

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9625 SENATE LABOR & COMMERCE

APPENDIX G (cont.)

Department of Revenue
Alcoholic Beverage Control Board
Summary of Questionnaires Sent to Licensees

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

Number of Responses:

4 Yes
8 No
1 No response

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

Four respondents stated "yes."

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

Number of Responses:

11 Yes
1 No
1 No response

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

Number of Responses:

2 Yes
9 No
2 No response

If yes, please cite the specific law or regulation and why you believe it is obsolete, vague, unduly restrictive and/or inadequate.

Typical Comments:

New regulations requiring licensees to pay biennial licensing fees.

Do not require licensees to fill out license renewal forms annually. Extend this requirement to every five years unless there have been changes in the licensee's status.

APPENDIX G (cont.)

Department of Revenue
Alcoholic Beverage Control Board
Summary of Questionnaires Sent to Licensees

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

Typical Comments:

Licensed businesses do not need a board to oversee them.

The ABC Board should not be terminated. It should be left as it is.

(Intentionally left blank)

STATE OF ALASKA

DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

WALTER J. HICKEL, GOVERNOR

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

January 28, 1994

Mr. Randy S. Welker
Legislative Auditor
PO Box 113300
Juneau AK 99811-3300

RECEIVED
FEB - 8 1994
LEGISLATIVE AUDIT

Re: Preliminary audit report, Alcoholic Beverage Control Board
Audit Control No. 04-1414-94

Dear Mr. Welker:

Thank you for allowing the board an opportunity to comment on your report.

Similar to the 1989 audit, respondents to the audit survey indicate a need for additional investigator staff. To punctuate this assessment, I am enclosing a recent letter from the mayor of Ketchikan and an editorial from the Fairbanks Daily News Miner.

The following remarks respond to the specific recommendations:

Recommendation No. 1

Partially disagree except as indicated:

Because of the magnitude of alcohol problems and abuse within the state, the board believes that local law enforcement is paramount. Refund of license fees is intended to be an incentive for local enforcement of liquor laws. Even if there is funding from other local, state, or federal sources, that funding should not negate refund of license fees.

The board will recommend to the Commissioner of Revenue that refund of fees be discontinued to two cities that do not provide any form of local enforcement.

The board believes that current statutes are clear. Communities must "actively enforce" alcoholic beverage laws. The board has been guided by one primary standard. That standard is that police departments must

cooperate with requests for assistance from ABC investigators and render reports required under AS 04.21.070. However, the board also believes determination of standards is a prerogative of the legislature.

The board's staff will compare warrant distribution reports from the Income & Excise Audit Division with the board's license revenue report.

Recommendation No. 2

Agree. The board has traditionally relied on inspection of tourist licensed premises by staff investigators to determine if operation continues to encourage tourism and meet other requirements of law. The board will consider developing a questionnaire to be filed with renewal applications by licensees whose license was issued under AS 04.11.400(g).

I compliment your audit staff on their courtesy and professionalism exhibited during the course of this audit. If I can provide additional clarification please do not hesitate to call.

Sincerely,


Patrick L. Sharrock
Director
(907) 277-8638

PLS/akj
enclosures

cc: Darrel Rexwinkel, Department of Revenue, Commissioner
ABC Board Members

City of Ketchikan



334 Front Street
Ketchikan, Alaska 99901
Phone 907-225-3111
Fax 907-225-5075

January 21, 1994

Honorable Walter J. Hickel
Governor, State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Hickel:

At the regular meeting of January 20, 1994, the Council discussed the need for additional Alcoholic Beverage Control investigators. Concern was expressed that there were only four investigators to cover the entire state and none was based in Southeast Alaska.

A motion was passed requesting four additional Alcoholic Beverage Control investigators be hired with at least one being assigned to Southeast Alaska.

Because of increased problems and lack of enforcement, Council recommended that the positions be included in the 1995 budget. Council recognized budget constraints but felt that additional control was needed because of the size of the liquor industry and more investigators would help provide that control.

Thank you for your consideration of this request.

Sincerely,


Alaire E. Stanton
Mayor

cc: Patrick Sharrook, Director, A.B.C. Board
Members, A.B.C. Board
Senator Taylor
Representative Williams
Ketchikan Retail Liquor Dealers Assn.

Hire an alcohol investigator

A Fairbanks resident visited a downtown bar one night over the holidays and reported this situation: Every person there was drunk. Not just tipsy. Roaring drunk.

And the bartenders kept serving, he said. That's illegal, of course, but no one seemed too worried about being busted.

Then we read that arrests for drunk driving were up over this holiday season, despite fewer law enforcement officers on the road. It's a good bet some of those who were arrested had just left bars.

While most bar owners are trying to follow the rules, the incentive to do so withered when the state pulled its Alcohol Beverage Control Board investigator out of Fairbanks several years ago.

Just the presence of such an investigator can make the bar owners and bartenders more cautious, and more caution apparently is needed.

The state currently has three investigators. That's half the number of a few years ago, and all of them are based in Anchorage. The Legislature last year actually approved a fourth position that was to be based in Fairbanks. However, no one was hired immediately and Gov. Walter Hickel's hiring freeze has closed that option for now.

Investigators encourage people to call them in Anchorage because they still can travel here to build cases against bars. It just takes a lot more work and money. They need strong witnesses with solid details.

The better solution would be to ensure that an investigator is hired in Fairbanks.

At the same time, it is difficult for local police and troopers to handle the problem.

In fact, our friend who walked into the bar over the holidays did call the Fairbanks police afterward. He was told that they only had three officers, all uniformed, on duty, and it would be futile to try to bust the bar. If an officer walked into the establishment, the bartenders would stop serving and the police would see no violations, our friend was told.

Such a response is another example of why we need a few more police officers in Fairbanks. Fairbanks Public Safety Director Mike Pulice notes that Fairbanks has about half as many officers as the average city of this size in the nation.

Alcohol abuse is not a problem any law or any amount of funding will eliminate. But we can at least put more effort into combating the commercial exploitation of the malady.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
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February 10, 1994

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

RECEIVED
FEB 10 1994

LEGISLATIVE AUDIT

RE: Preliminary Audit Report
Department of Revenue, Alcoholic Beverage Control Board
December 3, 1993

Dear Mr. Welker:

This is our response to findings and recommendations noted in the above referenced preliminary report with respect to the Income and Excise Audit Division.

Recommendation No. 1

The Department of Revenue (DOR) and the Alcoholic Beverage Control Board (ABCB) should review the liquor license fee sharing program to ensure that it complies with Alaska Statute 04.11.610.

The Department will review the liquor license sharing program to ensure that it complies with AS 04.11.610 taking into consideration criteria for enforcement of local ordinances.

Since 1989, DOR has issued refunds totaling \$119,900 to ten municipalities that do not maintain a local police force.

ABCB will recommend that the Department discontinue sharing to two of the ten communities referenced in this recommendation. The Department will determine whether it will continue to share fees to the eight other communities based on our review of the liquor license sharing program. Maintenance of a local police force is not required by statute for sharing fees.

No standards have been established for the use of the liquor license fee refunds by the municipalities.

Statutes do not provide authority for the Department to establish standards for the use of liquor license fee refunds by municipalities.

Randy S. Welker
February 10, 1994
Page 2 of 2

Recommendation No. 1 (Continued)

The liquor license fee sharing program lacks sufficient controls to ensure that the correct amounts of liquor license fees are refunded to eligible municipalities.

ABCB provides Income and Excise Audit Division a report of amounts to be shared to municipalities. The Department has implemented procedures for ABCB staff to verify refund warrant registers to their records.

If you have any questions or need further information regarding our response, please feel free to contact Larry Meyers, Director, Income and Excise Audit Division at 465-2320.

Sincerely,



Darrel J. Rexwinkel
Commissioner

DJR:ped

cc: Pat Sharrock
Larry Meyers

tpb legaud abc

Audit Report

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

September 8, 1997



Audit Control Number:

04-1452-97

Division of Legislative Audit

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

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

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

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
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September 8, 1997

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

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD

September 8, 1997

Audit Control Number

04-1452-97

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

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



Randy S. Welker, CPA
Legislative Auditor

TABLE OF CONTENTS

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

OBJECTIVES, SCOPE, AND METHODOLOGY

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

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

Objectives

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

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

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

Scope

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

Methodology

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

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

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

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

ORGANIZATION AND FUNCTION

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

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

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

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

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

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

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

Alcoholic Beverage Control Board Members

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

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

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

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

Vacant since January 31, 1997
Public Member Seat

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

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

REPORT CONCLUSIONS

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

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

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

Status of Prior Audit Recommendations

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

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

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

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

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

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

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

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

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

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

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

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

Recommendation No. 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation No. 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AUDITOR'S COMMENTS

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

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

ABC investigates illegal gambling and prostitution

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

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

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

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

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

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

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

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

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

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

Board is considering allowing investigators to carry firearms

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

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

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

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

Police functions could be retained by the Department of Public Safety

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

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

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

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

Don Dapamth -

support SB233; V pd 2 year stronger regis p between

2 boards.

opposed to CS w/ self drive language.

1,755,000 (to support the # of licenses for, not then)

(2) - 0 - 1 gm is drinking/driving

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APPENDICES

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

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

Schedule 1 - Revenue

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

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

(Note 2) Expenditures do not include encumbrances.

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

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

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

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

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

Source of Information: Alcoholic Beverage Control Board

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

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

Source of Information: Alcoholic Beverage Control Board.

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

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

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

Number of Responses:

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

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

Number of Responses:

7 Yes
20 No
3 No response

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

Comments:

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

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

Number of Responses:

4 Yes
12 No
7 No response
7 Not applicable

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

Number of Responses:

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

If no, should local governing bodies be:

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

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

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

Number of Responses:

1 Yes
20 No
10 No response

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

There were no comments.

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

Typical Comments:

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

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

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

Comments:

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

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

The remainder were nonresponsive.

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

Comments:

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

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

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

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

Questionnaires sent: 44

Responses received: 31 (70%)

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

Number of Responses:

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

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

Number of Responses:

24 Complements
2 Duplicates
1 Conflicts
5 None of the above

* One respondent marked two choices

Comments:

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

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

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

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

Number of Responses:

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

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

Number of Responses:

8 Yes
22 No
1 No response provided

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

Typical Comments:

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

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

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

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

Number of Responses:

6 Yes
25 No

If yes, were the sessions informative and worthwhile?

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

If no, have you requested training?

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

Comments included the following:

There is not enough enforcement personnel to provide it.

We did not know that training was available.

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

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

Comments:

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

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

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

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

Typical Comments:

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

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

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

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

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

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

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

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

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

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

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

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

Number of Responses:

27 Yes
10 No
1 Respondent Unsure

Approximate number of inspections by year:

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

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

Number of Responses:

29 Yes
5 No
4 No response

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

Number of Responses:

15 Yes

23 No

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

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

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

Number of Responses:

32 Yes

3 No

3 No response

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

Number of Responses:

13 Yes

19 No

6 No response

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

Typical Comments:

Statutes regarding minors on premises are confusing.

AS 04.16.15 - happy-hour discounts should be allowed.

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

Typical Comments:

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

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

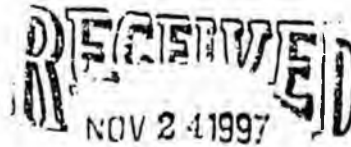
DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

November 21, 1997

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



LEGISLATIVE AUDI-

Ms. Davidson,

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

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

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

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

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

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

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

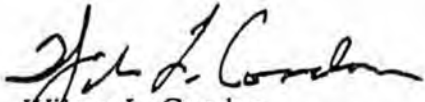
I want to assure you that we have no intention of permitting the ABC investigators to spend a disproportionate amount of time on these activities. We do not intend to create a vice squad at the ABC Board. Their mission continues to be to investigate and enforce the provisions of Title 4. But it seems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

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

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

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

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



Wilson L. Condon
Commissioner

CERTIFICATE OF COMMISSION
AS
SPECIAL OFFICER

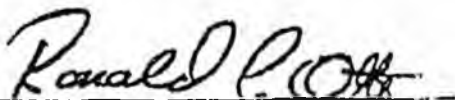
Pursuant to the authority vested in me under AS 18.65.010, I, Ronald L. Otte, Commissioner of Public Safety of the State of Alaska, do appoint William R. Roche as a Limited Special Officer.

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

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

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

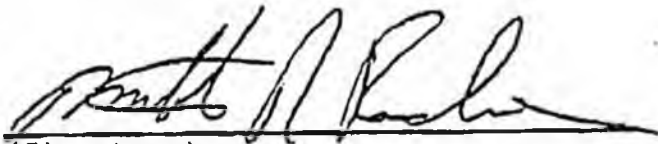
In witness hereto, I have set my hand this 9th day of September, nineteen-hundred and ninety-seven.


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

CONSTITUTIONAL OATH OF OFFICE

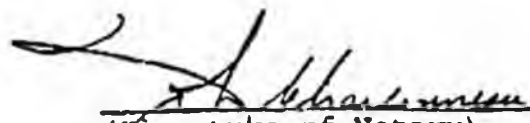
"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as Special Officer of the Alaska Department of Public Safety to the best of my ability."

Date: 9/15/97


(Signature)

William R. Roche
(Typed Signature)

WITNESSED BEFORE ME THIS 15 DAY OF September
1997.


(Signature of Notary)

My Commission expires: 2-7-98

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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF REVENUE

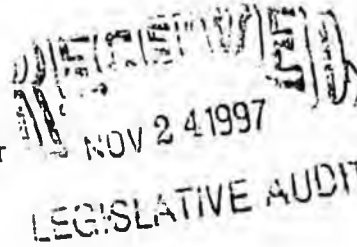
ALCOHOLIC BEVERAGE CONTROL BOARD

550 W. 7TH AVENUE, STE. 350

Anchorage, Alaska 99501-6698

Phone 907-277-8638

FAX: 907-272-9412



November 20, 1997

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

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

Dear Mr. Welker:

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

REPORT CONCLUSIONS

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

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

RECOMMENDATION No. 1

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

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

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

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

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

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

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

RECOMMENDATION No. 2

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

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

RECOMMENDATION No. 3

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

ANALYSIS OF PUBLIC NEED

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

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

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

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

AUDITOR'S COMMENTS

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

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

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

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

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

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

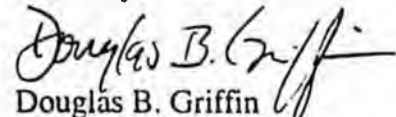
The ABC Board is requiring its investigators to do more. There is too much to do and too few resources. Your audit acknowledges this situation. The ABC Board is attempting to do more with less to address the pressing needs of the public. The board is unwillingly to pass the buck or lamely explain to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

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

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

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

Sincerely,


Douglas B. Griffin
Director

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

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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Juneau, AK 99811-3300
(907) 465-3830
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legaudit@legis.state.ak.us

December 2, 1997

Members of the Legislative Budget
and Audit Committee:

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

Recommendation No. 1

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

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

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

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

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

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

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

Analysis of Public Need

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

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

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

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

² See the table on page 15 of the report.

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

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

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

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

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

Auditor's Comments

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

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

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

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

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

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

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

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

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

Pat Davidson, CPA

Pat Davidson, CPA
Acting Legislative Auditor

class city dictated so much about how the city would work. Over the past decade, several villages in western Alaska disbanded their municipal governments in favor of tribal control.

Dozens of other rural communities never incorporated and the tribal councils there remain the only form of local government.

Fischer said the panel should look at expanding the options open to the villages.

"The state constitution can be interpreted and applied so as to deal with the realities in the villages rather than forcing villages to become Western-type governments," he said.

Others propose tribes take on more duties by state contract.

Heather Kendall-Miller, the attorney who represented Venetie at the Supreme Court, said the need for more rural law enforcement could be solved through state-tribal compacts in which the tribe might enforce both state law and tribal law.

Tribes already contract with the state and federal governments to perform many government functions and those are good models to follow, said Mike Irwin, commissioner of Community and Regional Affairs. The point, he said, is for local government to spring from the culture and the residents.

"To me, it's about who's really in control of the decision-making in the community," he said.

*

BAR'S OFFERING LEAVES BAD TASTE WITH ASSEMBLY

By TOM BELL

Daily News reporter

The day after Assembly member Dan Kendall voted against proposed restrictions on a downtown bar's liquor license, the bar's attorney held a fund-raiser at his home and gave Kendall a \$500 campaign contribution from the bar's general manager.

The contribution was legal, but several Assembly members said Kendall should have returned the donation from The Hub bar because it gives the appearance that special interests can buy votes on the Assembly.

Kendall said that the fund-raiser at lawyer Dan Coffey's home on Oct 29 had been planned for weeks ahead of time and that it was just a coincidence it happened the day after the vote.

The event raised more than \$7,500 for Kendall's campaign, including about \$2,050 from people in the liquor industry.

"It does look funny, I agree," Kendall said. "But my record on the liquor industry is the same and has been consistent all along. I haven't changed."

Coffey, who has other clients in the liquor industry, said he held the fund-raiser for Kendall because he agrees with his political philosophy and wanted to support his campaign. He said he didn't expect the money would buy Kendall's vote because Kendall is honest.

"If a guy is going to take contributions in exchange for votes and he has any political acumen, he will do it in a way so there is no political connection," Coffey said.

He added, "I suppose you can make a story about it if you want and smear the guy, but there is no evil intent here."

The contributions from The Hub's general manager and from Coffey were listed on Kendall's campaign disclosure statement for 1997, which was due at the Alaska Public Office Commission last week. Kendall reported receiving \$18,824 in 1997.

The 515 Club, another downtown bar, gave Kendall \$500. The Assembly last month voted to protest the 515 Club's liquor license. Kendall and two other Assembly members voted in the club's favor.

Assembly member Kevin Meyer said it makes sense for the liquor industry to give Kendall donations because he has treated the industry fairly. Assembly member Pat Abney said the timing of the fund-raiser and the Assembly's decision was a coincidence.

Assembly member Bob Bell agreed.

"Of all the people on the Assembly, Dan Kendall has the highest integrity," said Bell, who gave Kendall a \$225 check at the fund-raiser.

But five Assembly members interviewed said they would have returned The Hub's check.

"Whether he returns it or not depends on his conscience," said Assembly member Fay Von Gemmingen. "Had I received it, I would have returned it. To the average person, it looks wrong."

Von Gemmingen said she returned two checks in 1996, one from Veco and one from an Allvest employee, because the Assembly was going to vote on a zoning issue that would have allowed a private prison to be built. Allvest and Veco were partners in the prison project.

Assembly member George Wuerch also said he would have returned The Hub's check because it would have looked bad to the public.

"The timing was altogether wrong," Wuerch said.

Assembly Chairman Mark Begich said the city's legal staff has told Assembly members that they act in a quasi-judicial manner when deciding whether to protest liquor licenses to the state Alcohol Beverage Control Board. He said Assembly members shouldn't even talk to liquor license owners who have issues pending before the Assembly, let alone take money from them.

He said Kendall's behavior "taints" the entire Assembly. "It raises the question of whose business the Assembly is really doing -- the public's or special interests?"

Assembly member Cheryl Clementson said Thursday she was angry when she found out that Kendall had received donations from The Hub and the 515 Club.

"The public is not allowed to talk with the Assembly about their concerns" on quasi-judicial matters, she said. "However, a bar owner can get their attention and give them a \$500 check, and it doesn't become public for many months. There is something wrong with that process."

On Oct. 28, the Assembly took up a proposal by Assembly member Charles Wohlforth to put The Hub -- a Fourth Avenue bar criticized for serving intoxicated patrons -- on probation. The measure failed by an 8-3 vote. Kendall said Thursday he voted against

Wohlforth's proposal because the bar's managers had been making good-faith efforts to obey liquor laws. He also said he thinks putting special rules on one bar and not others wouldn't be fair. Only Begich and Clementson voted with Wohlforth.

On Jan 27, when the Assembly voted to protest the liquor license of the 515 Club, Kendall, Bell and Abney voted against it.

Kendall was the only Assembly member who received a contribution from The Hub in 1997, according to APOC reports. The bar's general manager, Bonnie Watson, said she had planned to give checks to other candidates once the campaigns picked up.

Watson said Assembly members don't give anything in return for donations.

"You don't get anything," she said. "You hope they give you a little respect when they start making decisions, a little favor or something."

She said that the bar's owner, Norman Dahl, owns a lot of real estate, not just The Hub, and that he has the right to give money to candidates just like anyone else.

Wohlforth said Kendall had plenty of warning that his resolution about The Hub was coming before the board. Wohlforth said he first began talking to the Assembly about The Hub in August, and his resolution was first scheduled on Sept. 30. It was then delayed twice.

The liquor industry is one of the biggest contributors to Assembly candidates, Wohlforth said, and all that money has affected the Assembly's "unwillingness to deal with alcohol problems."

"Usually it's not so blatant," he said.

*

NORTH'S LOSS WOULD BE CITIES' GAIN SCHOOL FUNDING BILL ANALYZED

By PAUL QUEARY

The Associated Press

JUNEAU -- A proposed overhaul of Alaska's school funding system would eliminate state support for the North Slope Borough and give Anchorage \$6 million more next year, according to a Department of Education analysis.

The bill's sponsor, Sen. Randy Phillips, R-Anchorage, wants the system changed because Anchorage only gets about 30 percent of the state's education money even though it has about 40 percent of the students.

"We believe that the school foundation formula is broken," Phillips said. "Some of the taxpaying districts are not paying their share of the costs. There are unorganized areas that are not paying anything."

The bill would cut state funding for many rural districts. Some districts would have to cut spending or raise local taxes. In areas that don't support their schools, a new 4 percent payroll tax would be imposed. The new tax would generate about \$15 million to \$18 million, said deputy commissioner of education Rick Cross.

By DON HUNTER

Daily News reporter

When the dust settled at the end of a long and argumentative Anchorage Assembly meeting Tuesday night, the owners of two local bars faced the prospect of losing their respective state liquor licenses; another bar will have to close a half-hour early; and a fourth escaped at the midnight hour.

Under city law, the Assembly cannot take action between the hours of midnight and 7 a.m. The panel was debating new operating rules for The Raven when the midnight curfew cut the discussion short. The Assembly could have continued the debate by calling a special meeting later in the week, but as of Wednesday had not done so.

The Assembly held the hearings on the four bars after getting reports of liquor law violations from state inspectors and city police, and complaints from community groups.

While the nine Assembly members present Tuesday voted unanimously to oppose allowing the South Seas Lounge in Spenard to continue operating, a bare six-vote majority voted to ask the state to lift the license for the 515 Club in downtown Anchorage.

Assemblyman Dan Kendall and others said the 515's performance has improved since its licence was last renewed in 1996. The Assembly has refused to take action against other bars with worse records, like The Hub, farther east on Fourth Avenue.

After nearly five hours of public hearings Tuesday night, here's the tally:

-- By a 6-3 vote, the Assembly voted to "protest the continued operation" of the 515 Club. The prevailing members pointed to police reports that said officers had found the bar serving intoxicated people three times in the third quarter of 1997. Prosecutors declined to pursue two of the cases, and bar owner Paulette Hout said videotapes do not support the officers' accounts.

-- The nine members present voted unanimously for a similar protest of a liquor license for the South Seas Lounge. Neighboring business owners and Spenard Community Council owners called the bar a magnet for the street prostitution that flourishes in the area, but South Seas owner Hyun Ju Song and her attorney said the bar keeps prostitutes out and has tried to discourage them from doing business in the neighborhood. Attorney Michael White said he felt "ambushed" because two Assembly members backed away from an agreement White said they had reached last Friday.

-- The Assembly decided not to protest the license for the Captain's Club in Midtown, but required the owners to close a half-hour early and limited the number of employees that can be on the premises after hours. Police and state liquor investigators cited the bar twice last summer for staying open a half-hour past closing time.

The Assembly's decisions will go to the state Alcoholic Beverage Control Board. Director Doug Griffin said the ABC Board will consider taking away the licenses when it meets in Anchorage in April.

"These are serious matters, and this will allow the people affected to address the board face to face," he said.

If the owners of the South Seas and the 515 are unable to convince the ABC board to ignore the Assembly's recommendations, both cases likely will end up in court.

White, the South Seas' attorney, told Assembly members Tuesday they were violating his client's rights, and the owners of the 515 sued two years ago when the Assembly voted to oppose renewal of that license in 1996. It later backed off on that protest.

White complained that Assembly members Joe Murdy and Faye Von Gemmingen and Spenard Community Council members had reneged on a deal in which the Assembly would have imposed stronger operating restrictions on the bar but allowed it to continue to operate. White said he didn't learn the deal was off until he got to the meeting Tuesday.

Murdy and other members said they changed their minds after Spenard council member Tom McGrath discovered state investigators had leveled more recent liquor law violations against the bar.

The luckiest bar owner in the room Tuesday was Raven owner Larry Kaiser, who sat through hours of often acrimonious public testimony and questioning of other bar owners, and ended the evening walking away with no opposition to his license or any new conditions on its operation.

By the time the Assembly completed action on the 515, less than 15 minutes remained before the midnight deadline. Several slipped past while Assembly member Charles Wohlforth and Kaiser's attorney, Dan Coffey, discussed conditions.

The Raven had recorded only two violations in 18 years, according to Coffey, and Kendall questioned why the panel was calling them on the carpet at all.

"I don't know why they're here before us," Kendall said.

*

GOVERNOR, MAYOR PITCH PRISON PLANS

By ROBERT KOWALSKI

Daily News Juneau Bureau

JUNEAU -- Anchorage's Sixth Avenue Correctional Center would be replaced and new or upgraded prisons would be built in Sutton and Bethel under an \$88.5 million lock-up plan Gov. Tony Knowles proposed to the Legislature on Wednesday.

The plan would add 670 beds to the state's Correctional capacity and begin to address the state's prison overcrowding problem, Knowles said.

Meanwhile, Anchorage Mayor Rick Mystrom, who was in Juneau with mayors from other Alaska cities to meet with legislators, lobbied lawmakers for support for his own proposal. It calls for replacing the 35-year-old city jail by 2000 -- two years earlier than the governor's target.

Legislators said they would consider both those plans along with a recently announced proposal by a private firm to convert part of the Fort Greely Army post near Delta Junction into an 800-

not conclusive," he said.

The deaths are the second and third fire fatalities in Alaska so far this year, Nicoletto said.

The two Williams children attended Hermon Hutchins Elementary School. Counselors visited the school Wednesday to help classmates and others deal with the tragedy, Blackburn said.

**

OPINION SECTION:

*

PROBLEM BARS

ASSEMBLY TAKES SOLID FIRST STEP

By Daily News editorial staff

While the Anchorage Assembly is making some progress in its handling of problem bars, recent events show that more needs to be done.

Every January the nonpartisan governing body reviews state-regulated local liquor licenses that are up for renewal. If the city protests a renewal to the state, that action can easily spell doom for the license holder. But as bar owners in town well know, almost every review is approved, even when legitimate concerns are placed on the table.

In a welcome break with tradition, the Assembly voted Tuesday to ask the state to revoke the alcohol license of two bars. It also imposed sanctions on another. If they're not followed, the Assembly says it will ask the state to revoke the bar's license.

If law and order, and not booze and lawlessness, are to be upheld as community values by the Assembly, then bar owners who break laws must suffer consequences. Otherwise, they're profiting at the expense of law-abiding citizens and tavern owners when they and their employees thumb their noses at the rules.

How can license reviews be made easier for all involved? Assembly members can -- and should -- write clear ground rules for how the license-review process will be handled. Fortunately, a foundation has been laid here.

Assembly member Charles Wohlforth authored a plan several months ago for Assembly members to use when they're debating license-renewal requests. The rules would allow for placing a problem bar on probation as one tool. Only three members supported the idea at the time, but now Assembly Chairman Mark Begich says, "I think the timing may be appropriate" to revisit the Wohlforth plan.

As this year's messy review work showed, it's a difficult and emotional time for the Assembly and bar owners because the stakes -- centered on licenses worth \$150,000 -- are so high. To take some of the uncertainty out of the process, make rules that are fair and clear, and then stick by them.

*

GEORGE JACKO

PO Box 196650, Anchorage, AK 99519-6650
907 343-4313(fax) 343-4376 (voice)

**MUNICIPALITY OF
ANCHORAGE**

MAR 09 1998

Fax

To: Annetta Kreitzer, Aide to Senate Labor & Commerce Committee

From: Vickie Cantrell, Deputy Clerk *VC*

Fax: 465-3810

Pages: pages *3*

Phone: 343-4376 FAX 343-4313

Date: March 9, 1998

Re: 3/10, 1:30 ABC extension bill hearing

CC: Assembly Members

Urgent For Review Please Comment Please Reply Please Recycle

• **Comments:**

Thank you for the hearing notice regarding the Alcohol Beverage and Control Board extension bill tomorrow at 1:30 p.m. I understand that the hearing can be attended by teleconference at the Anchorage Legislative Information Office.

Unfortunately, the Anchorage Assembly has a full schedule of meetings on Tuesday beginning at 10:30 a.m. However, on February 24, the Assembly passed AR 98-64 (attached) supporting SB 233 extending the termination date of the ABC Board.

At this time I am not sure a representative of the Assembly or an Assembly member will attend the hearing tomorrow.

We appreciate the Senate Labor and Commerce Committee advising the Assembly about relevant ABC legislation.

vc

Alaska State Legislature

Senate



Official Business

State Capitol
Juneau, AK. 99801-1182

Senate Labor & Commerce Committee

Memo

TO: Vickie Cantrell, Deputy Clerk
Municipality of Anchorage
via fax: (907) 343-4313 this page only

FROM: Annette Kreitzer, Aide to
Senate Labor & Commerce Committee
PH: 465-3844; Fax: 465-3810

DATE: March 9, 1998

RE: ABC Board Hearing

The Committee has rescheduled the Alcohol, Beverage and Control Board extension bill hearing to 1:30 p.m. Tuesday, March 10. The Anchorage Legislative Information Office is available (and scheduled) for testimony by teleconference. Would you please advise the Assembly members, so that they or a representative of the body could be available to provide testimony regarding Anchorage's working relationship with the ABC Board?

Thanks for your assistance. Please call me if you need further information, have questions, or want to confirm their testimony.

Alaska State Legislature

Senate



Official Business

Senate Labor & Commerce Committee

State Capitol
Juneau, AK. 99801-1182

Memo

TO: Vickie Cantrell, Deputy Clerk
Municipality of Anchorage
via fax: (907)343-4313 this page only

FROM: Annette Kreitzer, Aide to
Senate Labor & Commerce Committee
PH: 465-3844 Fax: 465-3810

DATE: February 24, 1998

RE: Cancellation of hearing on ABC Board

I have just been advised that our meeting for Thursday, February 26 has been canceled due to a special Senate Caucus meeting. We will reschedule the hearing, and will plan to again invite the Assembly members to testify. I can't tell you today when that would be, but I will give several days notice.

Could you please pass this message on to Doug Griffin, Director of the ABC Board, since he is in your work session today? Thank you very much.

STATE OF ALASKA
Boards and Commissions

ALCOHOLIC BEVERAGE CONTROL

BOARD: Alcoholic Beverage Control Board

BOARD IDENTIFICATION NUMBER: 003

DEPARTMENT: DEPARTMENT OF REVENUE

AUTHORITY: AS 04.06.010

STATUS: Active

SUNSET DATE: June 30, 1998

REQUIREMENTS: Legislative Confirmation, Financial Disclosure

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

TERM: 3 years

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

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

CHAIR: Board selects chair.

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

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Douglas B. Griffin, Director, Alcoholic Beverage Control Board, DOR, 550 West Seventh Avenue, Suite 350 M/S 0400, Anchorage, AK, 99501, Phone: 907 277 8638, Fax: 907 272 9412

STATE OF ALASKA
Boards and Commissions

Membership Roster
ALCOHOLIC BEVERAGE CONTROL (003)

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

S B

2 3 5

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 235

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act extending the termination date of the Board BRU: Occupational Licensing
of Certified Real Estate Appraisers Component: Operations
 Sponsor: Senate Labor and Commerce
 Requestor: Senate Labor and Commerce COMPONENT SERIAL NO. 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES						
---------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY 98) cost: \$ 35.5

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB 235 extends the Board of Certified Real Estate Appraisers to June 30, 2002. Funding for continuation of the board in the amount of \$35.5 is included in the department's FY 99 operating budget request; therefore, new funds are not needed. The program is required to cover its costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs.

Prepared by: Jennifer Strickler, Administrative Manager
 Division: Occupational Licensing
 Approved by Commissioner: Deborah B. Sedwick
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 1/23/98
 Date: 1-26-98

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/14/98

FURTHER: Finance

Date of 5-Day Notice: 1-22-98
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2-10-98

Labor and Commerce Committee considered

SENATE BILL NO. 235

"An Act extending the termination date of the Board of Certified Real Estate Appraisers."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>					
<i>Mike Miller</i>	✓				
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>Dept of Commerce</i>	<i>1/22/98</i>	✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Notes re:
SB 235: Real Estate Appraisers

- At request of L&C Chairman, bills introduced for Boards/Commissions sunsetting in 1998 and any in their wind-down year for the purpose of discussion
- Board of Certified Real Estate Appraisers created in 1990 after enactment of the Financial Institutions Reform, Recovery, and Enforcement Act guidelines of 1989, which required all appraisals in connection with federally related transactions to be performed by state licensed or state certified appraisers.
- The impetus for the federal legislation was the savings and loan crises.
- Board Composition:
 - General Real Estate Appraiser
 - Residential Real Estate Appraiser
 - Executive in a Mortgage Banking Entity (
 - Public Member
- Board Concerns:
 - 1) Make registered trainees mandatory. AS 08.87.310(a) change "may" to "shall"

Only 5 certified trainees in the state; lots of appraisal assistants. Committee considered, but Board did not show cause. Chairman expressed his opinion that CREA's must exercise "reasonable diligence" in developing, preparing and signing off on an appraisal. He compared this to the engineering profession, where professional engineers sign off on plans. It is incumbent upon the person with the professional license to bear the burden of liability. If a CREA does not act prudently, that person could be subject to a civil fine not to exceed \$5,000 (AS 08.01.075)
 - 2) Mandatory Certification for all Appraisers:

(Currently certification only required for appraisers doing federal appraisals). Committee considered, asked for more information, none provided.
 - 3) Increase CEU's to over 40 hours. (AS 08.87.020(3)) requires that the Board not exceed federal minimums. Committee considered, asked for more information, none provided

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 195 | _____

Revision Date (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>An Act relating to common law liens, to remedies,</u>	BRU <u>Criminal Division/Civil Division</u>
<u>costs, and fees imposed for the registration, filing or recording ...</u>	Component <u>1st-4th Jud Dist., OSPA; Collections</u>
Sponsor <u>Senate Rules Committee</u>	<u>& Support, Gov't Affairs, Special Lit.</u>
Requester <u>Senate Labor and Commerce Committee</u>	Component Serial No. <u>2198-99, 2261, 79, 01, 03;</u>

Expenditures/Revenues	(Thousands of Dollars)					2210, 2207, 2213
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 195 makes it easier, and faster, to remove a nonconsensual common law lien against the personal property of a public servant that was not filed accompanied by a specific court order. In addition, a person filing such a lien would be liable for actual and punitive damages, as well as cost and reasonable attorneys fees. Criminal penalties for offering a false instrument for recording are created by this bill.

If the nonconsensual lien was filed against the property of a public servant employed by the Executive or Judicial Branch based on their performance or nonperformance of their duties, the Department of Law would represent them. Unless someone were to file wholesale liens against many public servants at once, as has happened in Montana and Texas, the department believes the effect of the bill to be minimal and is not submitting a fiscal note with costs.

Prepared by	<u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone	<u>465-5370</u>
Division	<u>Attorney General's Office</u>	Date	<u>1/26/98</u>
Approved by Commissioner	<u>Bruce M. Botelho, Attorney General</u>	Date	<u>1/26/98</u>
Agency	<u>Department of Law</u>		

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(5) "psychologist" means a person who practices psychology;

(6) "to practice psychology" means to render or offer to render for a fee to individuals, groups, organizations, or the public for the diagnosis, prevention, treatment, or amelioration of psychological problems and emotional and mental disorders of individuals or groups or for conducting research on human behavior, a psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, including

(A) the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships;

(B) the methods and procedures of interviewing, counseling, psychotherapy, biofeedback, behavior modification, and hypnosis;

(C) constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations. (§ 1 ch 136 SLA 1967; am §§ 12, 13 ch 65 SLA 1973; am § 55 ch 218 SLA 1976; am §§ 18 — 20, 22, 24 ch 58 SLA 1980; am § 6 ch 29 SLA 1983; am § 9 ch 63 SLA 1986; am § 10 ch 51 SLA 1996)

Revisor's notes. — Reorganized in 1987 to alphabetize the defined terms.

Effect of amendments. — The 1996 amendment, effective September 4, 1996, in paragraph (4), deleted

"specific" following "who renders" and "in association with a licensed psychologist" following "psychological services."

NOTES TO DECISIONS

Applied in *Allred v. State*, 554 P.2d 411 (Alaska 1976).

Chapter 87. Real Estate Appraisers.

Article

1. Board of Certified Real Estate Appraisers (§§ 08.87.010, 08.87.020)
2. Certification (§§ 08.87.100 — 08.87.120)
3. Prohibited Practices and Disciplinary Proceedings (§§ 08.87.200, 08.87.210)
4. General Provisions (§§ 08.87.300 — 08.87.900)

Article 1. Board of Certified Real Estate Appraisers.

Section

10. Board created
20. Powers and duties of board

Sec. 08.87.010. Board created. There is created in the Department of Commerce and Economic Development the Board of Certified Real Estate Appraisers. The board is composed of five members appointed by the governor. At least one member shall be a person licensed under this chapter as a general real estate appraiser, at least one member shall be a person licensed under this chapter as a residential real estate appraiser, at least one member shall be an executive in a mortgage banking entity, and at least one member shall represent the public. The board shall elect a chair from among its membership. (§ 1 ch 177 SLA 1990)

Cross references. — For qualifications of members of initial board, see § 5, ch. 177, SLA 1990 in the Temporary and Special Acts.

Sec. 08.87.020. Powers and duties of board. In addition to the powers and duties conferred on the board by AS 08.01, the board shall

(1) establish the examination specifications for certification as a general real estate appraiser, as a residential real estate appraiser, and as an institutional real estate appraiser;

(2) adopt rules of professional conduct to establish and maintain a high standard of integrity in the real estate appraisal profession; and

(3) adopt regulations necessary to carry out the purposes of this chapter, including regulations necessary to comply with the requirements of 12 U.S.C. 3331 — 3351 (Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989); the regulations adopted by the board under AS 08.87.110, 08.87.120, and 08.87.310 may not be more stringent than the corresponding minimum requirements for receiving approval of the state's program of certification of real estate appraisers under 12 U.S.C. 3331 — 3351 or other federal law. (§ 1 ch 177 SLA 1990; am § 1 ch 42 SLA 1992; am § 2 ch 88 SLA 1994)

Effect of amendments. — The 1992 amendment, effective September 1, 1992, added “, and as an institutional real estate appraiser” to the end of paragraph (1) and made a related stylistic change. The 1994 amendment, effective September 4, 1994, rewrote paragraph (3).

Article 2. Certification.

Section

100. Certificate required
110. General, residential, and institutional real estate appraiser certificates

Section

120. Continuing education requirements for renewal of certificate

Sec. 08.87.100. Certificate required. A person is guilty of a class B misdemeanor who

(1) does not hold a certificate issued by the board, whose certificate is suspended or revoked, or whose certificate has lapsed or terminated, and holds out as a certified real estate appraiser in any way, orally or in writing, directly or by implication;

(2) is certified as a residential real estate appraiser and holds out as certified to appraise real estate other than

(A) residential real property of four or fewer units; or

(B) residential real property of 12 or fewer units when a net income capitalization analysis is not required by the terms of the appraisal assignment and a secondary mortgage market form is used; or

(3) is certified as an institutional real estate appraiser and

(A) holds out as certified to appraise real estate other than

(i) residential real property of four or fewer units having a transaction value of less than \$1,000,000; or

(ii) commercial property having a transaction value of less than \$250,000

(B) holds out as performing real estate appraisal services for a fee or for the public at large;

(C) accepts a fee for real estate appraisal services other than for services conducted as a full-time employee of a financial institution with offices in the state and other than a salary received as a full-time employee of the financial institution; or

(D) performs a real estate appraisal for other than the portfolio of the financial institution for which the person is employed. (§ 1 ch 177 SLA 1990; am § 2 ch 42 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, inserted “or terminated” in paragraph (1), added paragraph (3), and made related stylistic changes.

Sec. 08.87.110. General, residential, and institutional real estate appraiser certificates. (a) The board shall issue a general real estate appraiser certificate to a person who presents evidence satisfactory to the board that the person

(1) has successfully completed classroom instruction in subjects related to real estate appraisal, as required by the board in regulation, from an appraisal organization or academic institution approved by the board;

(2) has successfully completed classroom instruction related to standards of professional practice as a real estate appraiser, as required by the board in regulation;

(3) successfully completes an examination prescribed by the board;

(4) has not been convicted of a crime involving moral turpitude; and

(5) has paid the required fees.

(b) The board shall issue a residential real estate appraiser certificate to a person who presents evidence satisfactory to the board that the person

(1) meets the requirements of (a)(2) — (5) of this section; and

(2) has successfully completed classroom instruction in subjects related to residential real estate appraisal, as required by the board in regulation, from an appraisal organization or academic institution approved by the board.

(c) Notwithstanding (a) and (b) of this section, the board shall, without requiring the examination specified in (a)(3) of this section, issue a general real estate appraiser or residential real estate appraiser certificate to a person who can, by evidence satisfactory to the board, show that the person

(1) has been certified in another state that has certification requirements substantially equivalent to the requirements established by this chapter and by regulations issued by the board under this chapter, and that provides for certification of nonresidents under conditions similar to those set out in this subsection and without discriminatory costs;

(2) is not the subject of an unresolved complaint or disciplinary action before an authority regulating real estate appraisers or a professional real estate appraisers' association;

(3) has not failed the examination for certification as a real estate appraiser in this state;

(4) has not had certification as a real estate appraiser revoked or suspended in this state or in another jurisdiction;

(5) has submitted proof of continued competency satisfactory to the board;

(6) successfully completes an examination that may be prescribed by the board relating to appraisal matters unique to Alaska; and

(7) has paid the required fees.

(d) A certificate may be issued to a natural person only. A certified real estate appraiser may sign an appraisal report on behalf of a corporation, partnership, firm, or group practice.

(e) The board shall issue an institutional real estate appraiser certificate to a person who presents evidence satisfactory to the board that the person meets the educational and testing requirements of 12 U.S.C. 3331 — 3351 (Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989) as implemented by the board and that the person is a full-time employee of a financial institution with offices in the state. A person receiving certification under this subsection may perform an appraisal only

(1) for and as an employee of a financial institution with offices in the state;

(2) for the financial institution's own portfolio; and

(3) of

(A) commercial property with a transaction value of less than \$250,000; or

(B) residential property of four or fewer units having a transaction value of less than \$1,000,000.

(f) A certificate issued under (e) of this section terminates when the person certified leaves the full-time employment of the financial institution with offices in the state for whom the person was employed when the certificate was issued.

(g) A person certified under (e) of this section as an institutional real estate appraiser may not perform real estate appraisal services for the general public or for a fee other

than the salary the person receives as a full-time employee of a financial institution with offices in the state. (§ 1 ch 177 SLA 1990; am §§ 3, 4 ch 42 SLA 1992; am §§ 3 — 5 ch 88 SLA 1994)

Effect of amendments. — The 1992 amendment, effective September 1, 1992, rewrote subsection (c) and added subsections (f) and (g).

The 1994 amendment, effective September 4, 1994, inserted ", as required by the board in regulation," in paragraphs (a)(1), (a)(2), and (b)(2); in subsection (a), substituted "completed classroom instruction" for "completed 150 or more classroom hours of instruction" in paragraph (1), substituted "completed classroom instruction" for "completed 15 classroom hours of instruction" in paragraph (2), deleted former para-

graph (3), relating to real property appraisal experience, and redesignated former paragraphs (4)-(6) as present paragraphs (3)-(5); in subsection (b), made an internal reference substitution in paragraph (1), deleted "60 hours of" preceding "classroom instruction" in paragraph (2), deleted paragraph (3), relating to real property appraisal experience, and made related stylistic changes; and, in subsection (c), made an internal reference substitution in the introductory language.

Sec. 08.87.120. Continuing education requirements for renewal of certificate.

(a) The board may not renew a certificate issued under this chapter unless the person applying for renewal presents evidence satisfactory to the board that the person has, within the two years preceding the application for renewal, attended classroom instruction, as required by the board in regulation, in courses or seminars that have received the approval of the board.

(b) The board may grant credit toward some or all of the requirements of (a) of this section to a person who has

(1) successfully completed a program of study determined by the board to be equivalent for continuing education purposes to a course or seminar approved by the board for continuing education credit; or

(2) participated, other than as a student, in educational programs that related to real estate analysis or real property appraisal theory, practice, or technique, including teaching, program development, and preparation of textbooks, monographs, articles, and other instructional materials.

(c) The board shall adopt regulations on continuing education to ensure that persons applying for renewal of certificates have thorough knowledge of current theories, practices, and techniques of real estate analysis and appraisal. The regulations must provide for

(1) procedures for the sponsor of a course or seminar to apply for board approval for continuing education credit; the regulations must require the sponsor to show that claimed attendance at a course or seminar can be verified; and

(2) procedures for evaluating equivalency claims for applicants for certificate renewal under (b) of this section.

(d) In considering whether to approve courses and seminars under this section, the board shall give special consideration to courses, seminars, and other appraisal education programs developed by or under the auspices of organizations or associations of professional real estate appraisers that are utilized by those organizations or associations for the purposes of awarding real estate appraisal designations or of indicating compliance with the continuing education requirements of the organizations or associations.

(e) An amendment or repeal of a regulation adopted by the board under this section shall not operate to deprive a person holding a certificate under this chapter of credit toward renewal of the person's certificate for a course of instruction or seminar that had been completed by the person before the amendment or repeal of the regulation. (§ 1 ch 177 SLA 1990; am § 6 ch 88 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 4, 1994, substituted "attended classroom instruction, as required by the board in

regulation," for "attended 40 classroom hours of instruction" in subsection (a).

Article 3. Prohibited Practices and Disciplinary Proceedings.

Section

200. Prohibited practices
210. Disciplinary proceedings

Sec. 08.87.200. Prohibited practices. A certified real estate appraiser may not

(1) act negligently or incompetently or fail without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(2) wilfully disregard or violate a provision of this chapter or of a regulation adopted by the board under this chapter;

(3) fail to comply with the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation;

(4) accept a fee for an appraisal assignment that is contingent upon the appraiser reporting a predetermined estimate, analysis, or opinion or upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment;

(5) knowingly make a false statement, submit false information, or fail to provide complete information in response to a question in an application for certification or for renewal of a certificate; or

(6) violate the confidential nature of government records to which the person gains access through retention as an appraiser by the government agency. (§ 1 ch 177 SLA 1990)

Sec. 08.87.210. Disciplinary proceedings. The board may exercise its disciplinary powers under AS 08.01.075 if, after hearing, the board finds a certified real estate appraiser has

(1) violated a provision of this chapter or a regulation adopted by the board under this chapter;

(2) been convicted of a crime that involves moral turpitude; or

(3) committed, while acting as a real estate appraiser, an act or omission involving dishonesty, fraud, or misrepresentation with the intent to benefit the appraiser or another person or to injure another person. (§ 1 ch 177 SLA 1990)

Article 4. General Provisions.

Section

300. Retention of records
310. Registered trainees
320. Actions by uncertified real estate appraisers prohibited

Section

330. Exemptions
340. Appraisals by uncertified appraisers permitted
900. Definitions

Sec. 08.87.300. Retention of records. (a) A certified real estate appraiser shall retain for not less than three years copies of all written contracts engaging the appraiser's services for real property appraisal work, and all reports and supporting data assembled and formulated by the appraiser in preparing the reports.

(b) The three-year period specified in (a) of this section for retention of records is applicable to each engagement of the services of the appraiser and commences upon the date of the submittal of the appraisal reports to the client unless, within the three-year period, the appraiser is notified that the appraisal report is involved in litigation, in which case the three-year retention period commences upon the date of the final disposition of the litigation.

(c) All records that a certified appraiser must maintain under (a) of this section shall be made available to the board or department for inspection and copying upon reasonable notice to the appraiser. (§ 1 ch 177 SLA 1990)

Sec. 08.87.310. Registered trainees. (a) A person engaged in the practice of real estate appraisal who is employed by or under the direct supervision of a certified real estate appraiser may become a registered trainee by submitting proof to the board that the person has successfully completed the number of classroom hours required by the board in regulation of courses in subjects related to real estate appraisal from an appraisal organization or academic institution approved by the board.

(b) A registered trainee may prepare or assist in the preparation of an appraisal report issued by a certified real estate appraiser if the report is also signed by the certified real estate appraiser and if the certified real estate appraiser accepts full responsibility for the report. (§ 1 ch 177 SLA 1990; am § 7 ch 88 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 4, 1994, substituted “completed the number of classroom hours required by the board in regulation” for “completed at least 30 classroom hours” in subsection (a).

Sec. 08.87.320. Actions by uncertified real estate appraisers prohibited. A person may not bring an action in a court of this state for compensation for an act done or service rendered as a certified real estate appraiser if the person did not hold a certificate under this chapter at the time that the person performed the act or service or offered to perform the act or service. (§ 1 ch 177 SLA 1990)

Sec. 08.87.330. Exemptions. This chapter does not apply to a person who appraises real estate as part of the tax assessment process of a municipality. (§ 1 ch 177 SLA 1990)

Sec. 08.87.340. Appraisals by uncertified appraisers permitted. Nothing in this chapter precludes a person who is not certified as a real estate appraiser from appraising real estate for compensation if the person does not hold out to be a certified appraiser and if appraisal by a certified appraiser is not required by federal law. (§ 1 ch 177 SLA 1990)

Sec. 08.87.900. Definitions. In this chapter

(1) “analysis assignment” means an analysis, opinion, or conclusion prepared by a real estate appraiser that relates to the nature, quality, or utility of certified real estate or real property;

(2) “appraisal” means an analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality, value, energy efficiency, or utility of specified interests in, or aspects of, identified real estate, and includes a valuation appraisal, an analysis assignment, and a review assignment;

(3) “appraisal assignment” means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested person rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate;

(4) “appraisal report” means any communication, written or oral, of an appraisal;

(5) “board” means the Board of Certified Real Estate Appraisers;

(6) “department” means the Department of Commerce and Economic Development;

(7) “general real estate appraiser” means a real estate appraiser certified to appraise all types of real property;

(8) “institutional real estate appraiser” means a real estate appraiser employed full-time by a financial institution with offices in the state;

(9) “real estate” means an identified parcel or tract of land, including improvements, but excluding subsurface natural resource values;

(10) “real property” means one or more defined interests, benefits, and rights inherent in the ownership of real estate;

(11) “residential real estate appraiser” means a real estate appraiser certified to appraise residential real property, subject to the limitations of AS 08.87.100(2);