

LEGISLATIVE FINANCE-HOUSE / SENATE FINANCE COMM. FILES 8879

SB 375 cont. 1981 1982 668 259

Without some form of control over alcoholic beverages, sale and distribution would be rapidly overtaken by unscrupulous operators who are not held responsible for placing public interest above self-interest. The board has taken action against several such unscrupulous licensees over the years.

If Alaska's alcoholic beverage control board were to be discarded, current liquor licenses would terminate on December 31, and alcohol could not be legally sold thereafter because no organization would exist to administer the law. Repeal of present state law would allow indiscriminate sale/distribution within Alaska i.e. to underage persons, drunken persons, and in villages which have a stated preference to ban sale or importation of alcohol and promote other activities contrary to the public interest. Neither approach would be acceptable to the public or in the public interest.

An independent quasi-judicial organization is necessary to review and administer the conduct of sellers of alcoholic beverages in view of the public interest, and in light of the serious social ills that follow when alcohol is not distributed responsibly.

Introduced: 1/8/90
Referred: Labor and Commerce
and Finance

go00180s

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 375

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND 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
8 effective 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 04.06.010) - June
12 30, 1994 [1990];

13 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).



375

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to continue the existence of the Alcoholic Beverage Control Board for four years (AS 44.66.010(c)). Under current law, the board is scheduled to "sunset" June 30, 1990 (AS 44.66.010(a)), and will go into its "wind-down" year under AS 44.66.010(b).

If the board is allowed to "sunset," many of the liquor control laws in AS 04 could not be implemented or enforced by the state, although municipalities could, under AS 04.21.010, adopt their own liquor control ordinances. Virtually all states, however, regulate the sale of alcohol at the state level, with some input from local authorities. Such a system avoids situations in which locally powerful special interests could exert undue influence over local officials who might be more vulnerable to such pressure than would a state-level administrative body.

Policing liquor vendors is a critical government function given the grave social ills that result when liquor is not responsibly dispensed. Alaska has experienced much grief brought on by unscrupulous liquor vendors. In view of the tremendous profitability of liquor sales, a system of exclusive local control could too often result in liquor licensing decisions being made for financial reasons, at the expense of the public interest. At one time, Alaska liquor licenses were issued at the local level; an overabundance of licenses resulted in many locations.

Additionally, local control would very likely mean inconsistency in regulation from area to area, which would confuse the public and make enforcement difficult in the court system.

In light of the alcohol abuse problems that exist now in our state, I believe that the board's activities in administering, implementing, and enforcing our liquor control laws are essential. I urge your prompt and favorable consideration of this bill.

Sincerely

A handwritten signature in black ink, appearing to read "Steve Cowper". The signature is written in a cursive style with a large, looping initial "S".

Steve Cowper
Governor

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

June 30, 1989

Audit Control Number

04-1374-90-R

Commissioner, Department
of Revenue

Hugh Malone

Deputy Commissioner,
Department of Revenue

Milton B. Barker

Assistant Commissioner
Department of Revenue

Royce Weller

Members of the
Alcoholic Beverage Control Board

Chairman
Vice-Chairman
Member
Member
Member

Michael W. Gordon
Robert J. Klein
Andy Durny
Jane C. Perkins
Richard Stitt

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

September 26, 1989

Members of the Legislative Budget
and Audit Committee:

According to the provisions of Titles 24 and 44 of the Alaska Statutes, the Division of Legislative Audit is required to conduct a "Sunset" review of the Alcoholic Beverage Control Board.

At the request of the Chairman, the Audit Division's budget was revised in Fiscal Year 1988 to reflect certain changes in the organization of the Committee's two Divisions. The revised budget of the Audit Division reflected efficiencies that might be obtained by utilizing the staff of the Legislative Finance Division on selected audit assignments during the interim.

As a result, this report has been prepared by the Legislative Finance Division. We feel the audit examination conducted by Legislative Finance and the accompanying report discharges our responsibility under Titles 24 and 44. The report is submitted for your review.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
P.O. BOX WF
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

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In accordance with the provisions of Title 24 and 44 of the
Alaska Statutes, the attached report is submitted for your
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Mike Greany, Director
Division of Legislative Finance

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.60.050 (sunset legislation) an examination of the Alcoholic Beverage Control (ABC) Board was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative hearings to determine whether the ABC Board should be reestablished. The law now specifies that the Board will terminate June 30, 1990 and has one year from that date to conclude its affairs.

Scope

The major areas of our examination were: licensing, inspections, investigations and administrative functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documents of licenses.
3. Interviews with the staff of the ABC Board.
4. Complaints filed with the Attorney General's office and the Ombudsman's office.
5. Discussions with Board members.
6. Minutes of Board meetings and Board correspondence files.
7. Attorney General opinions and advisements applicable to the Board.
8. Surveys submitted to law enforcement agencies and municipalities.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959 by Title 4 of the Alaska Statutes as a regulatory, quasi-judicial agency. The Board is vested with the powers, duties, and responsibilities of the control of alcoholic beverages, including the power to propose and adopt regulations and to hear appeals.

Members are appointed for three-year terms by the Governor and are subject to confirmation by the Legislature. Membership is specified by statute to five persons (two liquor industry representatives and three non-industry representatives). A director, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and regulations. Under the direction of the Board, the director is capable of issuing, renewing, transferring, revoking or suspending licenses or permits.

Title 4 prescribes the type of licenses, fees, and specific activities allowed under each license classification. The availability of licenses throughout the State is determined by the population within designated areas. For calendar year 1988, a total of 1,762 licenses were issued.

The staff of the ABC Board is divided into three major functions: administration, licensing, and enforcement. The following narratives briefly describe the services provided within the three functions.

Administration. The director of the ABC Board has the responsibility of managing the administrative support for the Board. The responsibilities consist of: overseeing all staff work, preparing budget documents, directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff is responsible for processing application forms, maintaining records and files for all licenses, collecting fees and answering inquiries from the general public on routine licensing matters.

Enforcement. The ABC Board currently employs six investigators - four operating from the Anchorage central office and one each operating in the Fairbanks and Juneau field offices. Investigative duties consist of: surveillance and inspections of licensed premises for suspected licensing violations, public appearances relating to ABC laws and regulations, and responding to inquiries from the general public.

REPORT CONCLUSION

Policy Issues

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

Implementation of Prior Audit Recommendations

In order to operate in a more efficient and effective manner, the ABC Board incorporated administrative procedures or promulgated regulations to implement the recommendations in the prior Sunset audit, dated August 25, 1985.

Report Conclusions

In our opinion, the ABC Board should be reestablished. Title 4 of the Alaska Statutes established the ABC Board to control the manufacture, barter, possession, and sale of alcoholic beverages in the State in order to protect the public's health, safety, and welfare. Protection of the public's health, safety and welfare is provided by the Board through active investigation of complaints and revocation or suspension of licenses when appropriate.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Revenue, Income and Excise Audit Division and the Alcoholic Beverage Control Board (ABC Board) should coordinate more on matters relating to revenue sharing and compare records of liquor license files to ensure that revenues collected for licenses are shared with municipalities in accordance with the law.

As required by AS 04.11.610, annual liquor license fees (excluding annual wholesale license fees and miscellaneous permits) collected from businesses operating within the boundaries of a municipality shall be refunded to the municipality. The only requirement is that the municipality enforce laws and regulations relating to the sale and manufacture of alcoholic beverages.

The Department of Revenue, Income and Excise Audit Division (hereinafter referred to as the Division) provides administrative support to the ABC Board relative to revenue sharing. The Division obtains a copy of each liquor license from the staff of the ABC Board. Based upon information on the license, a clerk posts a record of the license to a written schedule for each municipality. During December and June of each year, the Department refunds an amount based upon the number and type of licenses for each municipality.

However, there has never been a comparison of records between the Division's revenue sharing accounts and liquor licenses of the ABC Board. Since there is no comparison of records or coordination of administrative effort, the potential exists for a material error or irregularity to occur and it would not be found during the normal administrative processing of revenue sharing.

In the course of our review, several items came to our attention which can be attributed to the lack of coordination between the agencies. Contrary to law, miscellaneous permits have been shared with municipalities; conversely brewery and distillery licenses have not been shared. In addition, Division personnel have stated that their records indicate that certain liquor license fees have not been shared with municipalities.

To determine if revenue is accurately shared with municipalities we used as a test sample the FY89 license and shared revenue records of four municipalities. For three of the four communities we found a number of discrepancies. Although the items are not material in value, it demonstrates how an error or irregularity could occur and it would not be discovered during the course of conducting business.

Anchorage - Fees relating to miscellaneous permits (\$2,400) were erroneously shared. The Division's records did not indicate that two liquor licenses totaling \$600 were shared. The revenue associated with a distillery license had not been shared (\$500).

Fairbanks - Fees for miscellaneous permits (\$350) were incorrectly disbursed to municipalities.

Juneau - Fees associated with miscellaneous permits (\$650) were incorrectly shared. The Division's own records indicate that a liquor license fee of \$400 was not shared. The brewery license fees have never been shared with the municipality (\$500 annually).

Because of the discrepancies disclosed in the previous paragraphs, the disbursement of revenue to other municipalities in FY89 and previous fiscal years should be reviewed. According to AS 04.11.610 (c), the Department of Revenue is required to recover any revenue erroneously shared. If during the review the Department finds that a municipality was not refunded the total amount due, the Department should request a special appropriation to fund the disbursement to the municipality.

The municipalities hold in trust and confidence that liquor license revenues will be accurately shared. Therefore, the Division and the ABC Board should coordinate more on matters relating to revenue sharing and develop a means of cross checking the amount of revenues shared with municipalities and the number of licenses issued by the ABC Board.

Recommendation No. 2

The ABC Board should reconsider the issuance of recreational site liquor licenses to businesses engaged in selling meals to tourists.

The recreational site license allows the holder to sell beer and wine at a recreational site during and one hour before and after a recreational event. Furthermore, AS 04.11.210 (c), reads as follows:

"In this section, recreational site means, but is not limited to, a location where baseball games, hockey games, dog sled racing events, or curling matches are regularly held during a season."

Complicating the issuance of recreational site licenses is the fact that the Board has issued three recreational site licenses to enterprises whose primary business is selling meals/beverages to tourists during the summer months. One of the licenses issued has been returned to the Board and the business is now operating under a beverage dispensing license. The remaining two licenses are currently active.

The issuance of a recreational site license has been the subject of an Attorney General's memorandum on the type of activities that would qualify for recreational site license.

The Attorney General in a memorandum dated February 3, 1983 stated:

"The activities listed in AS 04.11.210 (c) are distinctly and exclusively athletic in nature. Note that the statute specifies that the athletic event, whatever it may be, must be held regularly and during a season. Both qualifiers evince a legislative intent to confine recreational site licenses to athletic events only."

It is our opinion that it is not the intent of the statute to issue a recreational site license to an enterprise whose primary business purpose is selling meals/beverages to tourists. These businesses are similar to a restaurant operation and the Board should re-license them under the public convenience license statute which would allow them to continue to sell beer and wine. While the Board did not act illegally or grossly improper in issuing these as recreational rather than public convenience licenses, it is our fear they could be cited as precedences for patently questionable operations. Further, the Board should reconsider the criteria for issuing recreational site licenses and establish the necessary regulations to ensure that the intent of the statute is complied with.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

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

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

The health, safety, and welfare of the public is protected by the Board through active investigation of complaints and revocation or suspension of licenses when appropriate.

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

A large number of respondents to the enforcement agency questionnaire (Appendix D) indicated a need for more investigators. Including the supervisory agent, there are presently six agents available for inspecting and investigating 1,762 licensed premises. In addition, the enforcement section does not have clerical support.

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

Senate Bill No. 157, which was introduced by the Governor during the first session of the Sixteenth Legislature, amends AS 04.11 by imposing a civil fine for the violation of a statute, regulation, or ordinance related to alcoholic beverages.

- 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 Board has met at least seven times for fiscal years 1988 and 1989. During each fiscal year, the Board has held meetings in each of the four judicial districts. Each meeting has been adequately advertised and open to the public.

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

As noted in number IV the board has provided an adequate forum for obtaining input from the public.

- 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.

Since July 1985, ten complaints have been filed with the Ombudsman's Office concerning Board activity. Only one of these complaints, alleging "conflict of interest" by a board member, was found to be justified. Subsequent to this infraction, the Board has been cognizant of situations that may be construed as a conflict of interest.

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

Our review of licenses issued by the Board consisted of determining whether the licensees met statutory qualifications. The review disclosed no material infractions of the law.

- 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 of interest.

No discrepancies were noted in this area during our review of the Board.

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

The Board has discussed the possibility of proposing legislation that would require a biennial renewal of most liquor licenses, rather than annual. A biennial renewal would streamline the licensing process and lessen the workload of the administrative staff.

APPENDIXES

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APPENDIX A

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUE COMPARED WITH EXPENDITURES
Fiscal Years 1987, 1988, 1989
(Unaudited-See Note 1)

	<u>1987</u>	<u>1988</u>	<u>1989</u>
<u>Revenue</u> (See Schedule 1)	\$ 1,665,950	\$ 1,793,977	\$ 1,748,593
Less: Transfers to Municipalities (Note 2)	< 885,875>	< 884,517>	< 874,050>
<u>Net Revenue</u>	780,075	909,460	874,543
Less: Expenditures	< 570,646>	< 633,759>	< 690,124>
<u>Excess of Revenues Over Expenditures</u>	<u>\$ 209,429</u>	<u>\$ 275,701</u>	<u>\$ 184,419</u>

Schedule 1
Revenue Collected
(Note 2)

	<u>1987</u>	<u>1988</u>	<u>1989</u>
Liquor License Application \$	104,550	\$ 224,470	\$ 206,175
Common Carrier License	36,925	49,725	42,775
Retail Stock Sale	100	-0-	-0-
Wholesale General	127,100	126,100	116,000
Wholesale Malt Beverage	10,000	7,300	7,900
Pub License	400	400	400
Brewery License	500	1,000	1,000
Distillery License	-0-	-0-	1,000
Beverage Dispensary License	828,288	839,594	821,950
Club License	47,800	51,666	51,850
Recreational-Site License	4,800	5,400	5,400
Restaurant/Eating Place License	97,300	94,166	93,100
Package Store License	360,475	347,791	341,625
Miscellaneous (Note 3)	<u>47,712</u>	<u>46,365</u>	<u>59,418</u>
 <u>Total Revenues</u>	 <u>\$1,665,950</u>	 <u>\$1,793,977</u>	 <u>\$1,748,593</u>

The accompanying notes are an integral part of the above statement and schedule.

APPENDIX A (CONTINUED)

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NOTES TO STATEMENT OF REVENUE COMPARED
WITH EXPENDITURES AND SCHEDULE OF REVENUE COLLECTED

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's Statement of Revenue Compared with Expenditures, nor the Schedule of Revenue Collected.

Note 2

Revenues consist of receipts collected on various licenses, permits and miscellaneous items. In accordance with AS.04.11.610, annual license fees (excluding wholesale license fees) collected within a municipality are to be refunded to the municipality. The amount of revenue transferred to municipalities is represented by a deduction from revenues, "Transfers to Municipalities". If a municipality fails to enforce laws relating to the manufacture or sale of alcoholic beverages or the licensed premises are located outside city limits, the annual license fee would not be shared with the municipality and would be deposited in the general fund. Other revenues that should be deposited in the general fund are fees associated with permits, applications and wholesale licenses.

Note 3

The "miscellaneous" revenue account includes caterer's permit, special events permit, conditional contractor's permits, and restaurant caterer's dinner permit.

APPENDIX B

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NUMBER OF LICENSES BY CATEGORY
Calendar Years 1986, 1987, and 1988

<u>License Categories</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Distillery	-0-	-0-	1
Brewery	1	2	2
Pub	1	1	1
Beverage Dispensary	699	698	690
Club	78	82	85
Common Carrier	139	144	150
Restaurant	322	320	317
Retail Store	492	488	475
Wholesale General	19	16	16
Wholesale Malt Beverage	8	8	7
Recreational-Site	<u>17</u>	<u>17</u>	<u>18</u>
<u>Total Licenses</u>	<u>1,776</u>	<u>1,776</u>	<u>1,762</u>

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APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSES, PERMITS AND FEES

<u>DESCRIPTION</u>	<u>FEE</u>
Application Fee	\$ 100
Restaurant Designation Fee	50
Pub License	400
Brewery License	500
Distillery License	500
Brewpub License	250
Beverage Dispensary License-Half Year	625
Beverage Dispensary License-Tourism Half Year	625
Beverage Dispensary License	1,250
Beverage Dispensary License-Duplicate	1,250
Beverage Dispensary License-Tourism	1,250
Beverage Dispensary License-Tourism Duplicate	1,250
Beverage Dispensary License-Public Convenience	1,250
Beverage Dispensary License-Community License	1,250
Club License	600
Club License-Half Year	300
Common Carrier License	350
Common Carrier License-Half Year	175
Restaurant/Eating Place (Beer & Wine Only)	300
Restaurant/Eating Place (Beer & Wine Only)-Half Year	150
Restaurant/Eating Place (Beer & Wine Only)-Tourism	300
Restaurant/Eating Place (Beer & Wine Only)-Public Convenience	300
Theater License (Beer & Wine Only)	300
Package Store License	750
Package Store License-Tourism	750
Package Store License-Half Year	375
Package Store License-Community License	750
Retail Stock Sale License	100
Wholesale License-General (\$1,000 first \$100,000 of sales, plus \$500 on each additional \$50,000 of sales)	1,000
Wholesale License-Malt Beverage & Wine (\$200 first \$20,000 of sales, plus, \$300 on additional \$30,000 of sales and thereafter \$500 on each additional \$50,000 of sales)	200
Bottling Works License	250
Recreational Site License	400
Recreational Site License-Half Year	200
Winery License	250
Conditional Contractor's Permit	600
Caterer's Permit	50
Restaurant Caterer's Dinner Permit	50
Special Events Permit	50

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APPENDIX D

SUMMARY OF QUESTIONNAIRE SENT TO STATE OF
ALASKA LAW ENFORCEMENT AGENCIES

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

Number of respondents commenting

- 20 Yes
 Enforcement role is not well known.
 1 Aware of Board but have never seen any enforcement.
 Not aware of its role in enforcement.

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

Number of respondents commenting

- 15 Complements
 Duplicates
 1 Conflicts
 3 None of the above.
 1 Other (please respond and cite specific instances)

Respondent Comments

In some cases it is the only source of regulation or enforcement there is.

The enforcement effort is so minor that it isn't worth noting. The Board is functioning more as a regulatory agency issuing licenses and issuing meaningless notices of violations.

Would compliment if enough unscheduled inspections were made on licensed premises.

We support additional funding for State-Wide enforcement.

3. Do you have a cooperative working agreement with the ABC Board enforcement staff, such as, sharing investigative information and notification of arrests made on licensed premises?

Number of respondents commenting

- No, never share information.
16 Yes, always share information.
 5 Occasionally, ABC is sent copies of liquor related arrests and reports.
 1 ABC is notified, but we never receive a response.

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

Number of respondents commenting

11 No
8 Yes

Respondent Comments

AS 04.16.051(b) (1)

AS 04.11.410 The process of measuring should be the same for the State or City/Borough.

Serving intoxicated persons, intoxicated persons on premises.

License protests by local government should be considered an automatic denial by the Board.

It is extremely hard to take closure action against a license holder.

Minors being allowed inside a bar that doesn't serve food even accompanied by parent or guardian. Minors should not be allowed in a bar with persons drinking.

5. Any comments you would like to make?

Respondent Comments

I strongly recommend continuation of the ABC Board.

I would like to see additional staff "investigators" hired. ABC staff are surely understaffed.

Keep up the good work.

The most obvious is Sale To A Drunken Person. This needs to be changed in order for it to be an effective tool in dealing with the problem it was hoped to address.

They do a good job given the available staff.

If the Board is to continue they must become more active in enforcement.

Give them more investigators.

I think ABC fills a real need. It is badly understaffed, but does a good job with the resources it has. It's funding should be increased.

I would like to see the ABC Board personnel increased. We need more enforcement on licensed premises by them.

I have called them on 2 occasions within the last 4 months and received prompt attention to the problems. I am pleased with their service.

Recommend: State-Wide reduction of license beverage hours of operation.

(Intentionally left blank)

APPENDIX E

SUMMARY OF QUESTIONNAIRE
SENT TO MUNICIPALITIES

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

Number of respondents commenting

Yes 33 No 2

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

Number of respondents commenting

Yes 21 No 12

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

Typical Response

- A. Delinquent taxes.
- B. Too many liquor establishments.
- C. License not operated 30 days as required by law.
- D. Disapproval by police department.

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

Number of respondents commenting

Yes 12 No 12

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

Number of respondents commenting

Yes 25 No 4

If not, should local governing bodies be
4 more involved in the licensing process?
 less involved in the licensing process?

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

Number of respondents commenting

Yes 5 No 17

If yes, please cite the law or regulations.

Two "yes" respondents did not cite any specific laws or regulations that were obsolete, vague, unduly restrictive or inadequate. One respondent cited the Bottle Club law AS 04.16.090. Another respondent stated that there should be provisions for license suspension when taxes are unpaid. The last respondent cited the law limiting the number of licenses are too low for tourism towns.

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

Typical Response

- A. More enforcement effort by ABC Board investigative staff and enforcement of AS 04.11.330(a)(3) - days of operation requirement.
- B. Repeal the population limitations on the number of liquor licenses allowed in a community.
- C. The ABC staff is very helpful and knowledgeable.
- D. The ABC Board's notification/protest/hearing process does not allow enough time for local governments to respond or it would be helpful to have more time.
- E. ABC Board hearings concerning local licenses should be held locally.
- F. The ABC Board should develop instructions to help municipalities understand their role in the licensing process.

7. Any comments you would like to make?

Typical Response

- A. The Board is needed and should be continued.
- B. The Board staff is always very helpful.
- C. The ABC Board should conduct more inspections of liquor establishments.

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

October 2, 1989

Tom Sutton
Fiscal Analyst
Division of Legislative Finance
P.O. Box WF
Juneau, AK 99811-3300

Dear Mr. Sutton:

Following is our response to your Interim Letter No. 2 dated September 26, 1989 related to a review of the Alcoholic Beverage Control Board.

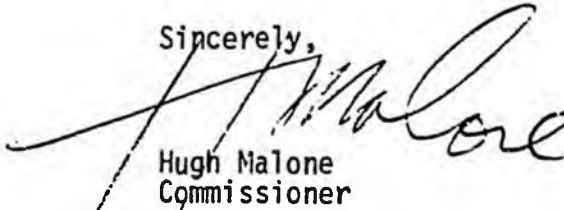
Recommendation No. 1

The Department of Revenue, Division of Income and Excise Audit Division and the Alcoholic Beverage Control Board (ABC Board) should coordinate more on matters relating to revenue sharing and compare records of liquor license files to ensure that revenues collected for licenses are shared with municipalities in accordance with the law.

The department agrees with your recommendation. I will ensure that staff personnel from both the ABC Board and the Income and Excise Audit Division work closely this year to coordinate on matters relating to revenue sharing of annual license fees collected by the ABC Board.

Although immaterial, I will ensure that Income and Excise Audit Division staff rectify amounts over or undershared with municipalities as pointed out, and that brewery and distillery license fees are shared in the future.

Sincerely,



Hugh Malone
Commissioner

HM:PED:m11
89-212

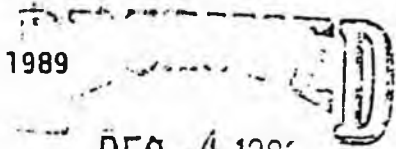
STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

550 W. 7TH AVE
ANCHORAGE, ALASKA 99501-6698

ALCOHOLIC BEVERAGE CONTROL BOARD

December 1, 1989



Mr. Randy S. Welker, Legislative Auditor
P. O. Box W
Juneau, Alaska 99811-3300

LEGISLATIVE
AUDIT

RE: Response to audit report, A Performance Report on the Department of Revenue, Alcoholic Beverage Control Board June 30, 1989

Dear Mr. Welker:

Thank you for the courtesy of an opportunity to comment.

The board concurs with the report conclusion that the board is accomplishing its role to serve the public and the public interest. This conclusion is buttressed by the survey results from law enforcement agencies and municipalities in appendixes "D" and "E".

Comments from survey participants indicate a request that the board's investigative staff be increased to expand enforcement efforts and provide for greater presence at licensed premises. Having this support, the board will pursue additional funding for investigators in its FY 91 budget.

The following remarks respond to the specific recommendations:

Recommendation No. 1:

Agree. This issue is being resolved and a separate response will be submitted by the Commissioner of Revenue.

Recommendation No. 2:

Disagree. Without going into a great deal of background detail, the recommended solution to a perceived problem could cause more difficulty than the situation warrants. In essence, the recommendation questions the board's interpretation/discretion regarding issuance of recreational site licenses.

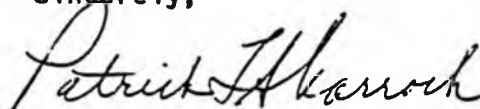
DEC 1 1989

December 1, 1989
Mr. Randy S. Welker, Legislative Auditor

The Alcoholic Beverage Control Board will discuss the matter upon issuance of the audit report.

If I can provide any additional information or clarification, please do not hesitate to let me know.

Sincerely,



Patrick L. Sharrock
Director, ABC Board
277-8638

PS/cl

cc: Hugh Malone, Commissioner of Revenue
ABC Board Members

CTS 89-244

SB 375

SENATE FINANCE COMMITTEE REPORT

DATE: January 25, 1990 FURTHER:

DATE TURNED INTO OFFICE: 2/13/90

The Finance Committee considered SB 375
Continuing the existence of the Alcoholic Beverage Control Board; efd.

- and recommended:
- replace with _____ CS _____ same title
 - or adopt _____ CS _____ new title
 - attached amendment(s) _____ technical
 - _____ letter of intent adopted _____ title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S): APPROVES PREVIOUS: Dept/Date:
 fiscal note(s) _____ fiscal note(s) DOB/ABC 12/31/91
738.462

zero fiscal note(s) _____ zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO/PASS: OTHER RECOMMENDATIONS:
[Signature]
[Signature]
[Signature]
 -- 2. --
 Co-Chairs: Signatures and Recommendations

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 375
PUBLISH DATE: 1/8/90

FISCAL NOTE

REQUEST:
 Revision Date: _____ Agency Affected: Dept. of Revenue
 Title: Continue existence of the BRU: Alcoholic Beverage Control Board
Alcoholic Beverage Control Board
 Sponsor: Rules Committee Components: _____
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	618.8	618.8	618.8	618.8	618.8	618.8
TRAVEL	43.7	43.7	43.7	43.7	43.7	43.7
CONTRACTUAL	68.1	68.1	68.1	68.1	68.1	68.1
SUPPLIES	7.8	7.8	7.8	7.8	7.8	7.8
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	738.4	738.4	738.4	738.4	738.4	738.4

CAPITAL	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
	-0-	-0-	-0-	-0-	-0-	-0-

REVENUE	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
	1,729.0	1,729.0	1,729.0	1,729.0	1,729.0	1,729.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
	738.4	738.4	738.4	738.4	738.4	738.4
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	738.4	738.4	738.4	738.4	738.4	738.4

POSITIONS:

FULL-TIME	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
	12	12	12	12	12	12
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: (Attach a separate page if necessary)
 Revenue projections and operating costs are contained in the proposed operating budget and revenue projections submitted by the Alcoholic Beverage Control Board for FY 91.

Prepared by: Patrick L. Sharrock, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: _____

Approved by Commissioner: Hugh Malone Date: 12-21-89
 Agency: Department of Revenue

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

SUNSET

Under sunset statutes the board expires on June 30, 1990. Unless the board is extended during the 1990 legislative session, this budget reflects estimated costs for the board's operations to terminate its affairs by June 30, 1991.

Under the 21st amendment to the federal constitution all 50 states have chosen to regulate alcoholic beverages at the state, and not the local level. The purpose of state regulation/control is to provide a system for enforcing laws which authorize approved responsible persons to sell and distribute alcohol to the public. Alcohol, if reasonably consumed, is not dangerous. Responsible distribution is an essential step in helping to insure responsible consumption by the public.

Alaska at one time granted issuance of liquor licenses to local governments. This delegation led to an overabundance of licenses in a number of Alaskan communities. If local governments were to establish local controls by ordinance, laws would vary from city to city and confuse the public. Local governments, under current statute, have an ability to impose controls consistent with state law and provide valuable input to the board on licensing matters. However, with few exceptions, cities and boroughs have chosen to develop controls that only assure collection of revenues.

If Alaska abandoned its current system of state level control in favor of local level control, it is inevitable that distribution of alcohol in some locations would be taken over by powerful interests who, unfortunately, have been known to exert undue control over the local governing body. It is essential, therefore, that control be retained at the state level where the administrators are less susceptible to undue and improper local political pressures.

Without some form of control over alcoholic beverages, sale and distribution would be rapidly overtaken by unscrupulous operators who are not held responsible for placing public interest above self-interest. The board has taken action against several such unscrupulous licensees over the years.

If Alaska's alcoholic beverage control board were to be discarded, current liquor licenses would terminate on December 31, and alcohol could not be legally sold thereafter because no organization would exist to administer the law. Repeal of present state law would allow indiscriminate sale/distribution within Alaska i.e. to underage persons, drunken persons, and in villages which have a stated preference to ban sale or importation of alcohol and promote other activities contrary to the public interest. Neither approach would be acceptable to the public or in the public interest.

An independent quasi-judicial organization is necessary to review and administer the conduct of sellers of alcoholic beverages in view of the public interest, and in light of the serious social ills that follow when alcohol is not distributed responsibly.

Introduced: 1/8/90
Referred: Labor and Commerce
and Finance

go00180s

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 375

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND 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
8 effective 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 04.06.010) - June
12 30, 1994 [1990];

13 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to continue the existence of the Alcoholic Beverage Control Board for four years (AS 44.66.010(c)). Under current law, the board is scheduled to "sunset" June 30, 1990 (AS 44.66.010(a)), and will go into its "wind-down" year under AS 44.66.010(b).

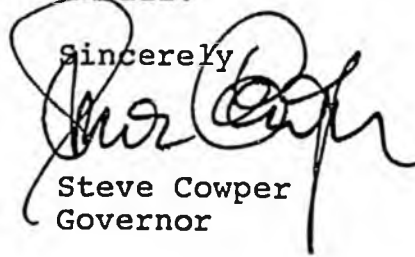
If the board is allowed to "sunset," many of the liquor control laws in AS 04 could not be implemented or enforced by the state, although municipalities could, under AS 04.21.010, adopt their own liquor control ordinances. Virtually all states, however, regulate the sale of alcohol at the state level, with some input from local authorities. Such a system avoids situations in which locally powerful special interests could exert undue influence over local officials who might be more vulnerable to such pressure than would a state-level administrative body.

Policing liquor vendors is a critical government function given the grave social ills that result when liquor is not responsibly dispensed. Alaska has experienced much grief brought on by unscrupulous liquor vendors. In view of the tremendous profitability of liquor sales, a system of exclusive local control could too often result in liquor licensing decisions being made for financial reasons, at the expense of the public interest. At one time, Alaska liquor licenses were issued at the local level; an overabundance of licenses resulted in many locations.

Additionally, local control would very likely mean inconsistency in regulation from area to area, which would confuse the public and make enforcement difficult in the court system.

In light of the alcohol abuse problems that exist now in our state, I believe that the board's activities in administering, implementing, and enforcing our liquor control laws are essential. I urge your prompt and favorable consideration of this bill.

Sincerely

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely". The signature is fluid and cursive.

Steve Cowper
Governor

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

June 30, 1989

Audit Control Number

04-1374-90-R

Commissioner, Department
of Revenue

Hugh Malone

Deputy Commissioner,
Department of Revenue

Milton B. Barker

Assistant Commissioner
Department of Revenue

Royce Weller

Members of the
Alcoholic Beverage Control Board

Chairman
Vice-Chairman
Member
Member
Member

Michael W. Gordon
Robert J. Klein
Andy Durny
Jane C. Perkins
Richard Stitt

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

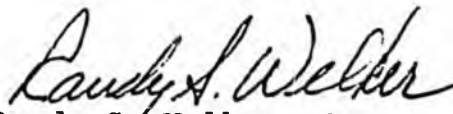
September 26, 1989

Members of the Legislative Budget
and Audit Committee:

According to the provisions of Titles 24 and 44 of the Alaska Statutes, the Division of Legislative Audit is required to conduct a "Sunset" review of the Alcoholic Beverage Control Board.

At the request of the Chairman, the Audit Division's budget was revised in Fiscal Year 1988 to reflect certain changes in the organization of the Committee's two Divisions. The revised budget of the Audit Division reflected efficiencies that might be obtained by utilizing the staff of the Legislative Finance Division on selected audit assignments during the interim.

As a result, this report has been prepared by the Legislative Finance Division. We feel the audit examination conducted by Legislative Finance and the accompanying report discharges our responsibility under Titles 24 and 44. The report is submitted for your review.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
P.O. BOX WF
JUNEAU, ALASKA 99811
PHONE (907) 465-3795

September 26, 1989

Members of the Legislative Budget
and Audit Committee:

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

A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

June 30, 1989

Audit Control Number

04-1374-90-R



Mike Greany, Director
Division of Legislative Finance

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.60.050 (sunset legislation) an examination of the Alcoholic Beverage Control (ABC) Board was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative hearings to determine whether the ABC Board should be reestablished. The law now specifies that the Board will terminate June 30, 1990 and has one year from that date to conclude its affairs.

Scope

The major areas of our examination were: licensing, inspections, investigations and administrative functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documents of licenses.
3. Interviews with the staff of the ABC Board.
4. Complaints filed with the Attorney General's office and the Ombudsman's office.
5. Discussions with Board members.
6. Minutes of Board meetings and Board correspondence files.
7. Attorney General opinions and advisements applicable to the Board.
8. Surveys submitted to law enforcement agencies and municipalities.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959 by Title 4 of the Alaska Statutes as a regulatory, quasi-judicial agency. The Board is vested with the powers, duties, and responsibilities of the control of alcoholic beverages, including the power to propose and adopt regulations and to hear appeals.

Members are appointed for three-year terms by the Governor and are subject to confirmation by the Legislature. Membership is specified by statute to five persons (two liquor industry representatives and three non-industry representatives). A director, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and regulations. Under the direction of the Board, the director is capable of issuing, renewing, transferring, revoking or suspending licenses or permits.

Title 4 prescribes the type of licenses, fees, and specific activities allowed under each license classification. The availability of licenses throughout the State is determined by the population within designated areas. For calendar year 1988, a total of 1,762 licenses were issued.

The staff of the ABC Board is divided into three major functions: administration, licensing, and enforcement. The following narratives briefly describe the services provided within the three functions.

Administration. The director of the ABC Board has the responsibility of managing the administrative support for the Board. The responsibilities consist of: overseeing all staff work, preparing budget documents, directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff is responsible for processing application forms, maintaining records and files for all licenses, collecting fees and answering inquiries from the general public on routine licensing matters.

Enforcement. The ABC Board currently employs six investigators - four operating from the Anchorage central office and one each operating in the Fairbanks and Juneau field offices. Investigative duties consist of: surveillance and inspections of licensed premises for suspected licensing violations, public appearances relating to ABC laws and regulations, and responding to inquiries from the general public.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

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

Implementation of Prior Audit Recommendations

In order to operate in a more efficient and effective manner, the ABC Board incorporated administrative procedures or promulgated regulations to implement the recommendations in the prior Sunset audit, dated August 25, 1985.

Report Conclusions

In our opinion, the ABC Board should be reestablished. Title 4 of the Alaska Statutes established the ABC Board to control the manufacture, barter, possession, and sale of alcoholic beverages in the State in order to protect the public's health, safety, and welfare. Protection of the public's health, safety and welfare is provided by the Board through active investigation of complaints and revocation or suspension of licenses when appropriate.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Revenue, Income and Excise Audit Division and the Alcoholic Beverage Control Board (ABC Board) should coordinate more on matters relating to revenue sharing and compare records of liquor license files to ensure that revenues collected for licenses are shared with municipalities in accordance with the law.

As required by AS 04.11.610, annual liquor license fees (excluding annual wholesale license fees and miscellaneous permits) collected from businesses operating within the boundaries of a municipality shall be refunded to the municipality. The only requirement is that the municipality enforce laws and regulations relating to the sale and manufacture of alcoholic beverages.

The Department of Revenue, Income and Excise Audit Division (hereinafter referred to as the Division) provides administrative support to the ABC Board relative to revenue sharing. The Division obtains a copy of each liquor license from the staff of the ABC Board. Based upon information on the license, a clerk posts a record of the license to a written schedule for each municipality. During December and June of each year, the Department refunds an amount based upon the number and type of licenses for each municipality.

However, there has never been a comparison of records between the Division's revenue sharing accounts and liquor licenses of the ABC Board. Since there is no comparison of records or coordination of administrative effort, the potential exists for a material error or irregularity to occur and it would not be found during the normal administrative processing of revenue sharing.

In the course of our review, several items came to our attention which can be attributed to the lack of coordination between the agencies. Contrary to law, miscellaneous permits have been shared with municipalities; conversely brewery and distillery licenses have not been shared. In addition, Division personnel have stated that their records indicate that certain liquor license fees have not been shared with municipalities.

To determine if revenue is accurately shared with municipalities we used as a test sample the FY89 license and shared revenue records of four municipalities. For three of the four communities we found a number of discrepancies. Although the items are not material in value, it demonstrates how an error or irregularity could occur and it would not be discovered during the course of conducting business.

Anchorage - Fees relating to miscellaneous permits (\$2,400) were erroneously shared. The Division's records did not indicate that two liquor licenses totaling \$600 were shared. The revenue associated with a distillery license had not been shared (\$500).

Fairbanks - Fees for miscellaneous permits (\$350) were incorrectly disbursed to municipalities.

Juneau - Fees associated with miscellaneous permits (\$650) were incorrectly shared. The Division's own records indicate that a liquor license fee of \$400 was not shared. The brewery license fees have never been shared with the municipality (\$500 annually).

Because of the discrepancies disclosed in the previous paragraphs, the disbursement of revenue to other municipalities in FY89 and previous fiscal years should be reviewed. According to AS 04.11.610 (c), the Department of Revenue is required to recover any revenue erroneously shared. If during the review the Department finds that a municipality was not refunded the total amount due, the Department should request a special appropriation to fund the disbursement to the municipality.

The municipalities hold in trust and confidence that liquor license revenues will be accurately shared. Therefore, the Division and the ABC Board should coordinate more on matters relating to revenue sharing and develop a means of cross checking the amount of revenues shared with municipalities and the number of licenses issued by the ABC Board.

Recommendation No. 2

The ABC Board should reconsider the issuance of recreational site liquor licenses to businesses engaged in selling meals to tourists.

The recreational site license allows the holder to sell beer and wine at a recreational site during and one hour before and after a recreational event. Furthermore, AS 04.11.210 (c), reads as follows:

"In this section, recreational site means, but is not limited to, a location where baseball games, hockey games, dog sled racing events, or curling matches are regularly held during a season."

Complicating the issuance of recreational site licenses is the fact that the Board has issued three recreational site licenses to enterprises whose primary business is selling meals/beverages to tourists during the summer months. One of the licenses issued has been returned to the Board and the business is now operating under a beverage dispensing license. The remaining two licenses are currently active.

The issuance of a recreational site license has been the subject of an Attorney General's memorandum on the type of activities that would qualify for recreational site license.

The Attorney General in a memorandum dated February 3, 1983 stated:

"The activities listed in AS 04.11.210 (c) are distinctly and exclusively athletic in nature. Note that the statute specifies that the athletic event, whatever it may be, must be held regularly and during a season. Both qualifiers evince a legislative intent to confine recreational site licenses to athletic events only."

It is our opinion that it is not the intent of the statute to issue a recreational site license to an enterprise whose primary business purpose is selling meals/beverages to tourists. These businesses are similar to a restaurant operation and the Board should re-license them under the public convenience license statute which would allow them to continue to sell beer and wine. While the Board did not act illegally or grossly improper in issuing these as recreational rather than public convenience licenses, it is our fear they could be cited as precedences for patently questionable operations. Further, the Board should reconsider the criteria for issuing recreational site licenses and establish the necessary regulations to ensure that the intent of the statute is complied with.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

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

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

The health, safety, and welfare of the public is protected by the Board through active investigation of complaints and revocation or suspension of licenses when appropriate.

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

A large number of respondents to the enforcement agency questionnaire (Appendix D) indicated a need for more investigators. Including the supervisory agent, there are presently six agents available for inspecting and investigating 1,762 licensed premises. In addition, the enforcement section does not have clerical support.

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

Senate Bill No. 157, which was introduced by the Governor during the first session of the Sixteenth Legislature, amends AS 04.11 by imposing a civil fine for the violation of a statute, regulation, or ordinance related to alcoholic beverages.

- 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 Board has met at least seven times for fiscal years 1988 and 1989. During each fiscal year, the Board has held meetings in each of the four judicial districts. Each meeting has been adequately advertised and open to the public.

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

As noted in number IV the board has provided an adequate forum for obtaining input from the public.

- 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.

Since July 1985, ten complaints have been filed with the Ombudsman's Office concerning Board activity. Only one of these complaints, alleging "conflict of interest" by a board member, was found to be justified. Subsequent to this infraction, the Board has been cognizant of situations that may be construed as a conflict of interest.

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

Our review of licenses issued by the Board consisted of determining whether the licensees met statutory qualifications. The review disclosed no material infractions of the law.

- 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 of interest.

No discrepancies were noted in this area during our review of the Board.

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

The Board has discussed the possibility of proposing legislation that would require a biennial renewal of most liquor licenses, rather than annual. A biennial renewal would streamline the licensing process and lessen the workload of the administrative staff.

APPENDIXES

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APPENDIX A

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUE COMPARED WITH EXPENDITURES
Fiscal Years 1987, 1988, 1989
(Unaudited-See Note 1)

	<u>1987</u>	<u>1988</u>	<u>1989</u>
<u>Revenue</u> (See Schedule 1)	\$ 1,665,950	\$ 1,793,977	\$ 1,748,593
Less: Transfers to Municipalities (Note 2)	< 885,875>	< 884,517>	< 874,050>
<u>Net Revenue</u>	780,075	909,460	874,543
Less: Expenditures	< 570,646>	< 633,759>	< 690,124>
<u>Excess of Revenues Over Expenditures</u>	<u>\$ 209,429</u>	<u>\$ 275,701</u>	<u>\$ 184,419</u>

Schedule 1
Revenue Collected
(Note 2)

	<u>1987</u>	<u>1988</u>	<u>1989</u>
Liquor License Application \$	104,550	\$ 224,470	\$ 206,175
Common Carrier License	36,925	49,725	42,775
Retail Stock Sale	100	-0-	-0-
Wholesale General	127,100	126,100	116,000
Wholesale Malt Beverage	10,000	7,300	7,900
Pub License	400	400	400
Brewery License	500	1,000	1,000
Distillery License	-0-	-0-	1,000
Beverage Dispensary License	828,288	839,594	821,950
Club License	47,800	51,666	51,850
Recreational-Site License	4,800	5,400	5,400
Restaurant/Eating Place License	97,300	94,166	93,100
Package Store License	360,475	347,791	341,625
Miscellaneous (Note 3)	<u>47,712</u>	<u>46,365</u>	<u>59,418</u>
 <u>Total Revenues</u>	 <u>\$1,665,950</u>	 <u>\$1,793,977</u>	 <u>\$1,748,593</u>

The accompanying notes are an integral part of the above statement and schedule.

APPENDIX A (CONTINUED)

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NOTES TO STATEMENT OF REVENUE COMPARED
WITH EXPENDITURES AND SCHEDULE OF REVENUE COLLECTED

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's Statement of Revenue Compared with Expenditures, nor the Schedule of Revenue Collected.

Note 2

Revenues consist of receipts collected on various licenses, permits and miscellaneous items. In accordance with AS.04.11.610, annual license fees (excluding wholesale license fees) collected within a municipality are to be refunded to the municipality. The amount of revenue transferred to municipalities is represented by a deduction from revenues, "Transfers to Municipalities". If a municipality fails to enforce laws relating to the manufacture or sale of alcoholic beverages or the licensed premises are located outside of city limits, the annual license fee would not be shared with the municipality and would be deposited in the general fund. Other revenues that should be deposited in the general fund are fees associated with permits, applications and wholesale licenses.

Note 3

The "miscellaneous" revenue account includes caterer's permit, special events permit, conditional contractor's permits, and restaurant caterer's dinner permit.

APPENDIX B

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NUMBER OF LICENSES BY CATEGORY
Calendar Years 1986, 1987, and 1988

<u>License Categories</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Distillery	-0-	-0-	1
Brewery	1	2	2
Pub	1	1	1
Beverage Dispensary	699	698	690
Club	78	82	85
Common Carrier	139	144	150
Restaurant	322	320	317
Retail Store	492	488	475
Wholesale General	19	16	16
Wholesale Malt Beverage	8	8	7
Recreational-Site	<u>17</u>	<u>17</u>	<u>18</u>
<u>Total Licenses</u>	<u>1,776</u>	<u>1,776</u>	<u>1,762</u>

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APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSES, PERMITS AND FEES

<u>DESCRIPTION</u>	<u>FEE</u>
Application Fee	\$ 100
Restaurant Designation Fee	50
Pub License	400
Brewery License	500
Distillery License	500
Brewpub License	250
Beverage Dispensary License-Half Year	625
Beverage Dispensary License-Tourism Half Year	625
Beverage Dispensary License	1,250
Beverage Dispensary License-Duplicate	1,250
Beverage Dispensary License-Tourism	1,250
Beverage Dispensary License-Tourism Duplicate	1,250
Beverage Dispensary License-Public Convenience	1,250
Beverage Dispensary License-Community License	1,250
Club License	600
Club License-Half Year	300
Common Carrier License	350
Common Carrier License-Half Year	175
Restaurant/Eating Place (Beer & Wine Only)	300
Restaurant/Eating Place (Beer & Wine Only)-Half Year	150
Restaurant/Eating Place (Beer & Wine Only)-Tourism	300
Restaurant/Eating Place (Beer & Wine Only)-Public Convenience	300
Theater License (Beer & Wine Only)	300
Package Store License	750
Package Store License-Tourism	750
Package Store License-Half Year	375
Package Store License-Community License	750
Retail Stock Sale License	100
Wholesale License-General (\$1,000 first \$100,000 of sales, plus \$500 on each additional \$50,000 of sales)	1,000
Wholesale License-Malt Beverage & Wine (\$200 first \$20,000 of sales, plus, \$300 on additional \$30,000 of sales and thereafter \$500 on each additional \$50,000 of sales)	200
Bottling Works License	250
Recreational Site License	400
Recreational Site License-Half Year	200
Winery License	250
Conditional Contractor's Permit	600
Caterer's Permit	50
Restaurant Caterer's Dinner Permit	50
Special Events Permit	50

(Intentionally left blank)

APPENDIX D

SUMMARY OF QUESTIONNAIRE SENT TO STATE OF
ALASKA LAW ENFORCEMENT AGENCIES

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

Number of respondents commenting

- 20 Yes
 Enforcement role is not well known.
 1 Aware of Board but have never seen any enforcement.
 Not aware of its role in enforcement.

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

Number of respondents commenting

- 15 Complements
 Duplicates
 1 Conflicts
 3 None of the above.
 1 Other (please respond and cite specific instances)

Respondent Comments

In some cases it is the only source of regulation or enforcement there is.

The enforcement effort is so minor that it isn't worth noting. The Board is functioning more as a regulatory agency issuing licenses and issuing meaningless notices of violations.

Would compliment if enough unscheduled inspections were made on licensed premises.

We support additional funding for State-Wide enforcement.

3. Do you have a cooperative working agreement with the ABC Board enforcement staff, such as, sharing investigative information and notification of arrests made on licensed premises?

Number of respondents commenting

- No, never share information.
16 Yes, always share information.
 5 Occasionally, ABC is sent copies of liquor related arrests and reports.
 1 ABC is notified, but we never receive a response.

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

Number of respondents commenting

11 No
8 Yes

Respondent Comments

AS 04.16.051(b)(1)

AS 04.11.410 The process of measuring should be the same for the State or City/Borough.

Serving intoxicated persons, intoxicated persons on premises.

License protests by local government should be considered an automatic denial by the Board.

It is extremely hard to take closure action against a license holder.

Minors being allowed inside a bar that doesn't serve food even accompanied by parent or guardian. Minors should not be allowed in a bar with persons drinking.

5. Any comments you would like to make?

Respondent Comments

I strongly recommend continuation of the ABC Board.

I would like to see additional staff "investigators" hired. ABC staff are surely understaffed.

Keep up the good work.

The most obvious is Sale To A Drunken Person. This needs to be changed in order for it to be an effective tool in dealing with the problem it was hoped to address.

They do a good job given the available staff.

If the Board is to continue they must become more active in enforcement.

Give them more investigators.

I think ABC fills a real need. It is badly understaffed, but does a good job with the resources it has. It's funding should be increased.

I would like to see the ABC Board personnel increased.
We need more enforcement on licensed premises by them.

I have called them on 2 occasions within the last 4 months and received prompt attention to the problems. I am pleased with their service.

Recommend: State-Wide reduction of license beverage hours of operation.

(Intentionally left blank)

APPENDIX E

SUMMARY OF QUESTIONNAIRE
SENT TO MUNICIPALITIES

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

Number of respondents commenting

Yes 33 No 2

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

Number of respondents commenting

Yes 21 No 12

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

Typical Response

- A. Delinquent taxes.
- B. Too many liquor establishments.
- C. License not operated 30 days as required by law.
- D. Disapproval by police department.

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

Number of respondents commenting

Yes 12 No 12

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

Number of respondents commenting

Yes 25 No 4

If not, should local governing bodies be
4 more involved in the licensing process?
 less involved in the licensing process?

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

Number of respondents commenting

Yes 5 No 17

If yes, please cite the law or regulations.

Two "yes" respondents did not cite any specific laws or regulations that were obsolete, vague, unduly restrictive or inadequate. One respondent cited the Bottle Club law AS 04.16.090. Another respondent stated that there should be provisions for license suspension when taxes are unpaid. The last respondent cited the law limiting the number of licenses are too low for tourism towns.

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

Typical Response

- A. More enforcement effort by ABC Board investigative staff and enforcement of AS 04.11.330(a)(3) - days of operation requirement.
- B. Repeal the population limitations on the number of liquor licenses allowed in a community.
- C. The ABC staff is very helpful and knowledgeable.
- D. The ABC Board's notification/protest/hearing process does not allow enough time for local governments to respond or it would be helpful to have more time.
- E. ABC Board hearings concerning local licenses should be held locally.
- F. The ABC Board should develop instructions to help municipalities understand their role in the licensing process.

7. Any comments you would like to make?

Typical Response

- A. The Board is needed and should be continued.
- B. The Board staff is always very helpful.
- C. The ABC Board should conduct more inspections of liquor establishments.

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

PO BOX 1
JUNEAU, ALASKA 99801
PHONE 475-1111
TELEFAX 475-1111

October 2, 1989

Tom Sutton
Fiscal Analyst
Division of Legislative Finance
P.O. Box WF
Juneau, AK 99811-3300

Dear Mr. Sutton:

Following is our response to your Interim Letter No. 2 dated September 26, 1989 related to a review of the Alcoholic Beverage Control Board.

Recommendation No. 1

The Department of Revenue, Division of Income and Excise Audit Division and the Alcoholic Beverage Control Board (ABC Board) should coordinate more on matters relating to revenue sharing and compare records of liquor license files to ensure that revenues collected for licenses are shared with municipalities in accordance with the law.

The department agrees with your recommendation. I will ensure that staff personnel from both the ABC Board and the Income and Excise Audit Division work closely this year to coordinate on matters relating to revenue sharing of annual license fees collected by the ABC Board.

Although immaterial, I will ensure that Income and Excise Audit Division staff rectify amounts over or undershared with municipalities as pointed out, and that brewery and distillery license fees are shared in the future.

Sincerely,



Hugh Malone
Commissioner

HM:PED:m11
89-212

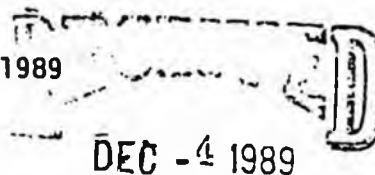
STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

550 W. 7TH AVE
ANCHORAGE, ALASKA 99501-6698

ALCOHOLIC BEVERAGE CONTROL BOARD

December 1, 1989



Mr. Randy S. Welker, Legislative Auditor
P. O. Box W
Juneau, Alaska 99811-3300

**LEGISLATIVE
AUDIT**

RE: Response to audit report, A Performance Report on the Department of Revenue. Alcoholic Beverage Control Board June 30, 1989

Dear Mr. Welker:

Thank you for the courtesy of an opportunity to comment.

The board concurs with the report conclusion that the board is accomplishing its role to serve the public and the public interest. This conclusion is buttressed by the survey results from law enforcement agencies and municipalities in appendixes "D" and "E".

Comments from survey participants indicate a request that the board's investigative staff be increased to expand enforcement efforts and provide for greater presence at licensed premises. Having this support, the board will pursue additional funding for investigators in its FY 91 budget.

The following remarks respond to the specific recommendations:

Recommendation No. 1:

Agree. This issue is being resolved and a separate response will be submitted by the Commissioner of Revenue.

Recommendation No. 2:

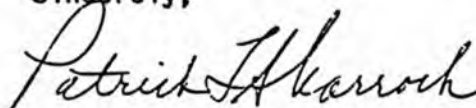
Disagree. Without going into a great deal of background detail, the recommended solution to a perceived problem could cause more difficulty than the situation warrants. In essence, the recommendation questions the board's interpretation/discretion regarding issuance of recreational site licenses.

December 1, 1989
Mr. Randy S. Welker, Legislative Auditor

The Alcoholic Beverage Control Board will discuss the matter upon issuance of the audit report.

If I can provide any additional information or clarification, please do not hesitate to let me know.

Sincerely,



Patrick L. Sharrock
Director, ABC Board
277-8638

PS/cl

cc: Hugh Malone, Commissioner of Revenue
ABC Board Members

DEC 19 1989