

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
10992 HOUSE RULES

The director should upgrade the ABC Board licensing database.

The current procedures used by the staff to issue permits, account for receipts, produce the revenue sharing payment amounts, and track required documentation for licensure are largely manual. We tested 60 licensing files and the procedures followed for processing the revenue sharing program. There were one or more errors in 28 of the 60 files (47%). Errors included missing information, incomplete information, and missed filing deadlines. Licenses are being issued or renewed without the information required by current statutes and regulations. Our testing also showed that revenue sharing payments of \$15,300 were sent to municipalities which do not qualify for revenue sharing.

The staff currently has no method of tracking what conditions may have been placed on a license. These conditions are imposed by the board to protect the public welfare. However, the public is not adequately protected if the conditions are not documented and enforced by the staff.

The enforcement section keeps a database which tracks premise inspections and notices of violation issued. A hard copy of these items is no longer routinely placed in the licensee's file. The enforcement database is separate from the licensing database and does not link to it. In addition, the data is not available for viewing on the Internet. If enforcement information about licensees is not included in the licensing file or on the Internet, appropriate judgments about the acceptability of a licensee cannot be made.

The licensing database should be upgraded to combine the receipting functions, licensing permit forms, and enforcement activities and to allow the data to be copied onto the Internet for public use. The director should also develop a policies and procedures manual and institute supervisory review of license applications and revenue share payments. The director should also pursue recovery of the \$15,300 paid to municipalities in error for deposit back into the General Fund.

Recommendation No. 7

The director should require staff to prepare and maintain procedural manuals.

Comprehensive procedural manuals have not been prepared. There has been considerable turnover during the past five years, and the lack of manuals has created difficulties when new employees were hired. Prior to the large turnover, writing procedural manuals was a low priority for the director. As a result, new employees were ill-equipped to complete their assigned duties. The difficulties of training a new employee are compounded when clear, written instructions are unavailable.

The lack of procedural manuals has also adversely impacted the agency's internal controls. Prior controls were lost when new employees created their own procedures to do the work.

In general, internal controls are the processes established by management to ensure that its objectives will be met. These objectives are in the areas of financial reporting, effectiveness and efficiency of operations, compliance with applicable laws and regulations, and safeguarding of assets. We offer suggestions for specific controls in Recommendation Nos. 3 through 6.

Recommendation No. 8

The ABC Board members should urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

Current statutes¹⁶ require the governor to appoint a replacement to the board within 30 days of a vacancy occurring. There were two instances where board seats were vacant for seven months, and one instance of a thirteen-month vacancy. Effectively, only three board members were active during the audit period.

A majority of the board, or three of the five members, is required to approve or deny all license applications.¹⁷ There were various instances when the board only had three members where action on a license was postponed because a majority vote could not be reached due to dissent or abstention. In one instance, the renewal decision on a license was postponed for over a year. During that year the licensee was able to operate without a board-approved license.

The board cannot fulfill its mission when it is unable to complete actions in a timely manner because of vacancy levels. The board and the director should urge the governor's office to fill board vacancies within the 30-day timeline.

¹⁶ AS 04.06.030(b) states, "A vacancy occurring in the membership of the board shall be filled within 30 days by appointment of the governor for the unexpired portion of the vacated term."

¹⁷ AS 04.06.060 states, "... a majority of the whole membership of the board must approve all applications for new licenses, and all renewals, transfers, suspensions, and revocations of existing licenses."

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of the Alcoholic Beverage Control Board's (ABC Board or the board) activities address both positive and negative conditions related to the public need factors established in AS 44.66.050. These analyses are not intended to be all-inclusive, but rather address those areas we were able to examine within the scope of our review.

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

The board operates in the public interest and protects the public's health, safety and welfare. The board has made an effort to allow only qualified applicants to own and operate licensed premises. It conducts background checks to ensure that licenses are not initially granted to individuals with significant criminal records. However, we recommend that background checks also be performed for license renewals. (See Recommendation No. 3.)

The board limits the number of licenses authorized and reviews license applications to ensure that licensed premises comply with health and safety codes and local zoning requirements. It provides license regulation and enforcement, investigates complaints and, when warranted, takes licensing actions such as revocation or temporary suspension.

In addition, ABC Board staff monitors the alcohol server training courses and answers questions from members of the public, licensees, law enforcement agencies, and local governing bodies regarding alcoholic beverage control statutes and regulations.

The board imposes fines and may temporarily suspend or revoke licenses or permits previously authorized if it is in the best interest of the public. However, vacancies on the board have made it difficult to fulfill its mission. (See Recommendations Nos. 4 and 8.)

The actions taken by the board during our audit period of FY 98 through FY 02 are summarized in Exhibit 1.

Exhibit 1	ABC Board Actions FY 98 to FY 02					
	FY 98	FY 99	FY 00	FY 01	FY 02	Total
Fines	3	4	4	1	2	14
Temporary Suspensions	1	2	1	3	2	6
New Denial	3	2	2	4	1	12
Renewal Denial	7	6	6	3	0	22
Revocation	0	0	0	0	0	0
Actions Pending	0	0	0	0	5	5
Total	<u>14</u>	<u>14</u>	<u>13</u>	<u>11</u>	<u>10</u>	<u>62</u>

The lack of revocations is due to the implementation of two new board procedures. The board effectively revokes a license by either (1) denying the renewal or (2) allowing a licensee a set time period to transfer or sell the license. If the license is not transferred within the allotted time period, the license holder is asked to voluntarily relinquish it.

We do not believe these procedures are in the best interest of the public. Allowing licensees to continue operating until their licenses are due to be renewed, or to sell their licenses, is not an effective penalty. It also would not have a major long-term impact on the liquor industry. Our primary concern is how the public would be adversely affected during this interim period by licensees who disregard the alcoholic beverage control laws and regulations.

Other occupational licensing boards currently use summary suspension as a means to protect the public and sanction licensees. The ABC Board does not currently have the power to summarily suspend a license. This means that licensees can continue to operate on revoked licenses until they have exhausted all due process rights allowed them. Exhausting all these rights, which can include an appeal to the Supreme Court, can take two or more years.

In contrast, a license that is summarily suspended cannot be used while the licensee is pursuing due process. Summary suspension should only be used in those instances where continued operation of a license poses a "clear and immediate danger" to public health and safety. (See Recommendation No. 2.)

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

We found no statutes that were obsolete, vague, or unduly restrictive.

Questionnaires were sent to local governing bodies, law enforcement agencies, community councils, and licensees to assess the impact of the board's programs and procedures. The questionnaires covered a number of issues. (See Appendices C through F.)

Some law enforcement and licensee respondents indicated that they consider AS 04.16.030 vague. This section of statute, entitled "Prohibited conduct relating to drunken persons", states that, "A licensee, an agent, or employee may not with criminal negligence . . . sell, give, or barter alcoholic beverages to a drunken person." The respondents feel that they cannot always determine when a person is drunk and they want a more specific definition. The standard is whether or not a reasonable person would come to the conclusion that the patron is drunk. Although this may not be a perfect standard, people who deal with serving alcohol on a daily basis should be able to determine if a patron is visibly drunk. Therefore, no clarification of the statute is considered necessary.

Respondents from all surveyed groups indicated a need for more consistent enforcement. There is the perception that some licensees are violating sections of Title IV because the enforcement

staff does not routinely conduct inspections in rural communities or in licensed premises located outside of the Anchorage, Fairbanks, or Juneau areas.

However, the opposite is true. Exhibit 2 summarizes the number and percent of licensed premises that received at least one premise inspection in our audit period. It shows that licensed premises in Anchorage and Fairbanks are less likely to be inspected than other locations statewide.

Exhibit 2		Premise Inspections FY 98 to FY 02	
<u>Geographical Area</u>	<u>Number of Premises Inspected</u>	<u>Total Licensed Premises¹⁸</u>	<u>Percent of Premises Inspected</u>
Municipality of Anchorage	164	445	37%
Fairbanks	27	179	15%
City & Borough of Juneau	60	92	65%
All Other Areas ¹⁹	<u>523</u>	<u>857</u>	<u>61%</u>
Total	<u>774</u>	<u>1,573</u>	<u>49%</u>

Respondents from all four groups commented that the enforcement staff is either too small or too busy to respond when an entity asks for assistance or tries to file a complaint about a licensed premise. It appears that the enforcement staff routinely refers complaints to the local law enforcement agency. The respondents stated that, in some instances, the local law enforcement agency is unable to address the complaint because of local politics.

The ABC Board budgetary data graphed in Exhibit 3 (shown on the next page) is adjusted for inflation to reflect FY 02 dollars and is presented as a percentage of FY 02 levels. The board's total budget has remained relatively stable over the past ten years while its travel component has dropped. (See Appendix A for additional revenue and expenditure information.)

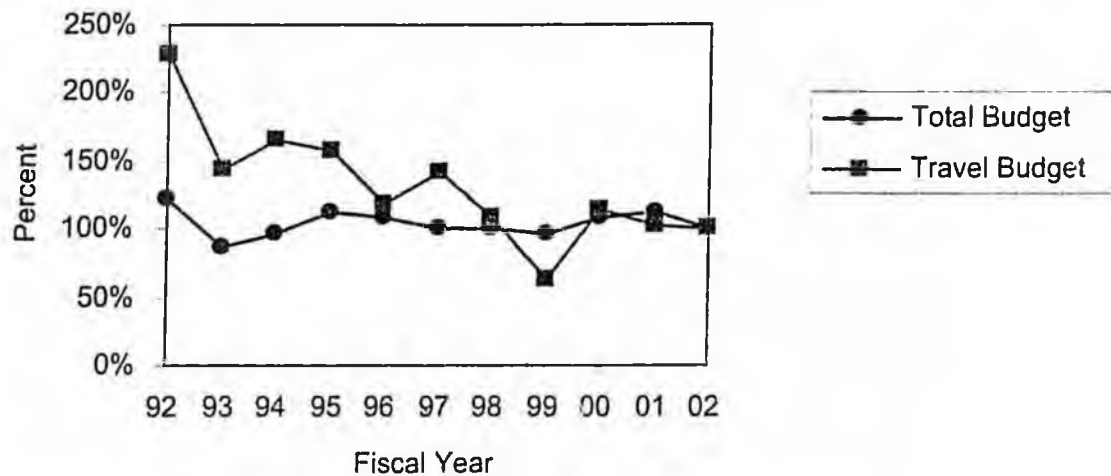
The board's homepage shows that basic information is available to the public on the Internet. However, most of the information on the website is directed toward aiding the current or prospective licensee. In addition, the website is difficult to navigate as choices are poorly titled and not well organized.

¹⁸ This number does not include licenses issued to airline companies, cruise lines, and the Alaska Railroad.

¹⁹ "Other" includes the remaining premises that are not located on a road system connected to Fairbanks or Anchorage.

Exhibit 3

**Total Budget and Travel Budget
Inflation Adjusted to 2002 Dollars**



The board is currently trying to update the website to make it easier to navigate and to provide additional public interest items, such as information on individual licensees, notices of violation²⁰ (NOV) issued, and complaint forms. Part of improving the webpage will entail improving the licensing database.

The current database, which includes all active and inactive licenses, is outdated and difficult to manage. The staff is not adequately trained on its use. We understand that the original structure of the database is password protected and that the password is unknown to the staff, making the database largely unusable. (See Recommendation No. 6.)

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

Four significant statutory changes pertaining to the liquor industry were made during the last five years. The first three of these changes were generally of benefit to the public. However, the fourth statutory change, regarding the investigation of gambling and prostitution, detracts from the board's primary mission.

Local Governing Bodies Allowed to Place Conditions on a Licensee

²⁰ A notice of violation is an investigative staff communication informing the licensee that a violation of statutes, regulations, or municipal ordinances by their employees or patrons may be occurring or has occurred on the licensed premise.

The legislature strengthened the control local governing bodies have over licensed premises in their area by allowing them to place conditions²¹ on an individual licensee. The local governing bodies can also enforce these conditions at the local level after the board has approved them. Failure by a licensee to abide by the imposed conditions can mean fines, temporary suspensions, or license revocation by the board.

Elimination of Possible Loophole for Bartenders Who Over Serve

The legislature has strengthened both the enforcement of Title IV and the court's ability to convict licensees or their employees if they serve an intoxicated customer. This was done by eliminating the defense²² that the customer voluntarily drank to the point of public inebriation.

Civil Liability Added to List of Penalties

The penalty²³ for selling alcohol without a license now also carries the additional penalty of strict liability for civil damages, including the cost of prosecution.

ABC Board to Investigate Gambling and Prostitution Offenses

Title IV was revised in 1999 to have ABC Board staff investigate violations of gambling and prostitution on licensed premises.²⁴

The inclusion of gambling and prostitution enforcement in Title IV significantly expands the focus of the agency from its initial mission as a regulatory agency to that of a fledgling police force. This expansion is more pronounced because all current ABC investigators are ex-police officers who would like to carry guns and investigate other crimes. In fact, they seem to be intensely preoccupied with the topic. However, we note that the Department of Public Safety (DPS) is the State's police force, and it is already administratively and operationally set up to perform this function.

The board should focus its efforts on regulatory issues instead of on building a police force of its own. The inclusion of gambling and prostitution investigations in Title IV is diluting the focus and efficiency of the ABC Board and its enforcement actions. The legislature should consider having DPS conduct these criminal investigations, rather than the ABC Board. (See Recommendation No. 1.)

²¹ AS 04.11.480(c) gives a local governing body the option to ". . . recommend that a license be issued, renewed, relocated, or transferred with conditions."

²² AS 04.21.020(c) states, "It is not a defense that the person drank voluntarily or was voluntarily under the influence of the alcoholic beverage."

²³ AS 04.21.020(b) states that ". . . a person who sells or barters an alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable . . . to the recipient or another person for civil damages. . . ." The person is also liable to the State for the costs of prosecution.

²⁴ AS 04.06.110 gives the staff the authority to exercise police powers with the concurrence of the DPS commissioner when enforcing criminally punishable laws ". . . including investigation of violations of laws against prostitution and promoting prostitution described in AS 11.66.100 – 11.66.130 and laws against gambling, promoting gambling, and related offenses described in AS 11.66.200 – 11.66.280."

No statutory changes have been requested to implement the Alaska Criminal Justice Assessment Commission's recommendations.

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.

Public participation is encouraged at each board meeting. In addition, time for public comment on each board meeting agenda item is allowed.

The board is required by statute²⁵ to hold an annual meeting in each of the four judicial districts of the State. The board holds at least one meeting in Anchorage, Fairbanks, Juneau, and Nome. One board member is physically present at each of the board meetings except Nome. Because of the travel costs, the current procedure is to have the director represent the board in Nome while the board members themselves participate via teleconference.

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,²⁶ 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, board meetings are open to the public and public comment is encouraged. The eight regulation changes, proposed from FY 98 through FY 02, were noticed in the newspapers.

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.

No complaints about the board or its actions were reported during the audit period to the Attorney General's Office, the Office of the Ombudsman, or the Department of Revenue.

The extent to which a board or commission which regulates entry into an occupation or

²⁵ AS 04.06.050 directs the board to "... meet at least once each year in each judicial district of the state."

²⁶ AS 04.06.090(e) directs the board to "... promptly notify all licensees and municipalities of major changes to this title and to regulations adopted under this title."

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. Some of the requirements include showing proof that the applicant advertised the location and type of license in a local newspaper, showing proof the applicant posted the license application on the building where the premise will be located, showing proof of title or lease for the premises, and submitting fingerprint cards so a background check can be completed. Our review of applicants' files disclosed no violations of these requirements.

Although the board routinely requires fingerprint cards to conduct background checks from new applicants, it does not require background checks on existing licensees. The question of whether an existing licensee has been convicted of a felony or violation of Title IV since the last renewal period is important enough to be included in the renewal application. However, the board does not verify this information by requiring another background check. (See Recommendation No. 3.)

The board is required to take licensing action when it finds that violations have occurred on licensed premises.²⁷ These offenses include violating a condition or restriction imposed by the board. Examples of conditions and restrictions are requiring additional background checks on an annual basis, limiting hours of operation, and not allowing live bands to entertain without prior ABC Board authorization. A notice of violation should result when the conditions and restrictions are ignored.

Throughout FY 02, the enforcement staff was at least six months behind in issuing notices of violations in Anchorage.²⁸ The backlog consisted of violations reported in police reports or from compliance checks. This raises concerns regarding the ability of the board to make informed decisions when considering whether licensing actions are necessary. (See Recommendation No. 5.)

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.

There was no evidence that hiring practices or board appointments were contrary to state personnel practices. No complaints have been filed with the Division of Equal Employment Opportunity, the Human Rights Commission, the Governor's Office, or the Office of the Attorney General.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to

²⁷ AS 04.11.370(10) requires license suspension or revocation if the board finds a ". . . violation by a licensee of this title, a condition or restriction imposed by the board, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010."

²⁸ According to the ABC Board director, this backlog was cleared up by the ABC Board staff in late October 2002.

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 section of this report.

Status of ABC Board-related recommendations made by the Alaska Criminal Justice Assessment Commission

In its May 2000 report, the Alaska Criminal Justice Assessment Commission made 21 alcohol-related recommendations. Of those, the two most directly affecting the ABC Board were to increase the board's size and to move its criminal investigation functions to the Department of Public Safety (DPS).

The commission recommended that the legislature add two nonindustry members to the board, raising the total membership from five to seven. It noted that, while AS 04.06.020 mandated that two board members be actively engaged in the alcoholic beverage industry, "*historically . . . at least one other member of the board has created a majority for alcohol dispenser interests because of past experience in the industry.*" The commission believed that adding a member from the public health or medical community and one from law enforcement would better protect the public interest.

In a draft update, dated November 2002, the commission observed that while

the legislature did not act on this recommendation Governor Knowles nominated, and the legislature confirmed, the appointment of former Anchorage Police Department Chief Duane Udland as one of the three public members of the Alcohol Beverage Control Board In addition, the Fairbanks member of the Board is a consultant to the Mental Health Trust and the third public member is employed by the Copper River Native Health Center. Neither member is a physician or medical practitioner, but both give some voice to the public health and medical communities. Therefore, although the [commission's] recommendation was not implemented, some of its concerns have been addressed.

Future governors are, however, not required to appoint members from the health or law enforcement communities. The commission continues to recommend an increase in membership to make the board "*reflective and responsive to the public's interests.*"

In addition to, or as an alternative to, increased membership the legislature may wish to consider converting the two current industry members to nonvoting industry advisors. This would have a similar effect, in that it would dilute the industry's influence on the board.

In May 2000, the commission also recommended that the legislature "*remove the law enforcement functions of the ABC Board from the Department of Revenue and place them in the Department of Public Safety.*"

In its November 2002 draft update, the commission states that DPS "*is satisfied with the present situation.*" Yet, the commission continues to recommend that investigative and law enforcement functions be assigned to the state troopers, as they are "*better trained and equipped*" to perform these tasks. In our discussions with the DPS commissioner, he stated that these tasks would best be performed by his department, and would be if funding were made available.

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APPENDICES

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APPENDIX A
Department of Revenue
Alcoholic Beverage Control Board
Schedule of Revenues and Expenditures
FY 98 through FY 02
(unaudited)

	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>	<u>FY 02</u>
<u>Revenue (rounded to nearest hundred)</u>					
License Application Fees	\$ 318,700	\$ 318,800	\$ 289,100	\$ 302,800	\$ 296,800
Pub Licenses	-0-	800	-0-	800	-0-
Brewery Licenses	7,000	8,000	3,000	7,000	3,000
Distillery Licenses	1,000	-0-	-0-	-0-	-0-
Beverage Dispensary Licenses	813,000	777,500	817,100	760,900	812,300
Club Licenses	59,100	49,600	51,600	48,000	57,000
Common Carrier Licenses	85,700	37,700	97,300	33,200	88,500
Restaurant Licenses	117,500	106,500	97,000	97,800	99,200
Theater License	600	600	-0-	-0-	600
Retail Store Licenses	297,000	312,000	286,500	310,500	281,800
Wholesale Licenses ²⁹	152,000	112,000	39,500	89,400	20,000
Malt Beverage and					
Wine Wholesale Licenses ²⁹	12,700	13,800	132,800	76,300	400
Miscellaneous ³⁰	<u>65,500</u>	<u>45,600</u>	<u>81,400</u>	<u>63,700</u>	<u>80,800</u>
<u>Total Revenues</u>	<u>1,929,800</u>	<u>1,782,900</u>	<u>1,895,300</u>	<u>1,790,400</u>	<u>1,740,400</u>
<u>Expenditures (rounded to nearest hundred)</u>					
Personal Services	551,200	558,300	543,400	585,300	573,100
Travel	21,300	12,400	23,000	21,400	21,200
Contractual	61,200	53,500	108,500	149,600	97,300
Commodities	6,400	8,900	10,500	4,000	3,600
Equipment	4,600	2,700	29,000	3,500	400
Transfers to Municipalities ³¹	<u>823,300</u>	<u>837,200</u>	<u>902,000</u>	<u>833,400</u>	<u>885,100</u>
<u>Total Expenditures</u>	<u>1,468,000</u>	<u>1,473,000</u>	<u>1,616,400</u>	<u>1,597,200</u>	<u>1,580,700</u>
<u>Excess of Revenue Over Expenditures</u>	<u>\$ 461,800</u>	<u>\$ 309,900</u>	<u>\$ 278,900</u>	<u>\$ 193,200</u>	<u>\$ 159,700</u>

Note: All ABC Board revenues are to be deposited into the General Fund and are not dedicated for use by the board.
Source: Alcoholic Beverage Control Board and the Alaska State Accounting System.

²⁹ In FY 00, new staff changed the coding procedures for the additional fees (taxes) paid by wholesalers.

³⁰ The miscellaneous revenue account includes fees from various low-volume licenses (recreational sites, winery and municipal golf courses), fines, and permits (caterer, special events, restaurant caterer, club license caterer, and restaurant designation).

³¹ 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.

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APPENDIX B
 Department of Revenue
 Alcoholic Beverage Control Board
 Licenses, Permits, and Fees
 FY 98 through FY 02

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	750.00
Common Carrier License -- Half Year	350.00
Distillery License	1,000.00
Golf Course	400.00
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

Note: This fee schedule has not changed since 1980.

Source of Information: Alcoholic Beverage Control Board.

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APPENDIX C
 Department of Revenue
 Alcoholic Beverage Control Board
 Summary of Responses from Active Licensees

Questionnaires sent: 245
 Responses received: 105³² (43%)

1. How often do you have contact with the Alcoholic Beverage Control Board or its staff during an average year?

78 0 – 6 times
 9 7 – 12 times
 2 More than 12 times
 16 Only to renew licenses

2. When you deal with the ABC Board, do you find the staff to be:

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Pleasant	94	5	3
Responsive	90	4	3
Knowledgeable	88	3	4

3. Did the staff of the ABC Board answer any questions you may have had?

80 Answered completely
 17 Answered to the best of their ability, but not completely
 1 Did not know the answer to my question
 5 Researched the answer and called me back
 8 Not applicable

4. Which classification is your license?

86 Full year
 17 Seasonal
 3 Both

³² Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others answered all that applied.

APPENDIX C
Department of Revenue
Alcoholic Beverage Control Board
Summary of Responses from Active Licensees
(continued)

5. What type of licenses(s) do you currently have? *(Check all that apply.)*
- 49 Beverage Dispensary
 - 33 Package Store
 - 31 Restaurant/Eating Place
 - 14 Club
 - 7 Tourism
 - 2 Common Carrier
 - 2 Golf Course
 - 2 Recreational Site
 - 0 Brewery
 - 0 Pub
 - 0 Wholesaler
 - 0 Winery
6. Do you feel there are enough ABC Board meetings held each year to adequately administer liquor licenses?
- 47 Yes
 - 16 No
 - 31 No opinion
 - 8 Unsure
7. Do you receive notice and information about proposed regulation changes in a timely manner so that you are able to participate in the hearings if you so choose?
- 80 Yes
 - 8 No
 - 12 Sometimes
8. Have you attended an ABC Board meeting in the past four years, either in person or by teleconference?
- 14 Yes, in person
 - 2 Yes, by teleconference
 - 89 No

APPENDIX C
 Department of Revenue
 Alcoholic Beverage Control Board
 Summary of Responses from Active Licensees
 (continued)

9. Have you offered public comment to the ABC Board in the past four years?

14 Yes
 87 No

If yes, to what extent do you feel your comments were considered in the decision made by the ABC Board?

2 To a great extent
 8 To some extent
 5 Not at all
 4 No decision made

10. Approximately how many inspections have you received during each of the following years?

<u>Year</u>	<u>0</u>	<u>1-2</u>	<u>3-5</u>	<u>More than 5</u>
1999	31	40	3	1
2000	30	48	5	1
2001	32	50	5	1
2002	50	29	3	1

11. Do you feel ABC Board enforcement activities and procedures adequately police the alcoholic beverage industry?

71 Yes
 11 Somewhat
 4 No
 17 No opinion

APPENDIX C
Department of Revenue
Alcoholic Beverage Control Board
Summary of Responses from Active Licensees
(continued)

12. Do you feel the ABC Board staff enforce the laws and regulations on all licensees equally?
- 69 Yes
 - 11 No
 - 7 Sometimes
 - 11 Don't know
13. Are there any existing alcoholic beverage control laws or regulations that you feel are obsolete, vague, unduly restrictive and/or inadequate?
- 22 Yes³³
 - 35 No
 - 33 No opinion
14. Overall, how do you rate the ABC Board?
- 19 Excellent
 - 46 Very good
 - 25 Good
 - 6 Fair
 - 1 Poor

³³ See discussion in Analysis of Public Need section on page 16.

APPENDIX D
Department of Revenue
Alcoholic Beverage Control Board
Summary of Responses from Local Governments

Questionnaires sent: 66
Responses received: 36³⁴ (55%)

1. Is your local government given adequate notice by the Alcoholic Beverage Control Board of proposed issuances of new licenses and transfers, relocations or renewals of existing licenses?

25 Yes, always
7 Usually
1 Sometimes
0 No, never notified

2. Since July 1, 1998, has your local government protested the issuance of a new license or the renewal, relocation or transfer of an existing license?

8 Yes
24 No
2 Unsure

If yes, what was the reason for the protest? *(Check all that apply.)*

7 Delinquent property taxes
2 Public complaints
2 Number of police reports
0 Violation(s) of public policy
8 Delinquent sales taxes
0 History of criminal activity on premises
0 Health and/or safety concerns
1 Other

Was your protest upheld by the ABC Board resulting in the denial of a license issuance, transfer, relocation or renewal?

5 Yes
0 No
4 Unsure
0 ABC Board did not provide us with the results
1 Other

³⁴ Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others answered all that applied.

APPENDIX D
Department of Revenue
Alcoholic Beverage Control Board
Summary of Responses from Local Governments
(continued)

3. Effective July 1, 1999, Alaska statutes were changed allowing local governments to recommend conditions be placed on a specific alcoholic beverage license and to notify the ABC Board if the licensee violated a condition imposed. Were you aware of this option? (*A copy of the statute was attached.*)

18 Yes
19 No

If yes, has your local government placed any conditions on a license renewal, issuance, relocation or transfer?

2 Yes
18 No
2 Unsure

4. Were you notified of the time and place your protest or proposed conditions would be considered by the ABC Board?

7 Yes, always
2 Sometimes
0 Unsure
1 No, never
18 Not applicable

5. The ABC Board can refuse to implement proposed conditions if it feels the conditions or the reason(s) the conditions were proposed are arbitrary, unreasonable or capricious. Has the ABC Board refused to implement any conditions proposed by your local government?

0 Yes
17 No
4 Unsure
0 ABC Board did not provide us with the results
4 N/A

APPENDIX D
Department of Revenue
Alcoholic Beverage Control Board
Summary of Responses from Local Governments
(continued)

6. Has the ABC Board or its staff provided your local government with guidelines about what is or is not considered arbitrary, unreasonable or capricious?
- 11 Yes
 - 14 No, and we would like some guidelines
 - 2 No, and we are not interested in receiving guidelines
 - 6 Unsure
7. Which of the following reasons do you feel the ABC Board would accept as valid to impose conditions or protest a license pending issuance, renewal, transfer or relocation? *(Check all that apply.)*
- 19 Delinquent property taxes
 - 25 Public complaints
 - 25 Number of police reports
 - 27 History of criminal activity on premises
 - 20 Delinquent sales taxes
 - 26 Violations of local ordinances
 - 25 Health and/or safety violations
 - 30 History of alcohol sales to minors or inebriates
 - 1 Other
8. Does your local government solicit community input on liquor license activity?
- 19 Yes
 - 9 No
 - 1 Unsure
 - 1 Not usually
9. Are there any alcoholic beverage control laws or regulations that you feel are obsolete, vague, unduly restrictive and/or inadequate?
- 1 Yes
 - 11 No
 - 10 Unsure
 - 11 No opinion

APPENDIX D
Department of Revenue
Alcoholic Beverage Control Board
Summary of Responses from Local Governments
(continued)

10. If alcoholic beverage license fees are refunded to your local governing body by the ABC Board, what are the funds used for?

13 General fund
4 Law enforcement
1 Alcohol specific crime prevention
10 Unknown
0 Other

11. Overall, how do you rate the ABC Board?

7 Excellent
14 Very good
8 Good
3 Fair
0 Poor

APPENDIX E
Department of Revenue
Alcoholic Beverage Control Board
Summary of Responses from Community Councils

Questionnaires sent: 50
Responses received: 23³⁵ (46%)

1. Are you aware of the purpose and existence of the Alcoholic Beverage Control (ABC) Board?

22 Yes
1 No

2. Does your community council contact the ABC Board for information about license renewal, issuance, relocation or transfer?

8 Yes
9 No
5 Sometimes
0 Unsure

Does the ABC Board or its staff provide the information you request?

9 Yes
1 No
3 Sometimes
1 Unsure
5 N/A

3. Has your community council ever lodged an objection with the ABC Board over a liquor license renewal, issuance, relocation or transfer?

10 Yes
11 No
1 Unsure

³⁵ Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others answered all that applied.

APPENDIX E
Department of Revenue
Alcoholic Beverage Control Board
Summary of Responses from Community Councils
(continued)

Do you feel the ABC Board took your concerns into consideration before ruling on the license you objected to?

5 Yes
4 No
3 Sometimes
1 Unsure
6 N/A

If you do not feel the ABC Board took your concerns into consideration, did it provide you with an explanation as to why it did not consider your objection?

3 Yes
2 No
2 Sometimes
1 Unsure
6 N/A

4. Do you feel the public has enough say in how liquor licenses in your area are issued, renewed, relocated, transferred or revoked?

9 Yes
11 No
1 Unsure
0 No opinion
1 N/A

5. Does your community council receive notice and information about proposed regulation changes in a timely manner so that you are able to participate in the hearings if you so choose?

9 Yes
8 No
3 Sometimes

APPENDIX F
 Department of Revenue
 Alcoholic Beverage Control Board
 Summary of Responses from Enforcement Agencies

Questionnaires sent: 44
 Responses received: 27³⁶ (61%)

1. Are you aware of the purpose and existence of the enforcement staff assigned to the Alcoholic Beverage Control (ABC) Board?

25 Yes
 0 No

2. Are you aware of enforcement by ABC Board staff of any of the following activities in your area?

	Yes	No	Unsure
Sale of alcohol to minors	13	13	1
Sale of alcohol to inebriated persons	13	14	0
Sale of alcohol before or after regulated hours of operation	11	15	1
Sale of alcohol without a valid permit or license	10	16	1

3. How often does your agency have contact with the ABC Board enforcement staff during an average year?

10 0 - 2 times
 7 3 - 6 times
 6 7 - 12 times
 4 More than 12 times
 0 We have no contact with the ABC Board enforcement staff

4. What kind of information does your agency receive from the ABC Board enforcement staff? *(Check all that apply.)*

16 Notice of violation issued to licensee in your area
 12 License revocations or suspensions in your area
 6 Available federal enforcement grants
 6 Available training sessions
 12 Enforcement assistance
 6 None
 3 Other

³⁶ Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others answered all that applied.

APPENDIX F
 Department of Revenue
 Alcoholic Beverage Control Board
 Summary of Responses from Enforcement Agencies
 (continued)

5. Does your agency enforce laws controlling the sale of alcoholic beverages in your area?

- 24 Yes
- 0 No
- 3 Sometimes

6. Does your agency share investigative information with the ABC Board's enforcement staff and notify them of arrests made on licensed premises?

- 19 Yes, always share information
- 4 Only when ABC requests the information
- 1 Occasionally ABC is sent copies of liquor-related arrests and reports
- 2 No, never share information

7. Do you contact the ABC Board enforcement staff regarding problem licensees in your area?

	<u>Yes</u>	<u>No</u>	<u>Sometimes</u>	<u>Unsure</u>	<u>N/A</u>
Bars	19	5	2	0	1
Liquor stores	18	6	0	0	1
Restaurants:					
Beer and wine only	11	5	3	2	2
Full license	13	5	4	1	2

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

- 15 Complements
- 1 Duplicates
- 1 Conflicts
- 11 ABC Board enforcement staff is not active in my area

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

- 5 Yes
- 22 No

APPENDIX F
Department of Revenue
Alcoholic Beverage Control Board
Summary of Responses from Enforcement Agencies
(continued)

10. How effective is the enforcement staff of the ABC Board at enforcing the laws controlling the sale of alcoholic beverages in your area?

- 6 Very effective
- 6 Somewhat effective
- 11 Not effective³⁷
- 3 Not applicable. We are a damp/dry community

³⁷ Enforcement agencies which responded "Not effective" included five from areas off the road system, four from the Southcentral area, and two from the Northern area.

(Intentionally left blank)

STATE OF ALASKA
DEPARTMENT OF REVENUE
Alcoholic Beverage Control Board

FRANK MURKOWSKI, GOVERNOR

550 W. 7TH AVENUE, SUITE 540

Anchorage, Alaska 99501-6698

Phone: 907-269-0350

FAX: 907-272-9412

March 7, 2003

Members of the Legislative Budget
and Audit Committee
Alaska State Legislature
State Capitol, Room 519
Juneau, Alaska 99801-1182

RE: Alcoholic Beverage Control Board Audit, Audit Control Number 04-20019-03

Dear LB & A Members:

In her letter of February 19, 2003, Legislative Auditor Pat Davidson asked that I respond to the recommendations contained in the DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD SUNSET REVIEW, dated November 29, 2002. It is my pleasure to give the ABC Board's perspective on the eight recommendations made in the audit and the analysis of need.

Recommendation No. 1

The Legislature should consider having the Department of Public Safety (DPS) conduct criminal investigations, rather than the ABC Board.

Of course, it is the Legislature's job to consider amending the law if those changes will provide better service, increased efficiency, and improved accountability in the provision of important government services. Fracturing the ABC Board's ability to meet its statutory mandate under AS 04.06.090(a) to "control the manufacture, barter, possession, and sale of alcoholic beverages in the state" (emphasis added) by having another agency conduct an important element of the ABC Board mission will not provide better service, increased efficiency or improved accountability.

In 1999, the Legislature felt the same way when it added additional criminal investigation responsibilities to the ABC Board to investigate prostitution and gambling on liquor-licensed premises. This amendment to AS 04.06.110 was not considered a major change when it was passed. Rather, it legally clarified a long-standing and generally accepted practice of ABC investigators to investigate illegal practices of

gambling and prostitution on licensed premises. In 1993, the Department of Law questioned an ABC investigator's authority to execute a search warrant for gambling devices on licensed premises. The Commissioner of Public Safety issued special commissions for all ABC investigators so there would be no legal question regarding ABC investigators conducting the criminal investigations in the same manner as they had done since Statehood. In 1999, the statutory change eliminated the need for the special commissions by granting direct authority for conducting these specific criminal investigations. The Department of Public Safety was supportive of the clarification of ABC Board authority.

The changes to regulations in 15 AAC 104.505 to allow ABC investigators to carry firearms were adopted following a great deal of study over nearly two years and public hearings that produced a great deal of comment. During the public comment period the Governor's Office, Department of Law, and the Department of Public Safety (DPS) remained silent. It was only after adoption of the regulations and ABC Board authorization to carry firearms did the Commissioner of Public Safety revoke the limited public safety commissions given to the ABC investigators.

Since statehood, there have been provisions for enforcement of criminal laws regarding the sale of alcoholic beverages that fall under the purview of the ABC Board. AS 04.06.110, the section cited in the recommendation, grants powers to the ABC Board employees "necessary for the enforcement of the **criminally punishable** provisions of this title, regulations of the board, and other **criminally punishable laws and regulations...**"(emphasis added). AS 04.06.075 says that the ABC Director "shall enforce this title and regulations adopted by the board" (emphasis added). There are numerous sections of Title 4 that involve enforcement of criminal offenses.

The larger question is why do the statutes give an agency the statutory duty to enforce laws, but not the necessary authority or means to do so. This has been the status quo for many years and its resulted in alcohol laws being made the "stepchild" when it comes to enforcement. Alcohol abuse is a factor in the majority of the crime committed in Alaska. Alcohol also is involved in many suicides and accidental deaths and the high occurrence of fetal alcohol syndrome and fetal alcohol effect in Alaska is well documented. It would be reasonable to assume that enforcement of alcoholic beverage laws should be a priority in Alaska. Historically, this has not been the case when it comes to support of the ABC Board, the primary agency mandated to perform this important public safety and health task. Alaska State Trooper and local police academies have not even been providing instruction in alcoholic beverage law.

The solution of peeling off alcohol enforcement from the ABC Board's licensing function would create more inefficiencies and loss of organizational synergy than is cited in the audit. The connection of having the organization that licenses your business to operate and enforces the rules and laws is a powerful and effective compliance tool. Shifting part of the enforcement responsibility to another agency would break this meaningful connection and would render enforcement more ineffective. Alternative A involves contracting with money the ABC Board does not have; no mention is made of

how this function would be funded. The next obstacle would be the matter of who would get to direct and control the DPS staff under the contradictory "as-needed" and "as-available" contractual enforcement scenario recommended by the audit. Which will it be, "as-needed" or "as-available"? Given the history of alcohol enforcement in Alaska and the emphasis a short staffed DPS has placed on other law enforcement priorities, I am afraid the winner will be "as-available" or maybe even "if-available at all". Utilizing "the many locations served by DPS" under Alternative A means we will be using various Alaska State Troopers (AST) personnel who are, on the whole, not very familiar with alcoholic beverage law. This is not efficient if our role becomes that of on-the-job trainer. The paperwork to keeping track of "billable hours" of various troopers at various levels of pay and geographical differential rates would also present new challenges. The ABC Board has had experience contracting DPS for the Underage Drinking Grant and the experience does not lead us to think Alternative A is the means to improve efficiency and accountability.

Alternative B of removing the criminal investigation function from the ABC Board is also a recipe for greater inefficiency and less enforcement of alcoholic beverage laws. The audit says that these "less serious crimes...need not be slighted", but over forty years of experience tells that they will be. This arrangement also sets up a situation where some alcohol violations will be investigated twice, once by the ABC Board for possible administrative action and once by DPS for criminal purposes. That is simply not the best use of limited public resources.

The audit states that "there would be significant inefficiencies in attempting to turn ABC into a four-officer, statewide police force", but no explanation for this assertion is provided. The ABC Board only wants to police Title 4 statewide for one reason; that is what the law mandates it to do. The efficiency is there because of the focus on Title 4 and gambling and prostitution on liquor licensed premises. The efficiency comes from being able to work with local law enforcement and AST on an equal footing as peace officers. The effectiveness comes from focus on a small, but important area of law that addresses alcoholic beverages with a comprehensive 360° approach of licensing, education, and administrative and criminal enforcement. The statutes set out a clear, accountable, and efficient blueprint to follow in providing alcoholic beverage control. The audit recommends changing the law, contracting out important responsibilities, weakening synergy between licensing and enforcement and blurring lines of accountability and responsibility. The result would be less effective and efficient alcohol beverage law enforcement.

ABC Investigators could access other sources of funding and improve alcoholic beverage enforcement if peace officer powers were restored. The Federal Underage Drinking Grant funds it now passes through to local police departments and AST detachments could be used if ABC personnel had the limited police powers. Far more compliance checks could be completed with greater quality control and uniformity if the ABC Board ran more of the underage compliance checks. Presently, law enforcement personnel do nearly all of the compliance checks on overtime. ABC Investigators could do twice as many checks for the same amount of funding if they did them as part of a

regular shift. Limited peace officer powers would also allow ABC Investigators the opportunity to access funding for National Highway Safety program initiatives focused on underage drinking and service of drunken persons by liquor licensees.

The ABC Board simply desires to carry out its statutory mandate. The ABC Board wants more effective and accountable enforcement as set out in Title 4.

Recommendation No. 2

The ABC Board should seek amendment to Title IV to allow the board to summarily suspend liquor licenses.

The ABC Board agrees with this recommendation, but it is concerned that there may be Alaska Constitution issues in Article I, Section 7 limiting a statutory change of this kind. This part of the Alaska Constitution states "No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed."

This recommendation gives the ABC Board significantly increased authority over the operations of liquor-licensed businesses. This change could certainly alter the dynamic of the suspension and revocation process as you describe by closing a business deemed to be a "clear and immediate danger" to public health and safety. Clearly, this recommendation coupled with increased enforcement authority discussed in the previous recommendation would provide further protection for the public's health, safety, and welfare.

The standard of showing clear and immediate danger to the public in the operation of a liquor license is much tougher than questioning the judgment and competence of a physician. The statute providing the ABC Board with this power would have to be very carefully drafted to address potential challenge as a taking without due process. Provision would also need to be made for a fairly quick post-deprivation hearing in those cases. These changes would involve additional costs. Additional resources for the Department of Law would be needed to take license revocations to formal hearing more quickly. Under the present ABC budget, no money is allocated to compensate the Department of Law for use of an Assistant Attorney General and scant funding is available to pay for administrative hearing officers. Therefore, this statute change would come with a fiscal note.

Recommendation No. 3

The ABC Board should conduct routine background checks on all licensees as they renew their licenses or should track licensees through the DPS information system.

The ABC Board agrees with this recommendation, but would offer an alternative means of implementing this change. This recommendation provides greater protection for the public. The question is whether the cost of this increased protection, borne primarily by the licensee, and the increased workload on an overburdened criminal background check system is worth the benefit. Under the present law (AS 12.62.160(c)(3)), the only background screening method available to the ABC Board is the national and state fingerprint check. This extensive and expensive alternative has kept the ABC Board from considering this additional procedure for renewals. Renewals are concentrated during a 4-1/2 month window between the middle of October to the first week of March. This concentrated activity makes this part of the licensing cycle very busy and any additional processing steps would place further demands on the small ABC Board staff.

The alternative of an APSIN--based review for renewal would be a good compromise in protection of the public interest and the additional work involved in conducting background checks. The DFYS system with Department of Public Safety is one alternative for using APSIN. ABC investigators have access to APSIN now based on statutory authority to conduct criminal investigations. AS 12.62.160 prevents doing APSIN checks for licensing purposes. Changes to this law to allow its use for liquor licensing renewal background checks would be the most straightforward and cost effective way to check for criminal violations of renewing licensees. I will recommend that the ABC Board request legislation to amend AS 12.62.160 to allow for access to APSIN for licensing purposes. This statute change could require a modest fiscal note.

Recommendation No. 4

The director should ensure that all fines are collected and deposited into the general fund.

I understand this recommendation, have already taken corrective action, and will implement this recommendation in the future. I still believe that the ABC Board has a great deal of discretion in reaching informal settlements under the Administrative Procedures Act. The one settlement involving a payment in lieu of fine was with the Breakers Bar in Nome. On November 19, 2002, while I was in Nome, I retrieved the Breakers Bar \$1,000 payment in lieu of fine from the Nome Police Department. At the next meeting of the ABC Board held on January 30, 2003, the Board amended the

informal settlement with the Breakers Bar to require that the \$1,000 fine be paid to the State of Alaska rather than the Nome Police Department. On February 12, 2003, I wrote to Wayne A. Locke, the Breakers Bar licensee, advising him of the need to replace the Nome check with one made out to the ABC Board.

Recommendation No. 5

The ABC Board and its director should provide goals for the enforcement staff.

I agree that goals for enforcement staff can be clearer and the Enforcement Supervisor has already begun preparing activity benchmarks for premise inspections and training of local police and state troopers. The handling of police reports has been simplified and streamlined to prevent backlogs for the issuance of Notices of Violation (NOVs) from law enforcement reports in the future. However, I do not agree that enforcement activities are unorganized and inefficient.

The emphasis on enforcement for the last two years has been on reducing underage access to alcohol. This is a worthwhile area in which to focus more time and energy since there are many negative effects on society due to underage alcohol use and abuse. Studies show there is a direct correlation between when young people begin to consume alcohol and problems with alcohol and other drugs when they become adults. The ABC Board made a conscience decision to focus on reducing underage access to alcohol by managing a grant for this purpose. This grant provides badly needed funding to help carry out this important job. Goals were set to reduce "failure rates" of licensees selling to underage persons and we are making progress on this compliance check program. When we started, the failure rates statewide were over 50%. After the first three years of the program, that rate is down to about 30% statewide and 16% in Anchorage. Our goal is failure rate of 10% statewide. Placing emphasis on this activity has reduced activities like premise inspections. Managing the grant has taken more time than I anticipated, but it has allowed us to be more visible in the enforcement arena. As I noted in my response to Recommendation No. 1, the ABC Board could do these compliance checks better and cheaper if it had the peace officer powers necessary to directly conduct the program.

I believe investigative staff spends ample time on regulatory activities (criminal background checks; inspections when issuing licenses; answering regulatory and local option questions over the telephone, in person, or by email; reviewing and approving restaurant designation permits; reviewing and approving catering and special event permits; hosting regular meetings of liquor licensees and representatives of law enforcement; performing research for ABC Board meetings; and assisting licensing staff with regulatory issues). There is "interest" in performing "police-type" activities, but I do not, given the limitations on our powers, believe that much effort is expended in this area. The ABC Board relies largely on local police and State Troopers to be our liquor law enforcement surrogates. Staff did spend time talking to the representative from

Legislative Audit about our interest in doing more criminal enforcement because of its strong belief that this important enforcement job that is mandated to the ABC Board was not being adequately addressed by police and troopers.

Recommendation No.6

The director should upgrade the ABC Board licensing database.

I concur with this recommendation and an overhaul of the existing database to improve its use and accessibility will be a high priority. Since my November 5, 2002 response to Management Letter No. 1, we have upgraded the ABC Software to include MS Access 2000, established a new template to incorporate enforcement information into the database, and begun the task of an in-house upgrade by the Records and Licensing Supervisor with assistance from Department of Revenue IT personnel. This work is temporarily on hold as licensing staff addresses the demands of liquor license renewals. Work on the database improvements should resume within a month. The goal is to have the new database operational within six months. The hands-on approach will make it easier to maintain, update and repair our database. The ABC Board will include, if feasible receipting functions and licensing permit forms.

Over the next year, the ABC Board will also complete a review of all of its files to address errors, omissions, and deficiencies. The ABC Board will also review license refund payments of \$15,300 and, upon verification of disqualification for the payment, I will seek refund to the State. It is impossible to ascertain how much, if any, of these funds will be retrieved, but returned funds will be deposited into the general fund. I will develop policies and procedures to provide closer supervisory review of license applications and license refund payments.

Filing of NOVs in license files have been brought current. Lack of clerical support will require premise inspection reports to be kept separate from license files, but this information is available upon request to allow interested parties to make determinations regarding licensee suitability. Development of the database will afford the best opportunity to integrate at least the most recent inspection into the license file.

Recommendation No. 7

The director should require staff to prepare and maintain procedural manuals.

I agree with this recommendation. A draft procedural manual has been completed for the Records and Licensing Supervisor position and one of the licensing clerk positions. Other staff positions for the ABC Board have either started or will soon start drafting procedural manuals for the position they now occupy. Particular focus will be placed on strengthening internal controls and providing greater uniformity in providing

services to the public, local governments, licensees and potential licensees, state officials, and law enforcement personnel. Initial drafts of procedural manuals should be complete by June 30, 2003. Once manuals are prepared they will be properly maintained.

Recommendation No. 8

The ABC Board should urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

The ABC Board through its chairman and its director did urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

This concludes my response to your recommendations.

Analysis of Public Need

On page 15 of your audit you summarize ABC Board Actions. One type of action that is not captured in the chart is licenses that are not renewed or voluntarily relinquished under threat of revocation. This is a very inexpensive (no hearing officer expenses or assistant attorney general time) and effective manner in dealing with problem licenses or licenses that have not been operated for several years. There have been four licenses taken out of circulation in this manner during the last audit review period. I disagree that the forced sale and denial of renewal of licenses are not effective penalties. The economic toll of not getting one's license renewed is just as great as a revocation and a forced sale of a license by a publicly known deadline places a big disadvantage on the seller of a liquor license. While the license remains in a forced sale, the problem licensee is removed from the scene. This benefits the public without the cost, time, and protracted effort of formal administrative or legal proceedings.

The ABC Board agrees, in part, with questionnaire comments that its enforcement staff is "too small or too busy to respond" to requests for assistance. Lack of a sufficient travel budget and limitations on peace officer powers is also a big factor in not being able to respond to requests. Local politics is often a big obstacle to addressing problem liquor licensees. That is one reason why a sufficiently staffed and empowered ABC enforcement would be in the public interest.

The graph on page five shows that if funding for the ABC Board had merely kept pace with inflation the travel budget would be \$48,400 instead of the present \$21,200 and the overall budget would be about \$140,000 higher at \$846,000. The ABC budget did not grow appreciably during years of increasing budgets (\$559,000 and 12 positions in FY81) so there was no fat in its budget when belt-tightening and across-the-board cuts came. Public safety budgets at the State and local level have also been squeezed at the same time as the public is asking for increased alcohol enforcement. With alcohol enforcement statutorily falling to the ABC Board, it is easy for law enforcement agencies

to find other areas of emphasis. Funding for alcohol enforcement needs to be increased, focused, and made a priority if Alaska is to seriously reduce alcohol related social, health, and safety problems. Enforcement provided at a level needed to deter and prevent violations and crime is much cheaper than treatment and incarceration.

Chapter 87, SLA 2001 is another significant legislative change I would add to your report on page 19. This new law allows liquor licensees to bring civil action against persons under the age of 21 and seek up to a \$1,000 civil fine and reasonable court costs. This law has the potential to be highly effective by allowing liquor licensees to police their own premises through a bounty on young people illegally seeking access to alcohol. Alaska is unique with this approach, but other states are showing an interest in this law. This is an innovative way to "privatize" alcohol enforcement without burdening the police, ABC Board, district attorneys, and criminal judges.

Executive Order 110, introduced by Governor Murkowski on March 5, 2003, moves the entire ABC Board function from the Department of Revenue to the Department of Public Safety for administrative purposes only. This change is a positive one as it reflects the important public safety function of alcoholic beverage control and regulation. This transfer reflects a third alternative for Recommendation No. 1, but keeps the ABC functions intact. I do not believe the change will be unduly disruptive to the ABC Board staff and it does address the need to enhance alcoholic beverage enforcement activity.

The ABC Board would request that it be granted a four-year extension in its sunset date to June 30, 2007. The audit did find areas that need to be addressed. However, I do not believe they rise to the level to justify the shortening of the sunset period. ABC staff has started work to upgrade the database and significant progress, if not complete remedy, can be made over the next few months.

Thank you for the opportunity to respond.

Sincerely,

Douglas B. Griffin
Director

cc: ABC Board Members
William Corbus, Commissioner, Department of Revenue
William Tandeske, Commissioner, Department of Public Safety

March 19, 2003

Ms. Pat Davidson, CPA
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Davidson:

This letter is written in response to the Preliminary Audit Report, Department of Revenue, Alcoholic Beverage Control Board (ABC), Sunset Review dated November 29, 2002. The Department of Public Safety (DPS) would like to take this opportunity to thank the Division of Legislative Audit for allowing the department to comment on the recommendations of the preliminary audit. This is especially important given Executive Order 110, which moves the ABC Board from the Department of Revenue to the Department of Public Safety. The Department's positions are stated below each recommendation.

Recommendation No. 1

The legislature should re-evaluate the need for gambling and prostitution investigations by the ABC Board.

The Department of Public Safety supports the mission of the ABC Board as stated in AS 04.06.090(a) to "control the manufacture, barter, possession, and sale of alcoholic beverages in the state." We concur with the audit findings that when the legislature amended Title IV by adding authority for investigation of gambling and prostitution as it relates to enforcement of alcohol licensing that it expanded the mission of the board beyond alcohol control.

Criminal investigations into gambling and prostitution, whether or not they occur in a licensed premises, should be conducted by Alaska State Troopers or officers of a local police department. To be effective, criminal investigations into gambling and prostitution often require undercover operatives and surreptitious tape recordings, which are more appropriately dealt with by experienced police investigators.

We believe that the transfer of the ABC Board to the DPS will serve to facilitate the investigation of these crimes in or around licensed premises. Relocation of the ABC Offices to DPS facilities

Ms. Pat Davidson
March 19, 2003
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will further encourage the flow of information related to criminal activities on licensed premises from ABC employees to the State Troopers.

Although not a specific point of this written recommendation, I would like to comment on the discussion in the preliminary audit of the question of ABC Board staff carrying firearms. Authorization for the use of deadly force by public servants in the course and scope of employment is a critically serious matter; therefore, we believe this authorization should only be given to employees whose primary responsibility is to protect life and property. I am in complete agreement with earlier determinations of my predecessors that ABC staff do not need to carry firearms or use deadly force to complete assigned duties.

Recommendation No. 2

The ABC Board should seek an amendment to Title IV to allow the board to summarily suspend liquor licenses.

The Department of Public Safety concurs with this recommendation.

We do however note that in his response, the Director of the ABC Board opined that there might be Alaska Constitution issues at Article I, Section 7, limiting a statutory change this kind. DPS has not reviewed that question.

Recommendation No. 3

The ABC Board should conduct routine background checks on all licenses as they renew their licenses or should track licensees through the DPS information system.

The Department of Public Safety concurs with this recommendation. We believe it is appropriate for the ABC Board to monitor the *criminal history record* of all licenses. This is particularly important at the time when licensees renew their licenses.

Preliminary analysis is that we would write a program for the Alaska Public Safety Information Network (APSIN) system similar to the program written for the Division of Family and Youth Services (DFYS) to generate an automated message to ABC staff whenever a previously identified individual is arrested or convicted of a felony, a Title IV violation, and other relevant offenses in Alaska.

Recommendation No. 4

The director should ensure that all fines are collected and deposited into the General Fund.

The Department of Public Safety concurs with this recommendation.

Ms. Pat Davidson
March 19, 2003
Page 3 of 3

Recommendation No. 5

The ABC Board and its director should provide goals for the enforcement staff.

The Department of Public Safety concurs with this recommendation.

Recommendation No. 6

The director should upgrade the ABC Board licensing database.

The Department of Public Safety concurs with this recommendation.

Recommendation No. 7

The director should require staff to prepare and maintain procedural manuals.

The Department of Public Safety concurs with this recommendation.

Recommendation No. 8

The ABC Board members should urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

The Department of Public Safety concurs with this recommendation.

Executive Order 110 moving the ABC Board from the Department of Revenue to the Department of Public Safety will not become effective until July 1, 2003. As such we have not had an opportunity to closely review the administrative operations of the Board and therefore are not aware of the intricacies or timelines for implementation of these recommendations.

Again, I appreciate the opportunity to comment on the preliminary audit findings.

Sincerely,

William Tandeske
Commissioner

March 21, 2003

Members of the Legislative Budget
and Audit Committee

We have reviewed the responses to our preliminary audit report on the Alcoholic Beverage Control Board (ABC Board or the board) from the ABC Board itself and from the Department of Public Safety (DPS). Nothing contained in their responses gives us cause to reconsider our findings. However, several issues warrant further discussion.

After the completion of our fieldwork and the preparation of the preliminary audit report, Governor Murkowski introduced Executive Order No. 110 to the legislature. Unless the legislature disapproves of it by resolution, this order will transfer the administration of the ABC Board from the Department of Revenue to DPS on July 1, 2003. The purpose of the transfer is to strengthen enforcement of alcoholic beverage control laws through the law enforcement expertise and assistance of DPS.

DPS is in total agreement with our findings. The ABC Board is in substantial agreement. The notable exception is that the board believes that its staff should conduct criminal investigations of gambling and prostitution. Because of operational economies of scale, training, and experience concerns, we believe these investigations would be better conducted by DPS and local law enforcement. We recommended that the board either contract with DPS for these services or that this criminal investigation function be removed from the board. Removal would leave DPS and local police forces with the investigative responsibility for these crimes. In its response, DPS states that

Criminal investigations into gambling and prostitution, whether or not they occur in a licensed premise, should be conducted by Alaska State Troopers or officers of a local police department. To be effective, criminal investigations into gambling and prostitution often require undercover operatives and surreptitious tape recordings, which are more appropriately dealt with by experienced police investigators.

As such, we anticipate that DPS will soon be addressing the question of whether to contract with the board for these investigative services or to request a statute change to accomplish it. Either of these alternatives will allow the ABC Board and its staff to retain focus on their mission as a regulatory and licensing agency.

Through its response to the preliminary report and in our discussions with the department, DPS has indicated its commitment to addressing the deficiencies in the ABC Board's operations. Given this commitment, we fully support Executive Order No. 110.

The ABC Board also expresses concern that our recommendation to allow the board to summarily suspend liquor licenses might conflict with the Alaska Constitution. Specifically, it references Article I, Section 7, which states that "*No person shall be deprived of life, liberty, or property, without due process of law.*" However, we did not suggest the board dispense with due process. Rather, we stated that, in instances where the licensee is a danger to the public, the beverage license should be summarily suspended while the licensee pursues his due process rights.

Although this is the same suspension procedure used by occupational licensing boards¹ in the State, the ABC Board takes exception to it and states that

The standard of showing clear and immediate danger to the public in the operation of a liquor license is much tougher than questioning the judgment and competence of a physician.

We disagree. There are few things more difficult to evaluate than professional judgment and competence. In contrast, determining whether a liquor licensee presents a clear and immediate danger to the public can be objectively measured. For example, a licensee who continually over serves, serves to minors, and serves after "closing" represents danger to public health and safety. The board would need to adopt regulations establishing the criteria necessary to identify emergency situations in which the public health, safety, or welfare requires summary action. The regulations could use both violation types and violation counts, along with time frames in which they occur, in developing a summary suspension rule.

The ABC Board has also asked that its termination date be extended for four years, rather than three. Although DPS's commitment to improving the board's operations is encouraging, given the magnitude of the current deficiencies, we continue to recommend a three-year extension of the termination date to June 30, 2006.

In summary, we reaffirm the findings presented in this report.

Pat Davidson
Legislative Auditor

¹ Sec AS 08.01.075(c).

HB

271

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

May 8th, 2003

My family has owned and operated Alaska Car Rental for nearly 25 years. During this span of time, we have developed a consistent business relationship with people in Ketchikan and people from Metlakatla, Prince of Whales Island, and other Southeast Alaska communities. Our business provides affordable transportation for doctor's visits, vehicle replacement, shopping, family activity, etc. Twelve months a year, people of these communities use our service. HB 271, the 10% state auto rental tax, stands to tear our business apart.

The senate finance committees estimate that 80% of the tax would be paid by visitors is a negligent exaggeration. It is completely irresponsible for legislatures to publicize such estimates without first surveying car rental agencies. Over 70% of Alaska Car Rentals annual revenue is derived from business travel, and local use. Close to 75% of all clients reside within the state of Alaska. It stands to reason that similar percentages apply to agencies with our type of clientele.

Please don't overlook the many Alaska residents who stand to suffer if this bill is passed. Business travelers and the greater Ketchikan area have relied on our affordable transportation for years and without question our revenue will be impacted. Combine HB 271 (10% tax) with Ketchikan's current 5.5% city sales tax, and a 8% airport concession fee*, and prospective rental clients will have to consider whether a 23.5% tax on top of rental fees is economical transportation. This tax turns a \$40/day rental into a \$50/day charge, or simply put death to our business. Seven full-time employees, 4 with families, stand to lose their jobs.

Taxing small business out of business is not the answer to Alaska's fiscal problems. I'm extremely disturbed by this bill, and ask for you to vote against it.

Thank you for your time,

Todd Ranniger
Alaska Car Rental
2828 Tongass Avenue
Ketchikan, AK 99901
907-225-5000

* 10% airport concession fee: New occupancy lease, scheduled to be enforced when a particular phase of airport remodeling is completed (late summer, 2003).

Subject:

Date: Thu, 8 May 2003 10:59:26 -0800

From: "Andrew Halcro" <ahalcro@avisalaska.com>

To: "Representative Norman Rokeberg" <representative_norman_rokeberg@legis.state.ak.us>

CC: <Senator_Ben_Stevens@legis.state.ak.us>

Dear Norm,

I have prepared what I believe are the most salient points about the substantial contribution that car rental customers currently pay to the State of Alaska as well as some important points about the status of our industry.

- In 2002, car rental customers paid \$3.7 million in direct taxes to the Department of Transportation at the Anchorage International Airport.
- In 2002, car rental customers paid over \$720,000 in direct taxes to the Department of Transportation in Fairbanks.
- In 2002, car rental companies paid an estimated \$1.5 million dollars in DMV fees
- In 2002, car rental companies and customers in Anchorage alone contributed an estimated \$600,000 in state gasoline taxes
- A 10% statewide tax would mean in Anchorage, car rental customers would pay 29% in state and local taxes.
- A 10% statewide tax would mean car rental customers would pay 19% in Sitka, 20% in Fairbanks, 26% in Juneau, 26% in Kenai, 16% in Petersburg, 14% in Skagway.

The industry:

- Visitors that travel to Alaska via domestic airlines are shrinking. (This is our customer base)
- In 1997, over 2,140,000 deplaned at the Anchorage Airport.
- In 2002, that number was 2,246,000 which means the market grew only 4% in the last six years
- In 1997, over 414,000 people deplaned at the Fairbanks Airport
- In 2002, that number was 416,000 which means traffic increased less than 1% in six years.
- In Kenai, deplanements were down 12% in 2002 and are down 21% year to date.

So it's clear that our customer base has not grown in the last six years and that is directly due to a struggling statewide economy and a lack of investment in tourism marketing. So the answer is impose a 10% tax?

What about our neighbors the cruise industry?

While deplaning traffic has been anemic the last six years, the amount of visitors traveling to Alaska on cruise ships has increased 82%. According to the ATIA, over 390,000 travelers in 1997 came to Alaska via cruise ships. In 2002, that number was 710,000.

But then again, you and I both know that the reason the cruise ship industry has escaped taxation for so long is because lobbyist like Joe Hayes have been able to exercise their political clout with Republicans who are hungry for re-election support.

As far as I'm concerned, this unfair targeting of my industry needs to stop now.

If you and your colleagues are truly looking for a solution to the fiscal gap I would suggest you muster the courage to put forth a plan that will not only solve the fiscal gap but grow the economy.

However, levying one of the highest taxes of its kind, (Only Maryland at 11.5% will be higher) on an industry that is already contributing significantly to the State is not the way to accomplish that.

If you honestly feel my customers should be contributing more, at least be fair and get a contribution for those who stay at hotels, arrive on cruise ships, eat at restaurants and ride in taxi cabs.

Even the sponsor of the bill is on record opposing a cruise ship head tax because it unfairly singles out an industry. How about asking him to reconcile that statement with a 10% tax on the car rental industry?

According to the sponsor, 80% of the car rental tax is going to be paid for by tourist. Wouldn't a cruise ship head tax be paid for 100% by tourist?

You're the Chairman, you have the ability to determine the direction of this bill and I would hope that you exercise good sound economic judgment before you allow this bill to go to the floor.

And if you're worried about political pressure from 27 other Republicans, just remember that none of them live in your district.

The more I think about this bill and the way it has been handled the more angry I get.

Thanks for your time.

Andrew Halcro
President/CEO
Avis Rent A Car of Alaska
(907) 249-8237

ahalcro@avisalaska.com

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 271(W&M)
(H) Publish Date: 4/24/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Passenger Vehicle Rental Tax BRU Revenue Operations
Sponsor Representative Kott Component Tax Division
Requester House Ways and Means Committee Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	55.0	55.0	55.0	55.0	55.0	55.0
Travel	5.0	2.0	2.0	2.0	2.0	2.0
Contractual	25.0	12.0	12.0	12.0	12.0	12.0
Supplies	3.0	1.0	1.0	1.0	1.0	1.0
Equipment	8.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	96.5	70.0	70.0	70.0	70.0	70.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	5,000.0	7,500.0	7,500.0	7,500.0	7,500.0	7,500.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	96.5	70.0	70.0	70.0	70.0	70.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	96.5	70.0	70.0	70.0	70.0	70.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached pages for discussion of this legislation, and the revenue estimate and operating costs.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
Division Department of Revenue Date/Time 4/16/03 7:46 PM
Approved by: Larry Persily, Deputy Commissioner Date 4/16/2003
Agency Department of Revenue

**CSHB 271(W&M) - Passenger Vehicle Rental Tax
Department of Revenue - April 16, 2003**

FN #1, Page 2 of 4

SECTIONAL ANALYSIS

Section 1 amends AS 43 by adding a new chapter establishing a passenger vehicle rental tax.

AS 43.52.010 imposes a tax on the lease or rental of a passenger vehicle, but not on commercial vehicles. Leases or rentals on passenger vehicles that exceed 90 consecutive days also would be exempt.

A commercial motor vehicle is defined in state statute as a motor vehicle with a gross weight rating exceeding 26,000 pounds, or a motor vehicle that is designed to transport more than 15 passengers including the driver, or is used to transport hazardous materials under the Hazardous Materials Transportation Act, or a combination of a motor vehicle and at least one other vehicle that is used on a highway or vehicular way to transport passengers or property.

The bill could be understood in this section to require that the passenger vehicle be manufactured in Alaska. We certainly would interpret the words "made in this state" on Lines 7 and 8 of Page 1 to refer back to "charge" rather than to the immediately preceding word "vehicle." However, to make it clear, we would suggest an amendment to read:

"There is imposed an excise tax on the [CHARGE FOR THE] lease or rental of a passenger vehicle [MADE] in this state if the lease or rental [OF THE PASSENGER VEHICLE] does not exceed a period of 90 consecutive days.

AS 43.52.020 provides that the tax is 15% of the amount charged for the lease or rental of the passenger vehicle. We interpret the "amount charged" to refer to the agreed base rental rate to be charged (daily rate plus mileage charges), which would exclude discounts and municipal and other taxes and fees.

AS 43.52.030 imposes the tax on the lessor, and the tax must be remitted as required by the department in regulation. The department anticipates it will require the filing of quarterly returns due on the last day of the month following each quarter, with payment in full due with the returns.

AS 43.52.040 provides that the tax applies to leases and rentals in the state without regard to whether the passenger vehicle is registered or licensed in the state.

AS 43.52.050 provides that the tax is in addition to municipal taxes on passenger vehicle rentals.

**CSHB 271(W&M) - Passenger Vehicle Rental Tax
Department of Revenue - April 16, 2003**

FN #1, Page 3 of 4

AS 43.52.060 gives the department the authority to adopt regulations to administer the tax and requires the money to be deposited into a special account in the General Fund. The Legislature may appropriate the money for tourism development and marketing.

AS 43.52.099 defines the term "passenger vehicle" and "tax".

Section 2 provides that the Department may adopt regulations to implement this Act.

Section 3 makes section 2 effective immediately.

Section 4 provides that the actual tax would start July 1, 2003.

OVERALL ANALYSIS

This legislation would impose a 15% tax on the rental of motor vehicles, predominantly passenger cars and trucks, but also motorcycles. Trucks that do not fall within the commercial vehicle classification would be subject to the tax. This would likely include some of the smaller trucks leased by self-service moving companies.

The tax would apply to recreational vehicles. The department interprets the legislation to apply to RV's because most RV's would not be classified as commercial motor vehicles unless they had a gross vehicle weight rating (GVWR) exceeding 26,000 pounds or were designed to carry more than 15 passengers. The GVWR is the weight specified by the manufacturer as the maximum weight that the chassis is designed to handle. While there are higher-end RV's that easily exceed the 26,000-pound GVWR threshold, we would not expect those RV's to be used in a rental business.

The department also interprets the legislation not to apply to the rental of "Fifth Wheels" or "Tagalongs" or similar vehicles that are trailed or towed behind a motor vehicle. Under the bill, a passenger vehicle is a motor vehicle and a motor vehicle is a self-propelled vehicle.

Passenger vehicles leased for more than 90 consecutive days are exempt from the tax. This would exclude passenger cars leased by individuals and businesses for long-term use as an alternative to the purchase of a vehicle. The department, however, interprets the bill to require that the rental must actually run for 91 consecutive days to be exempt. A long-term lease that is cancelled, for example, after 45 days would result in the application of the tax to the rental.

**CSHB 271(W&M) - Passenger Vehicle Rental Tax
Department of Revenue - April 16, 2003**

FN #1, Page 4 of 4

OPERATING EXPENDITURES

The Department of Revenue (DOR) anticipates additional costs for administering the provisions of this bill. There are more than 100 businesses that rent out cars and RV's across Alaska. We envision that this tax would be paid quarterly, which would mean between 400 and 500 tax returns during the year, of which several might involve questions, audits or additional work, and perhaps enforcement and collection efforts.

The Department expects it will need the equivalent of one full-time employee to handle the accounting and collections, taxpayer service and compliance work associated with this tax. In addition, we would expect to conduct taxpayer outreach and education efforts to help start this new program.

In addition to the outreach and education effort, the Department would need to move quickly to set up this new tax program for July 1, 2003, and would use the additional contractual funds requested in Fiscal 2004 to pay for setting up a computer program for tracking payments.

REVENUE ESTIMATE

The Department estimates the passenger car rental business in Alaska totals about \$50 million per year. Therefore, each 1% tax on rentals would raise approximately \$500,000 per year, and the 15% tax in this legislation would raise an estimated \$7.5 million per year for the state. The revenue in the first year of the program, Fiscal 2004, is estimated at \$5 million because the state would receive just three quarterly tax payments in the first year, and would miss out on the start of the tourism season in May and June 2003.

For comparison purposes, Anchorage imposes an 8% tax on vehicle rentals, with Cordova at 6% and Yakutat at 4%.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 271(FIN)
 (H) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Passenger Vehicle Rental Tax BRU Revenue Operations
 Component Tax Division
 Sponsor Representative Kott
 Requester House Finance Committee Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	55.0	55.0	55.0	55.0	55.0	55.0
Travel	5.0	2.0	2.0	2.0	2.0	2.0
Contractual	25.0	12.0	12.0	12.0	12.0	12.0
Supplies	3.0	1.0	1.0	1.0	1.0	1.0
Equipment	8.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	96.5	70.0	70.0	70.0	70.0	70.0

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

CHANGE IN REVENUES ()	4,000.0	6,000.0	6,000.0	6,000.0	6,000.0	6,000.0
-------------------------------	----------------	----------------	----------------	----------------	----------------	----------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	96.5	70.0	70.0	70.0	70.0	70.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	96.5	70.0	70.0	70.0	70.0	70.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would impose a 10% state tax on the rental or lease of passenger vehicles, and a 3% state tax on the lease or rental of recreational vehicles. The new taxes would take effect July 1, 2003. Commercial vehicles and farm equipment would be exempt, as would emergency and firefighting vehicles and all rentals by state, federal and local government employees on official business. Vehicles leased for more than 90 consecutive days also would be exempt from the tax.

The definition of recreation vehicles in this legislation includes traditional RVs plus campers, camper trailers, and pickup trucks with camper units mounted on the bed.

See attached page for the revenue estimate and operating costs.

Prepared by: Larry Persily, Deputy Commissioner
 Division: Department of Revenue
 Approved by: Larry Persily, Deputy Commissioner
 Agency: Department of Revenue

Phone 465-5469
 Date/Time 5/6/03 5:19 PM
 Date 5/6/2003

**CSHB271(FIN) - Passenger Vehicle Rental Tax
Department of Revenue – May 6, 2003**

Page 2 of 2 - FN #2

OPERATING EXPENDITURES

The Department of Revenue anticipates additional costs for administering the provisions of this bill. There are more than 100 businesses that rent out cars and RV's across Alaska. We envision that this tax would be paid quarterly, which would mean between 400 and 500 tax returns during the year, of which several might involve questions, audits or additional work, and perhaps enforcement and collection efforts.

The Department expects it will need the equivalent of one full-time employee to handle the accounting and collections, taxpayer service and compliance work associated with this tax. In addition, we would expect to conduct taxpayer outreach and education efforts to help start this new program.

In addition to the outreach and education effort, the Department would need to move quickly to set up this new tax for July 1, 2003, and would use the additional contractual funds requested in Fiscal 2004 to pay for a computer program for tracking payments.

REVENUE ESTIMATE

The Department estimates the combination of a 10% passenger vehicle tax and a 3% RV tax would raise approximately \$6 million a year in additional revenue to the state. The revenue in the first year of the program, Fiscal 2004, is estimated at \$4 million because the state would receive just three quarterly tax payments in the first year, and would miss out on the start of the tourism season in May and June 2003.

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-3777
Fax (907) 465-2819

Interim: (June-Dec)
716 West 4th Avenue, Suite 600
Anchorage, AK 99501-2133
(907) 269-0155
(907) 269-0154 Fax



Pete Kott
Speaker of the House

Sponsor Statement
for
CS for House Bill 271 (FIN)

“An Act levying and providing for the collection and administration of an excise tax on rental of passenger and recreational vehicles usable on highways and vehicular ways; and providing for an effective date.”

The travel industry is the second largest private-sector industry in Alaska. There were 1.6 million visitors to the state in 2002 -- two visitors for every resident. More Americans are choosing to spend their vacations in the United States since September 11, 2001, when international travel became more uncertain. Alaska's distance from the lower 48 states makes it an interesting destination and adventure; Alaska's geographic size, small population, and natural attractions contribute to a feeling of security for tourists.

The majority of visitors to Alaska come by cruise ship or domestic flight, and many of these visitors rent passenger or recreational vehicles to view our scenery and wildlife. Extra vehicles exacerbate the need for road maintenance and repair and conduces interest in construction of roads into other potential tourist destinations.

House Bill 271 is a way for the State to raise revenues that could be used for road and highway maintenance, repair, and construction as well as contributed to the tourism industry for promotion and marketing. This bill would levy a 10 percent tax on the amount charged for the lease or rental of a passenger vehicle, exempting government employees, and would put us on a par with other states' taxes on rentals. House Bill 271 has the potential of bringing \$6.0 million annually to the State.

At a time when State government spending must be decreased in order to balance the budget, those who benefit from State services must, concurrently, contribute to the support of those services.

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSHB 271(FIN)

BY REPRESENTATIVE ROKEBERG

1 Page 1, line 11:

2 Delete "The"

3 Insert "Except in a municipality that imposes a specific vehicle rental tax on passenger
4 vehicle rentals under AS 29.45, the"

5

6 Page 1, line 13, following "passenger vehicle.":

7 Insert "In a municipality that imposed a specific vehicle rental tax on passenger
8 vehicle rentals under AS 29.45 in effect on January 1, 2003, the rate of the state passenger
9 vehicle rental tax levied under AS 43.52.020 is 10 percent less the amount of the municipal
10 tax. If the municipal tax is greater than 10 percent, then the rate of the state tax is zero."

11

12 Page 2, line 4:

13 Delete "The"

14 Insert "Except in a municipality that imposes a specific vehicle rental tax on
15 recreational vehicle rentals under AS 29.45, the"

16

17 Page 2, line 6, following "recreational vehicle.":

18 Insert "In a municipality that imposed a specific vehicle rental tax on recreational
19 vehicle rentals under AS 29.45 in effect on January 1, 2003, the rate of the state recreational
20 vehicle rental tax levied under AS 43.52.030 is three percent less the amount of the municipal
21 tax. If the municipal tax is greater than three percent, then the rate of the state tax is zero."

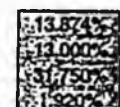
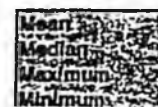
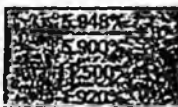
22

23 Page 2, lines 17 - 19:

- 1 Delete all material.
- 2
- 3 Page 2, line 20:
- 4 Delete "Sec. 43.52.080"
- 5 Insert "Sec. 43.52.070"
- 6
- 7 Page 2, line 27:
- 8 Delete "Sec. 43.52.090"
- 9 Insert "Sec. 43.52.080"

Table 2
Rental Car Tax
State-by-State Comparison¹

State	State Rental Tax		State Sales Tax		Local Rental Tax		Local Sales Tax		Effective Tax	
	Tax Rate ²	Applicable	Tax Rate	Applicable	Maximum Local Rate ^{2,3}	Applicable	Local Rate	Maximum Effective Tax	Rank	
Illinois ⁴	5.000%	No	8.250%		18.500%	Yes	up to 2%	31.750%	1	
Arizona ³	5.000%	Yes	5.000%		17.300%	Yes	up to 2.5%	29.800%	2	
Massachusetts ⁵	0.000%	Yes	5.000%		20.600%	N.A.	N.A.	25.600%	3	
Texas ³	10.000%	No	8.250%		13.000%	No	up to 2%	23.000%	4	
Louisiana ³	3.000%	Yes	4.000%		10.250%	Yes	up to 5%	22.250%	5	
Washington ³	5.900%	Yes	6.500%		7.000%	Yes	up to 2.1%	21.500%	6	
Nevada ³	6.000%	Yes	7.500%		8.000%	Yes	up to 0.5%	21.000%	7	
North Carolina ³	8.000%	No	4.000%		10.000%	Yes	up to 2.5%	20.500%	8	
Colorado ³	0.000%	Yes	2.900%		11.460%	Yes	up to 5%	19.360%	9	
North Dakota ³	3.000%	Yes	5.000%		10.000%	No	up to 1.75%	18.000%	10	
Indiana ¹	0.000%	Yes	5.000%		13.000%	N.A.	N.A.	18.000%	11	
Oregon ³	0.000%	N.A.	N.A.		18.000%	N.A.	N.A.	18.000%	11	
Utah	6.500%	Yes	4.750%		3.000%	Yes	up to 3.35%	17.600%	13	
California ³	0.000%	Yes	7.000%		8.000%	Yes	up to 2.5%	17.500%	14	
Minnesota ³	6.200%	Yes	6.500%		3.500%	Yes	up to 1%	17.200%	15	
Georgia ³	0.000%	Yes	4.000%		11.000%	Yes	up to 2%	17.000%	18	
Virginia ²	8.000%	No	4.500%		7.000%	Yes	up to 2%	17.000%	16	
New Jersey ³	0.000%	Yes	6.000%		10.000%	N.A.	N.A.	16.000%	18	
New Mexico	9.000%	Yes	5.000%		N.A.	Yes	up to 1.9375%	15.938%	19	
Nebraska	4.500%	Yes	5.000%		4.000%	Yes	up to 1.5%	15.000%	20	
Oklahoma	6.100%	Yes	4.500%		N.A.	Yes	up to 4%	14.600%	21	
Arkansas	5.500%	No	5.125%		5.000%	Yes	up to 4%	14.500%	22	
Dist. of Columbia ³	10.000%	No	5.750%		4.000%	N.A.	N.A.	14.000%	23	
New York	5.000%	Yes	4.000%		N.A.	Yes	up to 4.25%	13.250%	24	
Ohio	0.000%	Yes	5.000%		6.000%	Yes	up to 2%	13.000%	25	
Pennsylvania	6.000%	Yes	6.000%		N.A.	Yes	1%	13.000%	25	
Rhode Island	6.000%	Yes	7.000%		N.A.	N.A.	N.A.	13.000%	25	
Wisconsin	3.000%	Yes	5.000%		4.000%	Yes	up to 0.6%	12.600%	28	
Alabama	8.000%	No	4.000%		N.A.	Yes	up to 4%	12.000%	29	
Florida	4.100%	Yes	6.000%		0.000%	Yes	up to 1.5%	11.600%	30	
Maryland	11.500%	No	5.000%		N.A.	N.A.	N.A.	11.500%	31	
South Dakota	5.500%	Yes	4.000%		N.A.	Yes	up to 2%	11.500%	32	
Connecticut	5.000%	Yes	6.000%		N.A.	N.A.	N.A.	11.000%	33	
South Carolina	5.000%	Yes	5.000%		N.A.	Yes	up to 1%	11.000%	33	
Tennessee	2.000%	Yes	6.000%		N.A.	Yes	up to 2.75%	10.750%	35	
Kansas	3.500%	Yes	4.900%		0.000%	Yes	up to 2%	10.400%	36	
Wyoming	4.000%	Yes	4.000%		N.A.	Yes	up to 2%	10.000%	37	
Hawaii	6.000%	Yes	4.000%		N.A.	N.A.	N.A.	10.000%	37	
Maine	10.000%	No	5.000%		N.A.	N.A.	N.A.	10.000%	37	
Kentucky	0.000%	Yes	6.000%		3.000%	N.A.	N.A.	9.000%	40	
Mississippi	6.000%	Yes	3.000%		N.A.	N.A.	N.A.	9.000%	40	
Michigan	0.000%	Yes	6.000%		2.000%	N.A.	N.A.	8.000%	42	
New Hampshire	8.000%	N.A.	N.A.		N.A.	N.A.	N.A.	8.000%	42	
Missouri	0.000%	Yes	4.225%		N.A.	Yes	up to 3.75%	7.975%	44	
Idaho	0.000%	Yes	5.000%		N.A.	Yes	up to 2%	7.000%	45	
Iowa	0.000%	Yes	5.000%		0.000%	Yes	up to 1%	6.000%	46	
Alaska	0.000%	N.A.	N.A.		N.A.	Yes	up to 6%	6.000%	47	
Vermont	0.000%	Yes	5.000%		N.A.	Yes	1%	6.000%	47	
West Virginia	0.000%	Yes	6.000%		N.A.	N.A.	N.A.	6.000%	47	
Montana ⁶	1.920%	N.A.	N.A.		N.A.	Yes	up to 3%	1.920%	50	
Delaware	1.920%	N.A.	N.A.		N.A.	N.A.	N.A.	1.920%	51	



¹Sources: The National Conference of State Legislatures July 1999, "Travel and Tourism a Legislator's Guide"; Federal Tax Administrators, and National Car Rental for select states. Sources do not coincide for every state.

²Per day charges are converted to percentages using \$50.00 as a base price before surcharges and taxes

³Maximum local tax include additional off-airport car rental fees;

AZ-7%, CA-8%, CO-5.96%, DC-4%, GA-8%, IN-7%, LA-5%, MN-3.5%, NV-8%, NJ-10%, NC-5%, ND-10%, OR-4%, TX-8%, VA-7%, WA-4%

⁴Maximum local tax includes transit taxes (18.5% in Chicago)

⁵Maximum local tax includes 20.6% surcharge that is only assessed in Boston

⁶Resort tax

HB

288

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 288 (STA)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title DCED Name Change RDU Executive Admin & Dev (119)
 Component Commissioner's Office
 Sponsor Representative Kohring
 Requester House Rules Component No. 1027

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill changes the name of the Department of Community and Economic Development to the Department of Commerce and Economic Development. The department will implement the change to the new name as supplies need to be replenished; therefore, no new funds are required to implement this bill.

Prepared by: Tom Lawson, Director Phone (907) 465-2506
 Division Administrative Services Date/Time 1/14/04 9:17 AM
 Approved by: Edgar Blatchford, Commissioner Date 1/14/2004
 Agency Department of Community & Economic Development

Alaska State Legislature

House of Representatives



Official Business

COMMITTEE ON RULES
Representative Norman Rokeberg, Chairman

State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

MEMORANDUM

TO: Suzi Lowell, Chief Clerk
Alaska House of Representatives

FROM: Representative Norman Rokeberg, Chairman
House Rules Committee

DATE: January 15, 2004

RE: House Rules Committee Meeting Schedule

A handwritten signature in black ink, appearing to read "Norman Rokeberg", written over the "FROM:" line of the memorandum.

The House Rules Committee will meet as follows:

Tuesday, January 20, 2004

9:30 a.m. Beltz Room (Room 211), Second Floor, Capitol Building

Topic: HB 288 – An Act changing the name of the Department of Community and Economic Development to the Department of Commerce and Economic Development.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 288(STA)
 (H) Publish Date: 5/8/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Changing Name of Dept of Comm & Econ. Dev. BRU Executive Admin (119)
 Component Commissioner's Office
 Sponsor Representative Kohring
 Requester House State Affairs Component No. 1027

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill changes the name of the Department of Community and Economic Development to the Department of Commerce. The department will implement the change to the new name as supplies need to be replenished; therefore, no new funds are required to implement this bill.

Prepared by: Tom Lawson, Director Phone 907-465-2506
 Division Administrative Services Date/Time 4/30/03 3:03 PM
 Approved by: Edgar Blatchford, Commissioner Date 4/30/2003
 Agency Department of Community & Economic Development

ALASKA STATE LEGISLATURE

Interim:

600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 373-1842
Fax (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1192
(907) 465-2186
Fax (907) 465-5815

REPRESENTATIVE VIC KOHRING
DISTRICT 14

SPONSOR STATEMENT

CS for House Bill 288

"Changing the name of the Department of Community & Economic Development"

Confusion exists as to the actual mission of the Department of Community & Economic Development (DCED) on whether Alaska has an agency that is tasked with promoting commerce and economic development. It has somewhat complicated efforts to attract investment to the state.

Governor Murkowski, in his State of the State speech in January, announced his administration was now referring to the department as the "Department of Commerce" (short, for the Department of Commerce & Economic Development).

The Committee Substitute for House Bill 288 officially renames DCED to the Department of *Commerce* and Economic Development. I believe the name change more closely reflects its mission. That is, to further commerce and develop Alaska's economy.

Further, the name change more correctly reflects the goals and strategies of the department, such as promoting local economic development and crucial infrastructure, marketing Alaska's goods and services throughout the world, organizing and conducting business trade missions to expand product sales in current markets and develop new markets, and facilitating the exchange of information between Alaska exporters and potential customers.

Lastly, by adding the name "Commerce" into the title, it becomes consistent with numerous other states, including Utah, Montana, Idaho, and North Dakota and South Dakota.

HB

298

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 298(W&M)
 (H) Publish Date: 3/18/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Dist. Of Approps from Perm Fund RDU AK Permanent Fund Corporation
 Component AK Permanent Fund Corporation
 Sponsor Ways and Means Committee
 Requester Ways and Means Committee Component No. 109

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 298 would change the amount available to distribute from the Permanent Fund to conform to a Percent of Market Value payout limit. HB 298 would not change the management or the cost of operations of the Fund.

Prepared by: Robert D. Storer, Executive Director Phone 465-2047
 Division Alaska Permanent Fund Corporation Date/Time 3/16/04 8:12 AM
 Approved by: Steve Porter, Deputy Commissioner Date 3/16/2004
 Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 298(FIN)
 (H) Publish Date: 4/7/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Distribution of Appropriations RDU Revenue Programs & Services
from the Permanent Fund Component Commissioner's Office
 Sponsor House Ways and Means
 Requester House Finance Committee Component No. 123

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would allocate the funds from an annual 5% percent-of-market-value distribution (POMV) of the Permanent Fund. The distribution would be 50% of the funds to the state General Fund for public services, and 50% to the dividend fund for per-capita distribution to eligible Alaskans. This legislation would replace the current dividend calculation formula in statute. For purposes of this fiscal note, the Department of Revenue assumed this new distribution formula would take effect with the FY 2006 budget and the October 2005 dividend. Under this legislation, the amount of money available to the General Fund and for per-capita dividends is projected at:

	FY2006	FY2007	FY2008	FY2009	FY 2010	FY2011
Public Services	\$641.5 million	\$667.0 million	\$705.0 million	\$746.0 million	\$776.5 million	\$803.5 million
	Oct. 2005	Oct. 2006	Oct. 2007	Oct. 2008	Oct. 2009	Oct. 2010
Per-capita Dividend	\$641.5 million	\$667.0 million	\$705.0 million	\$746.0 million	\$776.5 million	\$803.5 million

Prepared by: Steve Porter, Deputy Commissioner
 Division: Department of Revenue
 Approved by: Steve Porter, Deputy Commissioner
 Agency: Department of Revenue

Phone 465-2302
 Date/Time 3/22/04 12:30 PM
 Date 3/22/2004

Alaska State Legislature

House Special Committee on Ways and Means

Representative Mike Hawker, Chairman

Session Contact:

State Capitol, Room 434
Juneau, AK. 99801
Phone (907) 465-4949
Fax (907) 465-4979
Staff Contact: Pauly Swanson (907) 465-6820



Interim Contact:

716 W. 4th Ave Room 620
Anchorage, AK 99501-2133
Phone: (907) 269-0244
Fax: (907) 269-0248

Sponsor Statement and Sectional Analysis CSHB 298 (W&M) - Version \S

HB 298 is effective only if a Percent of Market Value (POMV) constitutional amendment is approved by the voters during the 2004 general election and takes effect. HB 298 provides conforming language to existing statute to accommodate changing the constitutional requirement that all income of the Permanent Fund be deposited into the general fund to the more limiting appropriation mechanism of "up to 5%" of market value in the proposed POMV constitutional amendment and to recognize the merger of the Earnings Reserve Fund into the Permanent Fund.

HB 298 also provides that the annual appropriation from the Permanent Fund under the POMV management structure be divided equally between paying individual dividends and public services.

Section 1: Amends the basis for the Alaska jury list to people applying for a Permanent Fund Dividend. Former language referenced applicants for a "distribution of Alaska Income."

Section 2: Changes Legislative Budget and Audit Committee duties from making annual recommendations for investment policy for the "income" of the Permanent Fund to making annual recommendation for investment policy for the Permanent Fund. This change is consistent with the merger of the Earnings Reserve (income) Account into the Permanent Fund itself and with the general oversight responsibilities of the LB&A committee for the Permanent Fund and its operations.

Section 3(a): Provides that no appropriation shall be made from the Permanent Fund in excess of the average 10-year real rate of return. If the fund does not make a 5% real return over 10 years, the amount available for appropriation is reduced to that real return. This provision provides a statutory framework for implementing the "up to 5%" provision in the proposed POMV constitutional amendment.

Committee Members:

Representative Ralph Samuels • Representative Vic Kohring • Representative Norman Rokeberg
Representative Bruce Weyhrauch • Representative Peggy Wilson • Representative Dan Ogg
Representative Max Gruenberg • Representative Carl Moses

Section 3(b): Provides that annual appropriations from the Permanent Fund be divided equally between paying individual dividends and public services.

Section 4: The proposed POMV constitutional amendment allows appropriations based on the "market value" of the fund. This section provides a statutory mandate that "market value" be determined in accordance with generally accepted accounting principles.

Section 5: Eliminates the current statutory provision that any unexpended operating budget of the Permanent Fund Corporation be included in the determination of "income" of the fund for the calculation of income available for distribution. The determination of income available for distribution will no longer be required under the proposed POMV constitutional amendment that bases the amount that can be distributed on market value. Accordingly, this provision is no longer relevant.

Section 6: The Permanent Fund Corporation manages the investment portfolio of the Mental Health Trust Authority. Current statute provides that the income from those funds be determined "in the same manner the corporation determines the net income of the Alaska Permanent Fund..." The Mental Health Trust Authority has previously adopted a POMV style management. This section provides a statutory mandate that the net income of the Mental Health Trust fund be determined in accordance with generally accepted accounting principles. This is the same language that is being adopted for the Permanent Fund itself in Section 4.

Section 7: This section changes language in the existing Permanent Fund Dividend payment statutes to language that conforms to the proposed POMV methodology. This change has no substantive consequence on the current dividend payment statutes.

Section 8: This section changes language in the disclosures required on the payment stub for Permanent Fund Dividends to language that conforms to the proposed POMV methodology. This change has no substantive consequence on the disclosures required.

Section 9: Repeals statute that will be superseded by operation of the proposed POMV constitutional amendment. AS 37.13.140 defined income and net income of the Permanent Fund for purposes of making distributions. Under the proposed POMV constitutional amendment, distributions are based on Market Value not on income. AS 37.13.145 defined the disposition of the income of the permanent fund including inflation proofing and transfers to the dividend account. Inflation proofing is inherent in the proposed POMV constitutional amendment and Section 3 of this legislation provides for transfers to the dividend account.

Section 10: Provides that this Act takes effect only if a POMV amendment is approved by the voters during the 2004 general election and takes effect.

Section 11: Provides that. Subject to Section 10, the effective date of this act will be January 1, 2005.

Alaska State Legislature

House Special Committee on Ways and Means

Representative Mike Hawker, Chairman

Session Contact:

State Capitol, Room 434

Juneau, AK. 99801

Phone (907) 465-4949

Fax (907) 465-4979

Staff Contact: Pauly Swanson (907) 465-6820



Interim Contact:

716 W. 4th Ave Room 620

Anchorage, AK 99501-2133

Phone: (907) 269-0244

Fax: (907) 269-0248

Sectional Analysis CSHB 298(FIN)

HB 298 is effective only if a Percent of Market Value (POMV) constitutional amendment is approved by the voters during the 2004 general election and takes effect. HB 298 provides conforming language to existing statute to accommodate changing the constitutional requirement that all income of the Permanent Fund be deposited into the general fund to the more limiting appropriation mechanism of "up to 5%" of market value in the proposed POMV constitutional amendment and to recognize the merger of the Earnings Reserve Fund into the Permanent Fund.

HB 298 also provides that the annual appropriation from the Permanent Fund under the POMV management structure be divided equally between paying individual dividends and public services.

Section 1: Amends the basis for the Alaska jury list to people applying for a Permanent Fund Dividend. Former language referenced applicants for a "distribution of Alaska Income."

Section 2: Changes Legislative Budget and Audit Committee duties from making annual recommendations for investment policy for the "income" of the Permanent Fund to making annual recommendation for investment policy for the Permanent Fund. This change is consistent with the merger of the Earnings Reserve (income) Account into the Permanent Fund itself and with the general oversight responsibilities of the LB&A committee for the Permanent Fund and its operations.

Section 3(a): Provides that no appropriation shall be made from the Permanent Fund in excess of the average 10-year real rate of return. If the fund does not make a 5% real return over 10 years, the amount available for appropriation is reduced to that real return. This provision provides a statutory framework for implementing the "up to 5%" provision in the proposed POMV constitutional amendment.

Committee Members:

Representative Ralph Samuels • Representative Vic Kohring • Representative Norman Rokeberg
Representative Bruce Weyhrauch • Representative Peggy Wilson • Representative Dan Ogg
Representative Max Gruenberg • Representative Carl Moses

Section 3(b): Provides authorization for appropriations from the fund to cover corporation costs associated with operating and investing the fund.

Section 3(c): Provides that annual appropriations from the Permanent Fund be divided equally between paying individual dividends and funding public education.

Section 3(d): Provides timeframe for transfer of money appropriated from the fund.

Section 3(e): Defines the Index to be used in determining the Rate of Inflation.

Section 4: The proposed POMV constitutional amendment allows appropriations based on the "market value" of the fund. This section provides a statutory mandate that "market value" be determined in accordance with generally accepted accounting principles.

Section 5: Provides that the corporation's operating budget be included in the state's operating budget. Eliminates the current statutory provision that any unexpended operating budget of the Permanent Fund Corporation be included in the determination of "income" of the fund for the calculation of income available for distribution. The determination of income available for distribution will no longer be required under the proposed POMV constitutional amendment that bases the amount that can be distributed on market value.

Section 6: The Permanent Fund Corporation manages the investment portfolio of the Mental Health Trust Authority. Current statute provides that the income from those funds be determined "in the same manner the corporation determines the net income of the Alaska Permanent Fund..." The Mental Health Trust Authority has previously adopted a POMV style management. This section provides a statutory mandate that the net income of the Mental Health Trust fund be determined in accordance with generally accepted accounting principles. This is the same language that is being adopted for the Permanent Fund itself in Section 4.

Section 7: This section changes language in the existing Permanent Fund Dividend payment statutes to language that conforms to the proposed POMV methodology. This change has no substantive consequence on the current dividend payment statutes.

Section 8: This section changes language in the disclosures required on the payment stub for Permanent Fund Dividends to language that conforms to the proposed POMV methodology. This change has no substantive consequence on the disclosures required.

Section 9: Repeals statute that will be superseded by operation of the proposed POMV constitutional amendment. AS 37.13.140 defined income and net income of the Permanent Fund for purposes of making distributions. Under the proposed POMV constitutional amendment, distributions are based on Market Value not on income. AS 37.13.145 defined the disposition of the income of the permanent fund including inflation proofing and transfers to the dividend account. Inflation proofing is inherent in the proposed POMV constitutional amendment and Section 3 of this legislation provides for transfers to the dividend account.

Section 10: Provides that this Act takes effect only if a POMV amendment is approved by the voters during the 2004 general election and takes effect.

Section 11: Provides that subject to Section 10, the effective date of this act will be January 1, 2005.

Alaska State Legislature

House Special Committee on Ways and Means

Representative Mike Hawker, Chairman

Session Contact:

State Capitol, Room 434

Juneau, AK. 99801

Phone (907) 465-4949

Fax (907) 465-4979

Staff Contact: Pauly Swanson (907) 465-6820



Interim Contact:

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Anchorage, AK 99501-2133

Phone: (907) 269-0244

Fax: (907) 269-0248

Sectional Analysis CSHB 298 (W&M)

HB 298 is effective only if a Percent of Market Value (POMV) constitutional amendment is approved by the voters during the 2004 general election and takes effect. HB 298 provides conforming language to existing statute to accommodate changing the constitutional requirement that all income of the Permanent Fund be deposited into the general fund to the more limiting appropriation mechanism of "up to 5%" of market value in the proposed POMV constitutional amendment and to recognize the merger of the Earnings Reserve Fund into the Permanent Fund.

HB 298 also provides that the annual appropriation from the Permanent Fund under the POMV management structure be divided equally between paying individual dividends and public services.

Section 1: Amends the basis for the Alaska jury list to people applying for a Permanent Fund Dividend. Former language referenced applicants for a "distribution of Alaska Income."

Section 2: Changes Legislative Budget and Audit Committee duties from making annual recommendations for investment policy for the "income" of the Permanent Fund to making annual recommendation for investment policy for the Permanent Fund. This change is consistent with the merger of the Earnings Reserve (income) Account into the Permanent Fund itself and with the general oversight responsibilities of the LB&A committee for the Permanent Fund and its operations.

Section 3(a): Provides that no appropriation shall be made from the Permanent Fund in excess of the average 10-year real rate of return. If the fund does not make a 5% real return over 10 years, the amount available for appropriation is reduced to that real return. This provision provides a statutory framework for implementing the "up to 5%" provision in the proposed POMV constitutional amendment.

Committee Members:

Representative Ralph Samuels • Representative Vic Kohring • Representative Norman Rokeberg
Representative Bruce Weyhrauch • Representative Peggy Wilson • Representative Dan Ogg
Representative Max Gruenberg • Representative Carl Moses

Section 3(b): Provides that annual appropriations from the Permanent Fund be divided equally between paying individual dividends and public services.

Section 3(c): Defines the Index to be used in determining the Rate of Inflation.

Section 4: The proposed POMV constitutional amendment allows appropriations based on the "market value" of the fund. This section provides a statutory mandate that "market value" be determined in accordance with generally accepted accounting principles.

Section 5: Eliminates the current statutory provision that any unexpended operating budget of the Permanent Fund Corporation be included in the determination of "income" of the fund for the calculation of income available for distribution. The determination of income available for distribution will no longer be required under the proposed POMV constitutional amendment that bases the amount that can be distributed on market value. Accordingly, this provision is no longer relevant.

Section 6: The Permanent Fund Corporation manages the investment portfolio of the Mental Health Trust Authority. Current statute provides that the income from those funds be determined "in the same manner the corporation determines the net income of the Alaska Permanent Fund..." The Mental Health Trust Authority has previously adopted a POMV style management. This section provides a statutory mandate that the net income of the Mental Health Trust fund be determined in accordance with generally accepted accounting principles. This is the same language that is being adopted for the Permanent Fund itself in Section 4.

Section 7: This section changes language in the existing Permanent Fund Dividend payment statutes to language that conforms to the proposed POMV methodology. This change has no substantive consequence on the current dividend payment statutes.

Section 8: This section changes language in the disclosures required on the payment stub for Permanent Fund Dividends to language that conforms to the proposed POMV methodology. This change has no substantive consequence on the disclosures required.

Section 9: Repeals statute that will be superseded by operation of the proposed POMV constitutional amendment. AS 37.13.140 defined income and net income of the Permanent Fund for purposes of making distributions. Under the proposed POMV constitutional amendment, distributions are based on Market Value not on income. AS 37.13.145 defined the disposition of the income of the permanent fund including inflation proofing and transfers to the dividend account. Inflation proofing is inherent in the proposed POMV constitutional amendment and Section 3 of this legislation provides for transfers to the dividend account.

Section 10: Provides that Sections 3, 4 and 6-9 of this Act take effect only if a POMV amendment is approved by the voters during the 2004 general election and takes effect.

Section 11: Provides that subject to Section 10, the effective date of this act will be January 1, 2005.

Section 12: Provides that subject to Section 1, 2, and 5 of this take effective immediately.

ALASKA PERMANENT FUND CORPORATION

ANALYSIS OF HB 298(W&M) "D" VERSION

CURRENT STATUTES

Section 11 of the proposed bill includes the repeal of the two statutory sections detailed below.

1) Fund Income Available for Appropriation

AS 37.13.140. Net income of the fund includes income of the earnings reserve account established under AS 37.13.145. Net income of the fund shall be computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. Income available for distribution equals 21 percent of the net income of the fund for the last five fiscal years, including the fiscal year just ended, but may not exceed net income of the fund for the fiscal year just ended plus the balance in the earnings reserve account described in AS 37.13.145.

(2) Distribution of Income

AS 37.13.145. (a) The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited by the corporation into the account as soon as it is received. Money in the account shall be invested in investments authorized under AS 37.13.120.

- (b) At the end of each fiscal year, the corporation shall transfer from the earnings reserve account to the dividend fund established under AS 43.23.045, 50 percent of the income available for distribution under AS 37.13.140.
- (c) after the transfer under (b) of this section, the corporation shall transfer from the earnings reserve account to the principal of the fund

PROPOSED STATUTES/CONSTITUTION

To replace the repealed statutes HB 298 proposes two new statutory provisions (items 1 & 3 below) and one new subsection in the constitution (item 2 below).

(1) Fund Value Determination (Section 4)

Sec. 37.13.148. For the purposes of art. IX, sec. 15(b), Constitution of the State of Alaska, the corporation shall determine the market value of the fund annually as of the close of business on June 30 in accordance with generally accepted accounting principles for the determination of fair value.

2) Fund value available for appropriation

HJR 26 would amend the Permanent Fund provision in the Constitution (Article IX sec. 15) by adding subsection (b) – annual appropriations from the fund are limited to 5% of 5 year-end averaged market value.

3) Distribution of Value (Section 3)

Sec. 37.13.143. Appropriation from the fund. Appropriations by the legislature from the fund for a specific fiscal year are limited as follows:

- (1) not more than 60 percent of the total amount available for appropriation for that year under art. IX, sec. 15(b), Constitution of the State of Alaska, to the general fund;
- (2) not more than 40 percent of the total amount available for appropriation for that year under art. IX, sec. 15(b), Constitution of the State of Alaska, to the dividend fund established under AS 43.23.045.

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CURRENT STATUTES

an amount sufficient to offset the effect of inflation on principal of the fund during that fiscal year. The corporation shall calculate the amount to transfer to the principal under this subsection, by

- (1) computing the average of the monthly United States Consumer Price Index for all urban consumers for each of the two previous calendar years;
- (2) computing the percentage change between the first and second calendar year average; and
- (3) applying that rate to the value of the principal of the fund on the last day of the fiscal year just ended.
- (d) Notwithstanding (b) of this section, income earned on money awarded in or received as a result of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund.

PROPOSED STATUTES/CONSTITUTION

Note: Statutory inflation proofing [AS 37.13.145(c) 1 - 3] is repealed. Inflation proofing under POMV (HJR 26) would be implicit by limiting annual expenditures to no more than 5% of the fund value. To inflation proof the Fund no action would be necessary by the APFC or the Legislature.



Today's Situation

Permanent Fund Balance

\$26 billion



POMV of 5%

\$1.3 billion



\$1,000 Dividend Check

\$650 million



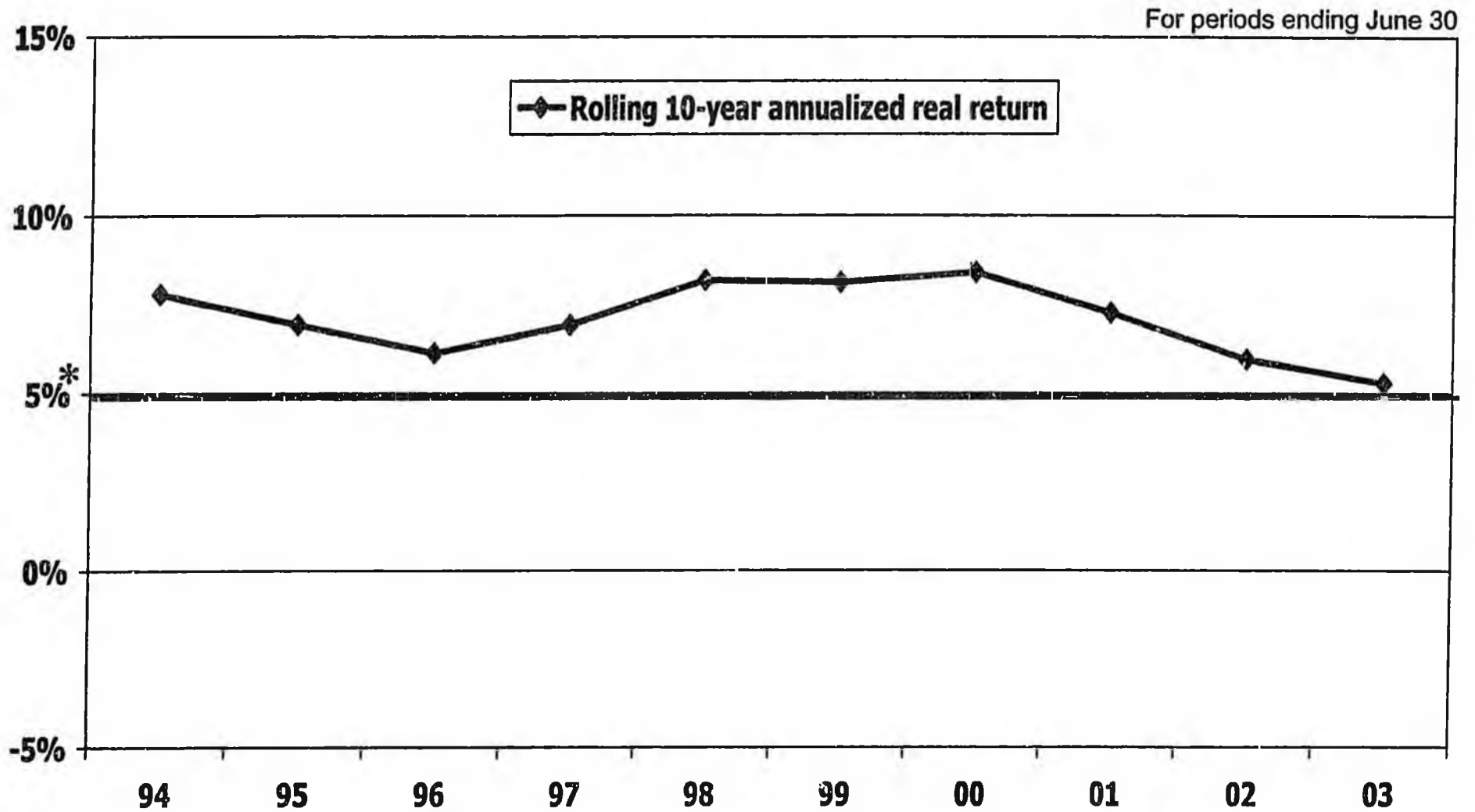
General Government

\$650 million





Rolling 10-year real return – Fiscal year



Rolling 10-year annualized real return

ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS