

HB

273

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273</SUBJECT><COMM>HL&C30</COMM></TARGET>



Representative Sam Kito

Alaska State Legislature

House District 33

Downtown Juneau

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Sponsor Statement

House Bill 273

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

House Bill 273 extends the termination date for the Marijuana Control Board until June 30, 2024.

Per statute, this board is scheduled to sunset on June 30, 2018 with a one-year wind down if the legislature does not pass legislation extending it. The licensing function will remain after this date; however, the administrative functions of the board would transfer to the department.

Legislative Audit reviewed the board's operations and determined that it is in the best interest of the state to extend this board. The audit makes four recommendations and recommends a six-year extension with a new termination date of June 30, 2024. This is shy of the full eight-year extension that Legislative Audit is authorized to provide.

The recommendations are as follows:

1. The board members, Alcohol and Marijuana Control Office (AMCO) director, and enforcement supervisor should work together to formally establish an enforcement plan to direct limited enforcement resources.
2. The board and the AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner.
3. The AMCO director should develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training.
4. The AMCO director should develop and implement procedures to segregate the duties for calculating and remitting fees to local governments.

The Marijuana Control Board is a regulatory and quasi-judicial board consisting of five members appointed by the governor, created for controlling the cultivation, manufacture, and sale of marijuana in the state. The board consists of one member from the public safety sector, one from the public health sector, one residing in a rural area, one actively engaged in the marijuana industry, and one who is either from the general public or actively engaged in the marijuana industry.

The continuation of the Marijuana Control Board is important to the health and safety of Alaskans.

Thank you for your support of House Bill 273.

ALASKA DIVISION OF
LEGISLATIVE AUDIT

Audit Report

Department of Commerce,
Community, and
Economic Development

Marijuana Control Board

October 6, 2017

Audit Control Number: 08-20100-17

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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 the Senate and one from the House. 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 \$12 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. Government Accountability Office.

Audits are performed as mandated by Alaska Statutes or 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 office in Juneau or on our website at www.legaudit.akleg.gov.

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Report Highlights

Why DLA Performed This Audit

The purpose of the audit was to determine if there is a need for the board's continued existence and whether its termination date should be extended. The board is set to sunset June 30, 2018, and will have one year from that date to conclude its administrative operations.

What DLA Recommends

1. The board members, Alcohol and Marijuana Control Office (AMCO) director, and enforcement supervisor should work together to formally establish an enforcement plan to direct limited enforcement resources.
2. The board and the AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner.
3. The AMCO director should develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training.
4. The AMCO director should develop and implement procedures to segregate the duties for calculating and remitting fees to local governments.

A Sunset Review of the Department of Commerce, Community, and Economic Development, Marijuana Control Board (board)

October 6, 2017

Audit Control Number: 08-20100-17

REPORT CONCLUSIONS

The board is serving the public's interest by effectively licensing marijuana establishments and developing and adopting regulations necessary to implement statutes that allow for the cultivation, manufacture, and sale of marijuana in Alaska. The audit makes four recommendations for operational improvements.

In accordance with AS 44.66.010(a)(13), the board is scheduled to terminate on June 30, 2018. We recommend the legislature extend the board's termination date to June 30, 2024.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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November 3, 2017

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
MARIJUANA CONTROL BOARD
SUNSET REVIEW

October 6, 2017

Audit Control Number
08-20100-17

The audit was conducted as required by AS 44.66.050(a). Per AS 44.66.010(a)(13), the board is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the board's termination date to June 30, 2024.

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

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

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

AAC	Alaska Administrative Code
ACN	Audit Control Number
AMCO	Alcohol and Marijuana Control Office
AS	Alaska Statute
board	Marijuana Control Board
CISA	Certified Information Systems Auditor
CPA	Certified Public Accountant
DCCED	Department of Commerce, Community, and Economic Development
DLA	Division of Legislative Audit
FY	Fiscal Year
SLA	Session Laws of Alaska

CONTENTS

Report Sections	Organization and Function	1
	Background Information	3
	Report Conclusions	5
	Findings and Recommendations	11
	Objectives, Scope, and Methodology	15
Agency Responses	Office of the Governor	31
	Department of Commerce, Community, and Economic Development	33
	Marijuana Control Board	35
Appendices	Appendices Summary	19
	Appendix A: Analysis of Public Need Criteria	21
	Appendix B: Marijuana Control Board Licensee Survey Data	23
	Appendix C: Marijuana Control Board Local Government Survey Data	25
Exhibits	Exhibit 1: Marijuana Control Board Members as of April 30, 2017	1
	Exhibit 2: Marijuana Control Board License Activity July 2016 through April 2017	8
	Exhibit 3: Marijuana Control Board Application and License Fees FY 16 through FY 17	9

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ORGANIZATION AND FUNCTION

Marijuana Control Board

The Marijuana Control Board (board) is a regulatory and quasi-judicial board consisting of five members appointed by the governor, created for the purpose of controlling the cultivation, manufacture, and sale of marijuana in the state. As shown in Exhibit 1, the board consists of one member from the public safety sector, one from the public health sector, one residing in a rural area, one actively engaged in the marijuana industry, and one who is either from the general public or actively engaged in the marijuana industry. Board members serve staggered three-year terms and those who have served all or part of three successive terms may not be reappointed unless three years have elapsed since serving on the board. Furthermore, the non-industry board members, and the members' immediate family, may not have a financial interest in the marijuana industry.

Three members of the board constitute a quorum for conducting business. A majority of the board membership must approve applications for new licenses, renewals, transfers, suspensions, and revocations of existing licenses, and product approvals as provided in regulations adopted by the board.

Alaska Statute 17.38.121 establishes the powers and duties of the board. The board shall:

1. Propose and adopt regulations;
2. Establish regulations for the qualifications for licensure including fees and factors related to the applicant's

Exhibit 1

Marijuana Control Board Members as of April 30, 2017

Peter Mlynarik, Chair
Public Safety

Brandon Emmett
Industry

Loren Jones
Public Health

Nicholas Miller
Industry

Mark Springer
Rural

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

experience, criminal justice history, and financial interests;

3. Review applications for licensure made under AS 17.38 and may order the executive director to issue, renew, suspend, or revoke a license; and
4. Hear appeals from actions of the director and from actions of officers and employees charged with enforcing board statutes and regulations.

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

AMCO provides assistance to the board in administering, licensing, and enforcing marijuana statutes and regulations. AMCO staff provide similar support to the Alcoholic Beverage Control Board established in AS 04.06. AMCO is led by a director appointed by the governor who also serves as the board's executive officer.

AMCO staff are responsible for receiving and processing licensing applications, collecting fees, maintaining licensing records and files, publishing notices of board meetings, preparing board member meeting packets, and drafting board meeting minutes. AMCO staff also perform other administrative duties such as tracking revenues and expenditures and assisting with board regulatory projects.

AMCO investigators conduct inspections of licensed premises; investigate complaints; and issue notices of violation to establishments in violation of marijuana statutes, regulations, or conditions or restrictions imposed by the board. The board may suspend, revoke, or refuse to renew a marijuana establishment license, or impose a civil fine, if the board finds that a licensee failed to correct the defect that is the subject of the notice of violation.

BACKGROUND INFORMATION

Ballot Measure 2, legalizing the sale of marijuana, was approved by voters during the November 2014 general election. Provisions took effect February 2015. The legislature passed three laws implementing the ballot measure:

- Chapter 4, SLA 2015, effective May 2015, created the Marijuana Control Board (board), set requirements for board membership and composition, and prohibited establishments from having a license if its owners, officers, or agents have been convicted of a felony within the last five years or if the person is on probation or parole for that felony.
 - Chapter 53, SLA 2016, effective July 2016, allowed local governments to prohibit the operation of marijuana establishments through the enactment of an ordinance or by voter initiative, and allowed established villages to exercise a local option to prohibit the same.
 - Chapter 32, SLA 2016, effective October 2016, required license applicants to submit fingerprints and pay fingerprint fees for criminal justice information and a national criminal history record check to be performed by the Department of Public Safety.
- The first board meeting was held July 2015. The law required the board adopt regulations necessary for the implementation of AS 17.38 by November 24, 2015.

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REPORT CONCLUSIONS

In developing our conclusions regarding whether the Marijuana Control Board's (board) termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A of this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

Overall, the audit concludes the board is serving the public's interest by effectively licensing marijuana establishments and developing and adopting regulations necessary to implement statutes that allow for the cultivation, manufacture, and sale of marijuana in Alaska. The audit makes four recommendations for operational improvements.

In accordance with AS 44.66.010(a)(13), the board is scheduled to terminate on June 30, 2018. We recommend the legislature extend the board's termination date to June 30, 2024.

Detailed report conclusions are as follows.

The board operated in the public interest and did not duplicate the efforts of other entities.

Board operations were conducted in an effective manner. The audit found that from July 2015 through April 2017, the board held 21 meetings and met in each judicial district of the state during calendar year 2016 as required by statute. Board meetings were public noticed and each meeting allowed time for public comment. The audit also found that board membership and composition complied with statutes and a quorum was consistently met.

The board met its statutory mandate to adopt regulations necessary for implementing statutes.¹ Significant regulations (3 AAC 306) specify requirements for the issuance, renewal, suspension, and revocation of registrations to operate marijuana establishments; qualifications for registration; and a schedule of application,

¹Statutes required the board adopt regulations necessary for the implementation of AS 17.38 by November 24, 2015.

registration, and renewal fees. The board also amended regulations to clarify submissions to the board and conduct of board meetings. Regulatory additions and changes during the audit period were public noticed according to the Administrative Procedures Act.

To help evaluate board effectiveness, surveys were conducted as part of the audit. A survey was sent to 101 licensees and 71 (70 percent) responded. A second survey was sent to 16 local governments that had a license issued in their jurisdiction and 14 (88 percent) responded. Licensee and local government survey questions and responses are presented as Appendices B and C of this report.

One hundred percent of local government survey respondents and 75 percent of licensee survey respondents rated the board's overall effectiveness in serving the public interest as *effective* or *very effective*. Eighty-six percent of local government survey respondents believe the board does not duplicate efforts.

The enforcement section issued notices of violations in accordance with regulation; however, operational improvements are needed.

The self-defined mission of the Alcohol and Marijuana Control Office's (AMCO or control office) enforcement section is:

To fairly and justly administer the alcohol and marijuana laws of the state to protect the safety and well-being of the people of Alaska; to develop and maintain a professional working relationship with licensees and other law enforcement agencies; and to continue our efforts of keeping alcohol and marijuana away from underage persons.

Based on the data provided, the enforcement section issued 24 notices of violations during the audit period. Testing of a random sample of 10 notices of violations found all were followed up timely by investigative staff and all were addressed in accordance with regulations. Testing of a random sample of 25 active licenses during the audit period found all received an inspection prior to being licensed. Additionally, 93 percent of local government

The board licensed establishments and individuals according to statutes and regulations.

survey respondents rated the board's effectiveness in enforcing marijuana laws in their area as *good* or *excellent*.

The audit noted the board and AMCO management have not established a written enforcement plan to direct its limited enforcement resources. (Recommendation 1) For example, the board has not formally established how often licensed premises are to be inspected. Furthermore, the control office does not monitor and track all complaints received to ensure they are assessed for follow-up action and investigated in a timely manner. (Recommendation 2)

In accordance with statute, the board started accepting applications to operate marijuana establishments in February 2016. The first marijuana licenses were approved at the June 2016 board meeting, allowing for the issuance of licenses beginning July 2016.

The board operated in the public's interest by licensing establishments in accordance with state laws and regulations. A random sample of 25 active licenses during the audit period was tested, and all were found to be issued in compliance with statutes and regulations. Additionally, 14 pended applications² were randomly selected for testing; the pended status was found to be reasonable, and the applications were found to comply with statutes and regulations. Eighty percent of licensee survey respondents rated their overall licensing experience as *good* or *excellent*.

As shown in Exhibit 2, the board issued 122 new licenses from July 2016 through April 2017.

Regulation requires all licensees, employees, or agents of marijuana establishments who sell, cultivate, manufacture, test, or transport marijuana or a marijuana product, or who check the identification of a consumer or visitor, to obtain a marijuana handler permit from the board before being licensed or beginning

²Pended applications include: applications under review by control office staff, applications determined complete and awaiting board decision, and board-approved applications that have not been issued.

Exhibit 2

**Marijuana Control Board
License Activity
July 2016 through April 2017**

	New Licenses Issued		
	Active Pending Inspection	Active and Operating	Total Licenses as of April 2017
Marijuana Cultivation Facility	18	32	50
Limited Marijuana Cultivation Facility	8	16	24
Marijuana Product Manufacturing Facility	1	3	4
Marijuana Concentrate Manufacturing	-	1	1
Retail Marijuana Store	14	26	40
Marijuana Testing Facility	1	2	3
Totals	42	80	122

Source: Compiled from AMCO's marijuana licensing database.

employment at a marijuana establishment. Based on the data provided, the board issued 1,260 marijuana handler permits as of April 2017. The audit found that the board generally operated in the public's interest by issuing permits only to individuals who have completed a board-approved education course; however, 47 of 53 marijuana handler permits tested had incorrect expiration dates. (Recommendation 3)

Application and licensing fees are intended to cover the cost of regulating the industry.

Statute limits fees to \$5,000, to be adjusted annually for inflation, unless the board determines a greater fee is necessary to carry out its responsibilities. Additionally, as included in AMCO's FY 17 operating budget,³ it is the intent of the legislature that application and licensing fees cover the cost of regulation and recover unrestricted general fund appropriations made while the program was being established. AMCO staff has implemented a process

³Chapter 3, 4SSLA 2016, Section 1, Page 6, Line 32.

for tracking both revenues and expenditures, but reported it is too early in the development of the board to determine whether the current fees are set at sufficient levels to cover the cost of regulating the marijuana industry. AMCO management expects to be fully funded by application and licensing fees by FY 20. Exhibit 3 presents a schedule of fees established by the board.

Exhibit 3

**Marijuana Control Board
Application and License Fees
FY 16 through FY 17**

Application fee for a new marijuana establishment license or application to transfer a license to another person	\$1,000
License renewal application fee	600
Marijuana cultivation facility annual license fee	5,000
Limited marijuana cultivation facility annual license fee	1,000
Marijuana product manufacturing annual license fee	5,000
Marijuana concentrate manufacturing annual license fee	1,000
Retail marijuana store annual license fee	5,000
Marijuana testing facility annual license fee	1,000
Marijuana handler permit card	50

Source: Board regulations effective February 21, 2016.

Upon receiving a complete new or renewal application, the board is required to forward half of the application fee to the local regulatory authority for the local government in which the applicant operates, unless the local government has not designated a local regulatory authority. The control office remitted \$113,000 in fees to local regulatory authorities during FY 17. The audit found this amount to be reasonable compared to application fees received as well as the number of applications received and determined complete by the AMCO director; however, the audit found only one person in the control office is responsible for calculating and approving the amount of fees remitted to local governments which is not

separately reviewed or monitored. This represents an inadequate segregation of duties over the calculation and distribution of fees to local governments. (Recommendation 4)

FINDINGS AND RECOMMENDATIONS

The audit makes four recommendations.

Recommendation 1:

The board members, the Alcohol and Marijuana Control Office (AMCO or control office) director, and enforcement supervisor should work together to formally establish an enforcement plan to direct limited enforcement resources.

The audit identified the enforcement section is operating without a formally established enforcement plan. Neither the Marijuana Control Board (board) nor AMCO director had considered the need for or importance of establishing enforcement goals or plans to ensure the effective allocation of enforcement resources.

Per AS 17.38.121, the board is vested with the powers necessary to enforce laws related to marijuana, and may employ enforcement agents and staff it considers necessary to carry out its duties. The board has tasked the enforcement section with the responsibility of detecting violations and enforcing marijuana laws. By not formally establishing an enforcement plan, the enforcement section has no guidance for prioritizing its limited resources and runs the risk of not adequately protecting the public.

We recommend the board members, the AMCO director, and enforcement supervisor work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources.

Recommendation 2:

The board and the AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner.

The board and AMCO management have not maintained a process to monitor and track all actions taken on complaints to ensure they are resolved in a timely manner. The board does have a process to receive complaints from licensees, law enforcement agencies, and the general public through their website, telephone, or emails; however, complaints are only tracked if they result in an inspection or investigation. Furthermore, the basis for a decision not to investigate is not documented and maintained.

According to AMCO staff, a process to log all complaints received previously existed for the Alcoholic Beverage Control Board; however, when the Marijuana Control Board was created, staff responsibilities were realigned, and the maintenance of the complaint log took a lower priority compared to new responsibilities associated with marijuana regulation.

The efficiency with which complaints are investigated is one of the sunset evaluation criteria used in the legislative oversight process. Alaska Statute 44.66.050(c)(6) specifies the sunset review must evaluate:

The efficiency with which public inquiries or complaints regarding the activities of the board or commission filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

By not tracking complaints, there is an increased risk that board staff may not investigate complaints and/or not investigate complaints in a timely manner. Such instances could reduce the board's ability to effectively enforce marijuana laws. Additionally, complaints received directly by board staff via telephone or email may never be resolved in the event of staff turnover.

We recommend the board and the AMCO director implement a process to monitor and track complaints received to ensure they are assessed for follow up action and investigated in a timely manner.

Recommendation 3:

The AMCO director should develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training.

Forty-seven of 53 marijuana handler permits tested were issued by AMCO with incorrect expiration dates. Of these, 45 were issued for a longer period than allowed by regulation. Regulation at 3 AAC 306.700(c) states that:

To obtain a marijuana handler permit, a person who has completed the marijuana handler permit education course described under (b) of this section shall present the course completion certificate to the director. The director shall issue a marijuana handler permit card valid for three years from the date of issue.

Management interprets the three-year validity period to start on

the date of the course completion. In most instances, expiration dates of the handler permits were established at three years from the date the individual applied for the permit. The lack of written procedures and sufficient training contributed to AMCO staff's varying interpretations for calculating permit expiration dates.

By not issuing permits in accordance with regulation, AMCO is allowing permit holders to handle marijuana and marijuana products beyond the period set in regulation without obtaining updated training on marijuana laws.

We recommend the AMCO director develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training.

Recommendation 4:
The AMCO director should develop and implement procedures to segregate the duties for calculating and remitting fees to local governments.

AMCO management does not adequately segregate duties over remittances of application fees to local governments. The audit found one AMCO employee is responsible for calculating and approving the amounts to be remitted to local governments, and no separate review is performed.

Upon receipt of a new or renewal application, AS 17.38.200(c) requires the board to immediately forward a copy of each application and half of the registration application fee to the local regulatory authority for the local government in which the applicant desires to operate. Management is responsible for establishing internal controls to ensure fees remitted are accurate and complete. Segregation of duties is a key internal control for appropriately receiving and distributing funds.⁴

AMCO management did not consider the need for segregating the duties for remitting fees to local governments. The lack of adequate segregation of duties increases the risks of error or fraud.

⁴Principle 10 of the Standards for Internal Control in the Federal Government, which is considered best practice, states that segregation of duties helps prevent fraud, waste, and abuse in the internal control system, and requires management to consider the need to separate the control activities related to authority, custody, and accounting of operations to achieve adequate segregation of duties. In cases where such segregation is not practical, management should design alternative control activities to address the risk.

We recommend the AMCO director develop and implement procedures to adequately segregate the duties for calculating and remitting fees to local governments.

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Marijuana Control Board (board) to determine if there is a demonstrated public need for its continued existence.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, under AS 44.66.010(a)(13), the board will terminate on June 30, 2018, and will have one year from that date to conclude its administrative operations.

Objectives

The two central objectives of the audit are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.

Scope

The assessment of operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board. We reviewed the board's activities from July 2015 through April 2017. Renewal applications due to the board by June 30, 2017 were outside the scope of our review.

Methodology

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

- Applicable statutes and regulations to identify board functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded board activities, and help ascertain if the board operated in the public interest.
- The State's online public notice system to verify the board meetings

were adequately public noticed.

- Board meeting minutes to gain an understanding of board proceedings and activities, goals and objectives, the nature and extent of public input, whether a quorum was maintained, and whether board vacancies impeded operations.
- Budget documents and financial reports generated from the state accounting system to gain an understanding of board financial activity and evaluate compliance with statutory requirements.
- Board member applications and résumés filed with the Governor's Office of Boards and Commissions to verify that members and board composition met statutory requirements.
- Various state and news related websites to identify complaints against the board or other board related concerns.
- Public comments presented at board meetings to gain an understanding and evaluate the board consideration of the comments and complaints received.
- Internal controls over the licensing database and enforcement records management system were assessed to determine if controls were properly designed and implemented.

To identify and evaluate board activities, we conducted interviews with Alcohol and Marijuana Control Office staff and board members. Specific issues of inquiry included board operations, regulations, duplication of effort, and complaints against the board.

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

- Random samples of new licenses and license applications as of April 2017 were selected and assessed for statutory and regulatory compliance. Sample sizes were selected based on low control risk, moderate inherent risk, and low/moderate audit risk. Testing

results were projected to the population. The random samples included the following:

- Twenty-five of 122 active licenses;
 - Eight of 39 board approved applications but not yet issued;
 - Four of 20 complete applications awaiting board decision; and
 - Two of eight applications under review by control office staff.
- A random sample of 40 and a judgmental sample of one were selected from 1,260 marijuana handler permits issued between July 2015 and April 2017 and assessed for regulatory compliance. The sample size was selected based on low control risk, moderate inherent risk, and low/moderate audit risk. An additional judgmental sample of 12 of 47 permits issued shortly after the audit period was selected and assessed for regulatory compliance. Testing results of the random sample were projected to the population.
 - A random sample of 10 was selected from 24 notices of violations issued between July 2015 through April 2017 and assessed for regulatory compliance. The sample size was selected based on low control risk, moderate inherent risk, and low/moderate audit risk. Testing results were projected to the population.

Surveys of licensees and local governments were conducted to obtain opinions on various aspects of the board's activities, including whether the board operated in the public's interest. A survey was sent to 101 licensees and 71 (70 percent) responded. A second survey was sent to 16 local governments that had a license issued in their jurisdiction and 14 (88 percent) responded.

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APPENDICES SUMMARY

Appendix A

In developing our conclusion regarding whether the Marijuana Control Board (board) termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A of this report.

Appendices B and C

As part of this audit, a survey was sent to 101 licensees, and 71 (70 percent) responded. A second survey was sent to 16 local governments that had a license issued in their jurisdiction and 14 (88 percent) responded. Licensee and local government survey questions and responses are presented respectively as Appendices B and C of this report.

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APPENDIX A

Analysis of Public Need Criteria (AS 44.66.050(c))

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

- (1) the extent to which the board or commission has operated in the public interest;
- (2) the extent to which the operation of the board or commission has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;
- (3) the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
- (4) the extent to which the board or commission has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided;
- (5) the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
- (6) the efficiency with which public inquiries or complaints regarding the activities of the board or commission filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;
- (7) the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

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

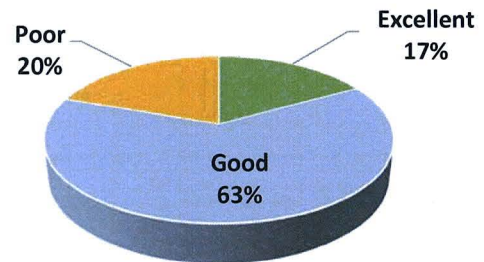
APPENDIX B

Marijuana Control Board Licensee Survey Data

Question 1: How would you rate the overall licensing experience?

Rating	Number of Responses	Percentage of Responses
Excellent	12	17%
Good	45	63%
Poor	14	20%
Total Responses	71	100%

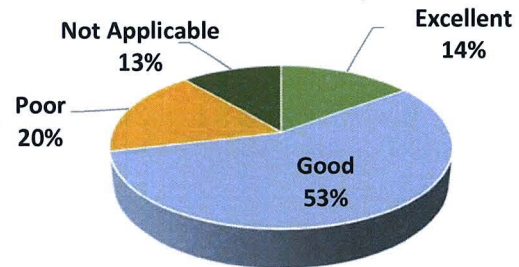
Overall Licensing Experience



Question 2: For your most recent renewal period, how would you rate your overall renewal experience?

Rating	Number of Responses	Percentage of Responses
Excellent	10	14%
Good	38	53%
Poor	14	20%
Not Applicable	9	13%
Total Responses	71	100%

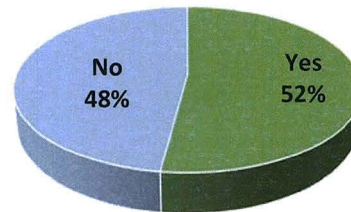
Overall Renewal Experience



Question 3: To your knowledge, are there any licensing requirements that create an unnecessary barrier to establishing a business involving the cultivation, testing, manufacture, or sale of marijuana?

Rating	Number of Responses	Percentage of Responses
Yes	37	52%
No	34	48%
Total Responses	71	100%

Existence of Occupational Barriers



APPENDIX B

(Continued)

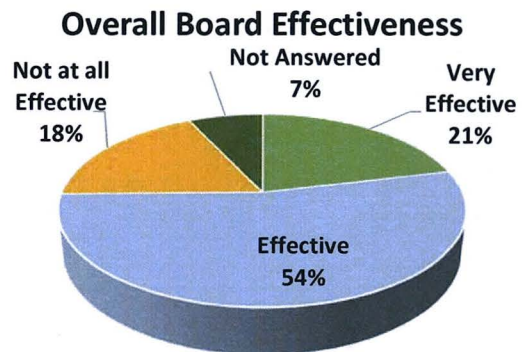
Marijuana Control Board Licensee Survey Data (Continued)

Question 3a: What specific licensing requirements create a barrier to establishing a marijuana business?

Cumbersome application process	9
Overregulation of industry	8
Expensive start-up costs or high licensing fees	4
Annual fingerprints requirement	3
Restrictive local laws	3
Ambiguous regulations	2
Lack of adequate AMCO staffing	1
No response	7
Total Responses	37

Question 4: How would you rate the overall effectiveness of the board in serving the public interest?

<u>Rating</u>	<u>Number of Responses</u>	<u>Percentage of Responses</u>
Very Effective	15	21%
Effective	38	54%
Not at all Effective	13	18%
Not Answered	5	7%
Total Responses	71	100%



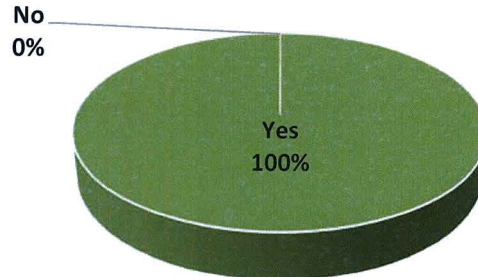
APPENDIX C

Marijuana Control Board Local Government Survey Data

Question 1: In the past three years, has your local governing body received a notice of a business in your area applying for a marijuana establishment license?

Rating	Number of Responses	Percentage of Responses
Yes	14	100%
No	0	0%
Total Responses	14	100%

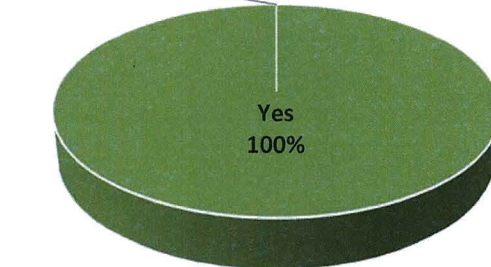
Local Government Notification



Question 1a: Were you given 60 days to protest the application?

Rating	Number of Responses	Percentage of Responses
Yes	14	100%
No	0	0%
Total Responses	14	100%

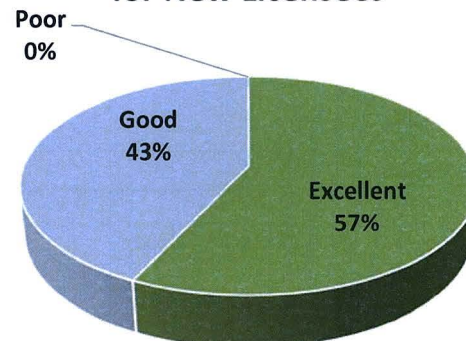
Appropriate Protest Period



Question 2: How would you rate the board's overall procedures to notify the local government of proposed issuance of new licenses?

Rating	Number of Responses	Percentage of Responses
Excellent	8	57%
Good	6	43%
Poor	0	0%
Total Responses	14	100%

Notification Process for New Licenses



APPENDIX C

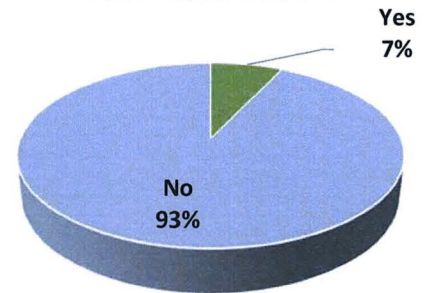
(Continued)

Marijuana Control Board Local Government Survey Data (Continued)

Question 3: To your knowledge, has a business owner in your area received a marijuana establishment license before the local government was notified?

Rating	Number of Responses	Percentage of Responses
Yes	1	7%
No	13	93%
Total Responses	14	100%

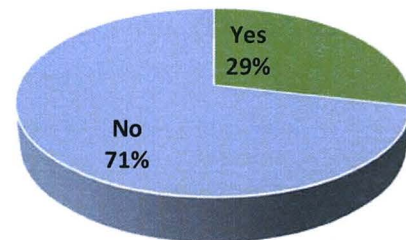
Late Notification



Question 4: To your knowledge, has your local government protested the issuance or renewal of a new license within the last three years?

Rating	Number of Responses	Percentage of Responses
Yes	4	29%
No	10	71%
Total Responses	14	100%

Local Government Protest



Question 4a: What was the reason for the protest? (Please select all that apply):

Responses	Number of Responses	Percentage of Responses
Delinquent property taxes	0	0%
Delinquent sales taxes	0	0%
Public complaints	0	0%
History of criminal activity	0	0%
Number of police reports	0	0%
Health and/or safety concerns	0	0%
Violation(s) of local ordinance	0	0%
Zoning violations	1	25%
Other (specify)	3	75%
Total Responses	4	100%

Responses for "Other"

No land use permit	1
Distance to youth center	1
No zoning clearance	1
Total Responses	3

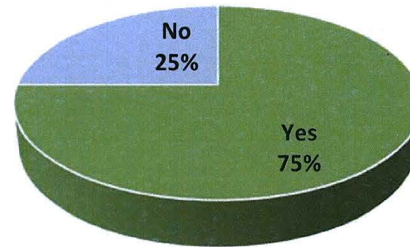
APPENDIX C (Continued)

Marijuana Control Board Local Government Survey Data (Continued)

Question 4b: In the event of a protest, were you notified of the date, time, and location of the meeting at which your protest can be considered by the board in a timely manner?

Rating	Number of Responses	Percentage of Responses
Yes	3	75%
No	1	25%
Total Responses	4	100%

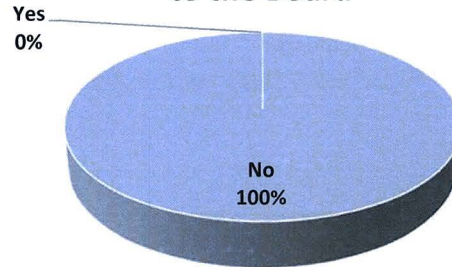
Protest Notification Timely



Question 5: Have you or your organization submitted a complaint to the board within the last three years?

Rating	Number of Responses	Percentage of Responses
Yes	0	0%
No	14	100%
Total Responses	14	100%

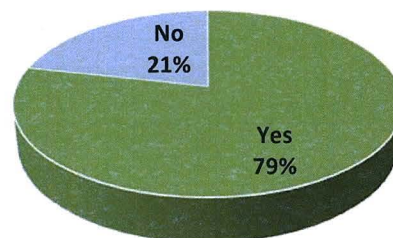
Complaint Submitted to the Board



Question 6: Regulation at 3 AAC 306.060(b) allows local governments to recommend that conditions be placed on a specific marijuana establishment license. Are you aware of this regulation?

Rating	Number of Responses	Percentage of Responses
Yes	11	79%
No	3	21%
Total Responses	14	100%

Awareness of Condition Options



APPENDIX C

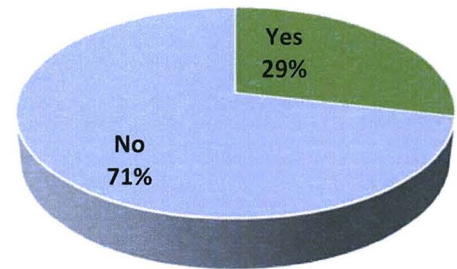
(Continued)

Marijuana Control Board Local Government Survey Data (Continued)

Question 6a: To your knowledge, has your local government recommended conditions to be placed on a specific marijuana establishment license?

Rating	Number of Responses	Percentage of Responses
Yes	4	29%
No	10	71%
Total Responses	14	100%

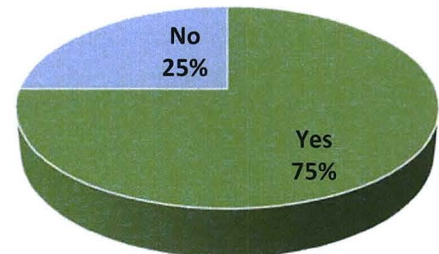
Conditions Recommended



Question 6b: Did the board impose the condition(s) on a specific marijuana establishment license?

Rating	Number of Responses	Percentage of Responses
Yes	3	75%
No	1	25%
Total Responses	4	100%

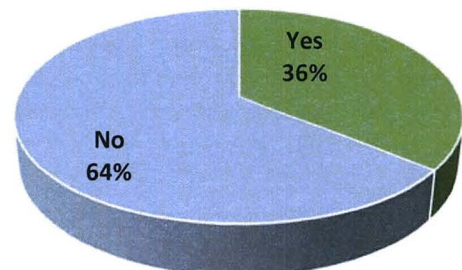
Conditions Placed on License



Question 7: To your knowledge, has a representative of your local government attended a board meeting in the past three years, either in person or by teleconference?

Rating	Number of Responses	Percentage of Responses
Yes	5	36%
No	9	64%
Total Responses	14	100%

Board Meeting Attendance



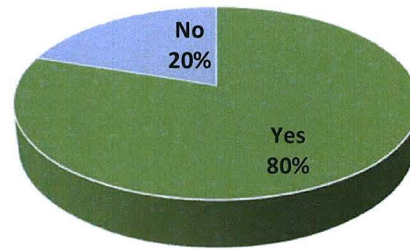
APPENDIX C (Continued)

Marijuana Control Board Local Government Survey Data (Continued)

Question 7a: Was there an opportunity for the representative to provide public comment at the board meeting(s) attended?

Rating	Number of Responses	Percentage of Responses
Yes	4	80%
No	1	20%
Total Responses	5	100%

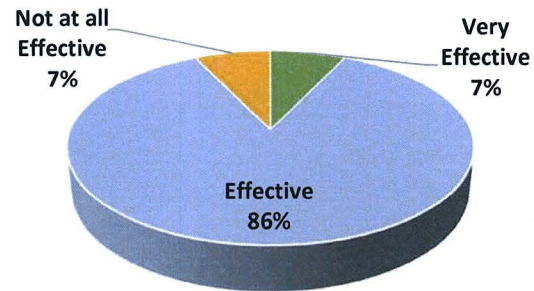
Opportunity to Comment



Question 8: How would you rate the board's effectiveness in enforcing marijuana laws in your area?

Rating	Number of Responses	Percentage of Responses
Very Effective	1	7%
Effective	12	86%
Not at all Effective	1	7%
Total Responses	14	100%

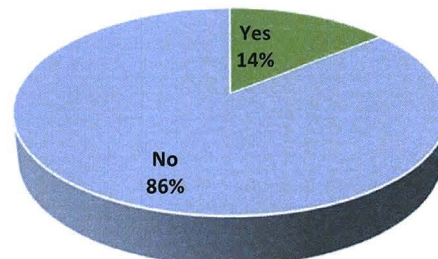
Enforcement Effectiveness



Question 9: In your opinion, does the board duplicate any efforts of the local government?

Rating	Number of Responses	Percentage of Responses
Yes	2	14%
No	12	86%
Total Responses	14	100%

Duplication of Effort



APPENDIX C

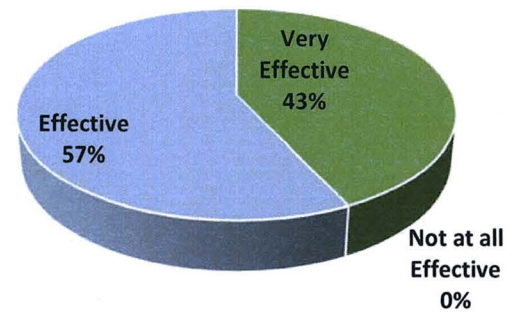
(Continued)

Marijuana Control Board Local Government Survey Data (Continued)

Question 10: How would you rate the overall effectiveness of the board in serving the public interest?

Rating	Number of Responses	Percentage of Responses
Very Effective	6	43%
Effective	8	57%
Not at all Effective	0	0%
Total Responses	14	100%

Overall Board Effectiveness



Agency Response from the Office of the Governor

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Juneau, AK 99811-0001
907-465-3500
Fax: 907-465-3532



550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450
fax: 907-269-7463
gov.alaska.gov
Governor@alaska.gov

Governor Bill Walker
STATE OF ALASKA

RECEIVED

NOV 28 2017

LEGISLATIVE AUDIT

November 16, 2017

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

Dear Kris Curtis:

Thank you for the opportunity to respond to the Legislative Budget and Audit Committee regarding the preliminary audit reports for the Marijuana Control Board under the Department of Commerce, Community and Economic Development.

While no recommendations for our office were reported, we agree that the board is functioning in the best interest of the public. They continue to regulate licensing standards, examine applicants, and, when necessary, provide disciplinary sanction. We believe the board's termination date should be extended until June 30, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Shirley Marquardt".

Shirley Marquardt
Director
Boards and Commissions

SM/li

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



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

OFFICE OF THE COMMISSIONER

P.O. Box 110800
Juneau, AK 99811-0800
Main: 907.465.2500
Fax: 907.465.5442

November 30, 2017

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

RECEIVED

NOV 30 2017

LEGISLATIVE AUDIT

RE: Confidential Preliminary Audit Report, Department of Commerce, Community, and Economic Development, Marijuana Control Board Sunset Audit

Dear Ms. Curtis:

In the matter of the confidential preliminary audit report conclusions regarding the Marijuana Control Board Sunset Audit, I concur with the four recommendations presented in the report.

Recommendation 1: The board members, director, and enforcement supervisor should work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources.

We agree with this recommendation. With only eight investigators to administer the marijuana and alcohol laws across the entire state and with over 2,000 licensees, it is vital that priorities are established for the workload. To date, the enforcement staff have prioritized the initial inspection of newly approved marijuana facilities and investigations of alleged violations, in order to protect the health and safety of the public. These priorities have been emphasized to the board by the enforcement supervisor, who reports on the section's work and focus at each board meeting, and the board sometimes directs the enforcement section's attention to certain issues. However, there has been no formal written statement of enforcement priorities. A formal enforcement plan to set the priorities of AMCO's enforcement section will not only provide clear guidance to the staff, but will also inform the public and licensees of the enforcement section's focus. It is our intent to present a draft enforcement matrix to the board by the summer of 2018.

Recommendation 2: The board and director should implement a process to monitor and track complaints received to ensure they are assessed for follow up action and investigated in a timely manner.

Steps are already being taken to implement this suggestion. Because of the limited number of staff and the increased workload with the onset of marijuana control, enforcement staff have recently documented clearly only those complaints which have been investigated by the staff. Although the number of emails and phone calls are logged to document workload, the staff has not been recording the resolution of a complaint that they have not been able to verify. AMCO recently was

Ms. Curtis, Division of Legislative Audit
November 30, 2017
Page 2

approved to hire a Criminal Justice Technician I to provide administrative support to the enforcement section. The addition of this support, along with modification of procedures, will enable the enforcement section to document all complaints received along with their resolution, even for those complaints that do not result in an inspection or investigation. Currently the Alaska Records Management System (ARMS) program is used to document investigations. This program will likely be used to document all complaints received.

Recommendation 3: The director should develop written procedures and ensure staff receive the appropriate training for establishing the expiration dates of marijuana handler permits.

We agree that that this is an area where processes can be improved. The interpretation of 3 AAC 306.700(c) was established sometime after the start of issuing marijuana handler permits, under the previous director. It does not appear that the interpretation was put into writing, and it is unclear how the interpretation was disseminated to the staff. A written procedure along with staff training will clarify the interpretation and lead to a consistent application of the regulation. In addition, a clarifying amendment to the regulation will be proposed to the board, to ensure that the appropriate expiration date for marijuana handler permits is clear to the board, the staff, licensees, and permit holders.

Recommendation 4: The director should develop and implement procedures to adequately segregate the duties for calculating and remitting fees to local governments.

This is an area where improvements can be made. As was stated in the audit findings, with a single person calculating and remitting fees to local governments, the risk of fraud is low but the potential for error is definitely a concern. As AMCO reorganizes its internal staff structure, the director will work with the Administrative Services Division of the Department of Commerce, Community, and Economic Development to develop procedures to segregate duties relating to providing half the application fees to local governments, so that there are checks and balances to the process.

Please feel free to contact me if you have any questions regarding this audit response.

Sincerely,



Mike Navarre
Commissioner

Cc: Erika McConnell, Director, AMCO
Catherine Reardon, Director, Administrative Services Division

Agency Response from the Marijuana Control Board

November 21, 2017

Kris Curtis, CPA, CISA
Legislative Auditor
Legislative Budget and Audit Committee
Alaska State Legislature
P.O. Box 113300
Juneau, AK 99811

RECEIVED
NOV 28 2017
LEGISLATIVE AUDIT

RE: Response to the Preliminary Report from the Legislative Budget and Audit Committee date November 9, 2017.

Dear Ms. Curtis:

Thank you for the opportunity to respond to this report.

I agree with the report conclusions. The Marijuana Control Board (MCB) has done much work to provide a framework and regulatory scheme to launch the commercial marijuana industry. We have also reviewed and approved many licenses. There is still much work to be done on the regulatory side of this commerce and many new licenses yet to be reviewed. I believe a six year extension is imperative to keep this industry within the statutory and regulatory requirements for the public's interest and safety. I concur that the board has meet the requirements for public meetings and was not redundant in its operation. The enforcement section of the board has been fair and impartial and has used the importance of public safety to guide their decisions. I believe that enforcement has treated those involved in businesses professionally and fairly. I agree that a clear enforcement plan should be written and that all complaints should be monitored and tracked. The board has endeavored to put, as a priority, the licensing of new establishments according to regulations and statutes. The board has set licensing fees with the intent that these fees will eventually cover the cost of regulating the industry. As the industry is new and there are many more licenses yet to be approved, it is too early to tell if these fees will actually cover the regulatory cost. Future adjustments may have to be made.

The following are my responses to the four recommendations set by the Legislative Budget and Audit Committee:

Recommendation 1. (I Concur)

The board members, the Alcohol and Marijuana Control Office (AMCO) director, and enforcement supervisor should work together to formally establish an enforcement plan to direct AMCO's limited enforcement resources.

I plan to add as an agenda item, for a future MCB meeting (preferably January 2017), a discussion on setting a plan to guide our enforcement personnel in the use of their resources. We will work with the director and the enforcement supervisor to develop a

strategy that is productive but feasible in light enforcement's personnel numbers and abilities.

Recommendation 2. (I concur)

The board and AMCO director should implement a process to monitor and track complaints to ensure they are assessed for follow up action and investigated in a timely manner.

This will also be an agenda item for the January 2017 meeting or later if need be. My thought is that we invest in a program that tracks complaints and that these complaints follow a chain of command so that their progress and final product will be reviewed and approved by the enforcement supervisor and/or the director.

Recommendation 3. (I concur)

The AMCO director should develop written procedures for establishing the expiration dates of marijuana handler permits and ensure staff receive the appropriate training.

The board will request that the director develop written procedures and train staff appropriately in their use. After the director develops the procedure, it will be presented to the board for approval.

Recommendation 4. (I concur)

The AMCO director should develop and implement procedures to segregate the duties for calculating and remitting fees to local governments.

The board will request that the director develop these procedures. After development of these procedures, the director will present them to the board for approval. An example of a procedure that could be used is to have a supervisor review and approve the prepared remittance fees.

I thought the audit was well prepared and went into sufficient depth to determine if the MCB was operating within its regulatory framework and the public's interest.

Sincerely,



Peter Mlynarik, Chair
Marijuana Control Board