

LEG. FINANCE - BILLS 1979 - 1980 1320

SB 248 thru SB 250 1320



# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith  
Signature of Camera Operator

3/23/90  
Date

# COMMITTEE REPORT HOUSE

FURTHER:

April 5, 1979

Date: 4-24-79

Mr. Speaker:

The Committee on FINANCE has had SB 248

"An Act continuing the existence of the State Physical Therapy Board;  
eff. date."

under consideration and (a majority of the committee) (the committee)  
reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with <sup>Committee HOUSE</sup> CS for SB 248  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

Freeman No-Pass

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**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

Smith No Rec

Rogers No Rec

\_\_\_\_\_

Matgomery No Rec

\_\_\_\_\_

Freeman  
CHAIRMAN

Original sponsor: Health, Education and  
Social Services Committee

Offered: 4/5/79  
Referred: Finance

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2

HOUSE CS FOR SENATE BILL NO. 248

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act terminating the existence of the State Physical  
7 Therapy Board on January 1, 1981 and reassigning its  
8 responsibilities to the Department of Commerce and  
9 Economic Development; and providing for an effective  
10 date."

11

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12

\* Section 1. TERMINATION OF STATE PHYSICAL THERAPY BOARD. Notwithstand-  
13 ing the provisions of AS 08.03.010, the State Physical Therapy Board will  
14 continue in existence until January 1, 1981, and after that date the Depart-  
15 ment of Commerce and Economic Development will have jurisdiction over the  
16 licensing of physical therapists and the practice of physical therapy under  
17 the provisions of AS 08.84.005 - 08.84.200. During the period until  
18 January 1, 1981, the members of the board will facilitate the orderly trans-  
19 fer of functions and responsibilities of the board to the department.  
20 Nothing in this Act or AS 08.03.010 reduces or limits the authority of the  
21 board under AS 08.84.010 - 08.84.200 before January 1, 1981.

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\* Sec. 2. AS 08.01 010 is amended by adding a new subsection to read:

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(b) This chapter applies to the responsibilities of the department  
24 over licensing and regulation of physical therapists (AS 08.84.010).

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\* Sec. 3. AS 08.01.050(a)(19) is amended to read:

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(19) provide investigative services to the boards established  
27 under AS 08.20, AS 08.32, AS 08.36, AS 08.64, AS 08.68, AS 08.71,  
28 AS 08.72, AS 08.80, [AS 08.84,] and AS 08.86 for the purpose of assist-  
29 ing those boards in matters of professional discipline.

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2 (20) provide investigative services in matters of professional  
3 discipline for the profession established under AS 08.84.

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5 (b) The form and content of a license [,] authorized under AS 08  
6 [BY A BOARD LISTED IN AS 08.01.010], including any document evidencing  
7 renewal of a license, shall be determined by the department after consul-  
8 tation with and consideration of the views of any [THE] board concerned.

9 \* Sec. 6. AS 08.84 is amended by adding a new section to read:

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11 jurisdiction over the licensing of physical therapists and the practice  
12 of physical therapy under this chapter.

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14 (b) The department [PHYSICAL THERAPY BOARD] shall conduct examina-  
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16 registration of physical therapists and physical therapy assistants and  
17 the practice of physical therapy. The department [BOARD] shall

18 (1) pass upon the qualifications of applicants;

19 (2) conduct examinations;

20 (3) issue temporary permits and registration certificates to  
21 physical therapists and physical therapy assistants qualified under this  
22 chapter;

23 (4) suspend or revoke registration certificates, when neces-  
24 sary;

25 (5) keep a current register listing the name, business  
26 address, date and number of registration certificate of each physical  
27 therapist and physical therapy assistant who is registered to practice  
28 in this state;

29 (6) keep a record and minutes of its meetings, proceedings

1 and hearings.

2 \* Sec. 8. AS 08.84.020 is amended to read:

3 Sec. 08.84.020. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.

4 The department [BOARD] shall comply with the Administrative Procedure  
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12 by the Council on Medical Education and Hospitals of the American  
13 Medical Association, or the American Physical Therapy Association;

14 (3) pass to the satisfaction of the department [BOARD] an  
15 examination from the Professional Examination Service Association, to  
16 determine his fitness for practice as a physical therapist or physical  
17 therapy assistant or be entitled to registration without examination as  
18 provided in AS 08.84.060.

19 \* Sec. 10. AS 08.84.040 is amended to read:

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28 therapist or physical therapy assistant registered under the laws of  
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1 state or territory were, at the date of his registration, substantially  
2 equal to the requirements in this state.

3 \* Sec. 12. AS 08.84.065(a) and (b) are amended to read:

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8 (b) A temporary permit issued to an applicant for registration by  
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24 (b) A penalty of \$10 shall be charged in addition to all delin-  
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9           (3) has been convicted of violating a state or federal narco-  
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11           (4) has been convicted of a crime involving moral turpitude;

12           (5) is guilty, in the judgment of the department [BOARD], of  
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14           (6) has obtained or attempted to obtain registration by fraud  
15 or material misrepresentation;

16           (7) has been declared mentally ill by a court and has not  
17 thereafter been lawfully declared sane; [OR]

18           (8) has treated or attempted to treat ailments of human  
19 beings otherwise than by physical therapy, or has attempted to practice  
20 independent of the prescription and direction of a person licensed to  
21 practice medicine or osteopathy;

22           (9) as a physical therapy assistant, has attempted to prac-  
23 tice physical therapy which has not been initiated, supervised and term-  
24 inated by a registered physical therapist.

25 \* Sec. 17. AS 08.84.180 is amended to read:

26           Sec. 08.84.180. INVESTIGATION BY DEPARTMENT [BOARD]. The depart-  
27 ment [BOARD] shall investigate every supposed violation of this chapter  
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2 \* Sec. 18. AS 08.84.185 is amended to read:

3 Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)

4 In addition to action under AS 08.84.180, upon a finding that by reason  
5 of demonstrated problems of competence, experience, education or health  
6 the authority to practice physical therapy should be limited or condi-  
7 tioned or the practitioner disciplined, the department [BOARD] may reprimand, censure, place on probation, restrict practice by specialty,  
8 procedure or facility, require additional education or training, or  
9 revoke or suspend a registration.  
10

11 (b) The Administrative Procedure Act (AS 44.62) applies to any  
12 action taken by the department [BOARD] under this section.

13 \* Sec. 19. REPEALER. AS 08.01.010(21), AS 08.03.010(a)(11), AS 08.84.-  
14 010(a) and 08.84.190(1) are repealed.

15 \* Sec. 20. EFFECTIVE DATE. Section 1 of this Act takes effect  
16 immediately in accordance with AS 01.10.070(c). Sections 2 - 19 of this Act  
17 take effect January 1, 1981.  
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# HOUSE JOURNAL

## LETTER OF INTENT

FOR

HCS FOR SB 241, 242, 243, 244, 245, 247 & 248  
and  
SB 246 and HB 446 & 447

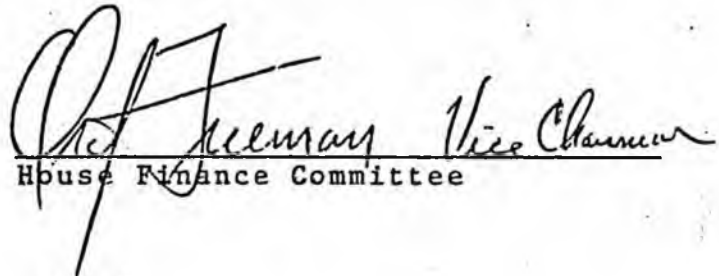
(SUNSET LEGISLATION)

When the House Finance Committee considered and approved its version of the Fiscal Year 1980 budget it did not have in its possession the several measures constituting the "Sunset" package for various boards and commissions. As a result the question of staffing to provide improved public service by the surviving boards was not addressed. The Senate in its version of the budget approved the addition of the following positions in the Occupational Licensing program:

Administrative Support Tech II, Juneau	18,700
Clerk Typist III, Anchorage	18,700
Special Investigator, Anchorage	<u>31,900</u>
	69,300

The House Finance Committee now wishes to support before the full House and the House conferees on the budget a request that these new positions be approved for inclusion in the Fiscal Year 1980 budget for Occupational Licensing.

The Division of Occupational Licensing shall report to the Second Session of the Eleventh Legislature the results of its efforts to correct practices found objectionable and meet requirements of the various legislative audits and committee reports pertaining to boards and commissions. This requirement applies equally to those boards approved for continuation this year and those under review during the budget year.

  
House Finance Committee

**THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE**

FISCAL NOTE

I. REQUEST House Committee Substitute for Senate Bill 241, 242, 243, 244, 245,  
Bill/Resolution No. 246, 247, and 248. House Bill 446 and 447.  
Title Acts relating to Sunset Legislation  
Requested by Finance Committee Date 4/24/79

II. FISCAL DETAIL

Agency Affected Commerce and Economic Development  
Program Category Affected Public Protection  
Budget Request Unit(s) Affected Regulation and Licensing of Professions

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	-0-	-0-	23.4	50.0	52.7	56.0
200 TRAVEL	-0-	-0-	(9.5)	(20.1)	(21.3)	(22.6)
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	3.4	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>17.3</b>	<b>29.9</b>	<b>31.4</b>	<b>33.4</b>

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	17.3	29.9	31.4	33.4
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	2	2	2
PART TIME	-0-	-0-	2	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached analysis

IV. DATE 4/24/79

PREPARED BY Don Hostak, Director  
AGENCY Occupational Licensing  
PHONE 465-2534

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)

In regard to the termination of seven health care boards effective January 1, 1981 and the resulting assumption of the licensing function by the Division of Occupational Licensing, it is difficult to estimate fiscal impact at this time. However, overall results are estimated to be:

1. Elimination of board meetings  
(travel and per diem)
2. Elimination of Practical examinations on:
  - a. Chiropractors
  - b. Optometrists
  - c. Veterinarians
  - d. Dispensing Opticians
3. Licensure would be by
  - a. National examination (4 boards currently use)
  - b. State examination (7 boards currently use)
  - c. Educational requirements; or
  - d. Endorsement

The period prior to termination will be used to work with the boards in updating statutes and regulations in order to define set criteria for licensure and regulation of each profession. If problems arise after transfer of this function, assistance could be obtained from State Professional Associations and/or former board members.

Two additional support personnel (R-12's) would be needed to complement current staff. License examiners would be relieved of some duties currently being performed for board members. These duties would be replaced by detailed review and licensure of applicants.

Analysis:

Personnel Services

For FY81 (2) full time positions for only half the year at R-12 with Benefits = \$3,028, FICA = \$1568 and Health Insurance = \$1716 \$23,444

For FY 82 and every year thereafter (2) full time positions for full years at R-12 with Benefits, FICA and Health Insurance \$49,701

A 6% inflation rate is used for FY83 and 84.

Travel

Travel expenditures were estimated for FY80. To estimate travel savings for FY81 half of FY80 figures were used being as the boards will continue through half of the year. The savings for FY82, FY83 and FY84 will be double of FY81 plus a 6% inflation rate.

Travel for FY81 by board is estimated to be:

Psychology	2.2
Nursing	-0-
Dental	-0-
Chiropractor	1.6
Veterinary	1.1
Phy. Therapy	.9
Disp. Optician	.8
Optometry	.9
Pharmacy	-0-
Medical	-0-
Nursing H. Admin.	2.0
	<u>(9.5)</u>

Equipment

For FY81 and only that year the estimated cost to equip the 2 R-12 positions would be:

2 desks 70 X 36	\$370 ea.
2 credenza 19 X 36	295 ea.
2 file cabinets	172 ea.
2 chairs posture	91 ea.
2 typewriters	705 ea.
2 type tables	62 ea.
	<u>\$3,392 Total</u>

Original sponsor: Health, Education and  
Social Services Committee

Offered: 4/5/79  
Referred: Finance

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

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HOUSE CS FOR SENATE BILL NO. 248

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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ELEVENTH LEGISLATURE - FIRST SESSION

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A BILL

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7 Therapy Board on January 1, 1981 and reassigning its  
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Introduced: 3/14/79  
Referred: Health, Education and  
Social Services and Finance

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 SENATE BILL NO. 248

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the State Physical  
7 Therapy Board; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 08.03.010(c) is repealed and reenacted to read:

10 (c) The following board has the termination date provided by this  
11 subsection: State Physical Therapy Board (AS 08.84.010) -- June 30,  
12 1983.

13 \* Sec. 2. AS 08.03 is amended by adding a new section to read:

14 Sec. 08.03.020. TERMINATION, CONTINUATION, AND REESTABLISHMENT OF  
15 REGULATORY BOARDS. (a) Upon termination, each board listed in AS 08.-  
16 03.010 shall continue in existence until June 30 of the next succeeding  
17 year for the purpose of concluding its affairs. During this period,  
18 termination does not reduce or otherwise limit the powers or authority  
19 of each board. One year after the date of termination, a board not  
20 continued shall cease all activities.

21 (b) The termination, dissolution, continuation or reestablishment  
22 of a regulatory board shall be governed by the legislative oversight  
23 procedures of AS 44.66.050.

24 (c) A board scheduled for termination under this chapter may be  
25 continued or reestablished by the legislature for a period not to exceed  
26 four years.

27 \* Sec. 3. AS 08.03.010(a)(11), (d) and (e) are repealed.

28 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-  
29 070(c).



# RECORDS



# CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made

James O. Smith  
Signature of Camera Operator

3/23/90  
Date



Introduced: 3/14/79  
Referred: Health, Education  
& Social Services and  
Finance

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 250

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the Alcoholic  
7 Beverage Control Board; and providing for an effective  
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 44.66.010(a)(1) is amended to read:

11 (1) Alcoholic Beverage Control Board (AS 04.05.010) --  
12 June 30, 1983 [1979];

13 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-  
14 070(c).

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## STATE OF ALASKA -- OPERATING BUDGET SUMMARY

20:08

4/07/79

## \* \* \* \* \* PUBLIC PROTECTION \* \* \* \* \*

SHORT FORM PAGE	BUDGET COMPONENT	FY78 ACT	FY79 ADJ	REQUEST	GOVERNOR	SENATE	SENATE - GOVERNOR COMPARISON	
2	DEPARTMENT OF ADMINISTRATION STATE RECORDER	767.7	953.2	1276.7	1338.5	1053.1	-285.4	-31.2%
4	DEPARTMENT OF LAW OFFICE OF CONSUMER PROTECTION	389.2	451.9	680.8	479.0	457.3	-21.7	-4.5%
6	DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BD	361.4	499.1	524.3	485.0	432.2	-52.8	-10.8%
	DEPARTMENT OF LABOR							
	OCCUPATIONAL SAFETY							
	GENERAL ADMINISTRATION	591.3	464.9	442.7	437.0	422.8	-14.2	-3.1%
12	COMPLIANCE INSPECTION	806.8	1145.6	1150.4	1127.2	1057.5	-69.7	-6.1%
14	HEALTH INSPECTION	124.7	190.6	283.6	222.0	106.3	-115.7	-52.0%
16	TRAINING & CONSULTATION	351.5	514.6	547.0	517.4	497.3	-20.1	-3.6%
18	PLANNING & STANDARDS	93.9	118.6	128.0	120.1	118.4	-1.7	-1.3%
20	RESEARCH CONTRACTS	125.5	218.2	144.4	139.4	135.2	-4.2	-3.0%
	*** PROGRAM TOTAL ***	2093.7	2652.5	2696.1	2563.1	2337.5	-225.6	-8.7%
	WORKER PROTECTION							
24	FISHERMANS FUND	324.5	347.6	446.7	446.7	445.4	-1.3	-0.2%
26	SECOND INJURY FUND	765.2	722.8	1056.1	1056.1	1052.0	-4.1	-0.3%
	*** PROGRAM TOTAL ***	1109.7	1070.4	1502.8	1502.8	1497.4	-5.4	-0.3%
	WORKER PROTECTION							
30	WORKMENS COMPENSATION ADMIN.	1026.6	1065.1	1337.7	1219.5	1105.8	-113.7	-9.2%
32	WAGE & HOUR ADMINISTRATION	621.6	618.1	684.4	644.1	624.3	-19.8	-3.0%
34	LOCAL HIRE	194.3	52.5					
	*** PROGRAM TOTAL ***	1842.5	1735.7	2022.1	1863.6	1730.1	-133.5	-7.1%
36	LIFE & PROPERTY PROTECTION MECHANICAL INSPECTION	368.9	529.5	672.4	595.9	557.9	-38.0	-6.3%
	*** AGENCY TOTAL ***	5414.8	5988.1	6893.4	6525.4	6122.9	-402.5	-6.1%
	DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT							
38	CONSUMER PROTECTION WEIGHTS & MEASURES	553.6	649.5	728.7	678.7	650.1	-28.6	-4.1%
42	BANKING SECURITIES & CORP. CORPORATIONS	182.9	203.8	261.4	238.5	231.7	-6.8	-2.8%
44	FINANCIAL INSTITUTIONS	497.3	568.5	618.0	616.0	579.6	-36.4	-5.8%
	*** PROGRAM TOTAL ***	680.2	772.3	879.4	854.5	811.3	-43.2	-5.0%
	INSURANCE							
48	INSURANCE COMPANIES	286.7						
50	RATES & POLICY FORMS	149.5						
52	LICENSING	53.1						
54	INVESTIGATION	124.5						
56	MARKET SURVEILLANCE		355.9	383.2	373.5	361.5	-12.0	-3.1%
58	LICENSE SURVEILLANCE		131.5	136.9	133.8	132.1	-1.7	-1.2%
60	FINANCIAL SURVEILLANCE		232.1	265.2	255.5	249.0	-6.5	-2.5%
	*** PROGRAM TOTAL ***	613.8	719.5	785.3	762.8	742.6	-20.2	-2.5%
64	REG OF BUSINESS & PROFESSIONS							
66	OCCUPATIONAL LICENSING	779.5	887.0	1205.0	1020.0	1064.5	36.5	3.5%
68	ADMINISTRATION AND SUPPORT	571.9	632.3	689.8	665.1	640.3	-24.8	-3.6%
70	ALASKA PUBLIC UTILITIES COMM	1265.7	1397.6	1573.3	1457.1	1393.2	-63.9	-4.3%
72	ALASKA TRANSPORTATION COMMISSI	1233.9	1316.8	1630.1	1408.2	1337.8	-70.4	-5.0%
	ALASKA PIPELINE COMMISSION	621.0	557.1	623.8	565.4	516.3	-49.1	-8.6%
	*** PROGRAM TOTAL ***	4473.0	4790.8	5722.0	5123.8	4952.1	-171.7	-3.3%
	*** AGENCY TOTAL ***	6320.6	6932.1	8115.4	7419.8	7156.1	-263.7	-3.5%
	DEPARTMENT OF MILITARY AFFAIRS							
74	SEARCH & RESCUE	294.7	321.7	373.6	337.6	332.9	-4.7	-1.3%
78	CIVIL AIR PATROL							
80	ALASKA DISASTER OFFICE	557.8	546.1	700.0	686.0	486.9	-199.1	-29.0%
82	CIVIL DEFENSE PLANNING	45.9	43.6	46.0	46.0	46.0		
84	RADIOLOGICAL PROGRAM	170.5	995.6	167.5	167.5	167.5		
86	CITY PARTICIPATION	77.0	69.6	75.0	75.0	75.0		
88	FLOOD CONTROL		39.7	30.0	30.0	30.0		
	TRAINING	108.1	85.7	53.2	53.2	53.2		
	DISASTER RELIEF ACT	959.3	1780.3	1071.7	1057.7	858.6	-199.1	-18.7%
	*** PROGRAM TOTAL ***	959.3	1780.3	1071.7	1057.7	858.6	-199.1	-18.7%
92	ALASKA NATIONAL GUARD	998.2	1047.8	1162.6	1008.0	984.4	-23.6	-2.2%
94	OFFICE OF ADJUTANT GENERAL	745.7	943.1	1044.7	989.2	934.2	-55.0	-5.5%
96	STATE ARMORIES	657.8	784.2	920.3	919.1	918.9	-0.2	0.0%
	FEDERAL ARMORIES							

SB250

John:

Audit Recommendations:

1. Transfer Enforcement to Public Safety
2. Transfer Administrative and licensing duties to Dept. of Commerce -- Occupational Licensing
3. Eliminate the ABC Board Office
4. Make some "clean up" amendments to lib 4
5. Change ABC Board membership limiting industry members to one.

House Commerce says they expect to introduce a bill on Monday that will make the above changes.

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

## THE LEGISLATURE

FINANCE DIVISION  
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

November 3, 1978

SUMMARY OF: A Performance Review of the Alcoholic Beverage Control Board.

### PURPOSE OF THE REVIEW

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Alcoholic Beverage Control Board was conducted to determine whether there is a demonstrated need to continue liquor regulation in its present form. To determine that need we reviewed Board activities to see if the Board has been operating in an efficient and effective manner. The major areas reviewed were the Board's program, licensing, enforcement, administration and affirmative action functions.

### REPORT CONCLUSION

In our opinion, the Alcoholic Beverage Control Board should continue to regulate and license those persons engaged in the liquor industry. Because of the growing body of knowledge on the potential dangers of alcohol and its attendant social and economic costs, we concur that the public need for this type of regulation continues to exist.

However, certain changes need to be implemented for the ABC Board to more effectively execute its mandated responsibilities. Enforcement responsibilities of the Board should be transferred to a special investigative unit within the Department of Public Safety. This transfer would eliminate the deficiencies in the ABC enforcement operation which render it ineffective and would provide continuing managerial control, proper training and supervision, and insulate the enforcement staff from possible Board influence.

The transfer of enforcement responsibilities to the Department of Public Safety would reduce the ABC staff to a size too small to justify maintaining a separate agency. We therefore recommend that the Alcoholic Beverage Control Board be placed under the administrative control of the Department of Commerce and Economic Development.

Administrative and licensing responsibilities of the Board should be transferred to that Department's Division of Occupational Licensing with authority for routine issuances, transfers and renewals of unprotested licenses delegated by the Board to the Director of the Division.

Other possible amendments to Title 4 which would improve the efficiency of the licensing function are: (1) removal of the requirement for public notice to local governing bodies on renewals of liquor licenses in AS 04.10.270 which is used primarily as a tax collection service for unpaid local taxes, and (2) removal of the requirement for the \$2,500 surety or cash bond in AS 04.10.040 which has become obsolete since its enactment in 1939.

Liquor industry representation on the Alcoholic Beverage Control Board should be limited to one member to eliminate the possibility of an industry majority comprising a quorum of the Board and conducting its business. Appointments of all members of the Board when terms expire or positions are vacated should be made by the Office of the Governor in a timely manner and terms should be properly staggered as required by AS 39.05.060.

In conclusion, the Alcoholic Beverage Control Board should analyze and evaluate its purpose and methods and take the necessary actions needed to perform and fulfill its responsibilities to the public.

**THE LEGISLATURE**

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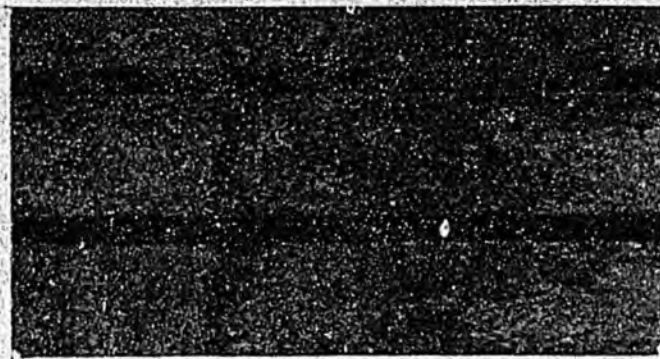
SB 250

SENATE FINANCE COMMITTEE  
BILL CHECKLIST

1. Committee Copy-Current Bill
  2. History Cover Form
  3. Printed Copies:
    - Original Bill
    - Committee Substitutes or Amendments
  4. SFC Committee Report Form
  5. Fiscal Information:
    - Note in File
    - Note Requested \_\_\_\_\_ Date \_\_\_\_\_
    - Other Financial Backup
    - (See Below)
- Backup:
- Handouts
  - Letter from Governor
  - Letter from Sponsor
  - Completed Committee Reports
  - Committee HES
  - Other

Legislative Audit - Performance Review

**STATE OF ALASKA**



**DIVISION OF LEGISLATIVE AUDIT**  
Juneau, Alaska

A PERFORMANCE REVIEW  
OF THE  
ALCOHOLIC BEVERAGE CONTROL BOARD

November 3, 1978

Commissioner of the Department  
of Revenue

Sterling Gallagher

Deputy Commissioner of the  
Department of Revenue

John R. Messenger

Acting Deputy Commissioner of  
the Department of Revenue

Pete Bushre

Members of the  
Alcoholic Beverage Control Board

Chairman

Timothy G. Middleton

Member

Elvin Elkins

Member

Albert P. Adams

Member

Robert J. Gonze

Member

John Kohler

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION  
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

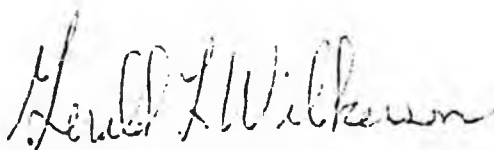
November 3, 1978

Members of the  
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the  
Alaska Statutes, the attached report is submitted for  
your review.

A PERFORMANCE REVIEW  
OF THE  
ALCOHOLIC BEVERAGE CONTROL BOARD

November 3, 1978



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

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## PURPOSE AND SCOPE OF THE REVIEW

### Purpose

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Alcoholic Beverage Control Board was conducted to determine whether there is a demonstrated need to continue liquor regulation in its present form. To determine that need we reviewed Board activities to see if the Board has been operating in an efficient and effective manner.

AS 44.66.010(1) specifies that the Alcoholic Beverage Control Board will terminate on June 30, 1979 but will continue until June 30 of the following year for the purpose of concluding its affairs. This report shall be considered during the legislative oversight function in determining whether the Board should be allowed to terminate, be reestablished in its present form or be reestablished in a modified form.

### Scope

The major areas reviewed were the Board's program, licensing, enforcement, administration and affirmative action functions. Our review consisted of analyzing and evaluating the following:

- (1) Applicable statutes and regulations;
- (2) Questionnaires sent to Board members;
- (3) Interviews with, and questionnaires to, ABC Board employees;
- (4) Interviews with and reports by the consulting attorney for the Alaska Code Revision Commission;
- (5) Tests of records and documents of the Alcoholic Beverage Control Board;
- (6) Tests of records and documents of the Office of the Governor on appointments to the ABC Board;
- (7) Questionnaires to Alaska law enforcement agencies;
- (8) Questionnaires to 1978 Alaska Municipal League Members;
- (9) Questionnaires to 206 current licensees of the Alcoholic Beverage Control Board;
- (10) Correspondence with the Commissioners of the Departments of Public Safety and Commerce and Economic Development;

- (11) A review of studies and major Alaska Supreme Court decisions concerning the Board;
- (12) Observation of two ABC Board meetings;
- (13) Observation of meetings with the Attorney General's Office, District Attorney's Office, and the Alaska Code Revision Commission; and
- (14) Complaints filed with the Ombudsman's Office.

#### Scope Constraints

This review was hampered by the following constraint: The Alcoholic Beverage Control Board had not adequately collected, recorded and maintained files and/or statistics on enforcement activity of the Board prior to October 1977.

## ORGANIZATION AND FUNCTION

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

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

Under Title 4 of the Alaska Statutes the ABC Board is charged with the general duties, powers and responsibilities involved in the control of alcoholic beverages, including the promulgation of rules and regulations and the hearing of appeals. Its authority is mostly discretionary. Provisions of AS 04.05.030 direct the Board to issue, reissue, revoke, transfer or suspend liquor licenses in accordance with what the Board considers to be the public's best interests. Concerning its general powers of regulation AS 04.05.030 states:

"The Board may control the manufacture, barter, sale and possession of intoxicating liquors in the State, and may adopt necessary rules and regulations in a manner that will protect the public health, safety and welfare."

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

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

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

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

Enforcement. The ABC Board currently employs five investigators; three operating from the Anchorage central office and two operating from the Fairbanks field office. Services provided include (1) routine surveillance and inspections of licensed premises, (2) investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, and (3) assisting the licensing staff in handling inquiries from the general public.

## REPORT CONCLUSION

### Policy Issues

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

### Report Conclusion

In our opinion, the Alcoholic Beverage Control Board should continue to regulate and license those persons engaged in the liquor industry. Title 4 of the Alaska Statutes established the Alcoholic Beverage Control Board to control the manufacture, barter, sale and possession of intoxicating liquors to protect the public's health, safety and welfare. Because of the growing body of knowledge on the potential dangers of alcohol and its attendant social and economic costs, we concur that the public need for this type of regulation continues to exist.

However, certain changes need to be implemented for the ABC Board to more effectively execute its mandated responsibilities. Enforcement responsibilities of the Board should be transferred to a special investigative unit within the Department of Public Safety. This shift in responsibility would correct the existing deficiencies in ABC Board enforcement. The three elements of ABC enforcement, routine inspections, investigations and licensing assistance, are deficient in the following ways:

- Routine Inspections:
- they are not performed on a regular, timely basis,
  - ratings assigned are not based on a uniform set of standards,
  - ABC inspections duplicate, to a large extent, Division of Public Health inspections, and
  - discrepancies noted during these inspections are seldom followed up.

- Investigations:
- documentation on enforcement activity is not accurate and not maintained in a current manner,

- the Notice of Violation procedures are ineffective because they are not issued in sufficient quantity, do not always result from original ABC work, are not always followed up, and carry no penalty,
- ABC enforcement officers do not have sufficient authority.

Licensing Assistance: - ABC enforcement staff spend approximately 15% of their time assisting the licensing staff, when 100% of their time should be devoted to enforcement efforts.

A transfer of responsibility would remove the State from a position of potential liability which results since the ABC enforcement officers are not commissioned, and are not employed by a "police agency", yet act as agents of the State (see Recommendation No. 1).

If enforcement responsibilities are transferred to the Department of Public Safety, the ABC Board will be left with five full-time employees: two administrative staff members and three licensing staff members. A transfer of the licensing responsibilities to the Department of Commerce and Economic Development, Division of Occupational Licensing would eliminate the need for the administrative positions and would result in an annual savings to the State of approximately \$54,000 (see Recommendation No. 2).

Our review of the licensing function revealed the following. Renewals of liquor licenses currently take longer to process than new issuances because of all licenses being renewed at the same time and conflicting statutory requirements. Public notice requirements under AS 04.10.270 have hindered the Board from automatically renewing licenses as provided under AS 04.10.350. The need for public notice for license renewals should be reviewed as municipalities and boroughs have used it only as a tax collection service for unpaid local taxes (see Recommendation No. 5).

We also noted that the need for the \$2,500 cash or surety bond required for a beverage dispensary license is obsolete. The requirement was established by a 1939 amendment as a penal sum to be forfeited upon revocation. Its penal impact has diminished in the 39 years since it was established and a forfeiture has not been imposed by the Board in at least five years (see Recommendation No. 6).

We also reviewed Board activity, composition and appointments and found the following. The ABC Board currently spends the majority of its meeting time in routine issuances, transfers, and renewals of unopposed licenses. The Board should adopt a regulation delegating the authority to the Director of the Division of Occupational Licensing to perform those routine administrative functions as authorized by AS 04.05.040. This action would result in (1) the need for fewer meetings, (2) reduction in processing time of unopposed applications, and (3) more economical and efficient use of existing funds and manpower (see Recommendation No. 3).

Alcoholic beverage industry representation on the ABC Board should be reduced from the required two members to one member. This action would eliminate the possibility of an industry quorum when the minimum number of members needed for a quorum attend a meeting, and two of those three members are industry representatives. This situation could introduce an unfavorable bias into the Board's actions and its ability to act in the public's best interests (see Recommendation No. 4).

A review of Board appointment activity performed by the Office of the Governor pointed out two problem areas: (1) vacant ABC Board seats have not been filled in a timely manner, and (2) have not been staggered. The establishment of a talent pool by the Office of the Governor for all Board appointments would allow for the immediate appointment of Board members when terms expire or a position is vacated (see Recommendation No. 7).

In conclusion, the Alcoholic Beverage Control Board should analyze and evaluate the purpose of the Board and take the necessary actions needed to perform and fulfill its responsibilities to the public.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

Enforcement responsibilities for the Alcoholic Beverage Control Board should be transferred to a special ABC enforcement unit within the Department of Public Safety.

The enforcement staff for the Alcoholic Beverage Control Board is currently responsible for:

- A. Routine surveillance and inspection of licensed premises,
- B. Investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, and
- C. Assisting the licensing staff by handling inquiries from the general public on regulations, procedures and licensing requirements.

We reviewed these three functions and noted the following deficiencies in each:

#### A. Routine Surveillance and Inspection

1. Licensed premise inspection reports are prepared subjectively.

The ABC Board developed the check-off list to be used in routine inspections as recommended in a previous Legislative Audit report. The licensed premise is evaluated in 9 categories (e.g. exterior, interior, overall appearance, etc.) and rated as excellent, good, satisfactory or unacceptable. However, no uniform written standards have been developed to explain the specific requirements necessary to receive a given rating.

No written standards have been developed in conjunction with the check-off list used in routine inspections and, therefore, each report reflects the subjective judgment of the inspector preparing it. For standardized reports to be useful and fair they must be prepared uniformly and objectively which can only occur when each report is based on an accepted common set of standards.

2. Licensed premises are not being inspected on a regular or timely basis.

The ABC Board has not adopted a policy on frequency of routine inspections needed to assure compliance with licensing regulations, or established a procedure for assuring that all licensed premises receive inspections in a timely manner.

We reviewed a random sample of 100 license files which excluded initial inspections and licenses issued in 1978, to determine frequency of routine inspections and found the following:

<u>Time last routine inspection performed</u>	<u>No. of Licenses</u>
a. within the last 6 months	13
b. 6 months to one year ago	16
c. one year to two years ago	31
d. over two years ago	3
e. never	<u>37</u>
<u>Total</u>	<u>100</u>

As can be noted above 71% of the licenses in our sample had not been inspected in the last year.

3. The enforcement staff of the Alcoholic Beverage Control Board does not follow-up on unacceptable ratings given or discrepancies noted during routine inspections.

Our review of the 100 files noted in 2 above disclosed five which contained unacceptable ratings. There was no evidence of any following action taken on those cases in the files. ABC management indicated the cause to be a lax attitude towards follow-up.

4. One of the primary purposes of ABC's routine inspections is to verify conformance with sanitary requirements also inspected by the Department of Health and Social Services, Division of Public Health - an obvious duplication of effort.

The Department of Health and Social Services is mandated by AS 18.35.120 with the enforcement of these requirements by means including but not limited to periodic inspections. There is, therefore, no obvious need for this duty to also be performed by the enforcement staff of the Alcoholic Beverage Control Board.

B. Investigations

1. There is insufficient managerial control over documentation of enforcement activity of the ABC Board.

A review of the license files and enforcement files maintained by the ABC revealed that neither is accurate as to amount or type of investigation activity or maintained in a current manner.

We attempted to locate and review all Notices of Violation and criminal complaints reported as issued in the October 1977 through July 1978 monthly activity reports, and found the following:

- a. of the 56 Notices of Violations reported as issued only 38 (68%) could be located, and
- b. of the 13 criminal complaints reported as issued only 6 (46%) could be located.

This lack of control over enforcement documentation has two serious effects. The major effect is limitation of the ABC Board's effectiveness in protecting the public's health, safety and welfare by assessing penalties against violators of the ABC laws and regulations. The Board cannot adequately accomplish this goal without accurate, timely information on the nature and type of violations occurring on licensed premises. Where penalties for violations increase with number of offenses it becomes important that the information their decisions are based on be accurate.

The secondary effect is the loss to management of an effective measurement tool of the staff's performance level. For performance reports, such as the ABC Board's monthly activity report, to be useful, the information contained in them must be accurate and properly supported.

2. Notices of Violation issued by ABC enforcement staff have limited effectiveness in reducing the number of violations occurring.
  - a. Notices of violation are not issued in sufficient quantity to provide a meaningful deterrent to violations. As noted in the previous findings we were only able to verify 38 Notices of Violation being issued in a nine-month period by five full-time enforcement staff members. This is an average of less than one enforcement action per month per individual.
  - b. Those Notices of Violation which have been issued are not necessarily the result of original investigative work by ABC enforcement staff. Of the 38 Notices of Violation located in our test period, 24 (63%) resulted from copies of arrest reports sent to ABC by local law enforcement agencies. These notices then required a minimum amount of effort on the part of ABC and served only to duplicate the work of the local law enforcement agency.
  - c. ABC enforcement staff does not provide adequate follow-up on Notices of Violation. Of the 38 Notices located in our test period only 3 (8%) resulted in further action--two leading to criminal complaints being filed and one leading to a formal letter of accusation. There was no evidence available to indicate any follow-up action being taken on the balance of the cases or any indication that the violations were ever corrected.
  - d. Notices of Violation carry no penalty, either singly or based on an accumulation of them.

As may be seen by the findings listed above the Notices of Violation system employed by the Alcoholic Beverage Control Board serves only to notify the licensee of a violation and carries no threat of subsequent action by the enforcement staff or by the Board. This system is an ineffective method of enforcement and has only

limited effectiveness in deterring violations from occurring.

3. ABC enforcement officers do not have sufficient authority to enforce liquor law violations.

At present, penalties (suspension or revocation of a license) are only assessed against licensees for violations of liquor laws as a result of convictions for those violations. Thus, the most effective enforcement effort that could be used by the ABC Board would be any effort that led to a conviction. Without minimum police powers, (i.e. powers of arrest, search and seizure authority, right to carry weapons) however, any effort to accumulate sufficient evidence to lead to a criminal conviction is severely hindered.

The amount of authority of the present enforcement staff has been under debate for several years. ABC regulation 15 AAC 20.060 gave the director and all persons employed by the Board for the administration and enforcement of Title 4 all the powers of peace officers. However, an informal opinion rendered by the Attorney General's office stated that because peace officer status was not specifically given in Title 4, agents of the ABC Board could not be considered peace officers.

The reaction to this situation by ABC administration has been a verbal directive to enforcement staff to not exercise any police powers on their own, but to coordinate all enforcement efforts with local law enforcement agents. This enforcement approach has obvious practical limitations. Local law enforcement agents cannot accompany ABC agents on all investigative work. Therefore, when ABC agents are working without the assistance of a commissioned police officer and encounter a violation in progress, they are powerless to take immediate action. Any action that might be taken could place the ABC agent in personal danger and the State in a position of liability because of the confusion over this agent's legal authority.

#### C. Assistance to Licensing Staff

1. ABC enforcement staff spend approximately 15% of their time assisting the licensing staff.

Included in the description of duties for an ABC Investigator is the duty of assisting the licensing staff by handling inquiries from the

general public on regulations, procedures and licensing requirements. Because enforcement staff is required to have specialized training in law enforcement or investigative work, their time should be spent exclusively on those duties, rather than on licensing duties which require a lesser degree of specialization.

In addition to the underutilization of specialized staff, another problem arises from enforcement staff advising licensees on licensing issues. This is the natural reluctance that would develop on the part of the licensee to question an enforcement agent on what might be a violation or problem.

#### Summary

The Alcoholic Beverage Control Board has been ineffective in its mandated responsibility of enforcement of ABC laws and regulations. Routine inspections are not made on a regular or timely basis. When they are performed, the ratings assigned are not based on a uniform, objective set of standards and duplicate, to a large extent, the inspections being performed by the Department of Health and Social Services, Division of Public Health. Additionally, when discrepancies are noted during these inspections, they are seldom followed up.

Investigations leading to Notices of Violation are ineffective as Notices of Violation carry no penalty or threat of subsequent action by enforcement staff or by the Board. The most effective enforcement effort that could be employed by the staff is that effort which leads to convictions. The enforcement staff has been able to accomplish this goal to a limited extent, but could be much more effective if given sufficient authority. Finally, specially trained enforcement staff should not be used for routine, administrative tasks such as licensing assistance.

To correct these deficiencies, we recommend that the enforcement responsibilities of the Alcoholic Beverage Control Board be transferred to the Department of Public Safety. A special ABC investigative unit should be established within that Department with the dual responsibilities of (a) investigations of ABC law violations, and (b) sharing of their specialized knowledge of ABC laws with other law enforcement agents through an organized training program.

There is support for this recommendation by the Commissioner of the Department of Public Safety, Richard L. Burton, ABC enforcement officers, and other law enforcement agents. The Commissioner concurred that ABC enforcement officers should

be replaced by state troopers. He also pointed out that because non-commissioned enforcement agents are not employed by a "police agency" they do not have to meet the licensing certification requirement for police officers, yet they act as agents of the State thereby placing the taxpayers of the State in a liability situation.

The responses to our questionnaire to the Alaska law enforcement agencies (Appendix C) supported our finding that ABC enforcement as organized is ineffective, and that there is a need for greater enforcement activity. Several respondents volunteered the suggestion that a transfer of enforcement staff to Public Safety would help accomplish that goal. Transferring the enforcement staff would provide continuing managerial control, proper training and supervision, and insulate the officers from possible Board influence. An organizational change such as this would also logically result in increased cooperation between ABC enforcement agents and other law enforcement agents by equalizing their professional status and clarifying their role in liquor law enforcement.

The alternative to this recommendation, retention of the Alcoholic Beverage Control Board enforcement section under the Department of Revenue, should only be considered in conjunction with the following recommendations: (1) ABC enforcement agents should be commissioned as special police officers with full police powers and authority to effectively enforce the alcoholic beverage control laws, and (2) responsibility for routine inspections to fulfill initial license requirements should be transferred to local law enforcement agencies, and (3) all other routine surveillance inspection activities should be curtailed. We believe, however, that this is a weak alternative to our primary recommendation as the effectiveness of the enforcement staff will always be limited while under the control of a non-enforcement oriented management.

#### Recommendation No. 2

The Alcoholic Beverage Control Board should be placed under the administrative control of the Department of Commerce and Economic Development, with administrative and licensing responsibilities transferred to the Division of Occupational Licensing.

The Alcoholic Beverage Control Board is the only regulatory Board now operating under the administrative control of the Department of Revenue. The support staff for the Board provides three types of services: administrative, licensing and enforcement. The licensing staff of the ABC Board provides the following services: issues and receives application forms; collects license fees; maintains records and files for all licenses; notifies applicants of acceptance or rejection; issues, renews and transfers licenses and permits; and answers general inquiries on licensing procedures.

These services are the same as the services being provided to the 21 regulatory boards under the administrative control of the Department of Commerce and Economic Development by the Division of Occupational Licensing.

If Recommendation No. 1, transfer of enforcement responsibilities to Department of Public Safety, is implemented, the ABC Board will be left with five full-time employees, three licensing staff members and two administrative staff members. The need for two full-time administrative staff members to oversee three licensing staff members at an annual cost to the State of approximately \$54,000 is not justified. We therefore recommend transfer of the licensing responsibilities to Department of Commerce and Economic Development, Division of Occupational Licensing and elimination of the two administrative positions.

Recommendation No. 3

The Alcoholic Beverage Control Board should adopt a regulation delegating authority to the director of the Division of Occupational Licensing for the routine issuance, transfer and renewal of unprotested licenses.

During our review we noted that the majority of issues discussed at ABC Board meetings during our audit period, (January 1, 1974 to June 30, 1978) were the routine issuance, transfer and renewal of unprotested licenses. The Board automatically issues a new license, or a transfer or renewal of an existing license, if it meets the following criteria:

(1) the local governing body does not protest the issuance of the license, and (2) there are not grounds for denial of the license based on state statutes or regulations.

The power of Alcoholic Beverage Control Board, as defined by AS 04.05.040, specifically includes "...providing for the delegation to the director of routine administrative functions and powers, including the issuance, transfer and renewal of licenses and permits where there is no contest or protest".

Effecting this delegation of power would logically produce the following results: (1) The need for fewer meetings. The Board currently meets an average of eleven times per year, but is only mandated to meet four times per year. (2) A reduction in processing time of all uncontested, routine applications, and (3) More economical and efficient use of existing funds and manpower.

The Board is currently revising the alcoholic beverage control regulations and is considering this delegation of authority in that process. We recommend that the regulation be adopted and implemented as soon as possible.

Recommendation No. 4

No two members of the Alcoholic Beverage Control Board should be engaged in the same business, occupation or profession.

A 1970 amendment to AS 04.05.010 increased ABC Board membership from three to five members and correspondingly increased the number of industry representatives from one to two. That amendment also changed the number of members necessary to comprise a quorum for the conduct of business from two to three. It is evident from these changes that the legislature wished to retain the alcoholic beverage industry representation on the Board in a minority position.

What has occurred, however, is the creation of a situation where just the opposite can occur. When the minimum number of members necessary for a quorum attend a meeting, and two of those three members are engaged in the alcoholic beverage industry, then Board business can be conducted by an industry majority.

A review of 48 meetings held during the period of January 1, 1974 to June 30, 1978 shows that this situation did occur a minimum of 5 times.

There are several alternatives available to correct this situation. One alternative is elimination of industry representation from the Board and allowing for the creation of a non-voting advisory group of industry representatives.

However, although this would be an uncompensated group, the State would be responsible for travel expenses and per diem for more individuals and may be undesirable from a purely economic viewpoint.

A second alternative is a statutory increase in the number of members necessary to constitute a quorum. However, whereas the ABC Board is a voluntary board serving without compensation except for travel and per diem, it would be unreasonable to expect all members to attend all meetings. A review of attendance at the 48 meetings from 1/1/74 to 6/30/78 supports this theory as full Board membership was in attendance for only 16 (33%) of those meetings.

The third alternative to the current situation is to amend AS 04.05.010 so that no two members of the ABC Board have similar interests or background and be in the same business, occupation or profession. This would retain the necessary input from the liquor industry while not affording an opportunity for imbalance in decision-making. This alternative was also supported by the Analysis of Alcohol Problems

Project, Dennis Kelso, Ph.D., Project Director in Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975.

Recommendation No. 5

Renewals of licenses should be made in a timely manner.

A review of 99 renewals indicated that the average processing time is 70 days, ten days longer than the average processing time for new applications. We were able to determine two major causes of this delay. One is due solely to volume for although the application process for renewal of licenses is almost identical for the application process for new licenses, all alcoholic beverage licenses are renewed at the same time each year, thus causing a large backlog for several months each year.

The second cause for the delay results from conflicting statutory requirements for renewing licenses. AS 04.10.270 requires the Board to transmit written notice of its intent to approve the renewal of a license to the local governing body (city or borough), allowing it 30 days in which to protest its issuance. However, AS 04.10.350 requires the Board to renew licenses automatically if the fee is paid except in the case of conviction of the licensee or protest of a license that is outside a municipality.

ABC licensing staff estimated that of the approximately 1300 licenses renewed in 1978 only 50 were protested by local governing bodies and most, if not all of those protests, were for non-payment of local property taxes. The need for causing the processing delay of all applications to accomplish this tax collection service should be reviewed for its merits. If found to be without merit, AS 04.10.270 should be amended to exclude renewals from the section.

If found to be of merit, however, the following alternative should be considered to reduce processing delays: blanket notification to municipalities or boroughs prior to the renewal period of the ABC Board's intent to renew all liquor licenses in their jurisdiction subject to receipt of application and fees. This would allow the protest period to run concurrent with, rather than subsequent to, the renewal period, thus allowing for automatic renewal unless a protest has been received.

Recommendation No. 6

The requirement for a \$2500 cash or surety bond for a beverage dispensary license should be eliminated from AS 04.10.040.

The requirement of a cash or surety bond in the amount of \$2500 for beverage dispensary license was established by a 1939 amendment to the Laws of Alaska. At that time beverage dispensary licenses had no economic value and the amount of the bond was established as a penal sum to be forfeited upon revocation of a license.

Since 1939, however, beverage dispensary licenses have gained economic value in areas where the quota for that type of license has been reached. Thus, the revocation of a beverage dispensary license is a financially penalizing action in its own right. Additionally, with the rate of economic growth experienced in Alaska in the last 39 years it is obvious that \$2500 no longer has the penal impact it did in 1939.

A review of the ABC Board records disclosed no evidence of the Board requiring forfeiture of the bond in the past five years. The bond requirement does, however, create additional work for the licensing staff and occasional delays in the application process. The need for this cash or surety bond requirement has become obsolete.

#### Recommendation No. 7

The Office of the Governor should keep appointments of members of the Alcoholic Beverage Control Board current and stagger them as required by AS 39.05.060.

During our review of ABC Board appointments during the period of January 1, 1974 to June 30, 1978, we noted the following exception. The ABC Board was allowed to operate without a five-member complement as required by law during the following periods:

1. February 1, 1974 through February 27, 1974: one vacancy for 27 days.
2. March 14, 1974 through March 23, 1975: one vacancy for 336 days, two vacancies for 35 days, three vacancies for 4 days. Total time period: 375 days.
3. November 20, 1976 through January 17, 1977: one vacancy for 59 days.
4. February 1, 1978 through February 8, 1978: three vacancies for 8 days.

As a result of these vacancies, the ABC Board was not in compliance with AS 04.05.010 which created it. Additionally, the ratio of public representation to industry representation established by AS 04.05.010 was upset allowing a possible unfavorable bias to enter into the Board's decision-making process.

Per AS 39.05.060, initial appointments were to be made for one, two, three, four and five years and each vacancy occurring during a term of office is filled in the same manner as the original appointment and is made for the balance of the unexpired term. During our review, however, we noted that there are currently three ABC Board members whose terms expire on the same day: January 31, 1981. This is an obvious violation of the intent of AS 39.05.060.

We recommend that the Office of the Governor appoint new members or reappoint current members to vacant ABC Board seats in a timely manner and stagger appointment terms as required by AS 39.05.060.

We further recommend that the Office of the Governor consider establishing a talent pool for Board appointments. The concept of a talent pool is to have a list of persons available and desiring to serve as a Board member. Many sources exist in the State to establish such a pool. Liquor industry associations could be requested to provide a list of members who would like to serve as the industry representative on the Board. Retired citizens offer an excellent pool of potential talent for public member appointments and should be contacted for possible inclusion in the talent pool.

An established talent pool, updated at reasonable intervals, would allow for immediate appointment of Board members when terms expire or a position is vacated.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analysis indicated both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature. It has been limited by the scope of our review and the constraints placed on this review as mentioned in the scope section of this report.

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

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

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

The operation of the ABC Board has been impeded by current statutes. The Legislature acknowledged in Senate Concurrent Resolution No. 88 (1978) that the laws in Title 4 are in serious disarray as a result of patchwork amending over several decades. Those laws are currently under review for revision by a joint interim committee of the Legislative Council and by the Alaska Code Revision Commission.

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

There was no evidence available of any activity on the part of the current ABC Board to recommend statutory changes.

- IV. 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 which it has provided.

The ABC Board has met an average of eleven times a year, at least once in each of the four judicial districts. Each meeting has been adequately advertised and open to all interested persons. The staff of the ABC Board is located in both Anchorage and Fairbanks and is available to answer inquiries of the general public during all normal business hours. We believe this has provided an adequate forum for allowing public input on Board regulations and decisions.

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

As noted above, the Board has provided an adequate forum for obtaining public input in general. The Board is currently in the process of rewriting its regulations which have not been revised since 1963. We cannot, therefore, draw any conclusions on the extent of public participation in the process.

- VI. 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 majority of complainants of ABC Board decisions requesting hearings under the Administrative Procedures Act in the past year have dropped their request for those hearings. Delays in holding a hearing under that Act have resulted primarily from delays in appointing hearing officers by the Office of the Governor.

The ABC Board also has the authority to hold its own hearings on protests which it has begun exercising with greater frequency. Hearings held in this manner have been accomplished in a timely manner because of the frequency of regular Board meetings.

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

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

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

No material discrepancies were noted during our review of the ABC Board affirmative action program. Additionally, our survey of current licensees of the ABC Board elicited only one complaint on discriminatory practices of the Board which was found to be without grounds.

- IX. The extent to which statutory, regularory, 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 previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

ALCOHOLIC BEVERAGE CONTROL BOARD  
REVENUES COMPARED WITH EXPENDITURES  
 Fiscal Year 1978

(UNAUDITED) <sup>1</sup>

Revenue (See Schedule 1 and Note 1)	\$1,006,275
Expenditures	<u>345,441</u>
Excess of Revenue Over Expenditures	<u>\$ 660,834</u>

Schedule 1  
 Collected Revenues

<u>Types of License</u>	<u>Number Issued</u>	<u>Total Collected</u>
Liquor license application	-	\$ 76,250
Pub	1	300
Brewery	1	100
Distillery	-0-	-0-
Beverage Dispensary	590	490,625
Club	53	21,300
Common Carrier	60	14,900
Restaurant	114	35,850
Roadhouse	19	3,050
Retail	424	255,350
Retail stock sale	1	100
Wholesale general	18	71,250
Wholesale malt beverage	7	16,350

Miscellaneous <sup>2</sup>	<u>9</u>	<u>\$ 20,850</u>
<u>Total</u>	<u>1297</u>	<u>\$1,006,275</u>

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Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and accordingly we do not express an opinion on the ABC Board Revenues Compared with Expenditures.

Note 2

Includes recreational-site licenses and a conditional contractor's permit.

APPENDIX B

ALCOHOLIC BEVERAGE CONTROL BOARD  
DESCRIPTION OF LICENSE TYPES

<u>Type</u>	<u>Description</u>	<u>Annual Fee</u>
Filing Fee	For each license application.	\$ 50
Pub	To sell beer and wine on campus.	300
Brewery	To operate brewery where beer is mfg., or bottled for sale.	100
Distillery	To operate distillery where intox. liquor is mfg. or bottled for sale.	100
Beverage Dispensary	To sell or serve on premises beer, wine & hard liquor for consumption on the premises only.	500 (Unincorp. comm. pop less than 1500) 1000 (population greater 1500)
Club	Right to sell intox. liquor to club members & families in club rooms.	200 (sales less \$5000) 400 (sales greater \$5000)
Common Carrier	To sell liquor on a boat, aircraft, or railroad buffet car.	250 (per vessel, aircraft, or railroad car)
Restaurant	To sell beer & wine in a restaurant with meals.	300
Roadhouse	Licensed premises not less than 18 miles from Corp. city limits and serves food, may sell beer and wine.	150

Retail	To sell in establishment intox. liquor in orig. packages & wine in bulk.	\$600 (sales greater \$20,000) 300 (sales less \$20,000)
Retail Stock Sale	To sell bulk quantities, but not to consumer, the entire stock of former retail store.	100 (90 days only)
General Wholesale	To sell liquor in original pkgs. to holders of licenses, not to consumer.	500 (plus \$250-\$5000 based on sales)
Wholesale Malt Bev. & Wine	To sell malt bev. & wine in original pkgs. to holders of licenses, not to consumer.	100 (plus \$50-\$4950 based on sales)

Misc. permits & fees:

Caterer's	Right to sell intox. beverages at conventions, picnics, social gatherings, sporting events, or similar affair where the premises are not otherwise licensed.	25
Special Events	To give non-profit organ. right to sell beer at retail for consumption on designated premises for a specific occasion & limited time period.	25 (per day)
Conditional Contractor's:	Right to sell beer on specified premises located within boundaries of military reservation or in remote area as designated by Board.	300 (annual)
Duplicate Bev. Disp.	For holders of Bev. Disp. licenses who have on a specified premise more than one room in which there is regularly maintained a fixed counter or bar where beverages are served.	(an amount equal to the original license fee).

APPENDIX C

QUESTIONNAIRE SENT TO STATE OF  
ALASKA LAW ENFORCEMENT AGENCIES

Please answer the following questions as completely as possible.

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

Number of respondents commenting

26	Yes
2	Enforcement role is not well known
1	Aware of Board but have never seen any enforcement
1	Not aware of its role in enforcement
<u>30</u>	

2. Do you feel that the enforcement staff of the ABC Board complements, duplicates or conflicts with the efforts of your law enforcement personnel? (if you can cite specific instances please do so.)

Number of respondents commenting

8	None of the above, not enough involvement so as to make a difference.
7	No
5	Conflicts
3	Complements
3	It should complement
1	Duplicates
4	Other
<u>31</u>	

3. Are you notified when an ABC Inspector/Enforcement Officer is operating within your jurisdiction? Do you accompany him on his inspections and/or enforcement activities?

Number of respondents commenting - Part I

11 No  
7 Yes  
6 Never see any ABC investigators  
5 Occasionally, sometimes  
2 Other  
31

Number of respondents commenting - Part II

10 No  
5 Yes  
2 Seldom or occasionally  
1 Only transport prisoners  
1 Only when requested  
19

4. Do you have any cooperative working agreements with the ABC Board such as sharing information, notifying them of arrests made on licensed premises, etc.?

Number of respondents commenting

11 No  
11 ABC sent copies of liquor related arrests and reports  
4 Only on a rare occasion, small amount  
3 ABC is notified but no response comes back  
2 Yes  
1 Not any more  
32

5. What evidence exists demonstrating that the absence of the Board would result in less effective enforcement of alcoholic beverage control laws or be detrimental to the public's best interest in any other manner?

Number of respondents commenting

13	None, no effect
3	Enforcement should be under Public Safety
3	Board may suspend or revoke the license
2	Little effect
2	Provides needed control
<u>6</u>	Other
<u>29</u>	

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

Number of respondents commenting

16	Yes
9	No
3	Inadequate because of the lack of enforcement
<u>1</u>	Not generally
<u>29</u>	

7. What changes could be made to these laws or to the present system of enforcing them which would enable your agency to better serve the public?

Number of respondents commenting

8	More enforcement is necessary.
7	Complete code revision needed.
4	Reduce hours bars can be open
4	Place enforcement under Public Safety
4	Impose stronger penalties.
3	Licensee should bear responsibility for minor on premises.
3	Minors should not be allowed in non-food premises
2	Investigators should be better trained
2	None
5	Other
<u>42</u>	

8. Any additional comments.

Number of respondents commenting

7	Laws and enforcement are inadequate or not effective
3	Take politics out of the ABC Board
3	Enforcement section is a joke, a paper tiger
3	Transfer enforcement to Public Safety
3	Enforcement staff is too small to be effective
2	Board has been cooperative
1	Eliminate present ABC enforcement but retain the issuance of licenses.
1	Rewrite liquor laws and do away with the Board

- 1 Board should not have any liquor industry representatives
- 1 Enforcement staff should work more closely with local police.
- 1 More restrictive liquor laws are needed
- 26

Note 1

Number of questionnaires sent to law enforcement agencies	56
Number of law enforcement agencies who responded	30
Response rate	54%

Note 2

Number of respondents comments does not always equal 30 as some respondents had more than one comment and some had no comments.

APPENDIX D

QUESTIONNAIRE SENT TO 1978  
ALASKA MUNICIPAL LEAGUE MEMBERS

1. Is your city or borough given adequate notice by the ABC Board of proposed issuances of new licenses and/or transfers of existing licenses?

Yes 77% No 23%

2. Has the city or borough ever protested the issuance of a new or renewal license or the transfer of a license?

Yes 29% No 71%

If yes, what criteria does the city or borough use to protest a license?

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

Yes 40% No 60%

4. Is the current system of notification/protest/hearing adequate in allowing local government input into the licensing process?

Yes 27% No 73%

If no, should local governing bodies be

100% more involved in the licensing process?

-0- less involved in the licensing process?

Please explain.

5. Should the quota for beverage dispensary licenses be
- |  |            |
|--|------------|
| a. increased (to more than 1500 people per license)? | <u>8%</u>  |
| b. decreased (to less than 1500 people per license)? | <u>8%</u>  |
| c. eliminated?                                       | <u>42%</u> |
| d. kept the same?                                    | <u>42%</u> |

6. Should the local governing body have the authority to increase or decrease the quota within its jurisdiction?

Yes 75% No 25%

Please explain.

7. Are there any existing alcoholic beverage control laws you believe are obsolete, vague, unduly restrictive and/or inadequate?

Number of respondents commenting

6 Yes  
 1 No  
 7 No response

8. What changes could be made to these laws which would enable your local governing body to better serve its constituency?

Number of respondents commenting

2 More municipal control  
 1 None  
 1 Population quotas increased  
 1 Eliminate restrictive licenses - ex. beer & wine only  
 1 Bootlegging penalties should be stricter  
 8 No response

- 9a. What do you feel the responsibility of state government should be in controlling the manufacture and sale of alcoholic beverages?

Number of respondents commenting

2	Regulate in areas not incorporated
2	Licensing
1	Minimal
1	None
1	Assist local governments
1	Total control
7	No response

- b. What do you feel the responsibility of local government should be in controlling the manufacture and sale of alcoholic beverages?

Number of respondents commenting

3	Establish rules more restrictive than the state
2	None
1	Enforce fire, health and building codes
1	Minimal
1	Allow for the voice of the community to be heard
1	Total control
5	No response

10. Do you feel that abolishing the ABC Board would have an impact on your community? On the State?

Number of respondents commenting

10 Yes

1 Abolish the Board would help

3 No response

11. Additional comments:

Note 1

Number of questionnaires sent to Municipal League Members 46

Number of Municipal League Members who responded 14

Response rate 30%

APPENDIX E

QUESTIONNAIRE SENT TO CURRENT LICENSEES  
OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

	% Responses (see Note 1)		
	Yes	No	Opinion
1. Do you believe that the Alcoholic Beverage Control Board has operated in the public's best interest?	81%	10%	9%
Comments: _____			
2. Do you believe that Alaska's requirements for obtaining alcoholic beverage licenses are adequate and effective in ensuring that the public is protected?	89%	7%	4%
Comments: _____			
3. Do you believe that the ABC Board's procedures for processing the following types of applications are adequate:			
a. new applications?	76%	14%	10%
b. transfers of ownership?	65%	25%	10%
c. transfers of location?	71%	17%	12%
d. renewals?	75%	19%	6%
Please comment on specific problems you have encountered with the application process. _____			
_____			
_____			
4. Are you aware of any discriminatory practices involving licensing of minority groups?	5%	90%	5%
5. Do you believe that the population quota (one type of license per 1500 people) should be			
a. increased (to more than 1500 people per license)	3%		
b. decreased (to less than 1500 people per license)	9%		
c. eliminated?	20%		
d. kept the same?	68%		
Please explain. _____			
_____			
_____			

% Responses  
(see Note 1)

	No	Opinion
	Yes	No

6. Do you believe that routine inspections of your licensed premises serve a useful purpose to
- |                  |     |     |    |
|------------------|-----|-----|----|
| a. the licensee? | 66% | 26% | 8% |
| b. the public?   | 73% | 23% | 4% |

Comments: \_\_\_\_\_

7. When was the last time your licensed premise received a routine inspection by an ABC Board Investigator?
- |                              |     |  |  |
|------------------------------|-----|--|--|
| a. within the past 6 months? | 42% |  |  |
| b. within the past year?     | 28% |  |  |
| c. within the past 2 years?  | 6%  |  |  |
| d. over two years ago?       | 12% |  |  |
| e. never?                    | 12% |  |  |

8. Have you ever been notified of a violation occurring on your licensed premise by an ABC Board Investigator?
- |  |     |     |     |
|--|-----|-----|-----|
|  | 10% | 90% | -0- |
|--|-----|-----|-----|

Comments: \_\_\_\_\_

9. If yes, was the violation clearly explained?
- |  |      |     |     |
|--|------|-----|-----|
|  | 100% | -0- | -0- |
|--|------|-----|-----|

Comments: \_\_\_\_\_

10. Was there any follow-up by the ABC Board to make sure the violation had been corrected?
- |  |     |     |     |
|--|-----|-----|-----|
|  | 66% | 17% | 17% |
|--|-----|-----|-----|

Comments: \_\_\_\_\_

11. Do you believe that the current penalties prescribed by the ABC Board against licensees for convictions are
- |                |     |  |  |
|----------------|-----|--|--|
| a. too harsh   | 13% |  |  |
| b. fair        | 80% |  |  |
| c. too lenient | 7%  |  |  |

Comments: \_\_\_\_\_

3 Responses  
(see Note 1)

Yes	No	Opinion
-----	----	---------

12. Would any of the following help prevent alcoholic beverage control law violations from occurring:

- a. mandatory license suspension and/or fine for each conviction?
- b. mandatory license revocation after a set number of convictions?
- c. commissioning the ABC Board Investigators as special police officers?

24%	50%	26%
68%	17%	15%
11%	67%	22%

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. Are you aware of any discriminatory practices of the ABC Board in suspending or revoking licenses?

2%	95%	3%
----	-----	----

Comments: \_\_\_\_\_  
 \_\_\_\_\_

14. Are you aware of any licensed premise in Alaska that has allowed violations to occur and has not had any action taken against it by the ABC Board, local police or State Troopers?

10%	81%	9%
-----	-----	----

Comments: \_\_\_\_\_  
 \_\_\_\_\_

15. Are there any existing alcoholic beverage control laws you believe are obsolete, vague, unduly restrictive and/or inadequate?

26%	44%	30%
-----	-----	-----

Please explain. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

16. Do you have any complaints concerning the service provided by the support staff of the Alcoholic Beverage Control Board?

12%	81%	7%
-----	-----	----

Please explain. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

17. Additional Comments:

Note 1

Number of questionnaires sent to current licensees	206
Number of current licensees who responded	59
Response rate	29%

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5 - JUNEAU 99811

JAY S. HAMMOND, GOVERNOR

February 6, 1979

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

Dear Mr. Wilkerson:

This letter responds to the preliminary report as a result of your sunset review of the Alcoholic Beverage Control Board. My response to each finding follows:

Recommendation No. 1

Enforcement responsibilities for the Alcoholic Beverage Control Board should be transferred to a special ABC enforcement unit within the Department of Public Safety.

We disagree.

You might find this disagreement ironic in view of the fact that I proposed moving the Alcoholic Beverage Control function to the Department of Public Safety four years ago. When I first became Commissioner I wanted to concentrate the department's efforts in taxation and treasury matters. Accordingly, I proposed transferring the Motor Vehicle Division and the Alcoholic Beverage Control Board to the Department of Public Safety. Although the Legislature accepted our proposal with regard to the Motor Vehicle Division it rejected our proposed transfer of the Alcoholic Beverage Control Board.

Since that time I have come to believe that it is not as important which agency a particular division resides in as it is how it functions. In particular, I believe that if there are problems in the enforcement area, those

problems should be dealt with directly rather than with the superficial answer of transferring between agencies. I also think that splitting the division between two agencies would be disastrous and would lead to confusion, lack of communication and direction. All parts of the Alcoholic Beverage Control program must be coordinated and work together.

Again, as I have said, it is far less important which agency is responsible for the program as is the commitment by the particular agency to make the program work. I believe that the Department of Revenue has the commitment to making the ABC program work well and to solve its problems. To solve problems in the enforcement area we have been working on several fronts. First of all we have been seeking additional enforcement staff to increase our enforcement effort and have had some success. We have been working to get our enforcement staff properly trained and have been able to secure investigator training at the State Trooper Academy for several of our enforcement officers. We have also been working on establishing uniform enforcement procedures and regulations. Our first step in that direction was the adoption of a procedures manual, and we are now near completion of a comprehensive set of regulations on all phases of Alcoholic Beverage Control including enforcement related topics. We will continue our efforts in obtaining adequate staffing and training for the staff and uniform rules of conduct which will be followed by the enforcement staff. In particular in our regulation effort we are attempting for the first time to set out in specific terms the rules of substantive conduct for licensees and their licensed premises. When we are finished we hope to have a full explanation as to what conduct is prohibited, what is needed to prove a violation and what penalty will be assessed for a particular violation. With these comprehensive rules our enforcement efforts will be many times more successful. Although the enforcement program still needs improvement I believe it has come a long way in just the last couple of years.

The thrust of this recommendation seems to be aimed at criminal enforcement, which is why I assume you are most concerned that the enforcement officers carry weapons and have the power of arrest. Criminal enforcement, however, is only one aspect of the total enforcement program. Only a portion of the violations rise to the level of criminal behavior. Most violations are of a civil nature and demand civil action in the form of license suspension, revocation, premises closure, or other monetary penalty. Enforcement officers must be able to deal in the full range

of enforcement activities whether civil or criminal. In all areas they should be equipped to put together the necessary evidence and documentation to insure compliance with the law, but you certainly don't need to carry weapons to have a successful enforcement program. If criminal behavior is present the enforcement officers should work closely with the local police and the state troopers as they have in the past. Several criminal complaints have been filed in the past year through the coordinated work of our enforcement officers and police agencies. We should not forget however the important area of civil enforcement and enforcement officers must be trained and motivated in this enforcement area as well.

In summary, I believe that problems in the enforcement area should be dealt with directly through adequate funding, training and uniform procedures, all of which we have been working towards. I do not believe that transferring the enforcement program to a police agency is the answer, and I believe that substantial progress is being made to upgrade our enforcement program.

Recommendation No. 2

The Alcoholic Beverage Control Board should be placed under the administrative control of the Department of Commerce and Economic Development with administrative and licensing responsibilities transferred to the Division of Occupational Licensing.

We disagree.

As I mentioned in response to Recommendation No. 1, nothing is to be gained from transferring Alcoholic Beverage Control to another agency. I also think it would be especially bad to separate licensing, administration and enforcement because a total coordinated approach is needed for Alcoholic Beverage Control. Enforcement, licensing and administration and Board activity depend upon each other and separation between agencies would make this coordination difficult.

With regard to your recommendation for separating the enforcement functions from the rest of the ABC program, I am particularly puzzled by the statement in the report that the enforcement officers should be insulated from the influence of the board. I do not understand this statement since it is the board which the Legislature has given the authority and policy making power for Alcoholic Beverage Control. They should not only influence enforcement efforts, they should direct

enforcement efforts through their enforcement policy decisions. Enforcement officers, as any of the staff, should be accountable to the board for their actions in following or not following board policy.

Recommendation No. 3

The Alcoholic Beverage Control Board should adopt a regulation delegating authority to the director for the routine issuance, transfer and renewal of unprotested licenses.

We agree. As you mentioned the board is considering a regulation which will do this very thing. We made this suggestion to the board several months ago in our regulation effort and they agreed that it made sense. Just this one change will help to insure that the board is able to conduct its true function as the body which sets basic policy through the adoption of regulations and insures that its policy is being correctly carried out by making the final decision in appeals of actions taken by the staff. This action will streamline the licensing program tremendously.

In making this delegation, however, we want to make sure that there are careful checks and controls to avoid abuses and insure that the board's public policy is being carried out.

Recommendation No. 4

No two members of the Alcoholic Beverage Control Board should be engaged in the same business, occupation or profession.

We agree.

Recommendation No. 5

Renewals of licenses should be made in a timely manner.

We agree with the statement that renewals should be made in a timely manner. We disagree, however, with your assumptions and your conclusions regarding municipal input during the renewal process. In summary, we believe that there are efficiencies which could be made to shorten the renewal process but we don't think that full and deliberate municipal comment should be sacrificed simply for the sake of efficiency.

First, it should be noted that the notice of renewal requirement to municipalities is not a tax collection service. It provides an annual review by the public and municipal officials at the municipal level of liquor establishments within their boundaries with the right to protest a renewal if the municipality believes it would not be in the public interest. There are several reasons other than the nonpayment of taxes

for a municipality to protest the renewal of a license including the health, safety and general welfare of its citizens.

I believe the public interest of allowing full and deliberate review and input by the public and municipal officials in renewing licenses, far outweighs shortened renewal time.

Recommendation No. 6

The requirement for a \$2,500 cash or surety bond for a beverage dispensary license should be eliminated from AS 04.15.090.

We disagree that the penal bond for a beverage dispensary license should be eliminated but believe instead that it should be increased and applied to all other licenses.

Although in some areas of the state the quota of licenses has been reached so that licenses have become valuable in their right, other areas of the state have not reached that point.

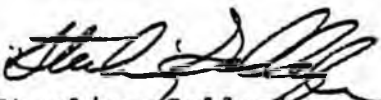
In addition, a cash or surety bond provides a form of security to satisfy any claims that the state may have against a licensee. We agree, however, that because of inflation \$2,500 may be unrealistically low today. Therefore we believe that it should be raised to \$10,000 and perhaps applied to all licensees.

Recommendation No. 7

The Office of the Governor should keep appointments of members of the Alcoholic Beverage Control current and stagger them as required by AS 39.05.060.

We understand that the Governor's Office has already responded to this recommendation and therefore no further comment is necessary.

Sincerely,

  
Sterling Gallagher  
Commissioner

February 6, 1979

Mr. Gerald Wilkerson, Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Juneau, Alaska 99801

Dear Mr. Wilkerson:

This letter is to be in response to your preliminary "Performance Review of the Alcoholic Beverage Control Board", dated November 3, 1978. Please also consider my letter of November 13, 1978 as a response as well, where applicable.

I could only agree with the statements concerning routine inspections, as I have no evidence to the contrary. I cannot, as Board Member, conduct the kind of review to determine if such inspections are made except to ask about specific cases.

Your comments about Notices of Violation have been made several times by me at Board meetings. They may have a "limited" utility in getting the attention of a licensee, otherwise they have no teeth. Due process probably dictates that such "Notices" absent a conviction could not be used in a future disciplinary action. However, they could be the basis of whether or not to take action on a license, if they are subsequent to the latest renewal. The same goes for information transmitted by a local police unit. If the local police observes illegal activity it should prosecute and if possible obtain a conviction - not merely forward information to the ABC Board staff.

Yes, enforcement staff should spend their time in enforcement, not assisting the licensing staff. Given the size of the staff and the need often to answer questions quickly, I think 15% is not unreasonable as a factor of time spent by enforcement.

The major deficiency is that the ABC investigator has limited authority. As I understand it, the Department of Revenue does not support the idea that an investigator should have police officer authority, despite my efforts at persuasion. This problem would be cured by transfer to the Department of Public Safety. However, this alone may not be sufficient to take care of the deficiencies you have

Mr. Gerald Wilkerson, Legislative Auditor  
February 6, 1979  
Page Two

noted. I am sure that greater manpower is necessary to adequately regulate and police 1,300 establishments. The Department of Public Safety would be foolish to accept this responsibility without making a very strong pitch for more than five personnel. I have said before I am neither enthusiastic of the transfer nor firmly in opposition. Perhaps such a change would be dramatic enough to accomplish a useful purpose, simply because it is a change.

Obviously, an alternative is a bigger and better trained staff with greater authority and better cooperation with local and state police.

Recommendation #2 is really part of #1. The two together raise serious and legitimate questions as to the current administrative structure. The Board is appointed by the Governor with certain powers over regulation of the liquor industry. The staff is hired by the Department of Revenue (including the Director) with no voice from the Board. The Board presumably has some authority over the staff, yet there little real authority, and the Board, because of its part-time status can not really supervise closely.

Yet, historically, control and regulation of liquor was deemed important enough to establish an independent agency with nothing else to do.

Recommendation #3 is now and has been a part of the regulations in the adoption process. These have been needed for several years, as the ones in existence are often poorly written, vague or out of date. This project is one we have been working since I came on the Board two years ago. We did get additional money in the budget to pay for it. This must be the number one priority for the Board. Included in regulations adopted should be the standards you earlier referred to. Regulations can also give the public notice as to what is required for licensure or protest.

The next priority must be a complete re-write of Title 4. Title 4 creates many many problems just in its own interpretation. Piecemeal amendments must stop until this is accomplished. I urged this to a luncheon meeting of the Senate Alcoholism Committee chaired by Senator Colletta in November, 1977. I am delighted the project is underway.

Mr. Gerald Wilkerson, Legislative Auditor  
February 6, 1979  
Page Three

Recommendation #4 is not really that important. See my response of November 13, 1978 for a complete response. This change would have no real impact and is probably going to raise emotions unnecessarily. The text suggests "industry" domination of the Board is possible. I suspect on only a very few issues, if any, has there been an "industry" position.

Recommendation #5 is hard to argue with - but I don't think we ought to remove the notice to the local government, so it can protest. However, we should find a way to speed up renewals. Perhaps by delegating renewals and licenses issuances to the Director we could speed up the process. Also, as in all municipal protests, there should be a clear protest set forth with specific reasons, not necessarily including non-payment of taxes. (As an aside, we should also review the merits of requiring creditors be satisfied prior to transfer.)

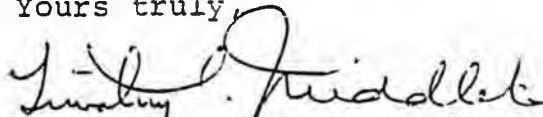
Recommendations #6 and #7, are meritorious.

An area of specific concern to me is the so called hotel-motel license exception to the population quota. This section could result in the elimination of the small neighborhood bar.

In summary, the number one priority of the legislature should be a complete and sensible re-write of Title 4, the other suggestions will not be of much use unless that is accomplished. Indeed, if only your suggestions are adopted, the problem of enforcement of ABC laws will be exacerbated, because there will be a feeling the problem is solved. The priority of the Board should be adoption of a comprehensive set of regulations.

Thank you for an opportunity to comment on your report.

Yours truly,

  
Timothy G. Middleton

TGM/lh

COMMITTEE REPORT

SENATE

*Finance*

FURTHER: ~~Finance~~

3/14/79

Date: \_\_\_\_\_

Mr. President:

The Committee on HSS has had SB 250  
continuing the existence of the Alcoholic Beverage Control Board

under consideration and (a majority of the committee) (the committee)  
reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*Stuart G. ...*  
 \_\_\_\_\_  
*...*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Glenn ...*  
 \_\_\_\_\_  
 CHAIRMAN

Introduced: 3/14/79  
Referred: Health, Education  
& Social Services and  
Finance

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 250

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the Alcoholic  
7 Beverage Control Board; and providing for an effective  
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 44.66.010(a)(1) is amended to read:

11 (1) Alcoholic Beverage Control Board (AS 04.05.010) --  
12 June 30, 1983 [1979];

13 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-  
14 070(c).

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