body may protest the issuance, renewal, relocation, or transfer to another person of a license by sending the board and the applicant a protest and the reasons for the protest within 60 days of receipt from the board of notice of the application. . . . If an application or continued operation is protested, the board shall deny the application or continued operation unless the board finds that the protest is arbitrary, capricious, and unreasonable.[Emphasis added]

If there is a license available, and the premise being considered meets licensing requirements, the board generally only denies licensure on the basis of a criminal background of the applicant, or a protest from the local governing body. During our review we noted several instances when licenses were issued or transferred despite ardent objections from concerned citizens or residents of the affected neighborhood. In only rare instances did the board deny licensure based on citizen objections.

There appears to be a lack of communication between the board and most municipalities. The board expects local governing bodies to consider neighborhood objections regarding the issuance, transfer, or renewal of a license when deciding whether to file a protest of licensure. We understand that the board considers denial of a license based solely on neighborhood objections to be tantamount to overriding the local governing body's wishes. However, only one of the thirty municipalities responding to our survey indicated

that neighborhood objections were considered when deciding whether to file a protest. Most indicated that protests were usually based on unpaid taxes. (See the Summary of Questionnaires Sent to Municipalities at Appendix D, No. 2.)

If neighborhood objections are of primary concern to neither the board nor the local governing body, then the board may be issuing some licenses without proper consideration of those objections. There should be a clear understanding between the board and local governing bodies regarding who is responsible for considering objections from concerned citizens regarding licensure. That understanding should also be made known to members of the public who may wish to express concerns regarding the issuance, renewal, or transfer of a license.

Recommendation No. 2

The board should review the liquor license fee sharing program to ensure these funds are properly used.

Alaska Statute 04.11.610, *Refund to municipalities*, states:

(a) Biennial license fees, excluding annual wholesale license fees, collected within a municipality shall be refunded semi-annually to the municipality.

(b) If the officers of a municipality fail to actively enforce local ordinances, laws of the United States and the State, and the regulations relating to the manufacture and sale of alcoholic beverages in the State, the commissioner of revenue may deny the refund provided for under (a) of this section until the board finds the enforcement of the ordinances, laws, and regulations is resumed.

(c) The Department of Revenue shall recover any amounts erroneously refunded under (a) of this section.

Senate Journal Supplement No. 23, dated April 1, 1980, accompanied the bill under which this statute was adopted. It contained a section analysis of the proposed rewritten statute. It stated that the purpose of the refunds was

. . . to provide an incentive to municipalities to actively enforce liquor laws, and the authority to grant, deny and recover refunds of license fees is intended to further that purpose.

No standards established for the use of the liquor license fee refunds

The purpose of liquor license fee refunds to municipalities is to provide an incentive for them to actively enforce ordinances, laws, and regulations relating to the manufacture and sale of alcoholic beverages. However, the board has no mechanism in place to determine if the refunds are used for such enforcement.

The results of our surveys during this review, and those in our 1993 sunset review, showed that most of the refunds are deposited into general fund accounts and used as a source of funding for all municipal operations. Only three of the 30 municipal respondents to our current survey indicated that the refunds were used to fund law enforcement activities. (See the Summary of Questionnaires Sent to Municipalities at Appendix D, No. 7.) The board does not currently require any documentation indicating how the refunds are used by the recipients.

We believe municipalities should be required to show that they are funding enforcement activities at greater than or equal to the refund amount. The current board director has indicated that he intends to introduce regulations at the next board meeting that would require such evidence.

During our prior audit, we took exception to the board's practice of refunding license fees to municipalities whose only local enforcement of liquor laws was provided by Village Public Safety Officers (VPSO) and/or State Troopers. It was, and still is, our contention that because these enforcement agencies are state funded,¹ their presence in the community does not constitute local enforcement of liquor laws.

As a result of our prior audit, the board's staff inquired as to how fee sharing funds were being spent by communities. Subsequently, four communities were dropped from the program. However, the board still holds that in some instances the presence of a VPSO in a community is sufficient to qualify a community for fee sharing. It is still refunding license fees to four communities that have only VPSO enforcement. As stated above, we disagree with this assessment. However, the issue will be a moot point if the board implements regulatory changes requiring municipalities to provide evidence that they are funding enforcement activities at a level at least as great as that of the refunds they receive.

¹ In the case of VPSOs, nonprofit Regional Corporations may contribute to the program as well. Further, per 13 AAC 96.040, the village where the VPSO serves is only required to provide office space, a telephone with long distance service, and a place to temporarily hold individuals under arrest, therefore, these contributions may not constitute an adequate contribution to the program.

Recommendation No. 3

The Alcoholic Beverage Control Board should take measures to ensure that license fees refunded to municipalities as part of the revenue share program are correct.

The liquor license fee sharing program lacks sufficient controls to ensure that the correct amounts of liquor license fees are refunded to eligible municipalities. ABC Board personnel maintain the data base used to determine the amount of license fees to be refunded. Twice a year a license fee revenue report is sent to the Department of Revenue's Income and Excise (I&E) Audit division. I&E issues refunds based on this report.

ABC Board employees reconcile payments made by I&E to the amount that the board requested them to make. Board employees also review the license fee revenue reports to ensure that refunds are requested for only eligible municipalities. However, no review is conducted to ensure that the amount of refund requested for each municipality is accurate. When errors are made in the amount or destination of the refunds, they may not be identified in a timely manner, if ever.

For example, during our review, we discovered errors in license fee revenue reports submitted to I&E in both FY 96 and FY 97. None of the errors we found had been detected by the board's control systems. In FY 96, we found two errors. In one instance, \$1,500 that should have been sent to Seldovia was sent to Seward. In the second instance, license fees collected for the city of Soldotna were not totaled correctly, resulting in an underpayment of \$11,680.

In FY 97, municipalities were overpaid a total of \$107,700. This occurred because both the license fee revenue reports for the year included license fees collected in December. Therefore, municipalities were paid twice for December collections.

Controls should be put in place to ensure the accuracy of the license fee revenue refund reports.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of the Alcoholic Beverage Control Board's (ABC Board or the board) activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

We found the board operates in the public interest and protects the public's health, safety and welfare. It limits the number of licenses authorized and reviews license applications to ensure that licensed premises comply with health and safety codes and that they are located in properly zoned areas. With the applicant's approval, they conduct background checks to ensure that licenses are not granted to individuals with significant criminal records. The board provides license regulation and enforcement, the investigation of complaints, and when warranted it takes licensing actions such as revocation or suspension. The board provides consistent interpretation and application of alcohol law statewide for the public, law enforcement, and liquor industry.

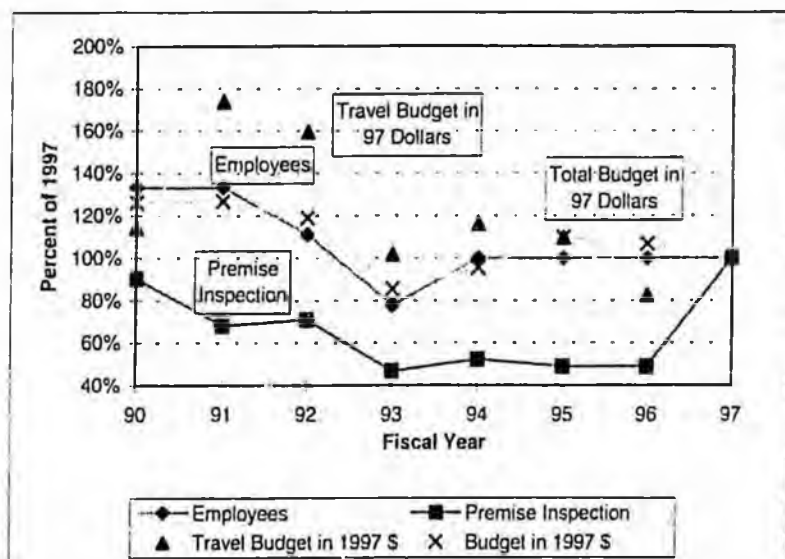
In addition, ABC Board employees monitor the alcohol servers training courses and answer questions from members of the public, licensees, law enforcement agencies, and local governing bodies regarding alcoholic beverage control statutes and regulations.

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

We found no statutes that were obsolete, vague, or unduly restrictive except those relating to the refund of license fees to municipalities. As stated in Recommendation No. 2, no standards have been established for the use of the liquor license fees refunded to municipalities, despite the fact that the purpose of the refund program is to provide an incentive to municipalities to actively enforce liquor laws. The board should review the liquor license fee sharing program to ensure that it complies with Alaska Statutes and legislative intent.

The current director of the ABC Board has held the position since January 1996. Under his leadership, the board's investigative staff have worked in a more high-profile manner than in the past. This is reflected in the increase in the number of premise inspections conducted in FY 97 and the latter half of FY 96. One Anchorage investigator now works full time on an evening shift visiting licensed establishments. A second Anchorage investigator works an evening shift approximately half the time. We see the heightened level of visibility as a positive step on the part of the board.

The following graph shows the board's total budget, travel budget, staffing level, and the number of premise inspections conducted for each of the last eight years. Budgetary data was inflation adjusted to reflect 1997 dollar values.² All information on the graph is presented as a percentage of the FY 97 levels. For example, the board's FY 91 travel budget was 174% of the FY 97 travel budget when both are reported in 1997 dollars.



FY 97 = 100%	
Travel Budget	\$ 27,400
Employees	9
Total Budget	\$ 642,500
Premise Inspections	821

The board's travel budget may be somewhat restrictive. While the overall number of premise inspections has increased dramatically, the vast majority were done in urban areas such as Anchorage and Fairbanks. During FY 97, no premise inspections were conducted in 67% of the communities we classified as rural or remote for the purposes of our analysis. By contrast, only 25% of those communities we classified as urban had fewer than 50% of their licensed premises inspected during the same year. It is costly to send investigators to remote locations, but the benefits of conducting inspections in these areas, along with the benefit of a heightened ABC enforcement presence, may make it worth the investment. This is clearly a matter that merits the consideration of the board and the legislature.

The Division of Legislative Audit sent out questionnaires to municipalities, law enforcement agencies, and licensees. The questionnaires covered a number of issues. (See the Questionnaire Summaries in Appendices D, E, and F.) Many of the law enforcement respondents indicated the desire for more ABC enforcement staff with comments such as:

Increase enforcement personnel.

They need more positions, full police power, and the ability to travel and train local police departments on Title 4 as changes occur.

² Inflation adjustments are based on U. S. Department of Labor, Anchorage Consumer Price Index for all Urban Consumers.

Increasing the level of ABC enforcement is a policy issue. Central to that issue is the degree to which various law enforcement costs should be paid by the State and which costs should be paid by local law enforcement agencies. If the State is to take the enforcement lead, it must then determine how much police power to give to the board. This issue is discussed in the Auditor's Comments section.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

Several statutory changes pertaining to the liquor industry have been implemented or proposed during our audit period. We find these changes, which were either proposed or supported by the board, to generally be of benefit to the public. The most significant statutory changes that have been implemented or are currently being considered can be categorized into four groups: brewpubs, expansion of what constitutes a Title 4 violation, inclusion of limited liability companies, and increased enforcement issues.

The increased popularity of "brewpub" establishments across the country and within the State has led to statutory changes. A brewpub is an establishment where beer is manufactured and served on the same premises. Prior to 1988, Alaska statutes prevented the establishment of a brewpub type business because brewery licensees could not hold a beverage dispensary license. The 1988 legislation created the brewpub license classification, but limited the amount of malt beverage that could be produced in a brewpub. Only beverage dispensary licensees were allowed to obtain a brewpub license.

During the early 1990's several distillery or brewery licensees obtained restaurant/eating place licenses in order to serve the beer they brewed in their restaurants. Thus, they circumvented the limitations imposed on brewpubs. Recent statutory changes, as well as some additional proposed changes put the various licenses on more equal footing.

Some statutory changes have been implemented to increase the level of accountability for persons other than just the licensees under Title 4. Alaska Statute 04.16.025 and AS 04.16.050 were amended to make being present in a bar after hours and underage possession of alcoholic beverages Title 4 violations.

Alaska Statute 04.16.051 was passed to establish a penalty for criminally negligent serving of alcoholic beverages. Repeat offenders are guilty of a class C felony. This means that a person who repeatedly serves alcohol to underaged persons may be sentenced to up to five years in prison.

Statutory changes in the area of limited liability companies were directed at ensuring that these companies are held to the same standards as other entities which hold liquor licenses. Modifications to statutes added limited liability companies to the list of those entities that require written ABC Board consent to receive controlling interest in a liquor license. A new section of statute has been proposed by the board to require a limited liability company to

conform to the requirements placed on corporations and partnerships for reporting substantial changes in ownership to the board.

Proposed changes being considered in the areas of enforcement authority are discussed in the Auditor's Comments section of this report.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

As noted in Recommendation No. 1, we have some concerns regarding the level of consideration the board gives to objections from concerned citizens on the issuance, renewal, or transfer of a license.

However, public participation is encouraged at each board meeting. Title 4 requires that the board meet in each of the four judicial districts of the State at least once each year. These meetings are advertised in local newspapers and are open to the public. Time for public comment on each board meeting agenda item is allowed.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

As required by statute, when new regulations are being adopted notices are mailed to all known interested parties. Public hearings are held in a further effort to receive public input. As noted above, all board meetings are noticed and open to the public. Our reservations regarding the level of consideration given to objections to the issuance, renewal, or transfer of a license are discussed in Recommendation No. 1.

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

The Office of the Ombudsman received ten complaints about the board during the period from July 1, 1993 through June 30, 1997. The Ombudsman declined to pursue three of the cases: one because the complainant refused to allow his identity to be disclosed to the agency, one because the action in question took place over a year prior to the complaint, and one because of a lack of evidence. Two complaints were attributable to a misperception about the board's function. Three cases involved unresponsive or rude agency personnel, and two complaints involved the board issuing licenses despite public objection. None of the complaints appear serious enough to raise doubts about the ability of the board to function in the best interest of the public. However, complaints about the board issuing licenses despite

public objection lend credence to concerns about the consideration of local objections to the issuance of licenses. See Recommendation No. 1.

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

The board reviews liquor license applications to determine if the applicants meet certain statutory qualifications. If a license is available and if the applicant meets the requirements, the board issues the license. Our review of applicants' files disclosed no violations of those requirements. The board may also impose fines or may suspend or revoke licenses or permits previously authorized, if it finds that it would be in the best interest of the public. The actions taken by the board are summarized below:

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98*	Total
Fines	1			3	5	2	11
Suspensions		3	5	3	3	1	15
Renewal Denial	3	1		1	1		6
Revocation	3		1		1		5
Actions Pending						5	5
Total	7	4	6	7	10	8	42

*FY 98 information covers July 1, 1997 through the end of our fieldwork on Sept. 8, 1997.

These statistics indicate that the board is somewhat active in imposing disciplinary actions against licensees. However, the industry representation on the board may lend itself to bias, particularly given the subjective nature of many of the decisions to impose license sanctions. We understand that the board's industry members often cast votes favorable to the licensee, whereas public members are more likely to vote for stronger licensing action, or to deny licensure. One of the board's three public member seats has been vacant since January 31, 1997, leaving a two to two split between public members and industry members. Perhaps the interests of the public would be better served by amending AS 04.06.020 to increase the number of public members or to decrease the industry representation on the board.

The board is required to take licensing action when it finds certain violations have occurred on licensed premises, such as gambling or prostitution. As part of our review in this area, we asked law enforcement agencies if they notify the board's enforcement staff when arrests are made on licensed premises. Fourteen of the 31 respondents indicated that they rarely or never shared this information with the enforcement staff. This raises concerns regarding the ability of the board to make informed decisions when considering whether license actions are necessary. We discuss this issue further in the Auditor's Comments section of this report.

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.

We found no evidence of hiring practices or board appointments that were contrary to state personnel practices. No complaints have been filed with either the Division of Equal Employment Opportunity or the Human Rights Commission.

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 the Findings and Recommendations and Auditor's Comments sections of this report.

AUDITOR'S COMMENTS

Through the audit process we became familiar with the various aspects of the Alcoholic Beverage Control Board's (ABC Board or the board) operations. The Auditor's Comments section of this report is based on our general observations. The purpose of this section is to bring certain policy matters to the attention of the legislature and to encourage public debate.

The board's purpose is described in AS 04.06.090, as follows: "*The board shall control the manufacture, barter, possession, and sale of alcoholic beverages in the state.*" The board fulfills its responsibility by licensing establishments to manufacture, distribute, or sell alcoholic beverages to the public and by enforcing the alcohol control laws contained in Title 4 and in the underlying regulations.

ABC investigates illegal gambling and prostitution

The ABC Board staff have conducted gambling investigations, in cooperation with the Alaska State Troopers (AST), Division of Charitable Gaming personnel, local police, and district attorneys. The board believes that there is a strong connection between gambling, prostitution, and alcohol sales, that local police often do not investigate these crimes, and that the current ABC investigators are some of the most knowledgeable enforcement personnel in the State on these issues. For these reasons, the board has allowed its staff to investigate these crimes on licensed premises.

Under AS 04.06.110, the exercise of peace officer powers, such as investigating gambling and prostitution, must be approved by the commissioner of the Department of Public Safety (DPS). The commissioner has granted these powers to ABC investigators.

We acknowledge the board's concern in this area and suspect that it may be justified. We also understand that the current ABC investigators are all ex-police officers and would very much like to address other crimes they see. However, we must point out that such investigations are contrary to current law. The very statute that allows this delegation of peace officer powers also stipulates that

[p]owers granted by the board under this section may be exercised only when necessary for the enforcement of criminally punishable provisions of this title, regulations of the board, or other criminally punishable laws and regulations governing the manufacture, barter, sale, consumption, and possession of alcoholic beverages in the state. [Emphasis added]

Gambling and prostitution are not regulated under Title 4; the board cannot conduct these criminal investigations.

The board's responsibility in this area strictly relates to the licensing aspects. Alaska Statute 04.11.370(a)(8) requires that a license or permit be suspended or revoked if the

board finds that illegal gambling has occurred on the premises. In addition, subsection (a)(7) of this statute requires suspension or revocation if the board finds

. . . use of a licensed premise as a resort for illegal possessors or users of narcotics, prostitution, or promoters of prostitution; in addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort of illegal possessors or users of narcotics, prostitution, or promoters of prostitution.

While we understand that the board may be hesitant to revoke a license because of the difficulty of proving the "general reputation" of the premises, we must point out that an ABC criminal investigation of specific individuals is not required nor even allowed.

Given the board's responsibility to take a licensing action in these situations, we find it disturbing that only 14 of the 31 law enforcement agencies responding to our survey indicated that they always notify the ABC Board's enforcement staff of arrests made on licensed premises. (See Appendix E, No. 3.) Perhaps the board should periodically survey law enforcement agencies and consult the available databases to determine if licensing actions are required.

Board is considering allowing investigators to carry firearms

As discussed above, ABC investigators have been given peace officer powers to conduct criminal investigations into gambling and prostitution. In addition, ABC board has been given the authority to issue citations for Title 4 infractions that involve parties other than licensees. For example, investigators may use this authority to cite underage individuals using forged identification to enter bars and possess alcohol, or to cite package store clerks who have sold alcohol to underage customers.

While the risks in a gambling or prostitution investigation may be more apparent, there is also a risk to ABC Board investigators in the citation process. Even though the citation authority does not grant investigators the right to make physical arrests, a person may refuse to accept the citation. We understand that the investigator can then either make a citizen's arrest or call a Trooper or a police officer to make the arrest. The board believes that neither of these options is satisfactory and may expand the investigator's authority to allow them to make physical arrests. If this is authorized, firearms would be needed. Firearms would also be appropriate in police actions involving after-hours clubs.

Regulation 15 AAC 104.505 specifically prohibits the board's investigators from carrying firearms in the performance of their duties. Yet, the board's investigators believe that due to the increasing presence of firearms in our society and the nature of their jobs, they need to carry firearms to protect themselves and to properly execute their duties. The board's director is researching the implications of repealing this regulation and allowing investigators to carry firearms.

We are skeptical of this course of action. Although the current investigators are all ex-police officers and would like to carry weapons, the primary issues here are employee safety, training and ongoing currency requirements for firearms, liability concerns, and of course the need for such a weapon. In the direction the board is going with the peace officer powers, firearms would be appropriate. However, the question as to whether this agency should be a police force or a licensing board should be addressed first.

Police functions could be retained by the Department of Public Safety

As discussed above, through DPS delegation and board action, ABC is trending toward and may very well become a police force, albeit limited in scope. We observe that DPS is the state's police force and is "geared up"³ to perform this type of function. To splinter off police functions may not be effective nor efficient.

Criminal investigations into gambling and prostitution as well as arrests or citations for Title 4 crimes, such as underage drinking or over serving, could be handled by DPS or local police departments. It is primarily a question of where the funds for these investigations are to be appropriated. Of course, how much emphasis the State should place on these investigations is a valid question that must be answered, but the answer is the same regardless of which department handles the enforcement. Although these are perhaps less serious crimes than many investigated by DPS, enforcement actions need not be slighted. DPS could set up a dedicated gambling, prostitution, and alcohol team if the legislature believed it to be necessary. Through the budget request and hearing process, the legislature could ensure that the appropriate emphasis continues.

We believe that retaining the police functions in DPS would not adversely impact the board's licensing function. This licensing function should be retained in the Department of Revenue. The board's mandated role of taking licensing actions when certain crimes are committed requires communication with police, but not a police force of its own. The board should focus its efforts on licensing issues.

³ DPS has already addressed the administrative and operational problems inherent in building a police force while the ABC Board has not. For example, AS 39.25.110 requires that ABC Board employees who have been given peace officer powers to be exempt employees. As noted above, these powers have been delegated, yet, all board employees are still members of either the general government or supervisory bargaining units.

(Intentionally left blank)

APPENDICES

(Intentionally left blank)

APPENDIX A
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Summary of Revenues and Expenditures
Fiscal Years 1994 through 1997

	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>
<u>Revenue</u> (From Schedule 1 below)	\$2,471,235	\$1,789,865	\$1,938,944	\$1,701,383
Less: Transfers to Municipalities (Note 1)	<u>1,340,900</u>	<u>900,225</u>	<u>886,170</u>	<u>873,750</u>
<u>Net Revenue</u>	1,130,335	889,640	1,052,774	827,633
Less: Expenditures (Note 2)	<u>574,900</u>	<u>675,941</u>	<u>641,643</u>	<u>642,579</u>
<u>Excess of Revenue Over Expenditures</u>	<u>\$ 555,435</u>	<u>\$ 213,699</u>	<u>\$ 411,131</u>	<u>\$ 185,054</u>

Schedule 1 - Revenue

Liquor License Application Fees	\$ 298,250	\$ 255,450	\$ 283,713	\$ 264,282
Pub Licenses	400	800	-0-	800
Brewery Licenses	2,000	6,000	6,000	8,000
Distillery Licenses	1,000	-0-	1,000	-0-
Beverage Dispensary Licenses	1,202,050	816,100	857,800	783,750
Club Licenses	78,400	47,450	56,400	48,700
Common Carrier Licenses	86,775	43,750	88,025	32,200
Restaurant Licenses	139,950	103,200	112,050	103,350
Theater Liquor License	-0-	-0-	-0-	600
Retail Store Licenses	471,375	326,625	310,200	316,250
Wholesale Licenses	139,000	128,500	138,500	96,900
Malt Beverage & Wine Wholesale License	3,500	6,100	3,000	1,800
Miscellaneous (Note 3)	<u>48,535</u>	<u>55,890</u>	<u>82,256</u>	<u>44,751</u>
<u>Total Revenues</u>	<u>\$2,471,235</u>	<u>\$1,789,865</u>	<u>\$1,938,944</u>	<u>\$1,701,383</u>

(Note 1) In accordance with AS 04.11.610, refunds of annual license fees, excluding annual wholesale license fees, collected within a municipality are to be given to the municipality semiannually. The total of these refunds is the "Transfers to Municipalities" amount. The FY 97 amount was adjusted for errors we found in the license fee revenue reports. See Recommendation No. 3.

(Note 2) Expenditures do not include encumbrances.

(Note 3) The miscellaneous revenue account includes fees from various low-volume licenses (theater, recreational sites, and municipal golf courses) and permits (caterer, special events, restaurant caterer, club license caterer, and restaurant designation).

Source: Alcoholic Beverage Control Board and the Alaska State Accounting System.

(Intentionally left blank)

APPENDIX B
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Number of Licenses by Category
Calendar Years 1993 through 1997 (Note 1)

<u>License Categories</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Pub	1	1	1	1	1
Brewery	3	5	8	14	15
Distillery	1	1	1	1	1
Brewpub	0	2	3	2	2
Beverage Dispensary	690	689	685	680	673
Club	86	86	85	86	84
Common Carrier	212	202	209	218	206
Restaurant	324	337	348	359	345
Theater	1	1	1	1	1
Retail Store	446	440	439	437	429
Wholesale	22	22	21	21	20
Recreational Site	23	24	23	23	23
Municipal Golf Course	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>Total Licenses</u>	<u>1,810</u>	<u>1,811</u>	<u>1,825</u>	<u>1,844</u>	<u>1,801</u>

(Note 1) Calendar year-end data is shown for 1993 through 1996. The 1997 data is as of September 1, 1997.

Source of Information: Alcoholic Beverage Control Board

(Intentionally left blank)

APPENDIX C
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Licenses, Permits, and Fees
FY 94 though FY 97

TYPES OF LICENSES	BIENNIAL FEE
Application Filing Fee	\$ 200.00
Beverage Dispensary License - Half Year	1,250.00
Beverage Dispensary License - Tourism - Half Year	1,250.00
Beverage Dispensary License	2,500.00
Beverage Dispensary License - Duplicate	2,500.00
Beverage Dispensary License - Tourism	2,500.00
Beverage Dispensary License - Tourism - Duplicate	2,500.00
Beverage Dispensary License - Public Convenience	2,500.00
Beverage Dispensary License - Community License	2,500.00
Bottling Works License	500.00
Brewery License	1,000.00
Brewpub License	500.00
Club License	1,200.00
Club License - Half Year	600.00
Club License - Public Convenience	1,200.00
Common Carrier License	700.00
Common Carrier License - Half Year	350.00
Distillery License	1,000.00
Package Store License	1,500.00
Package Store License - Half Year	750.00
Package Store License - Tourism	1,500.00
Package Store License - Public Convenience	1,500.00
Package Store License - Community License	1,500.00
Pub License (University)	800.00
Recreational Site License	800.00
Recreational Site License - Half Year	400.00
Restaurant/Eating Place (Beer & Wine only)	600.00
Restaurant/Eating Place (Beer & Wine only) - Half Year	300.00
Restaurant/Eating Place (Beer & Wine only) - Tourism	600.00
Restaurant/Eating Place (Beer & Wine only) - Public Convenience	600.00
Retail Stock Sale License	100.00
Theater License	600.00
Wholesale License - General (Basic Fee)	2,000.00
Wholesale License - Malt Beverage & Wine	400.00
Winery	500.00

Source of Information: Alcoholic Beverage Control Board.

(Intentionally left blank)

APPENDIX D
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Summary of Questionnaires Sent to Municipalities

Questionnaires sent: 50
Responses received: 30 (60%)

1. Is your city or borough given adequate notice by the Alcoholic Beverage Control (ABC) Board of proposed issuance of new licenses and/or transfers of existing licenses?

Number of Responses:

24 Yes
3 No
1 No response
2 NA to our city

2. Since 1994, has your city or borough protested the issuance of a new license, renewal of a license, or the transfer of a license?

Number of Responses:

7 Yes
20 No
3 No response

If yes, what criteria has the city or borough used to protest a license?

Comments:

Almost all respondents indicated that failure to pay taxes would cause the municipality to protest the licensure. One respondent listed neighborhood protest as a reason for protest. Two listed excessive disturbances or police reports.

3. Have protests lodged by the city or borough resulted in a hearing by the ABC Board or by a hearing officer appointed by the Governor?

Number of Responses:

4 Yes
12 No
7 No response
7 Not applicable

4. Does the current system of notification/protest/hearing enable local government's opinions to be heard during the licensing process?

Number of Responses:

17 Yes
5 No
7 No response
1 NA to our city

If no, should local governing bodies be:

8 More involved in the licensing process?
0 Less involved in the licensing process?

One respondent commented that no matter what the city's opinion, licenses would be approved anyway.

5. Are there existing alcoholic beverage control laws or regulations that are obsolete, vague, unduly restrictive and/or inadequate?

Number of Responses:

1 Yes
20 No
10 No response

If yes, please cite the law or regulation and why you believe it is obsolete, vague, unduly restrictive and/or inadequate.

There were no comments.

6. What changes in the ABC Board's policies or alcoholic beverage control laws and regulations could be made that would enable your local governing body to better serve the public?

Typical Comments:

The board should extend more support to local government for enforcement of "overservice" laws and for controlling the hours of operation.

Have an office here in Fairbanks that has a clerk/receptionist or a secretarial position in order to make contact with the locally based inspector/agent a little easier. Another inspector would be nice also.

7. If alcoholic beverage license fees are refunded to your city or borough by the ABC Board. what are funds used for?

Comments:

Eight responses stated that license fee refunds go to the general fund or for municipal operations.

Three responses reported that they are used for police or public safety.

The remainder were nonresponsive.

8. Do you have any other comments you would like to make?

Comments:

ABC is responsive & responsible - we feel overall it's a good agency.

I believe individual members of the board are unduly influenced by individuals applying political and personal pressure.

I have enjoyed working with the staff of the ABC Board. They have made my job much easier.

(Intentionally left blank)

APPENDIX E
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
Summary of Questionnaires Sent to Law Enforcement Agencies

Questionnaires sent: 44
Responses received: 31 (70%)

1. Are you aware of the existence of the Alcoholic Beverage Control (ABC) Board, its operation, and its role in the enforcement of ABC laws and regulations?

Number of Responses:

29 Yes
0 Enforcement role is not well known
1 Aware of board but have never seen any enforcement
1 Not aware of its role in enforcement

2. Do you feel the enforcement staff of the ABC Board complements, duplicates, or conflicts with the efforts of your law enforcement personnel?

Number of Responses:

24 Complements
2 Duplicates
1 Conflicts
5 None of the above
* One respondent marked two choices

Comments:

They provide assistance & information we often do not have resources to access.

Law enforcement by the ABC Board is nonexistent for all practical purposes.

As a police department it is very difficult to enforce and be up to date on all liquor requirements.

3. Do you share investigative information with the ABC Board's enforcement staff and notify them of arrests made on licensed premises?

Number of Responses:

14 Yes, always share information
4 No, never share information
10 Occasionally ABC is sent copies of liquor related arrests and reports
3 No response provided

4. Are there any existing alcoholic beverage control laws or regulations that you feel are obsolete, vague, unduly restrictive and/or inadequate?

Number of Responses:

8 Yes
22 No
1 No response provided

If yes, please cite the law or regulation and why you believe it is obsolete, vague, unduly restrictive and/or inadequate.

Typical Comments:

AS 04.16.049 - parents should not be allowed by statute to take children into bars.

Let them have statutory authority to investigate gambling and prostitution on licensed premises.

AS 04.16.030 - The elements of intent need to be changed from criminal negligence to recklessly when applied to the server's responsibility for over pouring.

5. Have the ABC investigators provided training sessions to your local police officers?

Number of Responses:

6 Yes
25 No

If yes, were the sessions informative and worthwhile?

All six respondents indicated that the training was worthwhile, but one stated that "with staff reductions training has been nonexistent. ABC training is vital to our mission."

If no, have you requested training?

Fifteen of the respondents stated that they have not requested training.

Comments included the following:

There is not enough enforcement personnel to provide it.

We did not know that training was available.

We have not received training from the ABC Board, but they always answer our questions on the phone.

6. If alcoholic beverage license fees are refunded to your city or borough by the ABC Board, what are funds used for?

Comments:

Five of the respondents stated that refunded license fees are put into the general fund for city use, and two indicated that fees were not refunded to the city or borough.

Two of the questionnaires stated that the refunds were used for some type of law enforcement activity.

All the remaining questionnaires were either left blank for this question or were answered by a "don't know" type of response.

7. Are there any additional comments you would like to make?

Typical Comments:

ABC investigations should be turned over to AST & the District Attorney or AG.

The ABC Board has always been a valuable resource for us and have always assisted when requests have been made.

I would like to see more support for rural police to combat crime.

The ABC Board's excellent work is only limited by current funding that I believe should be vastly increased. I have never made an arrest where alcohol was not a factor. Any action that would further limit the ability to regulate or control its abuse or distribution would be a grave error.

It would be helpful to know what types of complaints investigators respond to and investigate in our community.

I have worked in other states and found out of state ABC staff to have solid budgets, strong powerful state laws and enough field staff to keep a handle on the liquor business. Alaska has none of these tools.

I hope the state of Alaska would stop its soft stance on alcohol issues and give the Alaska ABC staff the tools they need, i.e.: 1) Full law enforcement authority, 2) More field and license investigators, 3) Authority to seize or suspend a liquor license immediately pending full board review, 4) Laws that are clear to enforce without built in defenses, 5) Require local law enforcement to report all criminal acts on license premises (Title 4), 6) Travel & training budget, and 7) Funding for undercover operations.

(Intentionally left blank

APPENDIX F
 DEPARTMENT OF REVENUE
 ALCOHOLIC BEVERAGE CONTROL BOARD
Summary of Questionnaires Sent to Licensees

Questionnaires sent: 109
 Responses received: 38 (35%)

1. When you deal with the Alcoholic Beverage Control (ABC) Board staff, do you find them to be:

	<u>Yes</u>	<u>No</u>	<u>No Response</u>
Pleasant	35	3	0
Knowledgeable	35	3	0
Responsive	34	4	0

2. Has your facility received an inspection by an ABC Board investigator?

Number of Responses:

27 Yes
10 No
1 Respondent Unsure

Approximate number of inspections by year:

<u>Year</u>	<u>Inspections performed</u>	<u>Inspection not performed</u>	<u>No response</u>
1994	11	21	6
1995	14	17	6
1996	13	19	6
1997	16	17	6

3. Do you feel ABC enforcement procedures are effective and are applied equitably to all licensees?

Number of Responses:

29 Yes
5 No
4 No response

4. Have you ever attended a Board meeting or otherwise offered public comment to the Board?

Number of Responses:

15 Yes

23 No

If yes, were your comments well received and acknowledged by the Board?

Ten respondents stated "yes," one stated "acknowledged," and four did not respond.

5. Do you receive notice and information about proposed regulation changes in a timely manner so that you are able to participate in the hearings?

Number of Responses:

32 Yes

3 No

3 No response

6. Are there any existing alcoholic beverage control laws or regulations that you feel are obsolete, vague, unduly restrictive and/or inadequate?

Number of Responses:

13 Yes

19 No

6 No response

If yes, please cite the specific law or regulation and why you believe it is obsolete, vague, unduly restrictive and/or inadequate.

Typical Comments:

Statutes regarding minors on premises are confusing.

AS 04.16.15 - happy-hour discounts should be allowed.

7. Are there any additional comments you would like to make?

Typical Comments:

I think the board does a good job and in no way should be eliminated.

We don't need more government. Have the ABC board go the way the parking authority did.

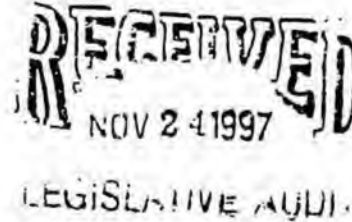
DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

November 21, 1997

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

Pat Davidson
Acting Legislative Auditor
P.O. Box 113300
Juneau, AK 99811-3300



Ms. Davidson,

You have asked that I review and respond to the portion of your audit dealing with the criminal investigation powers that are currently being exercised by the investigators at Alcoholic Beverage Control Board.

The issue of what police powers, if any, should be exercised by this group is a very important one, and one that we are giving and have given close attention. The current delegation is very narrow. It came about only after the situation was reviewed by this office (Deputy Commissioner Deborah Vogt); the Department of Public Safety (Deputy Commissioner Del Smith); the Department of Law (Chief Prosecutor Cindy Cooper) and Assistant Attorney General Linda O'Bannon; and the Director of the ABC Board, Doug Griffin. The ABC Board also reviewed the issue.

I agree with you that the ABC Board does not have the power to confer police powers on its staff relating to crimes not covered in Title 4 (AS 04.06.010 - AS 04.16.172). Nothing in Title 4 gives the Board that power. As you point out, the Board is restricted to authorizing staff to exercise police powers with respect to violations of Title 4.

However, we are charged with the duty to police the bars and taverns and other establishments selling alcoholic beverages in the state. We have perceived that there is a real need to address certain types of criminal activity taking place in those establishments. We have approached the issue from the perspective of the public, and have looked for a cost-effective way to provide that service to the public. Like many other agencies in the state, we are looking for ways to accomplish tasks, and cooperate on the provision of services, whether or not those services cross strict agency lines. Obviously, it is within the purview of Title 4 to discover whether gambling and prostitution are taking place on licensed premises, since licenses can be revoked if the Board finds these activities are taking place. AS 04.11.370(a)(7). This statute puts our investigators in a position to discover and observe criminal activity by third parties who are not licensed under Title 4. It is, as you acknowledge unlikely that local or state police will investigate these crimes.

As a result, we were persuaded that it would be cost effective and efficient if our investigators were authorized to investigate illegal gambling and prostitution on licensed premises. Commissioner Otte named certain individuals on the ABC Board staff to exercise these powers. He did so not under AS 04.06.110, but rather under AS 18.65.010. This statute authorizes the commissioner of public safety to:

appoint as special officers qualified police officers of the federal, state or local government units or other persons with adequate police training over the age of 19 years, as the commissioner considers necessary to aid and assist the division of state troopers in the enforcement of the criminal laws of the state. Each special officer appointed serves without compensation and at the pleasure of the commissioner of public safety and appointments shall be of limited duration.

The commissions that Commissioner Otte has made are to specific individuals who have the police training that Commissioner Otte finds sufficient. They are for a limited duration. I have attached a copy of one such Certificate of Commission as Special Officer.

I want to assure you that we have no intention of permitting the ABC investigators to spend a disproportionate amount of time on these activities. We do not intend to create a vice squad at the ABC Board. Their mission continues to be to investigate and enforce the provisions of Title 4. But it seems efficient and cost effective to follow through with the peripheral, third party aspects of violations of AS 04.11.370(a)(7).

We intend to move very slowly and carefully in this area. I share your concerns that it may not be appropriate for ABC Board investigators to carry firearms. As you note, the Director has initiated an inquiry into the ramifications of such a decision. You raise a number of the concerns he is looking at: employee safety, training and ongoing currency requirements, and liability concerns. To the extent that such a decision would necessitate additional funding (as the training and currency requirements well might), it is unlikely that the funding would be made available.

You recommend that police functions remain in Public Safety, and that the ABC Board limit itself to the parameters of Title 4. Commissioner Otte and I do not agree. We believe that the proximity of ABC investigators to the subjects of these investigations, together with their similar Title 4 statutory duties, makes it efficient for ABC investigators to exercise limited police powers with respect to certain crimes on licensed premises. The simple fact is that if they don't do it, no one will. While gambling and prostitution on licensed premises may not rise to a sufficient level

of importance within the troopers to warrant investigation, the balance looks quite different when the ABC investigators are considered. Given the small amount of additional effort, beyond what they would otherwise be expending, it becomes possible to carry out some law enforcement activities that would otherwise not occur.

Thank you for the opportunity to comment on your draft audit.


Wilson L. Condon
Commissioner

CERTIFICATE OF COMMISSION
AS
SPECIAL OFFICER

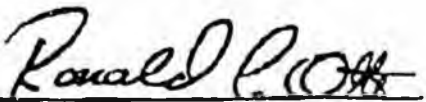
Pursuant to the authority vested in me under AS 18.65.010,
I, Ronald L. Otte, Commissioner of Public Safety of the State of
Alaska, do appoint William R. Roche as a Limited
Special Officer.

Said William R. Roche, an Investigator of the
Alcoholic Beverage Control Board, is duly appointed by the State
to assist the Alaska State Troopers, and is authorized to act as
an Officer, to investigate allegations of illegal gambling
(AS 11.66.200 - AS 11.66.280) and prostitution (AS 11.66.100 -
AS 11.66.150) only on premises licensed by the Alcoholic Beverage
Control Board. This Special Commission does not include arrest
authority.

Said William R. Roche Is Not authorized to carry a
concealed weapon while on duty.

THIS COMMISSION WILL EXPIRE ON September 01, 1999
UNLESS SOONER RENEWED OR RESCINDED.

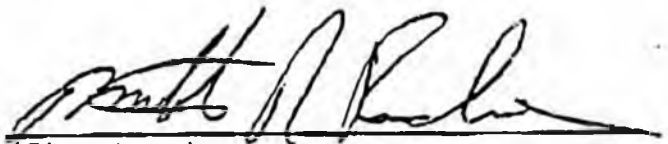
In witness hereto, I have set my hand this 9th day of
September, nineteen-hundred and ninety-seven.



Ronald L. Otte
Commissioner
Department of Public Safety
State of Alaska

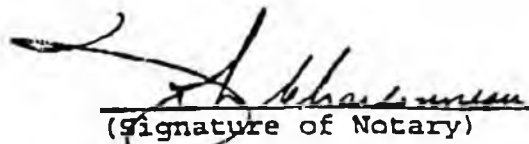
CONSTITUTIONAL OATH OF OFFICE

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as Special Officer of the Alaska Department of Public Safety to the best of my ability."

Date: 9/15/97 
(Signature)

William R. Roche
(Typed Signature)

WITNESSED BEFORE ME THIS 15 DAY OF September
1997.


(Signature of Notary)

My Commission expires: 2-7-98

(Intentionally left blank)

STATE OF ALASKA

DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD

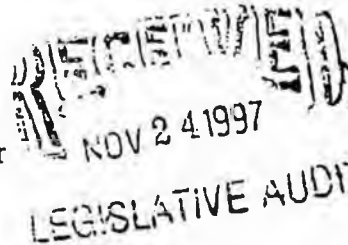
TONY KNOWLES, GOVERNOR

550 W. 7TH AVENUE, STE. 350

Anchorage, Alaska 99501-6698

Phone 907-277-8638

FAX: 907-272-9412



November 20, 1997

Mr. Randy S. Welker, Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

RE: ABC Board Response to Preliminary Audit Report, ACN 04-1452-97

Dear Mr. Welker:

I have reviewed the Preliminary Audit Report for the Alcoholic Beverage Control Board and wish to offer the following response:

REPORT CONCLUSIONS

The Alcoholic Beverage Control (ABC) Board agrees with your finding that it has protected the public's health, safety, and welfare during the audit period through administration of its licensing function and through active investigation of suspected licensing violations and enforcement of the State's alcoholic beverage control laws and regulations.

Alcohol abuse is the number one cause of social dysfunction in Alaska. Most alcohol abuse is not linked to illegal sales by liquor licensees, but when the problem is this big and insidious the regulation of beverage alcohol should be a high priority. The laws governing trade in this legal drug should be aggressively and prescriptively enforced.

RECOMMENDATION No. 1

This recommendation is ambiguous. If the recommendation is based on the conclusion that the ABC Board does not give considerable weight to objections from affected neighborhoods prior to the issuance, transfer, or renewal of a liquor license, the Board very strongly disagrees.

If, on the other hand, the recommendation is based on the conclusion that, from time to time, the affected public believes the Board ought to weigh objections from affected neighborhoods more carefully, then the Board understands the concern and may partly agree. However, the Board believes that the perception that prompted this recommendation cannot be supported when one considers the total record of the ABC Board over the last three years. The ABC Board has demanded that neighborhood residents be encouraged to address the ABC Board with concerns regarding liquor licenses. ABC employees have informed residents opposing liquor licenses to address concerns in writing or through

oral testimony and have worked on logistics to help the public in participating in ABC Board meetings.

The audit offers no examples to clarify or support this recommendation. I would like to offer just a few cases in rebuttal to show where Board decisions to deny licenses were based on neighborhood objections:

1) In 1995, the ABC Board denied a beverage dispensary transfer in the Matanuska-Susitna Borough due primarily to neighborhood protests although the governing body did not object. 2) In 1996, the ABC Board did not approve a relocation of a beverage dispensary transfer in Fairbanks (the Board toured the site of the proposed bar/restaurant) based solely on neighborhood protest after the Fairbanks City Council narrowly voted not to protest the move of the license. 3) This year the Board denied a beverage dispensary license to a new \$2 million dollar lodge in Gustavus based on neighborhood/community objection.

The ABC Board does expect local governing bodies to consider neighborhood objections. The ABC Board gives great weight to local government objections (i.e., Anchorage Assembly putting conditions on 4th Avenue bars, Ketchikan City Council objection to renewal of the Marine Bar license, Bristol Bay Borough protest of Rapids Camp Lodge). The licensing decisions in the Mat-Su Borough and Fairbanks show that the ABC Board does not consider, as you assert, "denial of a license based solely on neighborhood objections to be tantamount to overriding the local governing body's wishes." This ABC Board has denied licenses based on neighborhood objections even when there was no governing body protest. 15 AAC 104.145(e) states that "The board will not substitute its judgement for that of the local governing body on matters of public policy that have reasonable factual support."

In closing, Recommendation #1 is vague, unmeasurable, and unfair to the ABC Board. The recommendation offers no facts or cases but relies, as presented, on bias and speculation. The examples I offer show that not only does the Board consider neighborhood concerns, but demonstrably takes action in accordance with neighborhood wishes.

RECOMMENDATION No. 2

I concur with the minimum standard of requiring local governments to prove that they are funding law enforcement activities at a level at least as great as that of the liquor license fee refunds they receive. I will recommend this be placed in the ABC Board regulation package for 1998.

I will also begin sending out a cover letter with shared license payments to local governments citing AS 04.11.610 and requesting that information regarding liquor law violations be sent to our office.

RECOMMENDATION No. 3

The ABC Board will carefully review disbursements to improve the accuracy of shared liquor license receipts.

ANALYSIS OF PUBLIC NEED

The ABC Board is doing more with less. Your graph on page 12 clearly displays this. However, a very restrictive travel budget, no funding for overtime or shift differential, inadequate funding for

administrative hearings, and anemic funding for communications and outreach to licensees and the public hampers the ABC Board's ability to perform at a level that meets needs in this vast State that suffers from so many alcohol related problems. The ABC Board is doing a good job in Southcentral Alaska and in the Fairbanks area because that is where the enforcement staff is located. However, as you point out on page 12, the investment to cover Southeast Alaska and rural Alaska at levels comparable to Anchorage and Fairbanks merits consideration. Responses from law enforcement agencies support the need for increased funding. If the ABC Board could merely retain all of the funding generated from license fees, permits, fines, and administrative fees, it could significantly affect the enforcement of alcohol laws in this State and reduce crime. The statewide organization representing the hospitality industry endorses the use of these fees, paid by its membership, for increased enforcement.

Your statement on page 15 that "industry representation on the board may lend itself to bias" is provocative. Clearly, having industry represented on the ABC Board was intended by the State's lawmakers because these persons understand the industry and can act as a bridge between the ABC Board and the alcohol industry. The State takes this same approach on other licensing boards. The bias (a poor word choice in my opinion) is intended and is offset by three public members who are also biased (former police chief, public health/mental health consultant, and non-profit health executive). Again, no evidence is included to support your "understanding" that the board's industry members often cast votes favorable to the licensee, whereas public members are more likely to vote for stronger licensing action. In my experience, industry members often ask for harsher sanctions against licensees because those board members have a personal stake in the image of the alcoholic beverage industry. Usually the board is unanimous in its votes, particularly when it comes to issues related to sanctions against licensees. Your chart on page 15 shows that total sanctions coming from this ABC Board are generally higher over the last couple of years. This board has also wholeheartedly supported the increased enforcement presence that you praise in the audit. These are not actions of a board that is out to protect the alcoholic beverage industry. You may believe that the ABC Board should be "tougher" on the alcohol industry, but you also seem to concede that the board is moving in the right direction. The vacancy in a public seat was unfortunate, but you failed to mention that AS 04.06.060 provides that with the consent of the ABC Board members present I may cast a tie-breaking vote. The members have always consented to give me the honor of breaking ties.

The lack of information sharing from local police departments mentioned in the last paragraph of page 15 is troubling. Perhaps this cooperation should be mandatory and be made a condition of receiving shared license receipts. It bolsters my argument that more enforcement staff is warranted and undercuts the argument that local police are uniformly helping the ABC Board in its enforcement mandate.

AUDITOR'S COMMENTS

The Auditor's Comments are welcome so that the issue of enforcement powers of the Alcoholic Beverage Control Board can be debated. Statutes may conflict and I understand your comments, but I think your conclusions are wrong and in conflict with other portions of your audit.

AS 04.06.075. Authority of director. The director shall enforce this title and regulations adopted by the board. [Emphasis added]

AS 04.11.010, 04.16.051, 04.16.050, 04.16.052, 04.16.070, 04.16.090 and 04.16.180 all reflect criminal provisions of Title 4. Clearly, the law anticipates and provides for a means to address criminal offenses by the director of the ABC Board and his enforcement employees. Since it is my stated duty to enforce the law, believing that ABC staff should not exercise police powers and that the board "should focus its efforts on licensing issues" is illogical.

You are correct that illegal gambling and prostitution are not regulated by Title 4. However, it is our office that receives complaints regarding these illegal activities when they occur on liquor licensed premises. AS 04.11.370(b) requires liquor license suspension for at least six months for a criminal gambling conviction. The conduct of illegal activities of this kind on licensed premises certainly reflect the fitness of a licensee to operate in the "the public interest" (15 AAC 104.180(a)(4)). Many complaints of illegal gambling and prostitution come from affected neighborhoods and the ABC Board is always interested in ensuring "that objections from affected neighborhoods are considered prior to the issuance, transfer, or renewal of a license" (see Recommendation No.1).

The Department of Public Safety or local police are always consulted regarding these investigations. However, as you note, it is our investigators who are considered experts in these areas. Monitoring bars and liquor stores are low priorities for the Alaska State Troopers (Deputy Commissioner Del Smith at a June 12, 1997 meeting) and many police departments. This is due to lack of resources and the perception that the ABC Board exists under State law to handle this responsibility. If we do not carry out this police function, it does not get done. In recognition of the fact that the Troopers are not able to address gambling and prostitution on licensed premises, Commissioner Otte has granted these narrow powers to ABC investigators to assist the AST under AS 18.65.010(a) which states in relevant part that:

The commissioner of public safety may appoint as special officers qualified police officers of the federal, state or local government units or **other persons with adequate police training over the age of 19 years**, as the commissioner considers necessary to aid and assist the division of state troopers in the enforcement of the criminal laws of the state. [Emphasis added]

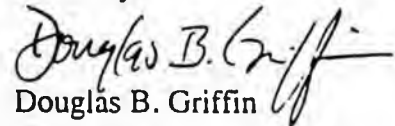
The ABC Board is requiring its investigators to do more. There is too much to do and too few resources. Your audit acknowledges this situation. The ABC Board is attempting to do more with less to address the pressing needs of the public. The board is unwillingly to pass the buck or lamely explain to a complainant that "it's not my job" to address certain illegal activities taking place on liquor licensed premises.

The question of investigators carrying firearms is controversial and is tied to the emphasis on the exercise of limited police powers. I have studied this issue for eighteen months, gone out in the evenings with ABC Investigators, and talked to other State agencies and local police departments about the issue. I would encourage anyone that is considering his or her opinion on this question to go out with the ABC Investigators and see first hand the circumstances they confront. The law enforcement community, which has a relevant perspective on the question, is very supportive of the initiative to allow investigators to carry firearms for personal protection. I concluded that my employees deserve the ability to protect themselves given the enforcement role the ABC Board wants them to play.

The increased enforcement visibility that you praise "as a positive step on the part of the board" is showing results where we have enforcement staff. In a recent work session, the Anchorage Assembly (October 7, 1997 work session with ABC staff) also praised and thanked the ABC Board for its enforcement efforts. ABC Board investigators are "out there" in the bars, clubs, and liquor stores. State Troopers are usually not. It makes perfect sense to me to request that the ABC Board confers to its investigators, with Commissioner Otte's concurrence, the ability to write citations for Title 4 violations. Law enforcement agencies recognize that an enforcement vacuum exists. The granting of additional powers to well trained and experienced ABC investigators strike me as an effective and efficient way to fill this vacuum. Range 18 ABC Investigators who do limited "police" work only part time are a lot less expensive than State Troopers. I believe that there is something to be said for specialization and the leverage gained when enforcement is conducted by the agency that oversees alcoholic beverage licensing. Leverage and effectiveness are advantages that must be exercised in the era of smaller public safety budgets.

This concludes my comments. Thank you for the opportunity to respond and discuss these important issues.

Sincerely,



Douglas B. Griffin
Director

cc: ABC Board Members
Wilson Condon, Commissioner, Department of Revenue
Cindy Smith, Special Assistant, Office of the Governor

(Intentionally left blank

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

December 2, 1997

Members of the Legislative Budget
and Audit Committee:

We have reviewed the responses to our preliminary audit report from the Alcoholic Beverage Control Board (ABC Board or the board) and from the Department of Revenue (DOR). Nothing contained in these responses gives us cause to reconsider our findings. However, we offer the following clarifying comments.

Recommendation No. 1

The Alcoholic Beverage Control Board should take steps to ensure that objections from affected neighborhoods are considered prior to the issuance, transfer, or renewal of a license.

The board states that this recommendation is vague, unmeasurable, and unfair. Nevertheless, it concedes that

[i]f . . . the recommendation is based on the conclusion that, from time to time, the affected public believes the Board ought to weigh objections from affected neighborhoods more carefully, then the Board understands the concern and may partly agree. [Emphasis Added.]

We acknowledge that when a government agency is not perceived as being responsive to those that it serves, it is faced with a very difficult task. We very much agree with the board that this problem is somewhat vague and difficult to measure. However, as the board's makeup and its approach to the licensing process may lend itself to a perception problem, we hardly consider it to be unfair. These are factors the board should be aware of and address.

In accordance with AS 04.06.020, two of the five board members must be actively engaged in the alcoholic beverage industry. As we understand¹ that the board's industry membership is inclined to be more pro-liquor than its public members, we believe there is a built-in perception problem. The board may wish to petition the legislature for a statute change reducing the number of industry members or increasing the number of public members.

We understand that the board considers denial of a license based solely on neighborhood objections to be tantamount to overriding the local governing body's wishes. Yet, as mentioned in our recommendation, only one in thirty of the municipalities responding to our survey indicated that neighborhood objections were considered when deciding whether to file a protest. This lack of coordination may create the perception that these objections are not being heard. During the course of the audit, the director stated he would respond to this problem by increasing his efforts to educate local government and the public about the board's expectations. We support the director in this endeavor.

Another factor that may contribute to a perception problem may be the board's approach to disciplinary action. Even though there were more licensing actions taken in FY 97 than in any year during our audit period, there were only ten² actions, and five of those were fines. The "affected public" may view this as low, considering the nature of the industry and the fact that there were 1,801 licenses outstanding. The board should consider how disciplinary actions are perceived. For example, we do not believe local objections to a bar that violates Title 4 would be perceived as being adequately addressed if the bar is allowed to sell its liquor license, rather than have it revoked.³

Analysis of Public Need

In response to our comment on page 15 that the industry representation on the board may lend itself to bias, the board states that

... having industry represented on the ABC Board was intended by the State's lawmakers because these persons understand the industry and can act as a bridge between the ABC Board and the alcohol industry. The State takes the same approach on other licensing boards.

While it is true that other boards do include industry members, we observe that the comparison itself is not valid. It is clearly inappropriate to compare the technical expertise needed in medical, dental, engineering, and similar boards with that required to monitor liquor licenses. The board must understand the liquor laws, but there is no special

¹ This understanding is based upon interviews. See further discussion below under Analysis of Public Need.

² See the table on page 15 of the report.

³ In addition to its impact on public perception, we believe revocations would also get the industry's attention. Revocation, as oppose to sale, is a tool that would encourage industry-wide Title 4 compliance.

professional expertise needed. We do not believe the board's functions would be compromised by smaller industry representation on the board.

The board also objects to our statement, on page 15, that

[w]e understand that the board's industry members often cast votes favorable to the licensee, whereas public members are more likely to vote for stronger licensing action, or to deny licensure.

This was softly written because it was based on interview evidence that could not be confirmed through written documentation. As board minutes are not transcribed and as no vote tabulations are prepared, the only evidence is audiotapes of the meetings. This was deemed to be too time consuming, given the issue at hand. Nevertheless, we believe it to be correct. In fact, the director himself, on two separate occasions, made statements to this effect.

Auditor's Comments

DOR points out that the commissioner of public safety appointed ABC Board investigators as special peace officers under AS 18.65.010, and not under AS 04.06.110 as our audit indicates. As an AS 04.06.110 delegation was being considered, we addressed the issue from that perspective. The actual delegation, under AS 18.65.010, occurred after our audit fieldwork was completed.

Even delegations under AS 18.65.010 raise some concerns, as outlined in attorney general opinion number J-66-005-75, dated December 22, 1977. For example, this delegation can only be made when "necessary to assist the division of state troopers in enforcement of criminal laws." [Emphasis Added.] The attorney general states that a "determination of necessity" should be based upon the needs of the troopers, not the requesting agency. However, no such determination was prepared. Further, the attorney general points out that

[w]hile the statute vests apparently broad discretionary authority in the Commissioner of Public Safety, the legislative history of the bill [CSHB 48, ch. 106 SLA 1961] which originally lead to the enactment of AS 18.65.010 indicates that this authority was to be restrictively exercised within the confines of certain criteria and that the central purpose of the bill was to strengthen state trooper personnel in the more remote areas of Alaska.

The Committee Report, which accompanied the passage of CSHB 48, emphasized this purpose as follows:

In the boondocks, it is necessary that there be more law enforcement officers with a minimum of cost; one of the best ways to encourage this is to use the

abilities of existing duly qualified police officers. Thus, the village policeman can be utilized beyond the village limits in the enforcement of state laws.
[Emphasis Added.]

As the delegation to investigate gambling and prostitution relates to all licensed premises in the State and as the board's enforcement activities have been primarily in urban areas which maintain a police force of their own, we question whether this delegation is consistent with legislative intent.

However, whether the Department of Public Safety delegates police powers under AS 04.06.110 or 18.65.010 and whether such delegations are technically appropriate are not the key issues. The fundamental question that should be addressed is whether this agency should focus on licensing issues or be allowed to evolve into a full-fledged police force.

We thank both the department and the board for their responses. The Auditor's Comments section of the report was intended to spark public debate on this difficult issue. We believe the various perspectives presented here will be helpful in beginning this process.

Pat Davidson, CPA

Pat Davidson, CPA
Acting Legislative Auditor

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3567 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 22, 1999

SUBJECT: A.B.C. Board - CSHB 69(FIN)

TO: Representative Gene Therriault
Attn: Mike

FROM: Michael F. Ford 
Legislative Counsel

The amendment you requested is attached. I believe that the amendment is a good idea in order to clarify that employees of the A.B.C. Board who exercise police officer powers, exercise those powers only on licensed premises regarding criminal offenses prohibited under provisions of law other than AS 04.

Please contact me if you have further questions.

MFF:glc
99-020.glc

Attachment

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 69(FIN)

- 1 Page 3, line 13, following "and":
- 2 Insert ". on licensed premises."